

WHEN INSOLVENCY OVERTAKES ARBITRATION: AWARD ENFORCEMENT AGAINST DISTRESSED AND CROSS- BORDER DEBTORS IN INDIA

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Abstract

An arbitral award is meant to bring a dispute to an end. Once the award debtor enters a collective process, however, Indian law treats the award as a claim like any other. This paper examines what remains of an award when insolvency or winding up intervenes, whether against the award debtor or, less obviously, against the award holder. It reads the relevant provisions of the Arbitration and Conciliation Act, 1996, the Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013 against three episodes: the Amazon and Future Retail dispute, the winding up of Devas Multimedia, and the cross-border insolvency of Jet Airways. The paper argues that the primacy of the Code over arbitration is not the difficulty. The difficulty is the absence of rules coordinating the two regimes, at home and across borders. It then assesses whether the enabling provisions inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2026 close that gap, and proposes what the rules framed under them should contain.

Keywords: Arbitral Awards; Moratorium; clean slate; winding up; cross-border insolvency; Section 240C.

Introduction

Commercial parties choose arbitration for finality. The New York Convention, and Part II of the Arbitration and Conciliation Act, 1996 which gives effect to it in India, proceed on the footing that an award, once made, will be enforced save on narrow and exhaustively stated grounds.

¹Insolvency law begins elsewhere. It is concerned not with the creditor who has won but with the body of creditors who must share what is left. When the two systems meet, the collective prevails. The Insolvency and

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1 The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), §§ 44-49; Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3.

Bankruptcy Code, 2016 ("the Code") says so in terms,² and the Supreme Court has consistently described the Code as a statute for time-bound resolution rather than recovery.³

That hierarchy is not challenged here. The problem lies in what follows once it is applied. An award holder whose debtor is admitted into the corporate insolvency resolution process ("CIRP") finds that years of arbitration have bought it surprisingly little. Execution is stayed by the moratorium. The claim is verified by a resolution professional who has no power to adjudicate. Payment, if any, comes in the same proportion as for an unadjudicated invoice of the same class. If the holder misses the claims window, the approved plan may extinguish the award altogether. Where the debtor's assets, or the holder's enforcement proceedings, lie abroad, the absence of any operative cross-border framework means that each forum proceeds on its own terms.

This paper addresses two questions. First, when an award debtor enters insolvency or winding up, does the award survive as anything more than an unsecured claim? Second, does India's failure to operationalise Sections 234 and 235 of the Code, or to adopt the UNCITRAL Model Law on Cross-Border Insolvency, leave foreign award holders without an effective remedy? The method is doctrinal, supported by three case studies chosen because each exposes a different gap. Part II maps the statutory position. Parts III, IV and V take up Future Retail, Devas and Jet Airways. Part VI evaluates the 2026 amendments against comparative models, and Part VII concludes.

The Award in the Collective Process

A. The Award as a Trigger

An unpaid award may found an application under Section 7 or Section 9 of the Code, depending on whether the underlying debt is financial or operational. The award does not alter the character of the debt. For operational creditors the gateway is narrow. In *Mobilox*, the Supreme Court held that an application under Section 9 must be rejected where a plausible dispute existed before the demand notice.⁴ In *K. Kishan*, it treated

2 The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 238.

3 *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India); *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).

4 *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353 (India).

a pending challenge under Section 34 of the 1996 Act as such a dispute, observing that the Code is not a mechanism for executing awards whose validity is still under challenge.⁵

The rule is sound in principle, since insolvency proceedings should not be used to collect disputed debts. Its practical consequence is less often noticed. A solvent award debtor can keep an operational creditor out of the insolvency forum for as long as its Section 34 petition remains pending, and such petitions routinely take years. A financial creditor faces no comparable obstacle, because Section 7 turns on default and not on the absence of dispute.⁶ The value of an award at the threshold of insolvency therefore depends less on the award than on how the debt beneath it is classified.

B. The Moratorium

Section 14(1)(a) prohibits "the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority".⁷ The provision leaves no room for pending arbitrations against the corporate debtor or for the execution of awards. An arbitration commenced after the moratorium has been held to be non est,⁸ and the Court has since read "proceedings" widely enough to reach quasi-criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881.⁹

Proceedings initiated by the corporate debtor are not barred. The moratorium protects the debtor. It does not disable the debtor from pursuing its own remedies. A more difficult case arises where the corporate debtor has filed, or wishes to file, a Section 34 petition against an award in favour of one of its creditors. Formally, the petition is the debtor's own proceeding and falls outside Section 14. In substance, its outcome determines the creditor's claim, a function the Code assigns to the resolution professional and, on dispute, to the Adjudicating Authority under Section 60(5). The Supreme Court has not yet settled the point. The better view, it is submitted, is that the challenge should be permitted to

5 K. Kishan v. Vijay Nirman Co. Pvt. Ltd., (2018) 17 SCC 662 (India).

6 Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund, (2021) 6 SCC 436 (India).

7 The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 14(1)(a).

8 Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd., (2018) 16 SCC 94 (India).

9 P. Mohanraj v. Shah Bros. Ispat Pvt. Ltd., (2021) 6 SCC 258 (India).

continue. The alternative would leave the award immune from challenge and the claim incapable of proper verification. The result of the challenge should, however, bind the resolution professional only as to the amount of the claim, and not as to its priority.

C. Verification, the Clean Slate and Liquidation

The award holder files its claim like any other creditor. The resolution professional verifies it and, where the amount cannot be stated precisely because of a contingency or for any other reason, must make "the best estimate" on the information available.¹⁰ The resolution professional performs administrative, not adjudicatory, functions.¹¹ Nothing in the Code gives an adjudicated claim any priority or procedural weight over an unadjudicated claim of the same class. The arbitration serves, at most, as strong evidence of the debt.

Once after the approval of a resolution plan, it binds the corporate debtor, its creditors and every other stakeholder.¹² In *Essar Steel*, it was held by the Court that a successful resolution applicant cannot be confronted with undecided claims after the plan is accepted.¹³ *Ghanashyam Mishra* went further: every claim not constituting part of the plan stands extinguished, and no proceeding in respect of it may be initiated or continued.¹⁴ An award holder who did not file, or whose claim was rejected and not pursued, therefore loses the award entirely. The outcome is severe for a claim determined after a full hearing, but it follows logically from the finality of the plan. The Code makes no exception for adjudicated claims.

In liquidation the position is no better. Section 33(5) bars suits and judicial processes involving the company in debt, unless the Adjudicating authority grants permission, and Section 53 fixes the order of distribution. After insolvency expenses, secured creditors, workers, employees, and unsecured financial creditors comes unsecured operational creditors with award.¹⁵ Winding up under the Companies Act, 2013 carries a comparable

10 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 13-14 (India).

11 *Swiss Ribbons*, (2019) 4 SCC 17.

12 The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 31(1).

13 *Essar Steel*, (2020) 8 SCC 531.

14 *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657 (India).

15 The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), §§ 33(5), 53(1).

stay.¹⁶ The recovery figures that the Insolvency and Bankruptcy Board of India publishes each quarter show how little usually reaches that class.¹⁷ Put simply, in the domestic collective process an award is an unsecured claim with better documentation.

Amazon and Future Retail: The Award Overtaken

In 2019, Amazon invested in Future Coupons Pvt. Ltd., a promoter entity of Future Retail Ltd. ("FRL"). The transaction documents restricted the transfer of FRL's retail assets to certain named persons, among them entities of the Reliance group. In August 2020, the Future group announced a scheme under which FRL's retail business would pass to Reliance. Amazon invoked arbitration under the SIAC Rules, and on 25 October 2020 an emergency arbitrator restrained the parties from proceeding with the transaction. On 6 August 2021 the Supreme Court held that an emergency arbitrator's award is an order under Section 17(1) of the 1996 Act, enforceable under Section 17(2), and that no appeal lies against an order enforcing it.¹⁸

The judgment was widely welcomed as an endorsement of institutional arbitration. Within a year, however, its practical value had largely disappeared. In early 2022, possession of a large number of FRL's retail premises passed to Reliance group entities after the underlying leases were terminated, a development whose characterisation remains disputed between the parties.¹⁹ On a petition by Bank of India under Section 7, the Mumbai Bench of the National Company Law Tribunal admitted FRL into CIRP on 20 July 2022. No resolution plan secured the approval of the committee of creditors within the statutory period, and on 29 July 2024 the Tribunal directed liquidation.²⁰

Three points emerge. The first concerns the nature of the relief. The emergency award was a negative injunction protecting a contractual position. Once the resolution professional assumed control and the moratorium took effect, the injunction had nothing left to operate upon.

16 The Companies Act, 2013, § 279, No. 18, Acts of Parliament, 2013 (India).

17 See, e.g., Insolvency & Bankr. Bd. of India, *Quarterly Newsletter* (various issues), <https://ibbi.gov.in>.

18 Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209 (India).

19 See *Amazon-Future Hearing #4: Future Did Not Transfer Its Assets, Was Forced to Surrender Lease*, Sup. Ct. Observer, <https://www.scoobserver.in> (last visited Sept. 30, 2026).

20 Bank of India v. Future Retail Ltd. (NCLT Mumbai July 20, 2022) (India) (admission); Future Retail Ltd., In re (NCLT Mumbai July 29, 2024) (India) (liquidation). [Company petition numbers to be inserted.] See also *NCLT Orders Liquidation of Future Retail*, LiveLaw (July 30, 2024), <https://www.livelaw.in/ibc-cases/nclt-mumbai-future-retail-liquidation-265218>.

There is an irony here. Section 14(1)(b) itself prohibits the corporate debtor from transferring or disposing of its assets, so the moratorium imposed the very restraint Amazon had sought. It did so, however, for the benefit of all creditors and not of the award holder.

The second concerns non-monetary entitlements. A "claim" under the Code includes a right to a remedy for breach of contract only "if such breach gives rise to a right to payment".²¹ The holder of an injunction or an award of specific performance can enter the CIRP only by converting its entitlement into a claim for damages, which is then estimated by the resolution professional and paid *pari passu* with other claims of its class. The Code offers no method for valuing such a claim, and no reported decision appears to have considered whether the conversion is fair to a party that bargained for specific relief.

The third concerns standing. Proceedings under Section 7 are, in structure, a matter between the financial creditor and the corporate debtor. A party with a live arbitral claim over the debtor's principal business has no right to be heard at admission unless it is itself a creditor. Amazon sought to be heard in the admission proceedings.²² Whatever the merits of its objections, the episode shows that no adverse finding was ever made against the award. Insolvency simply overtook it. Pro-arbitration jurisprudence, however robust, cannot protect an award whose subject matter is the debtor's business itself once that business enters a collective process.

Devas V. Antrix: Winding Up as an Answer to an Award

Devas reverses the usual direction of the problem. Here it was the award holder, not the award debtor, that was wound up. In 2005, Devas Multimedia Pvt. Ltd. contracted with Antrix Corporation Ltd., the commercial arm of the Indian Space Research Organisation, for the lease of S-band capacity on two satellites. Antrix terminated the agreement in 2011. An ICC tribunal found the termination wrongful and in 2015 awarded Devas about USD 562 million with interest.²³ Separate investment treaty proceedings were brought by Devas's Mauritian shareholders and by Deutsche Telekom. Those proceedings are distinct and are not examined here.

21 The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 3(6)(b).

22 [The scholar should cite the NCLT and NCLAT orders on Amazon's intervention applications, with dates, after verification from the tribunal record.]

23 See *Antrix v. Devas: Court Sets Aside Arbitral Award*, S.S. Rana & Co., <https://ssrana.in/articles/antrix-devas-court-sets-aside-arbitral-award/> (last visited Sept. 30, 2026).

In 2021, Antrix petitioned for the winding up of Devas under Section 271(c) of the Companies Act, 2013, on the ground that its affairs had been conducted fraudulently and that it had been formed for an unlawful purpose. The Bengaluru Bench of the National Company Law Tribunal ordered winding up on 25 May 2021, and the Appellate Tribunal affirmed. On 17 January 2022, the Supreme Court dismissed the appeals, observing that "the seeds of the commercial relationship between Antrix and Devas were a product of fraud".²⁴ Relying on that finding, the Delhi High Court on 29 August 2022 set aside the ICC award under Section 34 as being in conflict with the public policy of India.²⁵

The first point is structural. On a winding-up order, the liquidator takes custody of the company's property and actionable claims, and conducts its litigation.²⁶ Where the award debtor is also the petitioning creditor, it obtains an indirect influence over the proceedings brought against it, including enforcement actions abroad. The liquidator is an officer of the Tribunal who owes duties to the body of creditors, not to the petitioner, and nothing in the Act is irregular about this sequence. The concern lies in the structure. A collective proceeding against the award holder can neutralise an award as effectively as one against the award debtor.

The second point concerns fraud and finality. Parliament has already accepted that fraud justifies exceptional treatment. The Explanation to Section 34(2)(b) treats an award induced or affected by fraud as being in conflict with public policy, and the 2021 amendment to Section 36(3) requires an unconditional stay where the award or the underlying contract was *prima facie* induced by fraud or corruption.²⁷ Devas went a step further. The finding of fraud was made in winding-up proceedings under the Companies Act and then applied by the court hearing the Section 34 challenge. Those who support the outcome rely on the settled principle that fraud unravels everything it touches.²⁸ Critics respond that a state-owned award debtor used a domestic collective proceeding to defeat an

24 Devas Multimedia Pvt. Ltd. v. Antrix Corp. Ltd., 2022 LiveLaw (SC) 57 (India).

25 Antrix Corp. Ltd. v. Devas Multimedia Pvt. Ltd. (Del. HC Aug. 29, 2022) (India). [Petition number and the outcome of any appeal under Section 37 to be verified.]

26 The Companies Act, 2013, §§ 283, 290, No. 18, Acts of Parliament, 2013 (India).

27 The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), §§ 34(2)(b) expl. 1, 36(3) proviso; The Arbitration and Conciliation (Amendment) Act, 2021, No. 3, Acts of Parliament, 2021 (India).

28 S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1 (India).

international award. If the findings of fraud are sound, the outcome is correct. The general lesson is that the route to it passed through insolvency law rather than arbitration law.

The third point is cross-border. Enforcement abroad continued after the Indian rulings. In June 2025, the Supreme Court of the United States held that the Foreign Sovereign Immunities Act does not require proof of minimum contacts before a court may exercise personal jurisdiction in proceedings to confirm an award against a foreign state instrumentality.²⁹ Foreign courts must still decide whether to enforce an award set aside at the seat, which Article V(1)(e) of the New York Convention permits but does not require them to refuse, and what weight to give an Indian liquidator. Because India offers no reciprocal recognition, an Indian office-holder abroad depends entirely on the law of the foreign forum. The absence of a cross-border framework therefore disadvantages Indian insolvency office-holders abroad as well as foreign creditors in India.

Jet Airways and the Foreign Creditor

Jet Airways was not an arbitration case, but it shows the only working cross-border mechanism India has so far had. On 20 June 2019, the Mumbai Bench of the Tribunal admitted Jet Airways into CIRP on a petition by the State Bank of India. On the same day it declined to take note of bankruptcy proceedings already opened against the airline in the Netherlands, reasoning that Sections 234 and 235 had not been brought into operation. The Appellate Tribunal took a different course. On 26 September 2019 it approved a protocol agreed between the Dutch trustee and the resolution professional, which treated India as the centre of main interests and the Dutch case as a non-main proceeding. The Dutch trustee was allowed to attend meetings of the committee of creditors as an observer without voting rights, and was required to respect the Indian moratorium.³⁰

The resolution itself failed. A plan submitted by the Jalan Kalrock consortium was approved in 2021 but never implemented. On 7 November 2024, the Supreme Court invoked Article 142 of the Constitution to direct liquidation, ordered forfeiture of the ₹200 crore already paid by the consortium, and permitted the lenders to encash its performance bank

29 *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. ____ (2025) (decided June 5, 2025).

30 *Jet Airways (India) Ltd. (Offshore Reg'l Off.) v. State Bank of India, Comp. App. (AT) (Ins.)* No. 707 of 2019 (NCLAT Sept. 26, 2019) (India); see *Cross-Border Insolvency in India: The National Company Law Appellate Tribunal Paves the Way*, *IndiaCorpLaw* (Sept. 30, 2019), <https://indiacorpplaw.in/2019/09/30/cross-border-insolvency-india-national-company-law-appellate-tribunal-paves-way/>.

guarantee of ₹150 crore.³¹ A year earlier, the Go First insolvency had exposed a different gap: the moratorium collided with lessors' rights under the Cape Town Convention until the Central Government excluded aircraft transactions from Section 14.³²

The Jet protocol was pragmatic, but it depended on the consent of the parties and a willing tribunal. Applied to award holders, the gap produces three distinct situations. A foreign award holder whose Indian debtor is in CIRP may file a claim like any other creditor. The Indian moratorium, however, has no effect abroad unless a foreign court recognises the Indian proceeding. The holder may therefore attach the debtor's foreign assets while Indian creditors are held back, which is precisely the race to assets that collective insolvency law is meant to prevent. The resolution professional's only answer is to seek recognition in the foreign forum under that forum's law. That route is often available, since the United Kingdom, Singapore and the United States do not require reciprocity, but India offers nothing in return.

Conversely, an Indian award holder whose debtor is in insolvency abroad may enforce under Part II of the 1996 Act against the debtor's Indian assets, because the foreign representative has no statutory route to a stay in India. The Indian holder gains a priority over foreign creditors that the foreign process would not have allowed. Finally, where a foreign-seated award has been made against an Indian corporate debtor, execution is barred by Section 14, but it is unclear whether proceedings for recognition under Section 48 may continue, and whether the resolution professional may go behind the award when verifying the claim. It is suggested that the award should be treated as *prima facie* proof of the debt, with objections under Section 48 left to the Adjudicating Authority under Section 60(5). No authoritative ruling appears to exist on this point.

The 2026 Amendments and What the Rules Should Say

The Insolvency and Bankruptcy Code (Amendment) Act, 2026 received assent on 6 April 2026, and most of its provisions came into force on 26 May 2026.³³ Two of its provisions bear directly on this paper. Section 240C empowers the Central Government to prescribe rules for the recognition

31 State Bank of India v. Consortium of Murari Lal Jalan & Florian Fritsch, Civil Appeal Nos. 5023-5024 of 2024 (India Nov. 7, 2024).

32 See The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 14(3)(a); Ministry of Corp. Affs., Notification S.O. 4468(E) (Oct. 3, 2023) (India). [Notification number and date to be verified.]

33 The Insolvency and Bankruptcy Code (Amendment) Act, 2026, No. 6, Acts of Parliament, 2026 (India).

of foreign proceedings, relief, judicial cooperation and coordination in relation to notified countries or territories, and to adapt provisions of the Code and the Companies Act for that purpose. Section 59A, in a new Chapter VA, enables rules for group insolvency, including a common bench, a common insolvency professional and coordination between proceedings. As of June 2026, neither provision had been brought into force, no rules had been framed, and no country had been notified.³⁴ Sections 234 and 235 remain on the statute book, although no agreement has been concluded and no letter of request issued under them.

Section 240 C is a step in the right path. It follows the recommendation of the Insolvency Law Committee that India adopt the Model Law through a dedicated framework.³⁵ Three features, however, deserve scrutiny. First, the limitation to notified countries operates as reciprocity in substance. The Model Law does not require reciprocity, and Singapore adopted it without any such condition.³⁶ If notification proves as slow as the conclusion of agreements under Section 234, the old problem will simply reappear in a new form. Second, the substance of recognition and relief has been left entirely to subordinate legislation, which is a significant delegation for rights affecting foreign creditors. Third, and most relevant here, the provision says nothing about arbitration. Article 20 of the Model Law stays individual actions on recognition of a foreign main proceeding, leaving the scope of that stay to domestic law.³⁷ Whether a recognised foreign proceeding will stay arbitrations seated in India, or the enforcement of awards against Indian assets, will depend on rules that have not yet been drafted.

The English experience offers a caution. In *Rubin*, the Apex Court of the United Kingdom declined to enforce judgments given in foreign insolvency proceedings outside the ordinary common-law rules.³⁸ Under the older rule in *Gibbs*, a debt governed by English law is discharged only by

34 Rajasekhar V.K., *Cross Border Insolvency in India: What Rules Must Say*, LiveLaw (June 10, 2026), <https://www.livelaw.in/articles/cross-border-insolvency-india-537437>; *Cross-Border and Group Insolvency under the IBC Amendment Act 2026*, iPleaders, <https://blog.ipleaders.in/cross-border-and-group-insolvency-under-the-ibc-amendment-act-2026/> (last visited Sept. 30, 2026).

35 Ministry of Corp. Affs., *Report of the Insolvency Law Committee on Cross Border Insolvency* (Oct. 2018) (India).

36 Insolvency, Restructuring and Dissolution Act 2018, third sch. (Sing.).

37 UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, art. 20, U.N. Sales No. E.14.V.2 (2014).

38 *Rubin v. Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236 (appeal taken from Eng.).

an English proceeding.³⁹ UNCITRAL adopted its Model Law on Recognition and Enforcement of Insolvency-Related Judgments in 2018 partly to address those limitations.⁴⁰ Recognition of the proceeding alone does not settle the fate of a judgment or award made within it. India should address both when framing rules under Section 240C.

Conclusion and Recommendations

The response to the initial inquiry is predominantly negative. In an Indian collective process, an award is preserved as an unsecured claim with substantial evidentiary value, and nothing more. It may be completely extinguished if it is not filed. In principle, that result is tenable, as collective insolvency is predicated on the principle of equitable treatment among creditors within a class. Nevertheless, the Code contains gaps that could have been avoided, including the status of a debtor's challenge to an award during the moratorium, the valuation of non-monetary awards, and the status of parties whose arbitral claims pertain to the debtor's business.

Foreign award holders are not without recourse with regard to the second inquiry. Their remedies are frequently inconsistent with the collective principle that the Code safeguards, as they are uncoordinated and individual. Tribunals are capable of devising innovative solutions, as evidenced by Jet Airways. Devas demonstrates the degree of uncertainty that arises when the interests of a state entity, foreign creditors, and foreign tribunals diverge. The authority to resolve these issues is provided by Section 240C; however, the regulations have not yet been established.

The gap could be diminished by implementing five measures. First and foremost, the regulations under Section 240C should allow for recognition without a reciprocity condition, or at the very least, with a presumption in favour of recognition. Secondly, the rules should explicitly specify whether and under what conditions recognition suspends arbitrations and the enforcement of awards, as well as a process for requesting leave. Third, the CIRP Regulations should allow the Adjudicating Authority to permit a pending arbitration to continue within a fixed time for the limited purpose of quantifying a claim, so that the claim is determined by the forum the parties chose rather than estimated by the resolution professional. Fourth, the Code or the Regulations should clarify that a corporate debtor's own

39 Antony Gibbs & Sons v. La Société Industrielle et Commerciale des Métaux (1890) 25 QBD 399 (CA) (Eng.).

40 UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018).

challenge under Section 34 or Section 37 is not barred by Section 14. Fifth, India should consider adopting the 2018 Model Law on Insolvency-Related Judgments alongside the 1997 Model Law.

Whether insolvency should prevail over arbitration is no longer the real question. The real question is whether India will decide, in advance and by rule, how that primacy is to operate, or will continue to leave the answer to be worked out case by case, as it was in Future Retail, Devas and Jet Airways.