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India's Rendezvous with Cross-Border Insolvency and its Suggested Marriage to the UNCITRAL Model Law on Cross-Border Insolvency

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ABSTRACT

India has managed to resolve a sizeable chunk of its non-performing assets, to a fairly significant extent, by enacting the Insolvency & Bankruptcy Code, 2016. While this has certainly spelt victory on the domestic front for India; however, India must be also cognizant of its ever-expanding international footprint, and accordingly step-up its law and policy from time to time. India's insolvency law is no exception to this mandate. In fact, it should be one of the first laws that must be upscaled to a global standard.

Thus, from a pure insolvency law standpoint, achieving global economies of scale entails adequate legal provisioning for cross-border insolvency scenarios. Hence the subject-matter of this paper focuses on the interface that lies in-between the incumbent insolvency framework in India vis-à-vis cross-border insolvencies.

The crux of this paper is that the incumbent insolvency framework in India is not adequately equipped to address cross-border insolvencies, and that it needs to adopt the Model Law on Cross-Border Insolvency promulgated by United Nations Commission on International Trade Law.

I. INTRODUCTION

India transformed its business environment on May 28, 2016, by enacting the Insolvency & Bankruptcy Code, 2016 ("**IBC**"). The IBC is a robust and an empowering legislation that has delivered tangible results within a remarkably short span of time post its enactment. An irrefutable proof of the same is India moving a whooping 56 places from 108 to 52 under the heading of "resolving insolvency" in World Bank's Ease of Doing Business Report, 2020[2].

The IBC is a stark contrast to any other insolvency legislation that India has had before. It is

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[2] Available at- https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency

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modelled purely on the creditor-control tenet, it provides for an almost all-encompassing automatic stay post-admission/initiation of insolvency/bankruptcy proceedings, it has an absolute overriding effect on almost any other law that runs afoul of it (save and except for certain criminal laws), and it has created a new breed of professionals called "Insolvency Professionals," that have quasi-judicial powers in any insolvency/bankruptcy proceeding, subject to the review of the creditors and the bankruptcy court. Essentially, with the enactment of the IBC, India has created a legislative ecosystem where all stakeholders are assured of return/creation of economic value in some or shape or form.

India has certainly won the battle on the domestic front by repealing its erstwhile fragmented and toothless insolvency laws and enacting the IBC. However, it's now time for India to compete on the global front, by revamping its incumbent cross-border insolvency framework by adopting the Model Law on Cross-Border Insolvency ("**MLCBI**") promulgated by the United Nations Commission on International Trade Law ("**UNCITRAL**"). Hence, the one-sentence summary of this paper is that India does not have an adequate cross-border insolvency framework, and it needs to adopt the MLCBI at the earliest ("**One-Sentence Summary**").

That said, we must still undertake a thorough reconnaissance of India's rendezvous with cross-border insolvency so far, before we meet the One-Sentence Summary again in this paper's conclusion section. We will then be able to appreciate the One-Sentence Summary from a deeper standpoint, as we would have more insights and greater context by the time we reach this paper's conclusion section.

This paper has a fairly straightforward and succinct structure- we begin our proposed intellectual reconnaissance by first reviewing the incumbent cross-border insolvency framework in India (which includes the statutory as well as the common law framework governing cross-border insolvency in India). We then discuss what steps India has taken so far to revamp its cross-border insolvency laws. We then engage in some further discussion on the steps that India has taken so far to revamp its cross-border insolvency laws. Thereafter, we go over certain general and specific averments that advocate the adoption of the MLCBI by India, and then we conclude.

II. INCUMBENT CROSS-BORDER INSOLVENCY FRAMEWORK IN INDIA

This section on the incumbent cross-border insolvency framework in India is divided into two parts: Part A of this section deals with the incumbent statutory framework governing cross-border insolvency in India, whereas, Part B of this section deals with how the Indian common law has historically addressed cross-border insolvencies.

(A) Statutory Framework

1. §§234 and 235 of the IBC

The only live statutes from the IBC that directly address cross-border insolvencies are §§ 234 and 235. Let's dive a little into what they have to say about cross-border insolvencies:

(a) §234

Under §234, the Government of India can enter into reciprocal bilateral agreements with the governments of other countries for enforcing the provisions of the IBC that deal with corporate debtor(s), and the individual(s) that have personally guaranteed the repayment of the loans extended to the corporate debtor(s) in question.

(b) §235

Under §235, bankruptcy courts in India can approach competent courts in other jurisdictions, where the assets of the corporate debtor(s) and the individual(s) that have personally guaranteed the repayment of the loans extended to the corporate debtor(s) in question are present.

An action under §235 can be initiated basis an application by the insolvency administrator/liquidator to the concerned bankruptcy court in India. However, an action under §235 can only be initiated if India has entered into a reciprocal bilateral agreement under §234 with the country whose courts are proposed to be approached under §235.

2. §44A of the Code of Civil Procedure, 1908 ("CPC")

Under §44A of the CPC, Indian courts can directly enforce judgments passed by courts in other countries that are recognized by India if: (i) the court in the foreign country whose judgment is sought to be enforced has proper jurisdiction; (ii) the judgment sought to be enforced must be a final one and not an interim one; (iii) the judgment sought to be enforced must not be founded on an incorrect view of international law, or a refusal to recognize Indian law (in cases where it is applicable); (iv) the judgment sought to be enforced should not be contrary to the public policy of India; (v) the judgment sought to be enforced must not have been obtained by fraud; and (vi) the judgment sought to be enforced must not be based on a claim that is in breach of Indian law.

If a party seeks to enforce the judgment from a country that is not recognized by India under §44 of the CPC, then it has to initiate separate proceedings seeking recognition and subsequent enforcement of the foreign decree.

3. §376 of the Companies Act, 2013 ("CA")

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Under §376 of the CA, a foreign-incorporated company with an establishment/undertaking in India may be liquidated in India, if it ceases to carry on business in India, or if it gets liquidated in the jurisdiction where it is originally incorporated in.

(B) Common Law Framework

1. **In re P.Macfadyen & Co. Ex Parte Vizianagaram Co. Ltd.[3] ("*Macfadyen*")**

The world's first reported cross-border insolvency protocol was ideated in *Macfadyen*.

In *Macfadyen*, the debtor company was an Anglo-Indian merchanting and banking partnership that was liquidated following the death of one of its partners. The liquidators in India and England entered into an agreement in relation to admission of the claims and distribution of the surpluses ("**Agreement**").

An English Court struck down a challenge to the Agreement, by reasoning that the Agreement was a "common sense business arrangement," and that it was "manifestly for the benefit of all [interested] parties."

2. **The Rajah of Vizinagaram v. Official Liquidator[4] ("*Rajah*")**

In *Rajah*, the debtor company in question was incorporated in England with the sole objective of mining manganese in Kodur, Vizianagaram (now renamed as Visakhapatnam), India.

The debtor company subsequently landed in a financial crisis, and was unable to pay rents to the then Ruler of Vizianagaram ("**Ruler**"). As a result, the Ruler initiated liquidation proceedings[5] against the debtor company's India undertaking, where a liquidator was subsequently appointed.

In response to the liquidation proceedings, foreign creditors of the debtor company filed their claims before the *Rajah* court. However, the Ruler objected to this stating that the liquidation proceedings were initiated solely for the benefit of the debtor company's Indian creditors.

The *Rajah* court, however, permitted the debtor company's foreign creditors to file their claims before it. It reasoned that in line with the principles of comity, foreign creditors must be allowed to file their claims in an Indian liquidation/bankruptcy proceedings.

However, the *Rajah* court did not rule on the recognition of foreign insolvency/bankruptcy judgments in India.

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[3] *In re P. Macfadyen & Co. Ex parte Vizianagaram Co. Ltd.*, [1908] 1 K.B. 67

[4] *Rajah of Vizinagaram v. Official Receiver*, AIR 1962 SC 500

[5] Under the then incumbent Indian company law (i.e. Companies Act, 1956), inability to pay debts (which also included rent), was a potential ground for the initiation of involuntary liquidation proceedings against a company.

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3. Sumikin Bussan International (HK) Ltd. v. King Shing Enterprises & Anr.[6] ("*Sumikin*")

In *Sumikin*, a creditor had lent money to a Hong Kong-based debtor company. The repayment of the said loan was personally guaranteed by an Indian citizen (who was also permanent resident in Singapore) with assets in Hong Kong and India ("**Personal Guarantor**").

The creditor initiated loan recovery proceedings before a Hong Kong court after the debtor company and the Personal Guarantor failed to repay the loan. The Hong Kong court passed a decree wherein it was pleased to attach the Personal Guarantor's assets in Hong Kong ("**Hong Kong Decree**").

However, the Personal Guarantor's assets in Hong Kong were insufficient to satisfy the creditor's claim. Thus, the creditor moved the Indian court seeking recognition of the Hong Kong Decree (under §44A of the CPC), for attaching the Personal Guarantor's Indian assets. The Indian court was pleased to accept the creditor's request ("**Indian Decree**").

However, before the Indian Decree could be passed, the Personal Guarantor filed for bankruptcy in Singapore. Whereas, shortly after the Indian Decree was passed, the Singaporean court declared the Personal Guarantor as bankrupt.

In a challenge to the Indian Decree by the Personal Guarantor (basis his Singaporean bankruptcy adjudication), the *Sumikin* court reasoned that Hong Kong was a recognized country under §44A of the CPC and that Singapore was not. Thus, the *Sumikin* court refused to set aside the Indian Decree.

4. Intesa Sanpaulo S.P.A. v. Videocon Industries Ltd.[7] ("*Intesa*")

In *Intesa*, the debtor company which was incorporated in Italy, was a subsidiary of a company in Mauritius ("**Mauritian Company**"), which in turn was a subsidiary of a parent company in India ("**Parent Company**"). The debtor company had availed a loan from a bank in Italy ("**Bank**"), the repayment of which was guaranteed by the Parent Company.

Post-default in repayment of the loan by the debtor company, the Bank initiated liquidation proceedings[8] against the Parent Company in India. The *Intesa* court was pleased accept the Bank's plea.

[6] *Sumikin Bussan International (HK) Ltd. v. King Shing Enterprises & Anr.* (2005) 6 Bom C.R. 240
[7] *Intesa Sanpaulo S.P.A. v. Videocon Industries Ltd.* [2014] 183 Comp. Cas. 395 (Bom)
[8] Under the then incumbent Indian company law (i.e. Companies Act, 1956), inability to pay debts (which also included inability to repay guaranteed debt), was a potential ground for the initiation of involuntary liquidation proceedings against a guarantor.

The *Intesa* court reasoned that any creditor (regardless of their location), may initiate liquidation proceedings against a debtor/guarantor post-default in repayment. It further reasoned that commercial morality in international transactions was required to be observed, and that had it (i.e. the *Intesa* court) denied any relief to the Bank, other Indian debtors would be encouraged to defraud foreign banks.

5. Reserve Bank of India v. BCCI[9] ("*BCCI*")

In *BCCI*, the Bank of Credit & Commerce International ("**BCCI**"), a foreign bank with a branch in India, underwent liquidation proceedings in the Cayman Islands, where it was incorporated ("**Cayman Islands Proceedings**").

Basis the Cayman Islands Proceedings, the Reserve Bank of India ("**RBI**"), which is India's banking sector regulator, initiated liquidation proceedings against BCCI's India establishment, where the State Bank of India ("**SBI**") was appointed as a liquidator.

However, ultimately, the *BCCI* court sanctioned a scheme of arrangement where the SBI took over BCCI's India establishment. This scheme came to the rescue of BCCI's depositors, creditors, and employees.

6. In Re: Arvind Mills Ltd.[10] ("*Arvind*")

In *Arvind*, an India-incorporated debtor company, filed an application before the court seeking a restructuring of its debts (which was also subject to creditor approval as per the then-incumbent Indian company law).

The debtor company's international secured creditors objected to the proposed restructuring plan. They asserted that they deserved a preferential treatment as opposed to the debtor company's domestic creditors, because their debt was a foreign currency denominated debt.

Striking down their objection, the *Arvind* court reasoned that the then-incumbent Indian company law did not permit creation of a sub-class within a class of creditors (secured creditors in this case).

7. In re: William Watson & Ors[11] ("*Watson*")

In *Watson*, an English bankruptcy trustee challenged an Indian court's bankruptcy adjudication order ("**Order**") in relation to a debtor, basis the fact that an English court had already done so.

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[9] *Reserve Bank of India v. Bank of Credit & Commerce International*, AIR 1994 BOM. 177
[10] *In re: Arvind Mills Ltd.,* [2002] 111 Comp. Cas. 118 (Guj)
[11] *In the Matter of William Watson*, 1904 (31) ILR (Cal) 761

Rejecting the challenge to the Order, the *Watson* court held that it was not precluded from adjudging a debtor as bankrupt merely because its English counterpart had already done so. It further held that an Indian court can adjudge a foreign debtor as bankrupt if it (i.e. the foreign debtor) has committed an "act of insolvency" pursuant to the Indian law, regardless of the status of the foreign debtor's solvency in other jurisdictions.

8. Jet Airways (India) Ltd. v. State Bank of India[12] ("*Jet Airways*")

In *Jet Airways*, the domestic creditors of one of India's leading airlines, Jet Airways ("**Jet**"), initiated bankruptcy proceedings against it, as it failed to repay their debts. Whereas, a court in Netherlands also initiated bankruptcy proceedings against Jet, as it had Dutch establishment(s) and borrowings (on which it had also defaulted).

Following the order of the *Jet Airways* court, a protocol was created for the co-operation in between the Indian Administrator and the Dutch Administrator ("**Jet Protocol**"). The Jet Protocol was in line with its predecessors in the matters of *Maxwell Communications Corporation*[13], *Nortel Networks Corporation*[14], and the *Lehman Brothers*[15].

The Jet Protocol has been founded on the principles of modified universalism where the Indian and the Dutch Administrators took care of the procedural intricacies, and left the substantive questions of law and facts to the courts in each of the countries they represented.

The Jet Protocol also embodies some of the key principles and concepts promulgated under the MLCBI. For instance, it recognizes Jet's Indian insolvency proceeding as a foreign main proceeding, and its Dutch insolvency proceeding as a foreign non-main proceeding.

III. KEY EFFORTS TAKEN TO REVAMP INDIA'S CROSS-BORDER INSOLVENCY LAWS

This section enlists the key efforts taken by India so far to revamp its cross-border insolvency laws, which are largely in the form of expert-level quasi-governmental committees.

(A) Eradi Committee (2000)

In July 2000, a high-level expert committee comprising of legal and finance professionals, academicians, and bureaucrats chaired by Justice V. Balakrishna Eradi ("**Eradi Committee**"), submitted a report to the Government of India regarding the status and efficacy of the then

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[12] *Jet Airways (India) Ltd. (Offshore Regional Hub/Offices Through its Administrator Mr. Rocco Mulder) v. State Bank of India & Anr.*, Company Appeal (AT) (Insolvency) No. 707 of 2019

[13] *In re Maxwell Communication Corporation plc*, 93 F. 3d 1036

[14] *In re* Nortel Networks Corporation, Ontario Superior Court of Justice, Toronto, Case No.09-CL-7950 (14 January 2009), and the United States Bankruptcy Court for the District of Delaware, Case No. 09-10138 (15 January 2009)

[15] *In re Lehman Brothers Holdings Inc., et al.*, No. 08-13555(SCC) (Bankr. S.D.N.Y. June 17, 2009)

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incumbent corporate insolvency laws in India.

The Eradi Committee noted that the Indian economy was opening up to international trade, commerce and investments. It also noted that Indian companies had engaged in business with and had made investments in foreign companies. In light of these findings, the Eradi Committee observed that cross-border insolvencies would become relevant in the times to come, and thus recommended adoption of the MLCBI.

(B) Mitra Committee (2001)

In May 2001, another high-level expert committee, with a constitution similar to that of the Eradi Committee, chaired by Dr. N.L. Mitra ("**Mitra Committee**"), reviewed the then incumbent bankruptcy laws in India and shared its report with the Government of India.

The Mitra Committee reiterated the aforementioned findings of the Eradi Committee regarding the internationalization of Indian trade and commerce. It also noted that choice of law issues arise in all cross-border transactions, and that the reliance on Private International Law in cross-border transactions involving India was not a feasible option in the long term.

The Mitra Committee also noted that §44A of the CPC only provides for the recognition of foreign judgments, and not for the recognition of foreign proceedings.

Lastly, the Mitra Committee categorically noted that the then incumbent Indian bankruptcy laws, i.e. The Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 (repealed post-enactment of the IBC), were outdated and were not in sync with the global standards of insolvency resolution and that they did not contain any provisions for addressing cross-border insolvencies.

(C) Insolvency Law Committee ("ILC") (2018)

The next effort to revamp India's cross-border insolvency laws was a little short of two decades after the Eradi Committee and the Mitra Committee in 2018, when the Government of India constituted the ILC. The ILC like its predecessors, also roped in the best minds in restructuring and insolvency.

However, unlike its predecessors, the ILC was, first, only constituted to review the present cross-border insolvency framework in India, and second, it actually presented a version of the MLCBI that can be prospectively read into the IBC. Thus, the ILC certainly took a deeper dive into cross-border insolvency vis-à-vis India as opposed to its predecessors.

Thus, the ILC's recommendations are required to be discussed separately because of the

exclusivity of the exercise that it undertook. Section IV of this paper takes a deeper dive into two of the key recommendations made by the ILC in relation to adoption of MLCBI in India: (i) temporary inclusion of the legislative reciprocity requirement; and (ii) verbatim retention of the public policy exception from the MLCBI.

IV. ANALYSIS OF THE KEY RECOMMENDATIONS OF THE ILC

This section discusses the two key recommendations made by the ILC in relation to adoption of MLCBI in India: (i) temporary inclusion of the legislative reciprocity requirement; and (ii) verbatim retention of the public policy exception from the MLCBI.

(A) Temporary Inclusion of the Legislative Reciprocity Requirement

The ILC recommended mandating a temporary legislative reciprocity requirement in the Indian version of the MLCBI. The ILC clarified that the legislative reciprocity requirement would only be retained during the initial stages of enactment and subsequent enforcement of the MLCBI in India, and that it would be diluted thereafter.

Under the tenet of legislative reciprocity, a court in the domestic/enacting state will only recognize a foreign proceeding, if the state where the foreign proceeding has been initiated has either adopted the MLCBI or has an insolvency law that is along the lines of the insolvency law of the domestic state.

The ILC's report goes on to cite the examples of South Africa, Mexico, the British Virgin Islands, Romania, and Mauritius as those jurisdictions that have enacted the MLCBI with the reciprocity requirement.

One chief challenge with the reciprocity requirement is that it more often than not, hinders with the co-operation objective behind the enactment of the MLCBI. For instance, under The South African Insolvency Act, 2000, co-operation in cross-border insolvency proceedings will only be extended to certain designated countries. Thus, despite of being one of the first countries to adopt the MLCBI (adopted in 2000), South Africa has almost nullified the co-operation tenet in the MLCBI by introducing a highly restrictive reciprocity clause. One can also go to the extent of saying that by introducing such a restrictive reciprocity clause, South Africa has enacted a territorial version of an otherwise universal MLCBI.

Further, including a legislative reciprocity clause in the Indian version of the MLCBI (albeit temporarily), would still complicate matters on two counts- firstly, the Indian bankruptcy courts that are anyway overburdened (and are expected to get further overburdened in light of the economic distress attributable COVID-19), and might not have the bandwidth to undertake

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the legislative reconnaissance that follows a legislative reciprocity clause. Secondly, even if the Indian bankruptcy courts are able to undertake the legislative reconnaissance that follows a reciprocity clause, they might not be able to grant urgent reliefs to parties embroiled in a cross-border insolvency proceeding, till such point they do not complete the legislative reconnaissance that follows a reciprocity clause.

(A) Verbatim Retention of the Public Policy Exception from the MLCBI

The ILC recommended the verbatim retention of the public policy exception from the MLCBI. It also engaged in substantial discussion over the word “manifestly” as it appears in the MLCBI, in its report.

The MLCBI and the other supporting UNCITRAL texts state that an enacting state may refuse to grant recognition to a foreign proceeding only if granting such recognition would be “manifestly” contrary to the public policy of that particular enacting state.

The ILC noted that several countries such as the US, UK, and South Africa have retained the word “manifestly” in their version of Art.6 of the MLCBI, whereas certain countries such as Singapore have omitted it. Noting the guidance in the supporting UNCITRAL texts and the steps taken by the courts in the U.S. and U.K. while narrowly interpreting the public policy exception, the ILC recommended the verbatim retention of the public policy exception from the MLCBI.

The ILC further noted that while determining issues of public policy, courts in India may review foreign jurisprudence, more specifically American jurisprudence[16] on public policy.

Lastly, the ILC made the following additional concrete and welcome recommendations in relation to the public policy exception: (i) the federal Government of India must be given an opportunity to share its views on what actions may and what actions may not be contrary to the public policy of India; (ii) if an Indian court apprehends that there might be a potential public policy issue in a cross-border insolvency proceeding, then it must implead the federal Government of India in that particular cross-border insolvency proceeding, so that it may present its views; (iii) the federal Government of India must have an avenue to intervene in a cross-border insolvency proceeding if it is of the view that there might be a potential contravention of the public policy of India during the course of adjudication of that particular cross-border insolvency proceeding.

[16] *In re Gold & Honey, Ltd.,* 410 B.R. 357 (Bankr. E.D.N.Y. 2009); *In re Toft*, 453 B.R. 186 (Bankr. S.D.N.Y. 2011); *In re Qimonda AG*, 462 B.R. 165 (Bankr. E.D. Va. 2011)

V. Why India needs to adopt the MLCBI

India must adopt the MLCBI if it intends to leave behind its footprint in the global business arena. The law and policy of any country play an extremely critical role in shaping up its internal commercial machinery, and resultantly, its perception in the global marketplace. Thus, in order to provide comfort to international businesses and to encourage more foreign investment, India needs to adopt the MLCBI. This assertion is also supported by the findings of the Eradi Committee, the Mitra Committee, and the ILC.

While from a general standpoint (as discussed above), adoption of the MLCBI by India is almost irrefutable; however, some of the specific reasons for the adoption of the MLCBI by India are also worth discussing:

(A) IBC Is Now Sufficiently Mature for the Adoption of the MLCBI

IBC is now ready and ripe for the adoption of the MLCBI. It has been tested, it has evolved significantly since its enactment in 2016, and its constitutional validity has also been upheld by the Supreme Court of India in *Swiss Ribbons Pvt. Ltd vs. Union of India & Ors*, Writ Petition (Civil) No. 99 of 2018 ("***Swiss Ribbons***"). Thus, the IBC is now sufficiently mature for the MLCBI.

(B) IBC Practically Does Not Contain Any Statute on Cross-Border Insolvency

The incumbent statutes under the IBC that directly address cross-border insolvencies (i.e. §§234, 235), completely lack teeth to address the issues and complexities that arise in cross-border insolvencies, and thus the IBC practically does not contain any statute on cross-border insolvency.

As stated earlier, under §234 of the IBC, the Government of India can enter into reciprocal bilateral agreements with the governments of other countries for enforcing the provisions of the IBC, whereas under §235 of the IBC, bankruptcy courts in India can approach competent courts in other jurisdictions, where the assets of the corporate debtor(s) and the individual(s) that have personally guaranteed the repayment of the loans extended to the corporate debtor(s) in question are present.

As of today (i.e. 5 years post-enactment of the IBC), the Government of India has not entered into any reciprocal bilateral agreement pursuant to §234. Further, §234 does not provide any guidance/clarity on how the provisions of the IBC will be enforced beyond India's legislative borders. Also, needless to say, execution of reciprocal bilateral agreements often involves time-consuming negotiations, where all the prospective issues/challenges that may arise in cross-

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border insolvency proceedings might or might not be addressed. Whereas, on the other hand, India can simply short circuit the time and effort involved in execution of reciprocal bilateral agreements by reading the MLCBI into the IBC (with suitable changes as may be required).

Bankruptcy courts in India haven't used §235 as of today either, and that is because an action under §235 can only be initiated if India has entered into a reciprocal bilateral agreement under §234 with the country whose courts are proposed to be approached under §235. Not to mention the amount of time that would go in liaison between the Indian court and the foreign court even if an action were to be successfully initiated under §235.

Thus, for all practical purposes, the IBC does not contain any statute on cross-border insolvency.

(C) Interest of International Stakeholders in the IBC

The IBC, with the robust reforms that it has brought about, has already garnered a significant amount of interest from international stakeholders, such as foreign creditors and foreign investors.

One of the chief reasons for this level of interest from international stakeholders in the IBC is because it (i.e. the IBC), does not differentiate between domestic and foreign creditors. Thus, a foreign creditor has a right to initiate domestic insolvency proceedings in India under the IBC.

However, empowering foreign creditors to initiate insolvency proceedings under the IBC is only half the battle won in the global arena. In order to win rest of the battle, India must adopt the MLCBI. Only then, will the international stakeholders get additional comfort while commercially liaising with India.

(D) Impending Global Bankruptcy Debacle on Account of COVID-19

It has now been confirmed by restructuring experts across the world that a tidal wave of bankruptcies is coming[17]. Given that the world is now all the more internally-connected than what it previously was, we can expect multiple of these incoming bankruptcies to have a cross-border element, and more specifically, an India element.

Perhaps these statistics will help in explaining why we can expect an India element in multiple of these incoming global bankruptcies- India is the 5th largest economy in the world[18]; Indian banks hold a total of 0.15% of the total global bank equity[19]; Indian banks hold total foreign

[17] See- https://www.nytimes.com/2020/06/18/business/corporate-bankruptcy-coronavirus.html
[18] Source- https://www.investopedia.com/insights/worlds-top-economies/
[19] Source- Statistical Release: BIS International Banking Statistics at end-September 2019 (published on 22

claims worth $215 BN; India had a 1.7% share in global exports, and a 2.6% share in global imports in 2019.

Thus, in order to brace for the incoming global tidal wave of bankruptcies, India needs to equip itself with the MLCBI.

(E) Balancing Aesthetics and Global Perception of India

Perhaps not as concrete a specific reason as opposed to the other aforementioned specific reasons for adopting the MLCBI, but nevertheless worth mentioning- India needs to adopt the MLCBI in order to balance out its aesthetics and its global perception for the following three reasons-

Firstly, the world's first reported cross-border insolvency protocol was in *Macfadyen*, a cross-border insolvency case involving India, way back in 1908 (discussed in Section III of this paper). Secondly, the Jet Protocol in *Jet Airways* was in-line with the MLCBI (discussed in Section III of this paper); thus for all practical purposes, India adopted the MLCBI in *Jet Airways*. Lastly, the Eradi Committee recommended the adoption of the MLCBI in 2000, just three years after the MLCBI was enacted.

Thus, from an aesthetics and a global perception standpoint, India has had an interface with international insolvency law and MLCBI for far longer than it would like to admit. Hence, it is only prudent for India to adopt the MLCBI in order to balance its aesthetics and global perception.

VI. CONCLUSION

Having now completed the intellectual reconnaissance that we commenced in Section I of this paper, we now truly know why India does not have an adequate cross-border insolvency framework, and why India needs to adopt the MLCBI at the earliest.

Thus, its time for us to meet the One-Sentence Summary that we initially met in Section I of this paper, again- India does not have an adequate cross-border insolvency framework, and it needs to adopt the MLCBI at the earliest.

To be fair to India, it wasn't ready to adopt the MLCBI when its insolvency grundnorm consisted of a bunch of fragmented and toothless insolvency laws. It also wasn't ready to adopt the MLCBI when it had just enacted the IBC, as it needed time to get used to the new ecosystem that was created under it.

January, 2020)

However, 5 years fast-forward to today, India is now fully plugged into the IBC ecosystem. As stated in Section V of this paper, the IBC has been tested, it has evolved significantly since its enactment in 2016, and its constitutional validity has also been upheld by the Supreme Court of India in *Swiss Ribbons*.

Thus, India has had a long rendezvous with cross-border insolvency, and it’s now ready to get married to the MLCBI.

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