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CROSS-BORDER INSOLVENCY IN INDIA: THE GAP AND THE FIX THAT HASN'T COME

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ABSTRACT

India's engagement with cross-border trade and capital has long outpaced its statutory machinery for resolving insolvencies that cross national boundaries. Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 were designed as placeholder provisions contemplating bilateral treaties and letters of request, but neither has ever been operationalised, leaving adjudicating authorities to improvise ad-hoc protocols in proceedings such as Jet Airways and Go First. This article goes beyond the now-familiar narrative of delay to interrogate two questions that recent commentary has left underexamined. First, is the reciprocity requirement carried through from the Insolvency Law Committee's 2018 Draft Part Z a prudent, capacity-building safeguard, as its framers intended, or a self-defeating gate that excludes major non-Model Law trading partners, as critics contend? Second, what does the much-cited claim that Model Law jurisdictions dispense with reciprocity actually mean in a hard case — tested here against the Singapore High Court's recognition dispute in *Re Zetta Jet*? Drawing directly on the Insolvency Law Committee Report, the Cross-Border Insolvency Rules/Regulations Committee Report, and the text of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, the article argues that Section 240C supplies enabling authority without an operative regime, and that the rules eventually notified should replace a blanket reciprocity gate with a calibrated public-policy safety valve of the kind that did the real work in Singapore's own no-reciprocity system.

I. INTRODUCTION

Insolvency does not respect territorial boundaries, yet insolvency law largely does. A corporate group with assets, creditors, and operations spread across several jurisdictions can collapse in ways that no single domestic forum is equipped to resolve alone. For an economy as internationally integrated as India's, the absence of a coherent cross-border insolvency framework has moved from an academic curiosity to a live commercial problem.

The direction of reform has been settled for some time: successive government committees have recommended that India adopt a framework based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997. What has not been settled — and what most recent commentary treats too lightly — is how two specific design choices should be resolved: whether recognition of a foreign proceeding should depend on reciprocity, and what, in practice, a system without reciprocity actually does when a hard case arrives. This article addresses both questions directly, drawing on the primary reports and legislative text rather than on the secondary commentary that has largely restated them.

II. THE STATUTORY VACUUM: SECTIONS 234 AND 235

The Insolvency and Bankruptcy Code, 2016 contains two provisions addressing cross-border insolvency: Section 234, empowering the Central Government to enter into bilateral agreements with other countries for enforcing the Code's provisions, and Section 235, permitting an adjudicating authority to issue a letter of request to a foreign court or authority seeking action against a debtor's assets abroad. Neither provision has been substantially operationalised: no bilateral treaty has been notified under Section 234, and the letter-of-request mechanism under Section 235 is, in practice, dependent on such a treaty being in place.¹

¹The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, §§ 234-235, INDIA CODE (2016).



The Insolvency Law Committee itself identified this gap as the reason a dedicated framework was needed, noting that the existing provisions did not provide a comprehensive basis for dealing with cross-border proceedings and that a separate part of the Code, built on an internationally recognised model, was required.

III. JUDICIAL IMPROVISATION IN THE ABSENCE OF STATUTE: JET AIRWAYS AND GO FIRST

In the absence of a statutory mechanism, the National Company Law Tribunal has been left to fashion bespoke, case-specific protocols. The insolvency of Jet Airways (India) Limited, which had a parallel bankruptcy proceeding pending before a Dutch court, is the clearest illustration.

Corporate insolvency resolution proceedings against Jet Airways commenced before the NCLT, Mumbai Bench, on an application by the State Bank of India; a bankruptcy administrator appointed by the Dutch court subsequently sought recognition of the Netherlands proceeding and a stay of the Indian process. The NCLT approved a cross-border insolvency protocol negotiated between the Indian resolution professional and the Dutch administrator, coordinating the two proceedings without any statutory basis for doing so.²

The later liquidation of Go First presented a related but distinct problem: aircraft lessors sought to reclaim leased assets, prompting disputes over whether India's moratorium under Section 14 of the Code could override obligations recognised under the Cape Town Convention. Though ultimately resolved through domestic aviation and moratorium law rather than any cross-border mechanism, it reinforced the same underlying point — India's adjudicating authorities

are repeatedly asked to resolve cross-border questions using a toolkit that was not built for them.

Commentators examining the Jet Airways proceedings have argued that the NCLT's inherent powers, read together with the common law doctrine of comity of courts, functioned as a doctrinal bridge in the absence of legislation, though the same commentary cautions that reliance on inherent jurisdiction is inherently uncertain in scope and outcome, and cannot substitute for a codified framework.³

IV. FROM DIAGNOSIS TO DELAY: THE ILC REPORT, THE CBIRC REPORT, AND DRAFT PART Z

The Insolvency Law Committee, constituted by the Ministry of Corporate Affairs, submitted a dedicated second report on cross-border insolvency on October 16, 2018, recommending the incorporation of a new Draft Part Z into the Code, based on the UNCITRAL Model Law but subject to India-specific modifications. The Committee recommended that the Model Law be adopted initially on a reciprocity basis, with the requirement to be diluted over time as implementation experience accumulated and the domestic insolvency infrastructure matured.⁴

Draft Part Z retained the Model Law's core distinction between a "foreign main proceeding" (in the jurisdiction of the debtor's centre of main interests, or COMI) and a "foreign non-main proceeding" (in a jurisdiction where the debtor merely has an establishment), and built around it a structure for recognition, relief, and cooperation between courts and insolvency professionals.

²State Bank of India v. Jet Airways (India) Ltd., C.P. No. 2205(IB)/MB/2019 (Nat'l Co. Law Trib., Mumbai Bench, order dated June 20-21, 2019).

³See Andrew Godwin, Cross-Border Insolvency Law in India: Are the Principles of Comity of Courts and Inherent Common Law Jurisdiction Relevant?, 32 INT'L INSOLVENCY REV. 228 (2023) (cited here

for interpretation of the NCLT's reliance on inherent jurisdiction, not as authority for the underlying facts, which are drawn from the NCLT order itself).

⁴Insolvency Law Committee, Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross Border Insolvency (Oct. 16, 2018) [hereinafter ILC Report].



The Cross Border Insolvency Rules/Regulations Committee, constituted in January 2020, submitted its report in June 2020, recommending that the principal bench of the NCLT be designated as the adjudicating authority for proceedings involving foreign corporate debtors, that foreign representatives be given full access to Indian adjudicating authorities, and that such representatives be subject to a code of conduct comparable to that applicable to domestic insolvency professionals.⁵

The Ministry of Corporate Affairs invited public comments on the proposed framework in 2021. For several years thereafter, the reform stalled at the consultation stage, with no legislative vehicle to carry Draft Part Z into force.

V. SECTION 240C: ENABLING AUTHORITY WITHOUT AN OPERATIVE REGIME

The stalemate ended, at least on paper, with the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (Bill No. 107 of 2025), which was passed by the Lok Sabha on March 30, 2026 and received Presidential assent on April 6, 2026 as the Insolvency and Bankruptcy Code (Amendment) Act, 2026 (Act No. 6 of 2026). The 2026 Amendment inserts Section 240C, empowering the Central Government to prescribe rules for the recognition of foreign insolvency proceedings, judicial cooperation, relief, and assistance, and to designate a special bench for cross-border matters.⁶

This is, on its face, the long-awaited legislative vehicle. Yet Section 240C is an enabling provision, not a self-executing framework: it authorises rule-making, but does not itself recognise a single foreign proceeding, grant a single stay, or empower a single

Indian insolvency professional to cooperate with a foreign counterpart. As of the most recent public record, the rules contemplated under Section 240C had not been notified. This is the precise sense in which the fix has not come: India now has parliamentary authority to build a cross-border insolvency regime, and a design largely settled since 2018, but no operative rule that a resolution professional or foreign representative can invoke today.

VI. THE RECIPROCITY DEBATE: CAPACITY-BUILDING SAFEGUARD OR SELF-DEFEATING GATE?

Most commentary on Draft Part Z notes, almost in passing, that it departs from the Model Law by conditioning recognition on reciprocity. Fewer engage with why the Committee chose that design, or with the strongest objections to it. Both deserve to be taken seriously.

A. The Case for Reciprocity

The Insolvency Law Committee's own reasoning was calibrated rather than protectionist. It reasoned that the Model Law could be adopted on a reciprocity basis in the first instance, with the requirement diluted as implementation experience accumulated and India's insolvency infrastructure developed further, and expressly clarified that reciprocity would not affect the rest of the Code — foreign creditors would remain free to initiate and participate in Indian proceedings regardless of it. On this reading, reciprocity is not a wall but a valve, intended to be opened progressively rather than closed permanently.⁷

⁵Cross Border Insolvency Rules/Regulations Committee, Ministry of Corporate Affairs, Report on the Rules and Regulations for Cross-Border Insolvency Resolution 4.8 (June 2020) [hereinafter CBIRC Report].

⁶The Insolvency and Bankruptcy Code (Amendment) Act, 2026, No. 6 of 2026, § 240C, INDIA CODE (2026) [hereinafter 2026 Amendment].

⁷ILC Report, *supra*, at 3, 12 (recommending phased adoption with dilution of the reciprocity requirement based on infrastructural development, and clarifying that the requirement would not restrict foreign creditors' existing rights under the Code).



B. The Case Against Reciprocity

The strongest published objection comes from scholarship arguing that retaining reciprocity risks producing piecemeal recognition, since proceedings from major trading partners that have not adopted the Model Law would fall outside the framework altogether — precisely the jurisdictions with which India's outbound investment and trade exposure is often greatest. The same body of work adds an institutional objection: because the National Company Law Tribunal exercises a comparatively narrow, statutorily defined jurisdiction rather than a broad inherent one, it is less likely than courts of general jurisdiction to develop the kind of case-by-case judicial innovation that has allowed other Model Law jurisdictions to manage recognition flexibly without a reciprocity gate.⁸

A further, more pointed version of the objection is asymmetry rather than exclusion: Singapore has already recognised Indian insolvency proceedings without requiring India to reciprocate, so that Indian resolution professionals presently enjoy the benefit of foreign recognition that Indian law does not extend in return. On this view, reciprocity does not protect India from weak foreign regimes so much as it delays India's own recognition by other Model Law jurisdictions from ripening into a genuinely two-way arrangement.⁹

Both sides have force. The ILC's phased design answers a real institutional constraint — an under-resourced adjudicating authority extending untested cooperation to jurisdictions with weak creditor protections is a legitimate risk. But Goswami and Godwin correctly observe that a rigid, binary reciprocity gate is a blunt instrument for that risk, and that India's own experience as a beneficiary of non-

reciprocal recognition abroad undercuts the case for withholding it at home. The dispute, properly framed, is not about whether caution is warranted but about the form caution should take — a point taken up in Part VIII below.

VII. WHAT "NO RECIPROCITY" LOOKS LIKE IN PRACTICE: LESSONS FROM RE ZETTA JET

It is often said that most Model Law jurisdictions dispense with reciprocity. That claim is true but incomplete: it says nothing about what such systems do instead when a recognition application is genuinely contested. The Singapore High Court's handling of *Re Zetta Jet* supplies a concrete answer, and one with direct relevance to how India might calibrate its own rules.

Zetta Jet Pte Ltd, a Singapore-incorporated company, and its US subsidiary filed Chapter 11 proceedings in the United States. A minority shareholder had separately obtained a Singapore injunction restraining the Singapore entity from continuing those US proceedings; the US trustee nonetheless proceeded in apparent breach of that injunction and then sought recognition of the US proceedings in Singapore under the Singapore Model Law. The Singapore High Court did not resolve this by asking whether the United States would reciprocally recognise a Singapore proceeding — a question the statute does not even pose. It instead applied Article 6 of the Model Law, Singapore's public-policy exception, and granted only limited recognition, sufficient to let the trustee apply

⁸See Debaranjan Goswami & Andrew Godwin, *India's Journey Towards Cross-Border Insolvency Law Reform*, 19 *ASIAN J. COMP. L.* 197, 210-13 (2024) (arguing that retention of the reciprocity requirement may lead to piecemeal recognition and that the NCLT's limited jurisdiction constrains judicial innovation relative to courts possessing

inherent jurisdiction) [hereinafter Goswami & Godwin].

⁹See *Recognition Without Reciprocity - Why Indian Insolvency Law Must Catch Up*, *LEGAL500* (Aug. 26, 2025) (discussing a Singapore recognition of Indian insolvency proceedings and the resulting asymmetry in the absence of a reciprocal Indian framework).



to set aside the injunction, while declining fuller recognition until that breach was resolved.¹⁰

Once the Singapore injunction was later discharged, the same court revisited the question and granted fuller recognition of the US bankruptcy proceedings as a foreign main proceeding, holding that the earlier breach no longer justified withholding recognition on public-policy grounds.¹¹

The lesson is not that Singapore's system is lenient because it lacks a reciprocity requirement; the lesson is that the safety valve Singapore actually used was a

case-specific public-policy exception, applied and later lifted as circumstances changed, rather than a categorical rule fixed at the point of a treaty or a jurisdiction's own Model Law status. A reciprocity gate answers the question "does this country's legal system meet a general standard?" before the case is heard. A public-policy exception answers the narrower and more useful question, "does anything about this specific proceeding offend this forum's basic interests?" — and it can be revisited as those specific facts change, which a blanket reciprocity determination cannot.

Table 1: Recognition Mechanisms Compared — Reciprocity Rule vs. Case-Specific Safety Valve

Jurisdiction	Formal Reciprocity Requirement	Actual Safety Valve Used	What It Achieves
United States (Chapter 15)	No	Public-policy exception, comity discretion	Broad recognition; narrow, case-specific refusal only where US public policy is directly offended
Singapore (Model Law, Companies Act, Tenth Sch.)	No	Art. 6 public-policy exception (Re Zetta Jet)	Recognition calibrated to specific misconduct (breach of local injunction), then restored once the underlying issue was resolved
United Kingdom (CBIR 2006)	No	"Manifestly contrary to public policy" standard, read restrictively	High threshold for refusal; recognition is the default outcome
India (Draft Part Z / proposed s.240C rules)	Yes, at the threshold	None yet operative; reciprocity determines eligibility before any case-specific review	Categorical exclusion of non-Model Law jurisdictions, regardless of the facts of the particular proceeding

¹⁰Re Zetta Jet Pte Ltd, [2018] SGHC 16 (Sing.); UNCITRAL Model Law on Cross-Border

Insolvency, 1997, art. 6 (public policy exception to recognition).

¹¹Re Zetta Jet Pte Ltd, [2019] SGHC 53 (Sing.).



The comparison suggests that India's proposed design solves the wrong step of the problem. Singapore's public-policy exception operates after a proceeding has already cleared the recognition threshold, allowing the court to calibrate relief to the facts of the specific case. India's reciprocity requirement operates before that threshold is even reached, screening out entire jurisdictions rather than specific proceedings. It is a coarser tool applied at an earlier and less informative stage.

VIII. DESIGN CHOICES FOR THE RULES UNDER SECTION 240C

Three design choices, informed by the debate in Part VI and the comparative evidence in Part VII, should shape the rules the Central Government eventually notifies under Section 240C.

A. Replace the Blanket Gate with a Graduated, Public-Policy-Anchored Standard

Rather than a binary reciprocity threshold, the rules could adopt full Model Law treatment for jurisdictions that have themselves enacted the Model Law, and a narrower, court-supervised recognition track — anchored to a public-policy exception modelled on Article 6 rather than a treaty requirement — for proceedings from other jurisdictions. This preserves the ILC's underlying caution about extending untested cooperation, while addressing the AJCL critique that a blanket gate excludes major trading partners regardless of the facts of a given case.

B. Build the Institutional Capacity the CBIRC Already Recommended

The CBIRC Report itself recommended that the principal bench of the NCLT be designated as the adjudicating authority for proceedings involving foreign corporate debtors, precisely because cross-

border recognition requires a concentration of expertise that a general company law docket does not otherwise develop. This recommendation now finds unexpected reinforcement: a parliamentary standing committee reviewing the NCLT's institutional capacity in 2026 separately recommended dedicated benches for insolvency matters generally, citing an already disproportionate caseload and staffing shortfalls. The rules under Section 240C should adopt the CBIRC's specific recommendation as a floor, not an aspiration.¹²

C. Notify on a Fixed Timeline

Given that the gap between the CBIRC Report and the enabling amendment already spanned six years, the rules under Section 240C should be notified against a fixed statutory deadline rather than left open-ended, with the graduated reciprocity standard in sub-part A reviewed for further dilution once a defined caseload of recognition applications has been decided — operationalising the ILC's own suggestion that reciprocity should soften as experience accumulates, rather than leaving that dilution to indefinite executive discretion.

IX. CONCLUSION

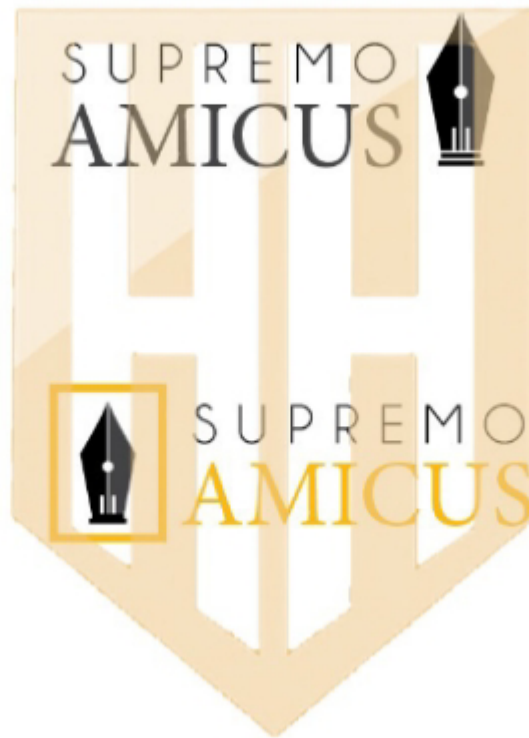
India's cross-border insolvency story is one of early diagnosis and slow implementation, but the remaining disagreement is no longer only about speed. It is about design. The Insolvency Law Committee's reciprocity requirement was a defensible, capacity-conscious compromise when proposed in 2018; measured against how Model Law jurisdictions actually resolve hard recognition disputes — through calibrated, case-specific public-policy review rather than categorical gates — it now looks like the wrong tool for the caution it was meant to express. Section 240C of the 2026 Amendment finally supplies the legislative hook Parliament had been missing, but a hook is not a

¹²CBIRC Report, supra, at 4.8; see also Parliamentary panel recommends dedicated insolvency benches in NCLT for faster case disposal, TELANGANA TODAY (Aug. 2026) (reporting a 2026 recommendation of the Department-Related

Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for dedicated NCLT benches, citing caseload and staffing constraints).



framework. Until the Central Government notifies rules that replace a blanket reciprocity threshold with the kind of safety valve Singapore's courts actually used in *Re Zetta Jet*, and until the National Company Law Tribunal is given the dedicated capacity that the CBIRC recommended six years ago, India's adjudicating authorities will continue to do what they have done since *Jet Airways*: improvise, case by case, without the tool that was meant to make improvisation unnecessary.





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