

Centre for Transnational Commercial Law

National Law University Delhi

IBMC 2019

RESPONSE TO CLARIFICATIONS

1. For the purpose of this moot, it is presumed that India has adopted The UNCITRAL Model Law on Cross Border Insolvency 1997. Should this be read to mean that it has incorporated the Model Law into its domestic framework, making it effectively domestic law without domestic variations?

Answer:

India has adopted the UNCITRAL Model Law on Cross Border Insolvency 1997 *mutatis mutandis*, except Article 14 thereof. The same has to be presumed to be part of the insolvency law of India. The Adjudicating Authority is vested with the jurisdiction to entertain applications arising out of cross-border insolvency issues.

2. The moot proposition makes no mention of whether an assumption is to be made about Netherlands adopting the Model Law? Can it be assumed that it is not in fact one of the countries that has adopted the law, as it stands in reality?

Answer:

For the purposes of the moot, it may be assumed that Netherlands has not adopted the UNCITRAL Model Law on Cross Border Insolvency.

3. Issue 5(a) of the moot proposition states that the participants are to present legal arguments on whether the application by Mr. Heinrich Dexter is to be recognised and whether the reliefs be granted by Adjudicating Authority in India. Is the relief mentioned in this issue understood to be a mere recognition of the stay order passed by the appropriate authority in Netherlands or should it also be understood to include recognition of this order AND relief under the domestic laws for insolvency?

Mr. Heinrich Dexter, apart from seeking recognition of stay order, sought recognition as foreign main proceeding of the insolvency proceedings that had already commenced in Netherlands against IDN and as such, sought reliefs provided under Articles 20 and 21 of the Model Law.

4. Is there any registered office of IEL?

Answer:

The registered office of IEL is in Delhi.

5. Whether the section 94/part-III shall be deemed as notified or not?

Answer:

For the purposes of this moot, it may be assumed that Part III of the Insolvency and Bankruptcy Code, 2016 is in force.

6. Whether the Insolvency Amendment Act, 2019 will apply to this moot?

Answer:

Yes.

7. Did Uganda and Netherlands have adopted UNCITRAL Model Law on insolvency?

Answer:

For the purposes of the moot, it may be assumed that both Uganda and Netherlands have not adopted the UNCITRAL Model Law on Cross Border Insolvency.

8. Whether the facts of superiority and discrimination shall be established by us?

Answer:

Participants shall base their submissions only on facts that are either explicitly mentioned or are necessarily implied in the Moot Proposition.

9. Whether the plan of DIPL shall be assumed to be discriminatory and whether the plan of FDL shall be assumed to be superior for the purposes of arguing issue 2?

Answer:

No clarification required.

10. Upto which date the laws of insolvency shall be applicable to this moot?

Answer:

It is clarified that the law applicable for the purpose of preparing the elimination round memorandum would be as in force on 31st August 2019.

However, for pleadings (11-12 Nov.2019), the applicable law will be as on date of 31st October 2019.

It is further clarified that law in force include amendments, regulations, cases.

11. In page 7, para 2, the company name "ISL" has been used.

Kindly read it as ASL.

In case of any other support the following Organising Committee members may be contacted:

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