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RECOGNITION OF FOREIGN INSOLVENCY PROCEEDINGS IN INDIA - BALANCING COOPERATION AND CREDITOR PROTECTION

AUTHOR – DIVYA SINGLA* & DR. MAYA DEVI**

* LLM STUDENT, UNIVERSITY OF LEGAL STUDIES, CHANDIGARH UNIVERSITY, MOHALI, PUNJAB, INDIA.

** PROFESSOR, UNIVERSITY OF LEGAL STUDIES, CHANDIGARH UNIVERSITY, MOHALI, PUNJAB, INDIA.

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Abstract

A foreign insolvency representative may need access to assets in India even though the proceeding under which the representative was appointed began elsewhere. The difficulty is deciding how Indian courts should assist that proceeding when the assistance may affect creditors whose rights arise under Indian law. This paper examines that problem through the Insolvency and Bankruptcy Code, 2016, official Indian reform materials and selected decisions from India, the United States and Singapore. It also considers the cross-border enabling provision contained in the 2026 Amendment Act, distinguishing its enactment from commencement and implementation. The analysis uses doctrinal and comparative methods. It argues that recognition and the grant of relief require distinct enquiries. Recognition should turn on defined eligibility and jurisdictional requirements, while discretionary assistance should depend on the prejudice that particular orders may cause and the conditions capable of addressing it. The automatic consequences of recognising a foreign main proceeding must be separately specified. Indian decisions demonstrate useful forms of cooperation, but their case-specific solutions do not settle these questions for all future applications. A workable Indian framework should therefore define recognition standards, provide meaningful notice and hearings, explain how relief interacts with domestic rights, and require reasoned decisions on objections. Creditor protection is most effective when it identifies a concrete risk and an appropriate remedy, rather than treating every difference in foreign insolvency law as a reason to refuse cooperation.

Keywords: Cross-border insolvency; foreign proceedings; Insolvency and Bankruptcy Code; UNCITRAL Model Law; creditor protection; judicial cooperation.

I. Introduction

A company's insolvency rarely confines itself to the country in which the company is registered. Its lenders may be abroad, its receivables may be payable in another jurisdiction, and assets needed for a restructuring may fall under the control of a foreign court. A representative appointed in one country must then explain why another country should recognise that appointment and permit action against

local assets. For India, the question is especially difficult where cooperation could alter a creditor's ability to enforce a security interest or participate in the distribution of the estate. The IBC's provisions on agreements with foreign countries and letters of request address only part of this problem.[394]

The UNCITRAL Model Law on Cross-Border Insolvency, 1997 offers a procedure through which a foreign representative can seek recognition and assistance. Its usefulness lies in allowing different national insolvency systems to cooperate while retaining their substantive differences.[395] The disagreement concerns how much deference the receiving court should give the foreign proceeding. Westbrook's account of universalism supports coordinated administration centred in a principal jurisdiction.[396] LoPucki's defence of cooperative territoriality gives greater weight to local administration and the expectations attached to local assets.[397] Both concerns matter when a recognition order may eventually lead to assets being administered or distributed elsewhere.

This paper asks how India should recognise and assist foreign insolvency proceedings while preserving fair treatment of affected creditors. Its contribution is to connect the threshold question of recognition with the separate legal tests governing assistance. A qualifying foreign proceeding should receive a predictable recognition decision. The court should then identify which consequences follow by law and which additional orders require evidence of need, prejudice and suitable safeguards. Earlier writing on emerging economies shows that reform also depends on institutional readiness; the existence of an international model cannot by itself supply judicial expertise or workable procedures.[398]

The enquiry is doctrinal and comparative. It examines legislation, official reports and six selected decisions, using the United States and Singapore to test particular choices in legal design. It does not claim to measure changes in recovery rates or the duration of proceedings. The principal scope is corporate insolvency involving a connection with India. Personal insolvency is considered only where a decision helps explain a foreign representative's access to Indian courts. The legal materials were checked up to November 14, 2026; enacted provisions, commencement measures and earlier proposals are treated separately.

II. The Indian Legal Framework for Cross Border Insolvency

Section 234 of the IBC authorises the Central Government to enter into agreements with foreign governments for enforcing the Code. Section 235 permits an adjudicating authority, in the circumstances specified there, to issue a letter of request concerning evidence or action relating to assets in a country covered by the reciprocal arrangement.[399] This design places considerable weight on arrangements between governments. It does not, on its own, give a foreign representative a generally available application for recognition in India or state the consequences of recognising a foreign main proceeding. The absence of those answers creates uncertainty even where the commercial case for cooperation is strong.

[394] The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ss. 234–235.
[395] UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency (1997) with Guide to Enactment and Interpretation (2013)* (United Nations, New York, 2014), preamble and arts. 1–2.
[396] Jay Lawrence Westbrook, "A Global Solution to Multinational Default" 98 *Michigan Law Review* 2276–2328 (2000).
[397] Lynn M. LoPucki, "The Case for Cooperative Territoriality in International Bankruptcy" 98 *Michigan Law Review* 2216–2251 (2000).
[398] Steven T. Kargman, "Emerging Economies and Cross-Border Insolvency Regimes: Missing BRICs in the International Insolvency Architecture" *Harvard Law School Bankruptcy Roundtable*, Aug. 19, 2014.
[399] The Insolvency and Bankruptcy Code, 2016, ss. 234–235.

The Code of Civil Procedure, 1908 supplies rules concerning foreign judgments. Section 13 identifies circumstances in which a foreign judgment is not conclusive, and section 44A permits execution of qualifying decrees from notified reciprocating territories.[400] Their relevance depends on the nature of the foreign order and the remedy sought. A request to execute a money decree differs from a request to suspend individual recovery actions, authorise a representative to collect assets, or coordinate two collective proceedings. Describing every such application as enforcement of a foreign judgment would obscure the separate legal powers involved. Equally, a cross-border recognition procedure should not silently displace the safeguards that apply to a particular judgment.

The Insolvency Law Committee's October 2018 report recommended a Model Law-based framework and supplied Draft Part Z. It considered recognition, cooperation, reciprocity and changes suited to the IBC.[401] The CBIRC report of June 2020 then addressed implementation, including foreign representatives, notice, COMI, relief and designated benches.[402] These reports are important because they show that adoption requires choices about procedure and institutions. They remain proposals and explanatory materials; their draft provisions cannot be cited as operative statutory rights.

The 2026 Amendment Act adds a further stage to this history. Section 71 provides for insertion of section 240C, authorising rules on cross-border administration, recognition, relief and cooperation. The text allows notified coverage of classes of debtors and countries, modifications to the application of the IBC and Companies Act, and designation of benches. It also provides for parliamentary scrutiny of draft rules.[403] However, the commencement notification dated May 22, 2026, appointing May 26 for specified provisions, does not include section 71.[404] No later commencement instrument bringing that section into operation was located in the official materials checked for this paper. The enabling text is therefore analysed as enacted reform, without assuming that a complete recognition procedure has become available under it.

The parliamentary discussion helps identify the remaining design problem. The Select Committee sought clarity on the basic tenets of cross-border insolvency and the treatment of foreign limited liability entities.[405] An enabling power leaves room to adapt procedure as experience develops. Yet the standards affecting access, recognition and creditor rights must be sufficiently visible for courts and applicants to use them consistently. Goswami and Godwin's examination of Draft Part Z explains why apparently modest domestic departures may have substantial effects in practice.[406] Jayshree and Biswal similarly connect reform with the scope of judicial assistance and institutional arrangements.[407] Their analyses inform the present enquiry, although earlier proposals and pre-enactment commentary cannot establish the legal effect of the later Act.

[400] The Code of Civil Procedure, 1908 (Act 5 of 1908), ss. 13–14 and 44A.
[401] Ministry of Corporate Affairs, Government of India, "Report of Insolvency Law Committee on Cross Border Insolvency" (October 2018), executive summary and annex. II.
[402] Ministry of Corporate Affairs, Government of India, Cross Border Insolvency Rules/Regulations Committee, "Report on the Rules and Regulations for Cross-Border Insolvency Resolution" (June 2020), chs. 4–5.
[403] The Insolvency and Bankruptcy Code (Amendment) Act, 2026 (Act 6 of 2026), ss. 1(2) and 71.
[404] Ministry of Corporate Affairs, Notification S.O. 2625(E), dated May 22, 2026, *Gazette of India, Extraordinary*, Part II, s. 3(ii), May 25, 2026.
[405] Lok Sabha, "Report of the Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025" (Lok Sabha Secretariat, New Delhi, December 2025), paras. 67.6.3–67.6.5.
[406] Debaranjan Goswami and Andrew Godwin, "India's Journey towards Cross-Border Insolvency Law Reform" 19 *Asian Journal of Comparative Law* 197–215 (2024).
[407] V. Jayshree and Mamata Biswal, "The Future of Cross-Border Insolvency Reform in India" 10 *Indian Law Review* 51–71 (2026).

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III. Recognition under the UNCITRAL Model Law

Recognition establishes the status of a qualifying foreign proceeding within the receiving legal system. Under the Model Law, the applicant must show that the foreign process and the representative satisfy the relevant definitions and provide the prescribed supporting documents. A proceeding is recognised as main where it takes place in the debtor's centre of main interests, or as non-main where the debtor has an establishment.[408] The decision should address those requirements directly. If recognition turns instead on a general assessment of whether the foreign system resembles Indian insolvency law, the procedure will become uncertain and potentially repeat the merits of the foreign case.

COMI requires particular care because a company's registered office and the place where its affairs are actually administered may differ. The registered office presumption offers an evidential starting point, rather than an answer immune from challenge. The UNCITRAL Digest records judicial approaches to COMI and related recognition questions, making it useful for identifying where interpretation has diverged.[409] India would need to specify the relevant date and the evidence capable of rebutting the presumption. Information available to creditors about the debtor's administration should carry greater weight than a bare assertion by the representative that a particular jurisdiction is commercially convenient.

There is also a risk of treating every change of forum as improper. Pottow questions the assumption that universalist arrangements uniquely create forum shopping, drawing attention to strategic choices under territorial systems as well.[410] For India, the proper response is to examine the purpose and circumstances of a change in administration. A genuine restructuring may require movement of management or a forum capable of coordinating creditors. A nominal relocation designed to manufacture a jurisdictional connection deserves closer scrutiny. Requiring disclosed evidence and a reasoned decision is more defensible than assuming that either registered office or recent relocation is conclusive.

Reciprocity introduces a different consideration. The Model Law's recognition criteria do not themselves require a treaty or reciprocal adoption, while India's 2018 proposals considered reciprocity as part of the domestic framework.[411] A country-based threshold may give the government control over the framework's initial reach. It can also prevent assistance in a case where creditors would benefit from coordination and adequate safeguards are available. If India retains such a threshold, its operation should be expressly stated, with a clear method for identifying covered jurisdictions. Courts should not have to infer eligibility from diplomatic arrangements that are unrelated to insolvency recognition.

Recognition and relief nevertheless cannot be separated absolutely. Recognition of a foreign main proceeding attracts the automatic effects specified in article 20, subject to the domestic qualifications contemplated there. Interim assistance under article 19 and further assistance under article 21 involve different powers. Article 22 expressly requires protection of creditors and other interested persons when relief under articles 19 or 21 is granted, denied or modified.[412] It should not be presented as an

[408] UNCITRAL Model Law and Guide, *supra* note 395, arts. 2 and 15–17.
[409] UNCITRAL, *Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency* (United Nations, 2021), discussion of arts. 2, 16 and 17.
[410] John A. E. Pottow, "The Myth (and Realities) of Forum Shopping in Transnational Insolvency" 32 *Brooklyn Journal of International Law* 785–817 (2007).
[411] Insolvency Law Committee, *supra* note 401, discussion of reciprocity and annex. II.
[412] UNCITRAL Model Law and Guide, *supra* note 395, arts. 19–22.

unrestricted power to cancel article 20's automatic consequences. Indian legislation must identify the effects of recognition and the legal route for challenging or modifying a particular order.

Non-main recognition also needs a defined purpose. A debtor may have an establishment in a country whose proceeding concerns only part of its affairs. That connection can justify assistance without establishing that the foreign court should direct the whole estate. Article 21(3) requires attention to the relationship between relief for a non-main proceeding and the assets or information connected with that proceeding.[413] For India, the resulting question is practical: which Indian assets or records are relevant to the recognised foreign process? The answer should appear in the application and the order. Otherwise, recognition based on a limited local establishment could become a route to relief whose reach exceeds the reason for recognising it.

The same precision is needed when the representative seeks enforcement of an insolvency-related judgment. UNCITRAL adopted a separate Model Law on recognition and enforcement of such judgments in 2018.[414] Mevorach's analysis explains the gaps and overlap between international instruments in this field.[415] India should therefore distinguish recognition of a proceeding from enforcement of a particular judgment arising within it. A finding that the proceeding qualifies for recognition cannot resolve every question about personal jurisdiction, notice or the effect of an order against a particular party.

IV. Judicial Approaches in India

The proceedings in *Jet Airways (India) Ltd. v. State Bank of India* show how cooperation can develop around a concrete insolvency problem. Proceedings concerning the company were taking place in India and the Netherlands. In its September 26, 2019 order, the NCLAT accepted a cooperation protocol between the Indian resolution professional and the Dutch administrator, with the modifications stated in the order. It also permitted the administrator to attend Committee of Creditors meetings as an observer without voting rights.[416] The arrangement addressed the risk that separate administrations would duplicate work or take inconsistent positions concerning the same business.

The protocol's terms matter as much as its existence. It contemplated cooperation and information sharing while preserving the authority of the courts and the separate interests involved. It did not create an unlimited right to information or erase each participant's duties under the applicable law.[417] The UNCITRAL Practice Guide treats agreements of this kind as practical means of organising cross-border work.[418] Their strength is their ability to respond to a particular case. Their limitation is that parties cannot, by agreement alone, supply powers a court does not possess or determine the position of every person who did not participate in the arrangement.

The lesson from *Jet Airways* is consequently narrower than a general claim that Indian courts have already adopted the Model Law. A negotiated protocol can make parallel proceedings more manageable. It does not give the next applicant a complete statutory test for recognition, a defined

[413] *Id.*, art. 21(3).
[414] UNCITRAL, *UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment* (United Nations, 2019), arts. 1–2 and 9–14.
[415] Irit Mevorach, "Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism?" 22 *European Business Organization Law Review* 283–315 (2021).
[416] Company Appeal (AT) (Insolvency) No. 707 of 2019, NCLAT, order dated Sept. 26, 2019, paras. 5–8 and the incorporated protocol.
[417] *Id.*, protocol, cls. 2, 5 and 6.
[418] UNCITRAL, *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation* (United Nations, New York, 2010; adopted 2009), chs. II–III.

automatic stay, or a predictable process for seeking asset turnover. Those questions still require an identified source of legal authority. McCormack's criticism of broad claims for universalism in the common law is relevant here: an attractive principle of international cooperation must be connected with the powers actually available in the receiving jurisdiction.[419]

A different route was considered in *Toshiaki Aiba, as Bankruptcy Trustee of the Estate of Vipan Kumar Sharma v. Vipan Kumar Sharma*. The Delhi High Court dealt with a foreign trustee's suit relating to Indian properties and rejected an application for rejection of the plaint. It distinguished the suit before it from an attempt simply to execute a Japanese decree.[420] The ruling concerned a preliminary procedural objection. It did not finally determine ownership of the properties or establish a general recognition procedure under the IBC. Since the foreign proceeding concerned an individual, its relevance to corporate insolvency is limited to the questions of access and the legal character of the remedy sought.

Godwin, Garg and Goswami argue that comity and common law jurisdiction deserve attention alongside statutory reform in India.[421] That argument is useful where a specific remedy may be available through an existing judicial route. It does not remove the need to identify jurisdiction, the appropriate forum and the conditions for relief. Read together, the Indian decisions support a practical distinction between access to a court, cooperation in a pending insolvency and enforcement of particular rights. A future framework should make those routes easier to identify and explain how they interact.

V. Creditor Protection and the Limits of Foreign Relief

Creditor protection must begin with the particular effect of the proposed order. A temporary stay may preserve assets for collective administration while delaying an individual recovery action. An order transferring assets abroad may be harder to reverse, especially if distribution follows before an objection is heard. The relevant enquiry is therefore which creditor faces what prejudice and whether a condition on relief can address it. The Judicial Perspective assists courts in examining recognition and cooperation questions in the order in which they arise.[422] A structured enquiry makes it harder for either the representative or an objecting creditor to rely on broad claims of efficiency or unfairness without supporting evidence.

Notice is central to that enquiry. A creditor cannot challenge an account of COMI, assert a security interest or explain the effect of a foreign distribution if the creditor learns of the application only after the order has been implemented. Articles 13 and 14 of the Model Law concern foreign creditors' access and notice.[423] An Indian procedure should state who receives notice, the documents to be supplied and the time available to respond. Urgent preservation orders may sometimes be necessary before a full hearing. Their duration and the opportunity for prompt reconsideration should then be made clear in the order itself.

Differences in priority rules present a harder problem. Sections 52 and 53 of the IBC are relevant to secured creditors and liquidation distributions.[424] Recognition should not be treated as a finding that

[419] Gerard McCormack, "Universalism in Insolvency Proceedings and the Common Law" 32 *Oxford Journal of Legal Studies* 325–347 (2012).
[420] 2022:DHC:1682, Delhi High Court, judgment dated Apr. 26, 2022, paras. 1–3 and 10–18.
[421] Andrew Godwin, Risham Garg, *et.al.*, "Cross-Border Insolvency Law in India: Are the Principles of Comity of Courts and Inherent Common Law Jurisdiction Relevant?" 32 *International Insolvency Review* 228–252 (2023).
[422] UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* (updated 2022, advance copy), discussion of recognition and relief.
[423] UNCITRAL Model Law and Guide, *supra* note 395, arts. 13–14.
[424] The Insolvency and Bankruptcy Code, 2016, ss. 52–53.

every foreign distribution produces the result an Indian liquidation would produce. At the same time, insisting on identical outcomes would defeat much of the purpose of cooperation between different systems. Janger's account of virtual territoriality is useful because it separates procedural coordination from the substantive law governing particular rights.[425] The Indian court should identify the right affected, the legal basis for the requested interference and the protection offered. It should avoid assuming that transfer to the principal proceeding necessarily answers all three questions.

The economic arguments also require qualification. Bebchuk and Guzman show why the rules governing transnational insolvency can influence investment and the allocation of capital.[426] Predictability may therefore matter before financial distress occurs, when lenders assess the consequences of default. However, negotiated expectations differ across creditors. Rasmussen's proposal for greater advance choice of insolvency rules highlights the potential value of party autonomy.[427] It also raises a question this paper treats as important for India: how should the law protect creditors who had little ability to bargain over the debtor's choice? Contractual acceptance may be relevant evidence, but it should not replace an independent assessment of statutory and procedural rights.

Public policy should remain available for serious defects that cannot be addressed through ordinary conditions on relief. Article 6 uses a restrictive threshold, referring to action manifestly contrary to the receiving state's public policy.[428] A foreign rule being different, or a creditor expecting a lower recovery, should not by itself settle that question. Conversely, evidence of a fundamental denial of a fair hearing cannot be dismissed merely because the foreign proceeding is collective. The court should identify the principle at stake and explain why the requested action would violate it. That reasoning also permits a distinction between refusing an objectionable order and refusing recognition of the proceeding altogether.

A hypothetical case illustrates the distinction. Suppose a foreign representative seeks recognition and permission to remove the proceeds of an Indian asset sale, while an Indian secured creditor disputes whether the proposed distribution respects its interest in those proceeds. The court may have sufficient evidence to recognise the proceeding but insufficient evidence to authorise immediate remittance. It could require an account of the claimed security, the proposed treatment abroad and the means of enforcing any protective undertaking. A short preservation order may allow that enquiry to proceed. This example is a proposed application of the distinction developed in this paper, rather than a description of an existing Indian statutory procedure.

The strongest objection to this approach is that individualised protection may favour the creditor with the resources to contest the application. A large institutional lender can usually explain its security and retain advisers in two countries. A small supplier or employee may struggle to obtain the documents or fund an objection before assets are transferred. The court should therefore consider what the proposed procedure permits affected classes to do, even when only one creditor appears. The applicant could be required to explain how known creditors were informed and how claims can be submitted or

[425] Edward J. Janger, "Virtual Territoriality" 48 *Columbia Journal of Transnational Law* 401–441 (2010).
[426] Lucian Arye Bebchuk and Andrew T. Guzman, "An Economic Analysis of Transnational Bankruptcies" 42 *Journal of Law and Economics* 775–808 (1999).
[427] Robert K. Rasmussen, "A New Approach to Transnational Insolvencies" 19 *Michigan Journal of International Law* 1 (1997).
[428] UNCITRAL Model Law and Guide, *supra* note 395, art. 6.

contested abroad. This would not guarantee each creditor the distribution preferred under Indian law. It would make participation and the opportunity to challenge treatment part of the evidence supporting relief. An assessment confined to the objections of the best-represented creditor would give an incomplete account of prejudice.

Delay can itself prejudice the creditor body. Sarra, Madaus and Mevorach explain how obstacles to tracing and recovering assets across jurisdictions can diminish the value available in insolvency.[429] A safeguard that merely suspends every application until all objections are finally resolved could preserve an individual claim while allowing the estate to deteriorate. India should therefore distinguish a reversible preservation measure from an irreversible distribution, and require objections to identify the relief opposed and the evidence needed. That approach gives procedural protection a defined purpose without assuming that speed always justifies the order requested.

VI. Comparative Lessons from the United States and Singapore

The United States implements its Model Law-based framework through Chapter 15 of the Bankruptcy Code. Its provisions separately address recognition, the effects of recognising a foreign main proceeding, additional relief and protection of creditors.[430] The arrangement is useful for India because it shows how different questions can be assigned different statutory tests. It does not follow that every United States rule should be copied. The relevant comparison concerns how a court identifies the foreign proceeding and then evaluates the particular assistance sought under its own law.

In *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, the Second Circuit considered the debtor's COMI when the Chapter 15 petition was filed, allowing scrutiny of the period before filing to examine possible manipulation. It treated the location of administration in a way ascertainable by third parties as important to the enquiry.[431] The decision demonstrates the significance of the reference date. India should make a deliberate choice on that date rather than assume that the foreign commencement date and the date of the Indian recognition application will always produce the same answer. A rule on timing needs an accompanying approach to evidence of strategic relocation.

Jaffé v. Samsung Electronics Co. (In re Qimonda AG) concerned assistance to German insolvency proceedings and the position of licensees under United States patents. The Fourth Circuit upheld relief conditioned on protection for the licensees, applying the balancing enquiry under section 1522.[432] The court's treatment of discretionary relief is especially useful for this paper. Cooperation with the foreign proceeding continued, but the consequences of the requested order were examined in relation to rights affected in the United States. India can draw from that reasoning without assuming that its law provides an identical intellectual property safeguard. The transferable lesson is the need to identify prejudice and justify the condition imposed.

Singapore gives its adapted Model Law force through section 252 and the Third Schedule to the Insolvency, Restructuring and Dissolution Act, 2018.[433] In *Ascentra Holdings, Inc. (in official liquidation) v.*

[429] Janis Sarra, Stephan Madaus, *et.al.*, "Chasing Assets Abroad: Ideas for More Effective Asset Tracing and Recovery in Cross-Border Insolvency" 32 *International Insolvency Review* 253–288 (2023).
[430] United States Bankruptcy Code, 11 U.S.C., ch. 15, ss. 1515–1522.
[431] 714 F.3d 127 (2d Cir. 2013) at 133–138.
[432] 737 F.3d 14 (4th Cir. 2013) at 23–31.
[433] Singapore, Insolvency, Restructuring and Dissolution Act, 2018 (Act 40 of 2018), s. 252 and Third Schedule.

SPGK Pte Ltd., the Court of Appeal held that the relevant Singapore definition did not exclude a qualifying foreign proceeding merely because the company was solvent. The court examined the wording concerning insolvency or adjustment of debt and the purpose of the adopted framework.[434] This does not require India to recognise every solvent liquidation. It demonstrates that the definition chosen by the legislature determines the reach of recognition and should be settled openly.

In *Re PT Garuda Indonesia (Persero) Tbk and another matter*, the Singapore International Commercial Court recognised Indonesian restructuring proceedings and granted relief that included recognition and enforcement of a restructuring plan, subject to the terms of its order.[435] The court also considered the public policy objection. Although Singapore's version omits the word "manifestly", the court maintained a high threshold tied to fundamental public policy.[436] India should retain clear restrictive wording and explain its purpose. The Singapore decision shows that a domestic variation may require substantial judicial interpretation before its consequences become settled.

The comparative material supports a distinction between cooperation as a guiding approach and cooperation as an exercise of legal power. Mevorach's work on modified universalism explores the possibility of more consistent international norms.[437] That aspiration can help explain why courts should take foreign proceedings seriously. The actual decision still depends on the adopted statute and the remedy sought. The United States and Singapore decisions are persuasive comparisons for India, not binding interpretations of the IBC. Their different statutory settings also caution against drawing a single rule from a case simply because it refers to the Model Law.

A practical Indian comparison should therefore ask whether a proposed rule produces a reasoned recognition decision and an intelligible treatment of creditor objections. It should also ask whether the rule can operate within the NCLT's jurisdiction and procedures. A broad foreign power to grant assistance cannot supply authority that Indian law withholds. Conversely, the existence of different foreign distribution rules should not prevent India from learning from procedures that improve evidence, participation or supervision. The comparison is most useful at that level of detail.

VII. A Recognition Framework for India

India should state the core recognition requirements and the principal consequences of recognition in accessible legal text. Eligibility, foreign main and non-main status, COMI, the public policy exception and the treatment of affected creditors determine substantial outcomes. They should not depend on an applicant assembling an uncertain combination of general principles and case-specific protocols. The rule-making approach in section 240C offers flexibility, but its use should be accompanied by clear standards and the parliamentary scrutiny contemplated in the enacted text.[438] Essential choices should receive direct legislative attention, particularly where the framework would modify the operation of domestic insolvency rights.

An application should disclose the foreign commencement order, the representative's authority, the debtor's known Indian connections and any parallel proceedings. It should identify the evidence

[434] [2023] SGCA 32, paras. 32–35 and 98–101.
[435] [2024] SGHC(I) 1, paras. 1–3 and 162–163.
[436] *Id.*, paras. 82–94.
[437] Irit Mevorach, "Modified Universalism as Customary International Law" 96 *Texas Law Review* 1403–1436 (2018).
[438] The Insolvency and Bankruptcy Code (Amendment) Act, 2026, s. 71 (s. 240C(1)–(3)).

supporting COMI and any recent change in the place of administration. India should choose an express reference date, with scrutiny of earlier events where abuse is alleged. As a starting point, the commencement of the foreign proceeding offers a reasonably stable date; subsequent administration can remain relevant evidence without automatically moving COMI each time recognition is sought. The choice should be tested against the practical difficulties identified in foreign decisions. It should not be disguised as a proposition already settled by Indian law.

The court's order should address recognition and each category of relief separately. It should identify any automatic stay and its statutory scope, then explain the basis for additional assistance. Where asset remittance or administration abroad is requested, the applicant should describe the proposed treatment of affected Indian rights. An objector should identify the right claimed, the prejudice anticipated and why the offered protection is inadequate. The court could consider conditions concerning accounting, preservation of disputed proceeds, notice of distribution and enforceable undertakings. It should impose a condition because it addresses an identified risk, with reasons showing why a less restrictive measure would be insufficient.

Foreign creditors should receive a practical opportunity to participate. Known creditors need usable notice and access to the documents on which material relief depends. A creditor unable to obtain the foreign file should not be expected to prove unfairness from information exclusively held by the applicant. At the same time, the representative should not face an unlimited obligation to disclose confidential material unrelated to the objection. Targeted disclosure and confidentiality directions offer a more workable response. The CBIRC's treatment of notice, foreign representatives and application requirements supplies a basis for developing those procedures, subject to the framework ultimately enacted and commenced.[439]

Protective orders should also be capable of reconsideration when their factual basis changes. Article 22(3) permits modification or termination of the relief to which that article applies.[440] An Indian rule could require the representative to disclose material changes affecting a protective condition, including a proposed distribution or a change in the foreign proceeding's status. The initial order should state who may seek reconsideration and what notice is required. Review should be directed to the changed circumstances or failure of a condition; it should not become an unrestricted opportunity to reopen findings already made. Where the relief involves an irreversible transfer, a short opportunity to seek review before implementation may be appropriate. The court should explain the need for that interval in the circumstances of the case.

Public policy objections should require identification of a fundamental principle and a connection between its violation and the action requested. The court should consider whether a limited refusal, a condition or reconsideration of relief can resolve the problem before refusing cooperation more broadly. If reciprocity or notified-country coverage is retained, the government should publish the criteria and review the coverage periodically. A restriction that begins as a transitional safeguard should be reassessed once experience shows whether it helps Indian creditors or merely prevents

[439] Cross Border Insolvency Rules/Regulations Committee, *supra* note 402, chs. 4.3, 4.5 and 4.9.
[440] UNCITRAL Model Law and Guide, *supra* note 395, art. 22(3).

useful assistance. This is a recommendation on legal design; the paper does not claim empirical evidence of the effects of either approach in India.

Judicial communication also needs a defined procedure. The JIN Guidelines offer a useful starting point while preserving the jurisdiction and substantive responsibilities of participating courts.[441] An Indian protocol should identify the purpose of communication, the record to be maintained and the opportunity for parties to be heard. Communications about scheduling and the coordination of hearings may require a different procedure from discussion affecting disputed rights. A protocol should also state how confidentiality and inconsistent directions will be handled. Publishing approved protocols, with necessary redactions, would give later applicants practical guidance without treating one agreement as a source of jurisdiction for unrelated cases.

Institutional design will affect whether these safeguards can be used in time. Designated benches may develop expertise, but allocation should avoid unnecessary travel and filing costs. Training should address recognition evidence, the interpretation of foreign insolvency documents and the limits of available relief. The World Bank Principles treat judicial competence and institutional arrangements as part of an effective insolvency regime.[442] IBBI can support professional capacity, while adjudicative decisions remain with the competent forum. Reasoned, searchable orders would allow recurring difficulties to be identified and corrected. Assessment of the framework should eventually examine outcomes, including the time taken to decide recognition and the treatment of contested asset transfers.

Implementation may proceed in stages. Pottow's account of procedural incrementalism helps explain why manageable forms of cooperation can develop despite disagreement over a complete international insolvency system.[443] India can begin with clear recognition procedures and specified assistance while reserving more difficult questions about judgments and enterprise groups for appropriately designed measures. Staging should not leave creditors uncertain about which rules govern the application before them. Each operative stage needs a defined scope, commencement date and statement of the powers available. That would permit experience to inform reform without leaving the basic legal position to repeated improvisation.

VIII. Conclusion

Recognition of a foreign insolvency proceeding should provide a reliable legal basis for cooperation. Its value is reduced if the receiving court must decide anew whether every feature of the foreign system is acceptable. Yet predictability cannot mean granting every order sought by the foreign representative. The distinction developed in this paper places the eligibility and jurisdictional enquiry at the recognition stage, requires the automatic effects of foreign main recognition to be stated by law, and subjects discretionary assistance to an assessment of the rights and prejudice involved.

The Indian decisions show that protocols and existing judicial routes can meet particular needs. Their contribution should be understood within the powers exercised and the issues actually decided. The comparative cases demonstrate that a recognition framework still requires choices about COMI,

[441] Judicial Insolvency Network, *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters* (October 2016).
[442] World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank, Washington, DC, revised 2021), Part D, principles D1–D5.
[443] John A. E. Pottow, "Procedural Incrementalism: A Model for International Bankruptcy" 45 *Virginia Journal of International Law* 935–1015 (2005).

qualifying proceedings, public policy and protective conditions. They also show why refusal of all cooperation is not the only response when a particular form of relief would prejudice creditors.

The 2026 enabling provision makes those choices especially relevant to the next stage of Indian reform. A usable framework requires defined standards, meaningful participation and reasons connecting the order to the evidence. Its operation must also be distinguished from the mere enactment of a power to make rules. India should preserve scope for international coordination while requiring courts to explain how affected rights have been addressed. On that basis, creditor protection becomes a working part of cross-border administration, rather than an uncertain objection raised after assets have already moved.

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