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Discretionary Powers of the NCLT in Cross-Border Insolvency

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In the era of globalisation, a company can own complex businesses, which eventually lead to an increased number of creditors and debtors in different countries. This has caused several problems across the nations, which revolve around the problem of cross-border insolvency.[1] In India, cross-border insolvency is currently addressed under Sections 234 and 235[2] of the Insolvency and Bankruptcy Code, 2016 (Code). However, these sections are limited, and hence the Central Government proposed Part Z of the IBC, which closely adopts the UNCITRAL Model Law on Cross-Border Insolvency,[3] which is a widely accepted framework. Crucially, Part Z empowers the National Company Law Tribunal (NCLT) to allow discretionary relief to foreign representatives within India's insolvency proceedings,[4] which provides recognition and relief to foreign proceedings, distinguishing mandatory relief from discretionary relief. While this expansion aims to enhance judicial flexibility, it also raises serious concerns about the NCLT's limited jurisdiction under the IBC, a code originally designed to minimise judicial intervention.[5] This paper thus critically analyses the implications of granting such discretionary powers to the NCLT and aims to examine whether textual acceptance of the Model Law can translate into practical effectiveness in the Indian legal system.

Keywords: *insolvency, cross-border, nclt, power.*

[1] N.L. Mitra, *The Report of the Expert Committee on Legal Aspects of Bank Frauds* (2001)
[2] Insolvency and Bankruptcy Code 2016, s 234
[3] Cross Border Insolvency Rules/ Regulations Committee (CBIRC) Ministry of Corporate Affairs, *Report on the rules and regulations for cross-border insolvency resolution* (2020)
[4] Ministry of Corporate Affairs, *Report of Insolvency Law Committee on Cross Border Insolvency* (2018)
[5] Insolvency & Bankruptcy Board of India, *Understanding the IBC KEY JURISPRUDENCE AND PRACTICAL CONSIDERATIONS A HANDBOOK* (2025)

INTRODUCTION

The Code has led to a pragmatic approach in the insolvency realm in India. The Code has been enacted with a design focusing on creditor-driven resolution, by emphasising the decision-making authority of the Committee of Creditors (CoC)[6], intentionally curbing the extent of judicial interference in insolvency processes[7]. The National Company Law Tribunals (NCLTs) are the primary adjudicatory bodies for both insolvency and liquidation proceedings under the Code.[8] However, India's current framework for dealing with cross-border insolvency remains ambiguous, especially when it comes to recognising and enforcing foreign insolvency-related rulings.[9] With the proposed amendment to incorporate the UNCITRAL Model Law on Cross-Border Insolvency (1997), India seeks to lay a structured foundation for recognising foreign insolvency proceedings. Such a move would help safeguard the domestic assets of a corporate debtor undergoing insolvency abroad by allowing timely and coordinated relief measures within Indian jurisdiction.

The incorporated provisions of the Model Law in Draft Part Z will now grant the authority to directly seek recognition and support from Indian courts in cross-border insolvency matters.[10] This framework eliminates the need to wait for the conclusion of foreign insolvency proceedings or the issuance of a formal foreign judgment before initiating recognition procedures in India.[11]

While the Model Law encourages courts to exercise discretionary powers to facilitate cooperation and protect local interests, it is also necessary to ensure that its implementation is in accordance with each country's judicial architecture. In India's case, the NCLTs, unlike general civil courts, were designed as specialist tribunals with limited statutory jurisdiction

[6] *Vallal RCK v M/S Siva Industries and Holdings Limited & Ors* (2022) 8 SCC 664
[7] *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v Satish Kumar Gupta & Ors* (2020) 8 SCC 531
[8] Insolvency and Bankruptcy Code 2016, s 60(1)
[9] Dhananjay Kumar, 'Indian Insolvency Regime without Cross-border Recognition – A Task Half Done?' (*Cyril Amarchand Mangaldas*, 16 May 2017) <https://corporate.cyrilamarchandblogs.com/2017/05/indian-insolvency-regime-without-cross-border-recognition-task-half-done/> accessed 17 August 2025
[10] Report of Insolvency Law Committee on Cross Border Insolvency (n 4)
[11] Andrew Godwin et al., 'Cross-Border Insolvency Law in India: Are the Principles of Comity of Courts and Inherent Common-Law Jurisdiction Relevant?' (2023) 32(2) International Insolvency Review <https://doi.org/10.1002/iir.1500> accessed 17 August 2025

and minimal inherent powers. Although Part Z grants the NCLT the authority to extend discretionary relief, it does so within the contours of relief already available under the IBC.

Interestingly, Section 5 of Part Z appears to provide a broader mandate by empowering NCLTs to grant additional assistance under any other law in India. This provision introduces a potential tension: whether NCLTs, as statutory tribunals bound by the confines of the IBC, legitimately exercise jurisdiction or grant relief under other legal regimes? The legislative intent appears to favour a single-window approach, yet such an approach may risk judicial overreach or conflict with established precedent, which mandates strict adherence to the NCLT's limited domain. This paper critically examines the consequences of granting discretionary powers to the NCLT under the proposed cross-border insolvency regime. It explores whether the textual convergence of Part Z with the Model Law can be reconciled with India's conservative judicial practice and the structural constraints of its adjudicatory forums. Through a comparative analysis with jurisdictions like the United Kingdom, the paper highlights key risks and policy recommendations to ensure that India's cross-border insolvency framework is both effective and efficient.

FRAMEWORK OF DISCRETIONARY RELIEF UNDER THE UNCITRAL MODEL LAW

The Model Law has evolved on the concept of modified universalism.[12] This concept of modified universalism states that insolvency proceedings should be dealt with under a single, unified system, with appropriate safeguards to avoid manifestly unfair outcomes.[13] The Model Law provides two forms of relief once a foreign proceeding is recognized: (a) mandatory relief, which includes an automatic suspension of individual claims and enforcement actions as applied to the debtor's assets when the proceeding qualifies as a foreign main proceeding and (b) discretionary relief, which may be granted after recognition of either a foreign main or non-main proceeding. This discretionary relief plays an essential role in ensuring that the objectives of cross-border insolvency, including cooperation, asset preservation, and equitable treatment of creditors, are achieved. Though recognition, as an

[12] Tom Smith QC, 'Recognition of Foreign Corporate Insolvency Proceedings at Common Law' in Richard Sheldon QC (ed), *Cross-Border Insolvency* (Bloomsbury Professional 2012)
[13] Andrew Godwin et al., 'The Inherent Power of Common Law Courts to Provide Assistance in Cross-Border Insolvencies: From Comity to Complexity' (2017) 26(1) International Insolvency Review <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953803> accessed 17 August 2025

acknowledgement of a foreign proceeding, is a binary act, with a yes or no button,[14] discretionary relief grants the court functional control to support fair and effective cross-border resolution. It serves as a balancing tool between domestic public policy considerations and the imperatives of international cooperation.[15]

The Model Law does not provide an exhaustive list of discretionary reliefs,[16] allowing courts considerable flexibility in their application. The extent and nature of such relief can vary based on case-specific factors,[17] domestic legal provisions and principles of international comity.[18] Discretionary relief has been employed by courts to serve multiple purposes, safeguarding the rights of stakeholders, fostering cross-border judicial collaboration, and facilitating the fair distribution of assets. Traditionally, courts have drawn upon their general insolvency powers or inherent jurisdiction to grant such relief. Over time, its application has evolved through case law and international best practices, underscoring the necessity for adaptable and cooperative frameworks in handling cross-border insolvency matters.

However, it has been observed by the courts that the jurisdictions which advocate for a territorialist approach have generally disregarded the effect of foreign proceedings in settling the **national-level** matters of an insolvent corporation. One of the key concerns surrounding the recognition of cross-border insolvency proceedings is the potential threat it poses to national sovereignty and a country's control over its legal and administrative processes. In India's context, a critical issue is whether, even after adopting the Model Law, the judiciary, particularly the NCLTs, with their statutorily confined authority, will continue to exhibit territorialist tendencies. There remains a genuine possibility that these tribunals may adopt

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[14] Xinyi Gong, 'A Middle Way– Tailoring the Model Law and the Regulation into China's Context' (*International Insolvency Institute*) <https://www.iiiglobal.org/file.cfm/12/docs/2014_gold_x_gong_submission_a_middle_way.pdf> accessed 17 August 2025; John Townsend, 'International Co-operation in Cross-Border Insolvency: HIH Insurance' (2008) 71(5) Modern Law Review <https://www.jstor.org/stable/25151240> accessed 17 August 2025

[15] *Ibid*

[16] Debaranjan Goswami & Andrew Godwin, 'India's Journey towards Cross-Border Insolvency Law Reform' (2024) 19(2) Asian Journal of Comparative Law 197 <https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/indias-journey-towards-crossborder-insolvency-law-reform/358135F0BED9AA9375F21913BAB56A73> accessed 17 August 2025

[17] Sarah Lee, 'Navigating Discretionary Relief in Cross-Border Insolvency' (*Number Analytics,* 24 June 2025) <https://www.numberanalytics.com/blog/discretionary-relief-cross-border-insolvency-guide.> accessed 17 August 2025

[18] *Ibid*

a conservative and inward-looking stance when asked to recognise and cooperate with foreign insolvency proceedings.

While Article 21 of the Model law gives broad authority to the courts, it also conditions such relief on the laws of the enacting State. This creates an important point of divergence between textual convergence with the Model Law and practical implementation. In India, this limitation may be particularly significant because under Part Z, discretionary relief is restricted to what is available under the IBC, unlike the open-ended scope allowed in jurisdictions like the US or UK. Though Section 5 of Part Z purports to allow additional assistance under other laws in India, the power of the NCLT, being a statutory tribunal with no inherent jurisdiction, will likely remain narrowly construed. As India's legal system lacks a tradition of broad judicial discretion in commercial matters, there is a risk that territorialist tendencies may persist despite adopting the Model Law framework. The jurisdictional limitations of NCLTs, combined with a history of cautious judicial interpretation, may hinder the full realisation of the discretionary powers envisioned under Article 21.

THE INDIAN LEGAL CONTEXT: RESTRICTED JURISDICTION OF THE NCLT

As per Section 60(5) of the Code, the NCLTs serve as the designated adjudicating bodies for all corporate insolvency matters.[19] The process begins when an application to initiate insolvency proceedings against a corporate debtor is submitted to any NCLT.[20] Upon admission of the application, a resolution professional (RP) is selected to supervise the company's operations during the resolution process.[21] The RP is responsible for inviting resolution plans from interested applicants. These plans are evaluated by the Committee of Creditors (CoC), which is composed solely of the corporate debtor's financial creditors and has the exclusive authority to approve a plan. Once the CoC approves, the chosen plan is forwarded to the NCLT for final confirmation. If no viable resolution plans are received, or if the CoC rejects all proposals, or an approved plan fails to meet the NCLT's criteria, the company is directed into liquidation.[22]

[19] *Ibid*
[20] Insolvency and Bankruptcy Code 2016 s 60(1)
[21] Insolvency and Bankruptcy Code 2016 s 5(25)
[22] *K. Sashidhar v Indian Overseas Bank & Ors* (2019) 12 SCC 150

This design of the Code is rooted in the principle that insolvency resolution is an economic and business decision, best left to the financial creditor's prerogative, rather than the courts. Thus, the NCLT's role is intentionally limited and supervisory, and it does not assess the commercial viability of resolution plans nor does it interfere with the CoC's business judgments. Its jurisdiction is confined to checking compliance with statutory requirements under Section 30(2) and other procedural aspects. Judicial decisions have consistently reinforced that the NCLT cannot question or substitute the CoC's commercial wisdom, even if a resolution plan may appear suboptimal.[23] The Indian Bankruptcy Law Reforms Committee, the body behind the drafting of the code, opined in its report as follows:

The Committee believes that there is only one correct forum for evaluating such possibilities and making a decision: a creditors committee, where all financial creditors have votes in proportion to the magnitude of debt that they hold. In the past, laws in India have brought arms of the government (legislature, executive or judiciary) into this question. This has been strictly avoided by the Committee. The appropriate disposition of a defaulting firm is a business decision, and only the creditors should make it.[24]

Furthermore, in the case of Principal Commissioner of Income Tax v Monnet Ispat and Energy Limited, it was held that IBC is a complete code, implying that NCLTs cannot derive their powers strictly from within the framework of the Code. The Code is intended to bring the insolvency law in India under a single unified umbrella with the object of speeding up the insolvency process. Still, the ambit of the NCLTs is solely confined to substances arising out of the insolvency of the corporate debtor.[25] They have also been cautioned against encroaching upon the justified jurisdiction of other courts, tribunals, or forums in disputes that do not exclusively arise outside of, or relate to, the insolvency proceedings of the corporate debtor.[26] Additionally, the Indian Supreme Court has held that the NCLTs do not possess the authority to intervene in matters which have not been contemplated under the Code. Therefore, in matters beyond the jurisdiction of the NCLT, parties are required to seek

[23] *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v Satish Kumar Gupta & Ors* (2020) 8 SCC 531; *Vallal RCK v M/S Siva Industries and Holdings Limited & Ors* (2022) 8 SCC 664; *Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Ltd & Ors* (2022) 1 SCC 401

[24] Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design* (2015)

[25] *Principal Commissioner of Income Tax v Monnet Ispat and Energy Limited* (2018) 18 SCC 786

[26] *Gujarat Urja Vikas Nigam Limited v Amit Gupta & Ors* (2021) 7 SCC 209

recourse through the appropriate judicial or regulatory authorities designated for such issues.

Therefore, in the light of the statutory scheme as culled out from various provisions of the [Code], it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the [Code], especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.[27] The Supreme Court has also explicitly stated that disputes revolving around decisions of statutory or quasi-judicial authorities can be corrected only by way of judicial review of administrative action and not by way of approaching the NCLT.[28]

This limited judicial intervention framework, while effective for domestic cases, could raise significant concerns when considered in cases involving cross-border insolvency, where Part Z of the Code proposes to exercise discretion in granting relief powers to the NCLT. The structurally constrained jurisdiction and lack of inherent powers vest the NCLT with broad discretion in complex international matters may lead to several inconsistencies and practical challenges, going against the basic objectives of the code.

OPTIONAL PROTOCOLS UNDER THE UNCITRAL MODEL LAW AND THE NCLT'S JURISDICTION

The UNCITRAL Model Law on Cross-Border Insolvency is designed with a core set of provisions but allows enacting States to incorporate optional elements to suit their domestic legal and institutional frameworks. These optional features, sometimes referred to as optional protocols, include mechanisms such as the reciprocity requirement, broader judicial cooperation clauses, or the formal adoption of cross-border insolvency protocols between courts of different jurisdictions. Their purpose is to give States flexibility in implementation while maintaining the Model Law's overarching principle of *modified universalism*.

India's draft Part Z adopts one such optional element by introducing a reciprocity clause; foreign proceedings will only be recognised where the originating jurisdiction extends similar recognition to Indian proceedings.[29] While this approach aligns with UNCITRAL's

[27] *Embassy Property Developments Pvt Ltd v State of Karnataka* (2019) SCC OnLine SC 1542
[28] *Ibid*
[29] Kevin Pullen, 'India proposes to adopt the UNCITRAL Model Law on Cross-Border Insolvency' (*Herbert Smith Freehills Kramer,* 24 July 2018)

allowance for optional conditions, it diverges from the practice in jurisdictions such as the United States (Chapter 15 of the Bankruptcy Code) and the United Kingdom (Cross-Border Insolvency Regulations 2006), both of which implement the Model Law without reciprocity. Commentators have cautioned that such a restriction may undermine the very objective of timely and coordinated relief in cross-border cases, where the Model Law's public policy exception already safeguards national interests.[30]

The introduction of an optional protocol into India's framework raises a fundamental question about the NCLT's capacity to administer such provisions. Section 5 of Part Z authorises the NCLT to provide additional assistance under any other law in India to foreign representatives. However, the NCLT, being a statutory tribunal, lacks inherent jurisdiction and can act only within the confines of powers expressly conferred by the Insolvency and Bankruptcy Code.[31] Without express statutory expansion, the exercise of optional protocol powers, especially those involving recognition based on reciprocity or the enforcement of foreign insolvency-related judgments, risks being viewed as coram non judice.

The Jet Airways case (2019) illustrates both the potential and the limits of India's current approach. In the absence of a formal statutory regime, the NCLAT facilitated cooperation between Indian insolvency proceedings and Dutch bankruptcy proceedings through a cross-border insolvency protocol.[32] This demonstrated that Indian adjudicating authorities can operationalise the spirit of the Model Law when given procedural leeway.[33] However, such cooperation was enabled through judicial pragmatism rather than explicit legislative mandate, leaving uncertainty about whether similar relief could be consistently granted under a reciprocity-bound Part Z.

<https://www.hsfkramer.com/insights/2018-07/india-proposes-to-adopt-the-uncitral-model-law-on-cross-border-insolvency.> accessed 17 August 2025

[30] Devender Mehta, 'India needs a way to resolve cross-border insolvency cases' *Live Mint* (22 May 2025) <https://www.livemint.com/opinion/online-views/crossborder-insolvency-mlcbi-uncitral-model-law-trade-agreements-reciprocity-clause-gibbs-rule-cloud-digital-world-bank-11747813147701.html.> accessed 17 August 2025

[31] *Embassy Property Developments Pvt Ltd v State of Karnataka* (2019) SCC OnLine SC 1542

[32] Saumya Vanwari, 'Cross-Border Insolvency Laws in India: An Imminent need to adopt the UNCITRAL Model Law' (*Arbitration & Corporation Law Review,* 18 July 2020) <https://www.arbitrationcorporatelawreview.com/post/cross-border-insolvency-laws-in-india-an-imminent-need-to-adopt-the-uncitral-model-law.> accessed 17 August 2025

[33] Ayush B Gurav, 'CROSS BORDER INSOLVENCY IN INDIA AND THE NEED TO ADOPT UNCITRAL MODEL LAW' (*Lawful Legal,* 14 January 2024) <https://lawfullegal.in/cross-border-insolvency-in-india-and-the-need-to-adopt-uncitral-model-law.> accessed 17 August 2025

Therefore, while the incorporation of optional protocols is consistent with the Model Law's flexibility, its effectiveness in India will depend on (i) clarifying the NCLT's jurisdiction to adjudicate relief requests that hinge on optional conditions, (ii) providing procedural rules for the negotiation and adoption of cross-border protocols, and (iii) reconsidering the reciprocity requirement to avoid creating unnecessary barriers to cooperation. Without these measures, the intended benefits of the Model Law's optional elements may be blunted by the NCLT's structural limitations and historically cautious interpretive approach.

DRAFT PART Z: GRANTING DISCRETIONARY RELIEF AND THE TENSION WITH NCLT'S ROLE

The Model Law allows the designated competent tribunal's authority to order further relief in line with the enacting state's legal framework. India's Draft Part Z narrows this flexibility by limiting such relief to what is already permitted under the IBC. As a result, foreign representatives would generally be entitled only to the same remedies available to domestic RP. However, Section 5 of Part Z introduces a significant exception that empowers the Adjudicating Authority to extend additional assistance under other applicable Indian laws. This provision may offer a way around the otherwise restrictive scope of discretionary relief. Still, any such relief must fall within the statutory limits of the NCLT's jurisdiction, as it remains a tribunal bound by the specific powers granted under the Code.

The NCLT, as a statutory tribunal with no inherent jurisdiction, is generally restricted to adjudicating matters expressly provided under the Code. Even with Section 5, any attempt by the NCLT to provide relief under non-IBC laws risks exceeding its statutory authority, thus raising concerns about jurisdictional overreach and the legitimacy of such orders. Therefore, while Section 5 attempts to preserve the flexibility intended by the Model Law, it places that flexibility in the hands of a body whose statutory design does not support expansive judicial discretion.

This tussle could further be amplified by the complete code doctrine surrounding the IBC, which holds that the Code provides an exhaustive mechanism for insolvency resolution, leaving no room for powers to be implied or assumed beyond what is explicitly stated. If the NCLT is now expected to administer relief under any other law as envisaged by Section 5, a clear conflict arises between the intent of cross-border cooperation and the institutional

limitations of the NCLT. Unless there is a concurrent expansion of the NCLT's jurisdiction or clear procedural guidelines, the power to grant discretionary relief under Part Z may remain underutilised, or worse, be struck down as *coram non judice* in cases that go beyond the Code's statutory scheme.

Additionally, it is also important to acknowledge that the ultimate effectiveness of any framework, regardless of its textual alignment, would majorly depend on how it is interpreted and implemented by domestic courts. While Draft Part Z adopts much of the Model Law's structure, including provisions for discretionary relief and judicial cooperation, the conservative approach historically adopted by Indian insolvency tribunals could severely influence outcomes in cross-border cases.

In domestic jurisprudence, the NCLTs have repeatedly emphasised their limited jurisdiction, as already highlighted in the *Embassy* case. If this restrained judicial philosophy persists, there is a risk that even under the broader language of Section 5 of Part Z, NCLTs may decline to exercise discretionary relief in cases where foreign representatives seek assistance that touches upon non-insolvency legal domains, redirecting such matters to other judicial forums. Thus, while the textual convergence between Part Z and the Model Law is significant, divergent outcomes may still arise due to the prevailing interpretive tendencies of Indian adjudicating authorities. Thus, procedural safeguards and judicial guidance need to be ensured for the consistent application of the cross-border framework in line with its legislative intent.

COMPARATIVE JURISPRUDENCE AND JUDICIAL PRACTICE

In the United Kingdom, the UNCITRAL Model Law was incorporated through the Cross-Border Insolvency Regulations 2006 (CBIR).[34] Rather than creating a new statutory framework, Parliament gave the Model Law direct legal effect by integrating it into the CBIR, subject to *specific adaptations* suited to the Great British legal system.[35] Much like the approach taken under Chapter 15 in the United States, the CBIR presumes that a corporation's

[34] Cross-Border Insolvency Regulations 2006
[35] Bryan Rochelle, 'Cross-Border Insolvency in the U.S. and U.K.: Conflicting Approaches to Defining the Locus of a Debtor's Center of Main Center of Main Interests' (2017) 50(2) International Lawyer <https://scholar.smu.edu/cgi/viewcontent.cgi?article=4542&context=til.> accessed 17 August 2025

registered office is also its centre of main interests (COMI), though this presumption can be challenged with appropriate evidence.

However, there still remains a degree of uncertainty in relation to matters not expressly addressed under the Model Law, particularly in giving effect to and enforcing judgments rendered in insolvency cases.[36] Thus, it has been contemplated that the Model Law, in its present arrangement, do not explicitly grant the authority for such recognition, rendering its principles inapplicable to enforcement actions involving foreign insolvency judgments. To address this legislative gap, UK courts have resorted to the private international law principles as they apply within their jurisdiction to provide necessary judicial assistance and maintain coherence in cross-border insolvency coordination.[37] In contrast, it remains unclear how NCLTs will handle similar issues under the proposed cross-border framework. Section 5 of Part Z allows NCLTs to provide additional assistance under any other law in force in India to a foreign representative. However, in the absence of an explicit statutory expansion of jurisdiction, NCLTs may be constrained by their limited powers and may decline to exercise jurisdiction over matters falling outside the scope of the IBC Code.

As noted by UNCITRAL, those courts which possess an inherent jurisdiction are likely to have greater flexibility in determining what steps can be taken between courts to give effect to the Model Law's emphasis on cooperation and coordination.[38] Given the constrained scope of their authority, it is unlikely that NCLTs will take an innovative or expansive approach in facilitating effective coordination in cross-border insolvency matters.

CONCLUSION

Therefore, Part Z of the code serves as a crucial step by India to enact the Model Law, aligning its insolvency regime with globally accepted standards. The incorporation of provisions enabling recognition of foreign proceedings and the grant of discretionary relief reflects an intent to embrace a more cooperative and efficient approach in dealing with cross-border insolvency matters. However, this development presents a conceptual and institutional challenge, particularly in the context of NCLT's limited jurisdiction. While Section 5 of Part Z attempts to introduce flexibility by allowing foreign representatives to seek assistance

[36] *Rubin & Anr v Eurofinance SA & Ors* [2012] UKSC 46
[37] *Ibid*
[38] Godwin (n 11)

under any other law in India, it simultaneously risks exposing NCLTs to jurisdictional ambiguities and potential overreach.

The tension between the Model Law's expansive vision of judicial discretion and the NCLT's statutory limitations poses practical difficulties. In the absence of inherent jurisdiction or express legislative enlargement, the ability of NCLTs to interpret and implement cross-border relief, as seen in jurisdictions like the United States (Chapter 15) or the United Kingdom, might remain constrained. This could further be ameliorated by India's historically cautious judicial posture in insolvency matters, which may lead to fragmented or inconsistent relief and deter effective cooperation with foreign courts.

SUGGESTIONS

Given the current institutional design of the NCLTs, their limited jurisdiction has emerged as a significant challenge in the context of cross-border insolvency. As bodies established specifically to adjudicate matters under select legislations, NCLTs lack the authority to grant relief under laws beyond the scope of the Code. This raises a pressing concern: would a foreign representative be compelled to seek relief under other commercial laws by approaching multiple domestic forums individually? If so, the envisioned goal of establishing a unified single-window mechanism similar to the U.S. framework under Chapter 15 of its Bankruptcy Code would remain aspirational rather than attainable.

To address this institutional constraint, a viable solution would be to expand the jurisdiction of NCLTs exclusively for cross-border insolvency matters. Such legislative enhancement would empower the tribunals to deliver tailored and context-sensitive discretionary relief, thereby strengthening India's alignment with international best practices. Moreover, for Part Z of the IBC to be implemented effectively, it is essential to reconcile the tension between the Model Law's reliance on broad judicial discretion and the NCLTs' statutorily confined authority. A calibrated expansion of powers, supported by procedural clarity, is therefore crucial to bridge this gap and ensure that India's cross-border insolvency regime operates efficiently and in harmony with global standards.

The NCLT, as a statutory tribunal, lacks inherent powers and operates strictly within the boundaries of the IBC. While Section 5 of Part Z permits additional assistance under other

laws in India, the absence of an express legislative mandate may limit the NCLT's ability to grant specific relief in cross-border insolvency matters. To address this, the IBC should be amended to explicitly confer jurisdiction on the NCLT to adjudicate cross-border insolvency disputes, even when relief under non-IBC laws is required. This would promote a streamlined, single window system for cross-border insolvency relief.

In addition, the recognition of foreign insolvency-related judgments remains uncertain under Indian law. While the Civil Procedure Code[39] provides a mechanism for recognition, its applicability in insolvency matters is unclear. The proposed framework under Part Z should address this gap by empowering NCLTs to recognise and enforce foreign insolvency-related judgments in countries that meet reciprocity standards, superseding conflicting provisions of the CPC.

Part Z of IBC must clarify the criteria for reciprocity to ensure consistent interpretation and decrease the judicial discretion in rejecting applications. In line with modified universalism, Part Z should mandate judicial cooperation by allowing NCLTs to adopt cross-border protocols, as seen in the Jet Airways case[40]. Similarly, group insolvency concerns, such as those highlighted in the Videocon matter[41], necessitate provisions for recognising group proceedings and coordinated administration of assets across jurisdictions. Given the time-sensitive nature of cross-border relief and the heavy load on NCLTs, India should consider establishing specialised benches for cross-border insolvency. This would enhance institutional expertise and improve adherence to the 30-day recognition timeline under Part Z. Finally, regular stakeholder consultation and international engagement are crucial. The IBBI and Ministry of Corporate Affairs should form a task force to track global developments and update Part Z accordingly. This will ensure India's regime remains adaptive and competitive, boosting creditor confidence and foreign investment.

[39] Code of Civil Procedure 1908
[40] *State Bank of India v The Consortium of Mr Murari Lal Jalan & Mr Florian Fritsch* (2024) INSC 852
[41] *State Bank of India v Videocon Industries Ltd & Ors* (2018) SCC OnLine NCLT 13182