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With this thought, we hereby present to you

W H I T E   B L A C K  
L E G A L

# **CROSS-BORDER INSOLVENCY AND THE INSOLVENCY AND BANKRUPTCY CODE (IBC): NAVIGATING INTERNATIONAL LEGAL COMPLEXITIES**

AUTHORED BY - DIV KR. SINGH

## **ABSTRACT<sup>1</sup>**

In today's global economy, cross-border insolvency has become a significant topic, especially in the context of India's Insolvency and Bankruptcy Code (IBC). This paper dives deep into how the IBC handles cross-border insolvency, aiming to provide a comprehensive overview that's both informative and easy to understand. We'll break down the legal frameworks, pinpoint key elements, and look at recent case laws that shape the current landscape of cross-border insolvency in India.

First, we'll explain what cross-border insolvency is and why it matters in our interconnected world. Essentially, it's about figuring out what happens when a company that's doing business in multiple countries goes bankrupt. Different countries have different laws about insolvency, and this can lead to complications. Our goal is to make sense of these complexities, especially focusing on India's approach.

The IBC, since its inception, has been a game-changer for insolvency proceedings in India. However, when it comes to cross-border insolvency, the IBC is still evolving. We'll take a close look at the provisions that currently exist in the IBC for handling cross-border cases. This includes the role of Indian courts in recognizing and dealing with foreign insolvency proceedings. We'll also discuss the gaps that still need to be filled for the system to be more robust.

To give you a broader perspective, we'll compare India's framework with those of other major jurisdictions like the United States. The US has a well-established system for cross-border

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<sup>1</sup> Div Kr. Singh, 9<sup>th</sup> Semester, B.A.LL.B. (Hons.), Maharashtra National Law University, Mumbai.

insolvency, primarily guided by Chapter 15 of the US Bankruptcy Code, which aims to provide effective mechanisms for dealing with insolvency cases involving more than one country. By comparing the two, we hope to highlight areas where India can learn and possibly improve its own system.

One of the core challenges in cross-border insolvency is managing the interests of creditors from different countries. We'll discuss how the IBC attempts to balance these interests and the practical difficulties that arise. For instance, how do you ensure fair treatment of a creditor in another country when the laws in India are different? These are the kinds of questions we'll explore. We'll also touch on recent case laws that have set important precedents in this area. These cases provide real-world examples of how cross-border insolvency issues are being handled in India today. By examining these cases, we can see how the theory is put into practice and what challenges have emerged.

Finally, we'll consider the future of cross-border insolvency in India. There's a growing consensus on the need for international harmonization of insolvency laws, which means making laws more consistent across countries. This can help avoid conflicts and make cross-border insolvency proceedings smoother. We'll discuss what steps India might take in this direction and what changes we can expect in the near future.

In summary, this paper aims to shed light on the current state of cross-border insolvency in India, how it compares to global standards, and what the future might hold. By breaking down complex legal concepts into simpler terms, we hope to make this topic accessible to a broader audience.

## INTRODUCTION

In our increasingly interconnected world, businesses often operate across multiple countries, creating complex webs of assets, liabilities, and interests spanning different jurisdictions. As a result, when such businesses face insolvency, it becomes a multifaceted challenge requiring a nuanced approach. Effective mechanisms for handling cross-border insolvency are vital to ensure fair and efficient resolution, protecting the interests of creditors and debtors alike.

India's Insolvency and Bankruptcy Code (IBC) of 2016 was a landmark reform aimed at addressing insolvency and bankruptcy issues within the country. It streamlined the processes



for resolving insolvency, providing a much-needed framework for timely and effective resolution. However, when it comes to cross-border insolvency, the IBC's initial framework left several gaps, highlighting the necessity for further legal enhancements.

The concept of cross-border insolvency involves situations where an insolvent debtor has assets, creditors, or liabilities in multiple countries. This can lead to conflicts of laws, jurisdictional issues, and challenges in coordinating insolvency proceedings across borders. In such scenarios, without a robust legal framework, the resolution process can become protracted and inefficient, leading to significant financial losses and legal uncertainties.

The IBC was a significant step forward for India, addressing domestic insolvency comprehensively. However, it initially fell short in addressing the complexities of cross-border insolvencies. Recognizing this, legal experts and policymakers have been advocating for reforms to incorporate more detailed provisions for cross-border insolvency into the IBC. These reforms aim to align India's insolvency framework with international standards, facilitating smoother coordination with foreign jurisdictions.

A crucial element in managing cross-border insolvency is the recognition of foreign insolvency proceedings. The ability to recognize and cooperate with insolvency processes initiated in other countries can significantly streamline the resolution of cross-border cases. Under the current IBC, Indian courts have some discretion to recognize foreign proceedings, but the process is not yet fully standardized. This lack of standardization can lead to inconsistencies and unpredictability, which are detrimental to the efficient resolution of cross-border insolvencies.

Comparatively, other jurisdictions have more developed frameworks for cross-border insolvency. For instance, the United States operates under Chapter 15 of its Bankruptcy Code, which is specifically designed to handle cross-border insolvency cases. Chapter 15 facilitates cooperation between US courts and foreign courts, aiming to provide an effective mechanism for dealing with insolvency cases involving multiple countries. This model has been cited as a benchmark that India could look to in strengthening its own framework.

The IBC's journey towards incorporating robust cross-border insolvency provisions has seen some progress. For example, the inclusion of the UNCITRAL Model Law on Cross-Border Insolvency into Indian law has been a topic of discussion. The Model Law provides a

framework for cooperation and coordination between jurisdictions, promoting greater legal certainty and efficiency in cross-border insolvency cases. Adopting such a model could greatly enhance India's ability to manage these complex cases effectively.

One of the primary challenges in cross-border insolvency is balancing the interests of creditors from different jurisdictions. Each country has its own insolvency laws, which can vary significantly in terms of priorities, protections, and processes. This creates a scenario where creditors in one jurisdiction might be disadvantaged compared to those in another. The IBC seeks to address this by providing a framework that aims to balance these competing interests, though more work is needed to ensure equitable treatment for all parties involved.

Recent case laws in India have highlighted both the progress and the challenges in handling cross-border insolvency. These cases provide valuable insights into how the current legal framework is applied in practice and where improvements are necessary. By examining these cases, one can see the practical difficulties that arise and the need for clearer, more comprehensive guidelines.

Looking ahead, the future of cross-border insolvency in India is likely to involve greater international harmonization of insolvency laws. This means aligning India's laws more closely with global standards, facilitating better cooperation with foreign jurisdictions, and creating a more predictable and efficient process for resolving cross-border insolvencies. Such harmonization can help avoid legal conflicts and ensure that insolvency proceedings are handled in a manner that is fair to all parties involved.

In conclusion, the globalization of businesses necessitates a robust and effective framework for managing cross-border insolvency. While the IBC has made significant strides in addressing domestic insolvency issues, there is a clear need for enhancements to better handle cross-border cases. By learning from international best practices and incorporating models like the UNCITRAL Model Law, India can strengthen its insolvency framework, providing greater certainty and protection for businesses and creditors alike. This paper aims to explore these themes in detail, offering insights into the evolution, key elements, and global relevance of cross-border insolvency under the IBC.

## **2. The Legal Framework Of Cross-Border Insolvency Under The Ibc**

### **2.1 Initial Provisions**

When the Insolvency and Bankruptcy Code (IBC) was introduced in India in 2016, it primarily focused on resolving insolvency issues within the domestic sphere. This meant it laid out clear guidelines for handling insolvencies involving companies, individuals, and partnerships operating within India. However, as the global economy became more interconnected, the need to address cross-border insolvencies became increasingly apparent. To this end, Sections 234 and 235 of the IBC were included to handle such situations. Section 234 allows the Indian government to enter into bilateral agreements with other countries to facilitate cross-border insolvency proceedings.<sup>2</sup> Section 235, on the other hand, permits domestic insolvency professionals to seek assistance from foreign courts, thus paving the way for international cooperation in insolvency matters.

### **2.2 Adoption of UNCITRAL Model Law**

Recognizing the limitations of the initial framework, Indian authorities have taken steps to enhance the IBC's capability to deal with cross-border insolvencies. One significant recommendation came from the Insolvency Law Committee (ILC) and the Cross-Border Insolvency Rules/Regulations Committee (CBIRC).<sup>3</sup> These bodies proposed the adoption of the UNCITRAL Model Law on Cross-Border Insolvency into the IBC.<sup>4</sup> The Model Law provides a comprehensive framework that promotes cooperation, mutual recognition, and coordination between different jurisdictions, which is crucial for efficiently managing cross-border insolvency cases. This adoption is intended to make the resolution process more predictable and orderly, benefiting both domestic and international stakeholders involved in insolvency proceedings.

### **2.3 Modified Universalism and Territorialism**

India's approach to cross-border insolvency is an interesting blend of two major philosophies: territorialism and universalism. Territorialism emphasizes control by local courts over domestic assets, ensuring that a country maintains sovereignty over its own economic entities.

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<sup>2</sup> Section 234 of INSOLVENCY AND BANKRUPTCY CODE, 2016

<sup>3</sup> CROSS BORDER INSOLVENCY RULES/REGULATIONS COMMITTEE (CBIRC). Report on the rules and regulations for cross-border insolvency resolution, 2020. <https://ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83dd0138211640994127c27.pdf>.

<sup>4</sup> "UNCITRAL Model Law on Cross-Border Insolvency (1997)." [https://Uncitral.Un.Org/En/Texts/Insolvency/Modellaw/Cross-Border\\_insolvency](https://Uncitral.Un.Org/En/Texts/Insolvency/Modellaw/Cross-Border_insolvency), n.d.

Universalism, on the other hand, advocates for a single, unified insolvency proceeding that is recognized globally, usually conducted in the debtor's home country. India's preferred approach, known as modified universalism, strikes a balance between these two philosophies. It aims to foster international cooperation and coordination while ensuring that local authorities retain some level of oversight. This hybrid model helps in addressing the unique challenges posed by cross-border insolvency cases, making it easier to manage and resolve them effectively.

## **2.4 Challenges and Opportunities**

The journey towards a robust cross-border insolvency framework in India has not been without its challenges. One significant hurdle has been the lack of a standardized process for recognizing and enforcing foreign insolvency judgments and proceedings. This inconsistency can lead to unpredictable outcomes, which can deter foreign investors and complicate the resolution of insolvency cases involving multiple jurisdictions. However, the proposed adoption of the UNCITRAL Model Law aims to mitigate these issues by providing a more predictable and harmonized legal framework.<sup>5</sup>

Moreover, balancing the interests of creditors from different jurisdictions poses another challenge. Each country has its own insolvency laws, which can differ significantly in terms of priorities, protections, and procedures. This discrepancy can create scenarios where creditors in one jurisdiction are disadvantaged compared to those in another. The IBC's approach seeks to provide a framework that balances these competing interests, ensuring equitable treatment for all parties involved.

## **3. Key Elements of Cross-Border Insolvency Under the IBC**

The globalization of business has made cross-border insolvency an important issue. When a company with international operations faces insolvency, navigating multiple legal systems becomes challenging. The Insolvency and Bankruptcy Code (IBC) of 2016 in India, while primarily focused on domestic insolvency, has provisions for handling cross-border insolvency. Recent efforts to incorporate the UNCITRAL Model Law aim to enhance this framework. Here, we explore the key elements of cross-border insolvency under the IBC,

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<sup>5</sup> Hannan, Neil Francis. *Cross-Border Insolvency*. Springer eBooks, 2017. <https://doi.org/10.1007/978-981-10-5876-9>.



focusing on the recognition of foreign proceedings, cooperation and communication, and managing concurrent proceedings.

### **3.1 Recognition of Foreign Proceedings**

One of the fundamental aspects of cross-border insolvency is how domestic courts recognize and interact with foreign insolvency proceedings. The IBC, through its sections on cross-border insolvency, empowers Indian courts to engage with foreign insolvency matters. This engagement is crucial for maintaining order and ensuring that insolvency resolutions are effective across borders.

#### **UNCITRAL MODEL LAW**

The UNCITRAL Model Law on Cross-Border Insolvency is designed to provide a uniform approach to dealing with insolvency cases that span multiple jurisdictions. India's move towards adopting this Model Law represents a significant step forward. The Model Law encourages cooperation between national courts and foreign insolvency administrators, promoting a more harmonized and predictable system for handling cross-border insolvencies.

By recognizing foreign proceedings, Indian courts can assist in the effective resolution of insolvencies that involve assets and creditors in multiple countries. This recognition is not just about acknowledging the existence of a foreign proceeding but also involves understanding the decisions made by foreign courts and how they impact domestic stakeholders. This framework helps avoid conflicts and ensures that the insolvency process is streamlined and efficient.<sup>6</sup>

### **3.2 Cooperation and Communication**

Effective cross-border insolvency resolution relies heavily on cooperation and communication between insolvency practitioners and courts in different jurisdictions. The Model Law provides specific mechanisms to facilitate this cooperation, ensuring that all parties involved have the necessary information to make informed decisions.

#### **MECHANISMS FOR COOPERATION**

Under the Model Law, cooperation can take many forms, including direct communication

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<sup>6</sup> Sudhaker Shukla and Kokila Jayaram, "Cross Border Insolvency A Case to Cross the Border Beyond the UNCITRAL," IBBI, accessed June 7, 2024, <https://ibbi.gov.in/uploads/resources/c3593c9f41984c6f31f278974de3cf37.pdf>.

between courts, appointment of insolvency representatives, and coordination of concurrent proceedings. These mechanisms are designed to maximize the value of the debtor's estate, ensuring that assets are managed and distributed in a manner that benefits all creditors, irrespective of their location.<sup>7</sup>

## **PRACTICAL IMPLEMENTATION**

In practice, this means that insolvency practitioners must be proactive in sharing information and coordinating their efforts. For instance, if a company has assets in India and the United States, the insolvency administrators in both countries must work together to manage these assets effectively. This cooperation helps in avoiding duplication of efforts and conflicting decisions, which can complicate the insolvency process and reduce the overall value available to creditors.

### **3.3 Concurrent Proceedings**

Concurrent proceedings refer to the simultaneous administration of insolvency cases in multiple jurisdictions. Managing these concurrent proceedings is one of the most complex aspects of cross-border insolvency. The IBC, aligned with the Model Law, provides procedural rules to handle these situations effectively.

#### **Procedural Rules**

The procedural rules outlined in the IBC aim to avoid conflicts between jurisdictions and ensure that the insolvency process is coordinated. This involves recognizing the primary jurisdiction where the main insolvency proceedings are conducted and coordinating secondary proceedings in other jurisdictions. By doing so, the IBC ensures that there is a coherent strategy for asset distribution and debt resolution.<sup>8</sup>

#### **Synchronization of Efforts**

Effective management of concurrent proceedings requires synchronization of efforts between different jurisdictions. This includes coordinating court hearings, aligning legal strategies, and ensuring that all stakeholders are kept informed about the progress of the insolvency

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<sup>7</sup> Bhumika Indulia, "Need for International Harmonisation of Cross-Border Insolvency Laws: Challenges and Prospects | SCC Times," SCC Times, April 19, 2024, <https://www.scconline.com/blog/post/2024/04/19/need-for-international-harmonisation-of-cross-border-insolvency-laws/>.

<sup>8</sup> Lalwani, Rohit, and Aditi Tiwari. "An overview of Cross-Border Insolvency in India." Lexology, March 18, 2022. <https://www.lexology.com/library/detail.aspx?g=83c36e66-e1e2-4804-a2ca-329ddb9d8fc1>.

proceedings. By harmonizing these efforts, the IBC seeks to create a more predictable and efficient insolvency process, reducing the risk of legal conflicts and maximizing the recovery for creditors.<sup>9</sup>

## **4. Comparative Analysis: Cross-Border Insolvency in Major Jurisdictions**

### **4.1 The United States**

In the United States, cross-border insolvency is primarily governed by Chapter 15 of the Bankruptcy Code, which was enacted to incorporate the principles of the UNCITRAL Model Law on Cross-Border Insolvency. Chapter 15 aims to provide effective mechanisms for dealing with insolvency cases that involve debtors, assets, or creditors in more than one country. It facilitates foreign representatives' access to U.S. courts, granting them rights and protections similar to those afforded to domestic representatives.

#### **Key Features of Chapter 15**

**Recognition of Foreign Proceedings:** One of the central tenets of Chapter 15 is the recognition of foreign insolvency proceedings. Once recognized, the foreign representative gains the authority to act on behalf of the debtor's estate within the United States. This includes the ability to initiate lawsuits, recover assets, and manage the debtor's affairs.<sup>10</sup>

**Cooperation and Coordination:** Chapter 15 emphasizes cooperation between U.S. courts and foreign courts or representatives. This is achieved through direct communication and the sharing of information to ensure that insolvency proceedings are handled efficiently and equitably across borders.<sup>11</sup>

**Public Policy Exception:** A notable feature of Chapter 15 is the public policy exception, which allows U.S. courts to refuse recognition or assistance if doing so would be manifestly contrary to U.S. public policy. This exception is intended to protect fundamental principles of justice

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<sup>9</sup> Manasi Lad-Gudhate, "Cross-Border Insolvency," accessed June 7, 2024, <https://www.icsi.edu/media/webmodules/CSJ/April/15ArticleManasiLadGudhate.pdf>.

<sup>10</sup> Day, Jones. "Chapter 15 Inapplicable Unless "Foreign Representative" Seeks Enforcement of Foreign Insolvency Cour...," March 31, 2017. <https://www.jonesday.com/en/insights/2017/03/chapter-15-inapplicable-unless-foreign-representative-seeks-enforcement-of-foreign-insolvency-courts-order>.

<sup>11</sup> Hayes, Adam. "Chapter 15 Bankruptcy: Meaning, Purpose, History." Investopedia, June 1, 2022. <https://www.investopedia.com/terms/c/chapter-15.asp>.

and fairness, although courts have set a high threshold for its application.<sup>12</sup>

## NOTABLE CASE LAW IN CONTEXT OF U.S.

**In re Vitro S.A.B. de C.V.:** In this case, the Fifth Circuit Court of Appeals upheld the recognition of Vitro's Mexican reorganization plan, which included non-consensual third-party releases. The court's decision emphasized the importance of respecting foreign insolvency proceedings and their outcomes, provided they do not contravene U.S. public policy.<sup>13</sup>

**In re Qimonda AG:** In this case, the Fourth Circuit Court of Appeals addressed the issue of applying U.S. patent law protections in a German insolvency proceeding. The court's decision highlighted the need for balancing international cooperation with the protection of domestic interests.<sup>14</sup>

### 4.2 The European Union

The European Union has a comprehensive framework for dealing with cross-border insolvency, primarily through the EU Regulation on Insolvency Proceedings (Recast) (Regulation (EU) 2015/848). This regulation aims to standardize the approach to cross-border insolvency within the EU, ensuring that insolvency proceedings are recognized and respected across member states.<sup>15</sup>

#### Key Features of the EU Regulation

**Mutual Recognition:** The regulation mandates that insolvency proceedings opened in one member state must be recognized in all other member states. This ensures that decisions made in one jurisdiction are respected across the EU, promoting a uniform approach to insolvency.<sup>16</sup>

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<sup>12</sup> Global Restructuring Review. "The High Burden to Satisfy the 'Manifestly Contrary to Public Policy' Standard of Chapter 15," n.d. <https://globalrestructuringreview.com/review/restructuring-review-of-the-americas/2021/article/the-high-burden-satisfy-the-manifestly-contrary-public-policy-standard-of-chapter-15>.

<sup>13</sup> "In re Vitro Fifth Circuit Declines to Enforce Mexican Plan of Reorganization and Crafts New Framework for Foreign Debtor Relief | ABI," n.d. <https://www.abi.org/member-resources/blog/in-re-vitro-fifth-circuit-declines-to-enforce-mexican-plan-of-reorganization>.

<sup>14</sup> Chung, John J. "In re Qimonda AG: The Conflict Between Comity and the Public Policy Exception in Chapter 15 of the Bankruptcy Code," February 3, 2014. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2390351](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2390351).

<sup>15</sup> Insights | Mayer Brown. "Cross border insolvency – an overview of the current EU legal framework and the impact of a 'no deal' Brexit on UK/EU cross border insolvencies under the Recast Regulation," January 10, 2024. <https://www.mayerbrown.com/en/insights/publications/2020/12/cross-border-insolvency-an-overview-of-the-current-eu-legal-framework-and-the-impact-of-a-no-deal-brexite-on-uk-eu-cross-border-insolvencies-under-the-recast-regulation>.

<sup>16</sup> POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS LEGAL AFFAIRS. "HARMONISATION OF INSOLVENCY LAW AT EU LEVEL." DIRECTORATE GENERAL FOR



**Centre of Main Interests (COMI):** The regulation introduces the concept of the Centre of Main Interests (COMI) to determine the appropriate jurisdiction for opening insolvency proceedings. The COMI is generally presumed to be the location of the debtor's registered office, but this can be challenged based on the debtor's actual business activities.

**Cooperation and Communication:** The regulation emphasizes the need for cooperation and communication between insolvency practitioners and courts in different member states. This includes the sharing of information and coordination of actions to ensure that insolvency proceedings are conducted efficiently and effectively.<sup>17</sup>

### **Notable Case Law of EU Cross-Border Insolvency**

**In re Eurofood IFSC Ltd.:** This case involved the determination of COMI for a company registered in Ireland but controlled from Italy. The European Court of Justice (ECJ) ruled that the COMI should be where the debtor conducts its main business activities, not necessarily where it is registered. This decision underscored the importance of the actual operational location in cross-border insolvency cases.

**In re Interedil Srl:** This case further clarified the concept of COMI, with the ECJ emphasizing that the COMI should be identifiable by third parties, such as creditors, based on the location of the debtor's central administration.

### **4.3 Singapore**

Singapore has also embraced the UNCITRAL Model Law on Cross-Border Insolvency, incorporating it into its Insolvency, Restructuring, and Dissolution Act of 2018. This move aligns Singapore's insolvency framework with international standards, enhancing its ability to handle cross-border insolvency cases.

### **KEY FEATURES OF SINGAPORE'S FRAMEWORK**

**Recognition of Foreign Proceedings:** Similar to Chapter 15 in the U.S., Singapore's framework allows for the recognition of foreign insolvency proceedings, granting foreign

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INTERNAL POLICIES European Parliament. Accessed June 7, 2024. [https://www.eesc.europa.eu/sites/default/files/resources/docs/ipol-juri\\_nt2010419633\\_en.pdf](https://www.eesc.europa.eu/sites/default/files/resources/docs/ipol-juri_nt2010419633_en.pdf).

<sup>17</sup> "Cooperation and communication between insolvency practitioners." In Oxford University Press eBooks, 517–54, 2022. <https://doi.org/10.1093/oso/9780198852117.003.0042>.

representatives the authority to act in Singapore. This facilitates the management of cross-border insolvencies and ensures that foreign insolvency decisions are respected.<sup>18</sup>

**Cooperation and Communication:** The framework emphasizes cooperation between Singaporean courts and foreign courts or representatives. This includes direct communication and coordination to ensure that insolvency proceedings are handled efficiently across borders.<sup>19</sup>

**Public Policy Exception:** Singapore also includes a public policy exception, allowing courts to refuse recognition or assistance if it would be contrary to the country's public policy. This ensures that foreign insolvency proceedings do not undermine fundamental principles of justice and fairness in Singapore.<sup>20</sup>

### **Notable Case Law in Singapore Cross-Border Insolvency**

**In re Zetta Jet Pte Ltd.:** This case involved the recognition of a U.S. Chapter 7 bankruptcy proceeding in Singapore. The Singapore High Court's decision to recognize the foreign proceeding highlighted the importance of international cooperation in cross-border insolvency cases.<sup>21</sup>

**In re CW Advanced Technologies Pte Ltd.:** This case demonstrated the practical application of Singapore's cross-border insolvency framework, with the court emphasizing the need for cooperation and communication between jurisdictions to ensure a fair and efficient resolution of insolvency proceedings.<sup>22</sup>

## **5. Recent Case Laws and Judicial Interpretations**

### **5.1 Jet Airways Case**

The *Jet Airways* case is a landmark in the context of cross-border insolvency under the IBC.

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<sup>18</sup> S. Chandra MOHA. "Cross-border insolvency problems: Is the uncitral model law the answer?" Singapore Management University Institutional Knowledge at Singapore Management University, n.d.

<sup>19</sup> Jobanputra, Sushma, Vinay Kurien, and Dan T. Moss. "Singapore International Commercial Court Issues First Decision on Recognition of Cross-Border Bankruptcy Ca..." Lexology, March 26, 2024. <https://www.lexology.com/library/detail.aspx?g=6117f52b-aa4e-44d9-8f4c-69b525dbe9cb>.

<sup>20</sup> "[2023] SGHC 337," n.d. [https://www.elitigation.sg/gd/s/2023\\_SGHC\\_337](https://www.elitigation.sg/gd/s/2023_SGHC_337).

<sup>21</sup> Re: Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener) [2019] SGHC 53

<sup>22</sup> Marsden, John M., Thomas A. Pugh, and Dirk Behnsen. "CW Advanced Technologies Limited - Recognition Issues Considered." Lexology, August 20, 2018. <https://www.lexology.com/library/detail.aspx?g=6ebe0c2b-4ba9-4cf7-841b-f170d73714d7>.

The insolvency proceedings involved coordination between the National Company Law Tribunal (NCLT) in India and the Dutch court, reflecting the principles of the UNCITRAL Model Law. This case underscored the necessity of formalizing a structured approach to cross-border insolvency, highlighting the importance of interim coordination to facilitate smoother insolvency resolution despite the absence of a comprehensive framework.

## **5.2 Videocon Group Case**

The *Videocon Group* insolvency involved substantial assets and interests across borders, showcasing the importance of recognizing foreign proceedings and cooperation between jurisdictions. The NCLT recognized the need to align domestic proceedings with international norms, emphasizing the role of the proposed cross-border provisions under the IBC. This case highlighted the complexities of handling multinational insolvencies and the need for clear guidelines to ensure equitable treatment of all creditors.<sup>23</sup>

### **Global Norms And Practices: Aligning With International Standards**

Cross-border insolvency, a dynamic legal realm, intertwines national laws with international standards. Understanding global norms and practices is crucial for harmonizing cross-border insolvency proceedings. Let's delve deeper into how these norms align with international standards:

#### **Evolution of International Standards**

International standards, such as the UNCITRAL Model Law on Cross-Border Insolvency, have evolved to address the complexities of cross-border insolvency. These standards aim to provide a framework for recognizing foreign proceedings and facilitating cooperation among jurisdictions.<sup>24</sup>

#### **Uniformity in Recognition and Relief**

Uniformity in recognizing foreign insolvency proceedings is essential for fostering confidence among multinational stakeholders. The UNCITRAL Model Law advocates for consistency in granting relief, thereby reducing legal uncertainties and promoting cross-border participation

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<sup>23</sup> Consultants, Vinod Kothari. "VIDEOCON RULING: SETTING A BENCHMARK FOR GROUP INSOLVENCY," February 28, 2020. <https://vinodkothari.com/2020/02/videocon-ruling-group-insolvency/>.

<sup>24</sup> Godwin, Andrew, Risham Garg, and Debaranjan Goswami. "Cross-border insolvency law in India: Are the principles of comity of courts and inherent common law jurisdiction relevant?" *INSOL International Insolvency Review/International Insolvency Review* 32, no. 2 (June 1, 2023): 228–52. <https://doi.org/10.1002/iir.1500>.

in insolvency resolutions.<sup>25</sup>

### Cooperation and Direct Communication

Effective communication and cooperation between insolvency practitioners and courts worldwide are paramount for the efficient administration of cross-border insolvency cases. International best practices emphasize the need for direct communication channels to facilitate timely information exchange and streamline the resolution process.<sup>26</sup>

### Protection of Domestic Interests

While promoting international cooperation, it's imperative to safeguard domestic interests. Modified universalism, as embraced by the Insolvency and Bankruptcy Code (IBC), ensures that national interests are not undermined. This approach strikes a balance between international collaboration and sovereign oversight, preserving the integrity of domestic insolvency proceedings.<sup>27</sup>

## **CHALLENGES AND PRACTICAL IMPLICATIONS**

### **7.1 ADDRESSING LEGAL AND PROCEDURAL CHALLENGES**

in Cross-Border Insolvency Navigating the complexities of cross-border insolvency involves harmonizing legal and procedural frameworks across diverse jurisdictions. The challenge lies in reconciling variations in national insolvency laws, which can often clash and impede efficient resolution processes.<sup>28</sup>

**THIS NECESSITATES ONGOING EFFORTS TO ALIGN DOMESTIC LAWS WITH INTERNATIONAL STANDARDS, FACILITATING SMOOTHER TRANSITIONS AND COOPERATION IN CROSS-BORDER INSOLVENCY CASES.**<sup>29</sup>

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<sup>25</sup> Global law firm | Norton Rose Fulbright. "The Model Law on Cross-Border Insolvency turns 25," n.d. <https://www.nortonrosefulbright.com/en/knowledge/publications/87d4ce21/the-model-law-on-cross-border-insolvency-turns-25>.

<sup>26</sup> "GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS." Judicial Insolvency Network. Accessed June 7, 2024. <https://www.jin-global.org/content/jin/pdf/Guidelines-for-Communication-and-Cooperation-in-Cross-Border-Insolvency.pdf>.

<sup>27</sup> Staff. "Cross Border Insolvency in India: A Long Due Dream," February 1, 2022. <https://vinodkothari.com/2022/02/cross-border-insolvency-in-india-a-long-due-dream/>.

<sup>28</sup> Moiz Rafique, Abhishek Sadhwani, Moiz Rafique, and Abhishek Sadhwani. "Navigating the labyrinth: Cross-border insolvency regime in India." Bar and Bench - Indian Legal news, May 17, 2024. <https://www.barandbench.com/law-firms/view-point/navigating-the-labyrinth-cross-border-insolvency-regime-in-india>.

<sup>29</sup> Ibid.



## **7.2 ENHANCING JUDICIAL EXPERTISE AND INFRASTRUCTURE**

To effectively implement cross-border insolvency provisions, judicial bodies must possess the requisite expertise and infrastructure. This includes providing comprehensive training and allocating resources to equip judges and insolvency practitioners with the skills needed to navigate the intricacies of international insolvency cases.<sup>30</sup>

Investing in continuous professional development ensures that legal professionals are adept at handling the complexities inherent in cross-border insolvency proceedings, thereby facilitating more efficient and equitable outcomes.<sup>31</sup>

### **Multidisciplinary Approach**

Adopting a multidisciplinary approach that integrates legal, financial, and commercial expertise enables stakeholders to comprehensively address the complexities of cross-border insolvency. Collaborative efforts among legal practitioners, financial advisors, and industry experts enhance the efficacy of insolvency proceedings and maximize value for creditors and other stakeholders.

Foreign versus Indian Companies: Key Differences and Considerations

### **8.1 Jurisdictional Challenges**

When it comes to foreign companies operating in India or Indian companies with assets abroad, the legal landscape can get pretty complicated. The main issue here is jurisdictional challenges. Essentially, this means figuring out which country's laws apply and how to enforce them across borders. For instance, if a company goes bankrupt, it's crucial to have a clear legal framework that both countries recognize and respect. This often involves reciprocal agreements, where each country agrees to honour the other's legal decisions. Without these agreements, it can become a messy affair, with conflicting laws and prolonged legal battles. This is a significant concern because it directly impacts how quickly and efficiently insolvency resolutions can be implemented, which is crucial for creditors and other stakeholders.

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<sup>30</sup> INSOLVENCY AND BANKRUPTCY BOARD OF INDIA. "Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016." Report of the Expert Committee, July 2024.

<sup>31</sup> Ibid.

## **8.2 Asset Recovery and Distribution**

Asset recovery and distribution in cross-border insolvency cases are another tricky area. Different countries have different legal systems, and navigating these can be challenging. The goal here is to ensure that creditors are treated fairly and that assets are distributed efficiently. This requires balancing international principles with domestic laws to maintain legal integrity.<sup>32</sup> For example, if a company with assets in multiple countries goes bankrupt, there's a need to coordinate how these assets are recovered and distributed among creditors from different jurisdictions. This coordination is crucial for maintaining trust in the insolvency process and ensuring that all parties are treated equitably.

### **CONCLUSION**

The evolution of cross-border insolvency under the Insolvency and Bankruptcy Code (IBC) signifies a critical shift towards the internationalization of India's insolvency framework. The incorporation of the UNCITRAL Model Law constitutes a significant advancement in aligning with global standards, promoting cooperation, and ensuring predictable outcomes in multi-jurisdictional insolvency proceedings. As India persistently refines its cross-border insolvency mechanisms, it must address challenges related to legal harmonization, judicial expertise, and stakeholder coordination. By doing so, India can fortify its legal infrastructure, thereby bolstering confidence among international investors and stakeholders in its insolvency regime.

### **FUTURE RECOMMENDATIONS**

To further advance the cross-border insolvency framework, it is imperative to focus on several key areas. Firstly, the reinforcement of bilateral and multilateral agreements is essential to facilitate cooperation in insolvency matters. Secondly, substantial investment in the training of judicial authorities is necessary to equip them with the skills required to manage complex cross-border cases effectively. Thirdly, the integration of advanced technology should be leveraged to streamline communication and coordination among international stakeholders. By addressing these critical areas, India can significantly enhance its cross-border insolvency framework, thereby fostering a robust and resilient economic environment.

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<sup>32</sup> Stolen Asset Recovery Initiative (StAR). "Going for Broke: Using Insolvency Proceedings For Cross-Border Asset Recovery," April 16, 2019. <https://star.worldbank.org/blog/going-broke-using-insolvency-proceedings-cross-border-asset-recovery>.