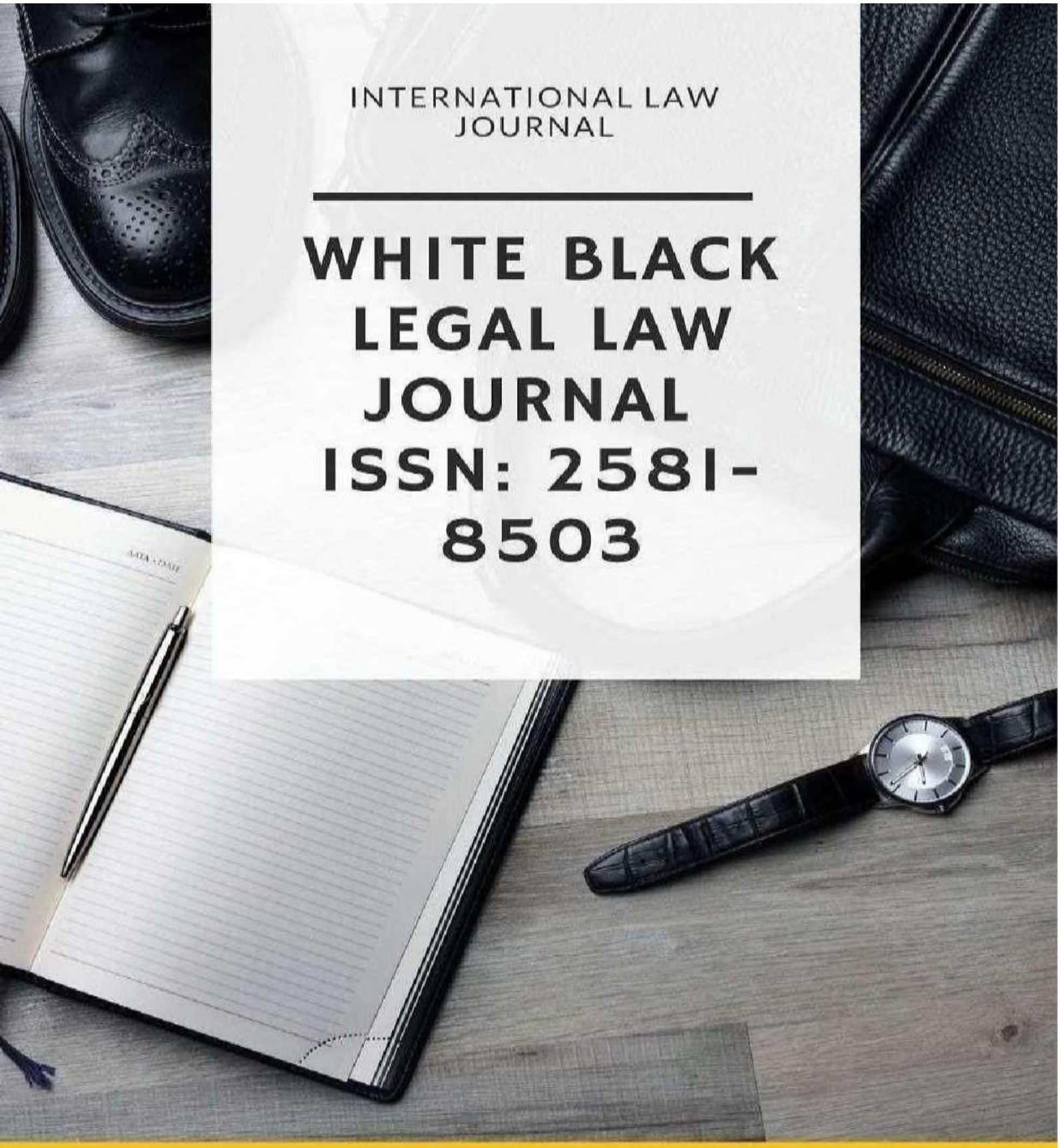

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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INDIA'S PROGRESS TOWARD A STRUCTURED CROSS-BORDER INSOLVENCY REGIME [1]

AUTHORED BY - PARAS AGNIHOTRI & PALASH JAIN

Abstract:

India's economic landscape has witnessed a significant transformation in recent years, marked by increased globalization and cross-border transactions. With the growing integration of Indian businesses into the global economy, the need for an effective framework to address cross-border insolvency issues has become paramount. This paper provides a comprehensive analysis of India's emerging framework for cross-border insolvency, exploring its evolution, key components, challenges, and potential implications.

The paper begins by examining the historical context of cross-border insolvency in India, tracing the evolution of relevant legal provisions and judicial precedents. It then delves into the recent legislative developments, including the adoption of the UNCITRAL Model Law on Cross-Border Insolvency and the amendments to the Insolvency and Bankruptcy Code (IBC), which have sought to enhance the effectiveness of cross-border insolvency proceedings in India.

Through a detailed examination of the key components of India's emerging framework for cross-border insolvency, including recognition of foreign insolvency proceedings, cooperation and coordination between domestic and foreign courts, and the treatment of foreign creditors, the paper elucidates the procedural and substantive aspects of cross-border insolvency resolution in India.

Furthermore, the paper critically evaluates the challenges and limitations inherent in the implementation of India's cross-border insolvency framework, such as jurisdictional conflicts, cultural and legal differences, and procedural complexities. It also discusses potential strategies and best practices for addressing these challenges and maximizing the efficiency and

[1]. This paper is authored by Mr. Paras Agnihotri, a fourth-year Student pursuing a BBA. LL.B. (H) at the School of Law, UPES, Dehradun, and Mr. Palash Jain, a fourth-year Student pursuing a BA. LL.B. (H) at the School of Law, UPES, Dehradun.

effectiveness of cross-border insolvency proceedings in India.

By providing a comprehensive analysis of India's emerging framework for cross-border insolvency, this paper contributes to the existing literature on international insolvency law and offers valuable insights for policymakers, practitioners, and stakeholders involved in cross-border insolvency proceedings in India and beyond.

Key Words: **Cross-Border Insolvency, IBC, UNICITRAL Model Law.**

Introduction

Due to the dynamics of globalization companies are expanding their business overseas and they may have various creditors located at different locations all around the globe. Consequently, if the company becomes insolvent the legislations of various jurisdictions will become applicable on them and the subsequent proceedings might result in complexity and impossibility as laws differ from jurisdiction to jurisdiction. This highlights the interdependence between a company's insolvency and the foreign creditors. Hence, arose the need for there to be a system which will protect the stakes of the parties getting involved.

A Cross-Border Insolvency (CBI) arises when a debtor has become insolvent and has acquired credit and/or debtors in different countries[2]. According to Professor Ian Fletcher "this refers to instances where the provisions of domestic as well as the foreign laws would be applicable in case of insolvency as the insolvency crosses the legal system of the domestic country."

A CBI may arise in three situations in India:

1. When the creditors attempt to assert their rights on the overseas assets belonging to a debtor belonging to India.
2. When creditors seek to impose their rights over assets in India belonging to a foreign debtor.
3. When Indian creditors attempt to assert their entitlements over the overseas assets of foreign debtors.

Insolvency and Bankruptcy Code (IBC)[3] was enforced in India in 2016 and it has evolved

[2] Neil Hannan, Cross-Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law (Springer 2017).
[3] Insolvency and Bankruptcy Code (IBC) 2016.

significantly via amendments or judicial precedents. In order to evaluate and analyse the efficiency and execution of the IBC, an Insolvency Law Committee (ILC)[4] was formulated by the Ministry of Corporate Affairs. The ILC in its reports stated that the current structure of insolvency was not up to the global standards and there arose a need to incorporate the United Nations Commission on International Trade Law (UNCITRAL) Model Law[5] on Cross-Border Insolvency to settle disputes related to CBI.

Earlier the IBC was silent on matters of CBI as opposed to the national level insolvency dealt with by NCLT. However, on the recommendations of Joint Parliamentary Committee ("JPC") which reviewed the draft bill prepared by the Bankruptcy Law Reforms Committee ('BLRC')[6], and added two provisions to the bill: Section 234 and Section 235, which will be discussed in detail in this paper. The Union Budget 2022-2023[7] has foretold that 'in order to provide seamless cross-border insolvency procedures amendments will be carried out to ensure the efficacy of the resolution'.

However, these provisions also fail to tackle the issue of CBI as they do not propose a comprehensive framework to address these issues.

Necessity For A Cross Border Insolvency In India

The CBI has developed in India in various stages. The UNCITRAL was introduced in the year 1997 and has been adopted by more than 50 countries as of now. India has made a draft law derived from the UNCITRAL model law but is yet to implement it.

India's first CBI case arose in the year 1908 in the MacFadyen & co. case[8].The London and madras trustees of the company entered into an agreement in conformity with the courts of both jurisdictions. Later, it was opposed and the English court asserted that the agreement was for the advantageous for both parties and it was initiated while considering all the business aspects involved in it.

[4] Report of Insolvency Law Committee on Cross Border Insolvency, October, 2018.
[5] UNCITRAL Model Law on Cross-Border Insolvency (1997), https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border insolvency.
[6] The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design, https://ibbi.gov.in/BLRCReportVoll 04112015.pdf,
[7] https://www.indiabudget.gov.in/doc/Budget_Speech.pdf.
[8] In re P. Macfadyen & Co. Ex parte Vizianagaram Co., Ltd. [1908] 1 K.B. 67.

In May 2000 the Eradi Committee[9], dissertated on the issue of CBI due to the increasing involvement of foreign companies in India as a result of globalisation. The committee took into consideration the UNCITRAL model law while forming a decision on the issue of CBI. It also stated that the Companies act, 1956 should be altered so as to include provisions related to the model law to solve the problems arising due to rapid globalisation.

After this in 2015 the BLRC, was formed by the Department of Economic Affairs and the Ministry of Finance. They were charged with drafting of the IBC and they only dealt with the domestic aspects of insolvency and stated that the CBI shall be done at a subsequent phase after analysing the effectiveness of the domestic laws on insolvency. The report dealt with issues such as overseas investors in corporate bonds issued in India or borrowing funds internationally by an Indian company while the other aspects such as Indian firms having foreign nationals as their debtors, were supposed to be dealt with later.

A Joint Parliamentary Committee ('JPC')[10] reviewed the matters decided by the BLRC before the enactment of the draft bill. The JPC reformed several recommendations of the BLRC. This was done after JPC declared that CBI cannot be neglected for too long and there should be several legislations in place to help India in forming an insolvency law globalisation is on the rise and several MNC's have set up their business in India and vice versa and with it the lending has crossed the territorial borders of the company , since this is a cross-border element involving several legislations of countries involved hence there should be some laws in place to ensure that CBI issues will be addressed accordingly.

The JPC thereafter added two provisions, Section 234 and 235, to the Draft Bill aimed at addressing matters related to CBI.

Section 234[11] authorizes the Central Government to establish bilateral agreements with other countries to uphold the provisions of this code. The code can also be modified by a notification of the Central Government regarding assets or property of the corporate debtor located situated outside the borders of India with which reciprocal agreements have been established.

[9] Report of the Justice Eradi Committee on Law Relating to Insolvency of Companies, Company Law Cases, 2000, Vol XII, pp. 1297 - 1334.
[10] Report of the joint committee on the insolvency and bankruptcy code, 2015, https://ibbi.gov.in/16 Joint Committee on Insolvency and Bankruptcy Code 2015 1.pdf, (14 December, 2020 15:30)
[11] Section 234, IBC.

Section 235[12] authorizes the adjudicating authority to send a letter of request ,to an authority competent to entertain such request, on the application of the resolution professional, liquidator or bankruptcy trustee during the process of the insolvency resolution process ,if the resolution professional, liquidator or bankruptcy trustee is of the view that the assets of the corporate debtor are situated in a country outside India with which reciprocal arrangements have been made , as mentioned under section 234, and if the adjudicating authority determines that evidence these assets is necessary for the insolvency resolution process upon receiving an application for such evidence.

But the JPC also mentioned that "But cross border insolvency has a larger issue. There can be a multinational company having branches elsewhere and they actually go for liquidation somewhere. That may have a ramification. There are various other issues. Later on, these issues perhaps could be considered."

These provisions are just a simplistic solution to CBI but it doesn't consider the complexities that might be associated with CBI. in cases where several countries are involved then it might turn out to be arduous, exorbitant and might involve multiple negotiations to be entered into and if several countries are involved then balancing the conflicting clauses within such treaties could pose a challenging situation.

An ILC[13], a committee formed under the Ministry of Corporate Affairs ("MCA"), was also formed in 2017 to oversee the implementation of the code, and also taking note on the various issues associated with CBI. Their first report was released in March 2018 and they pointed out that the existing provisions (S.234 and S. 234) refrain from furnishing an exhaustive framework for CBI matters. Implementation of the model law will also assist in securing additional overseas investments as it would then provide means to ensure the recognition of insolvency proceedings and would make their facilitation easier. It also talked about forming a Draft Part Z[14] in conformity with the Model Law. The Draft however neglected in answering certain gaps and later on a second report[15] was released wherein it provided suggestions regarding a

[12] Section 235, IBC.
[13] Report of the Insolvency Law Committee on Cross-Border Insolvency MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA 16 October 2018 available at https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf.
[14]https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/Report%20on%20Cross%20Border%20Insolvency_2018-10-22%2018:55:11.pdf
[15]https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/Report%20on%20Cross%20Border%20Insolvency_201

legislative structure for CBI.

The MCA then established a cross-border insolvency rules/ regulations committee ("CBIRC")[16] which in its report suggested a few modifications in Draft Part Z. This report also suggested some recommendations for improvement of CBI. Executing a CBI legislation within the IBC, aligned with global standards and befitting to the Indian environment, could prove advantageous for all involved parties. The applicability of this draft is restricted to cross-border regulations concerning individual insolvency and not for multiple corporate entities within a group.

Draft Part Z is a set of guidelines encompassing a specific chapter with the endeavour to tackle the shortcomings of the existing CBI system, or its absence thereof.

Draft Part Z was proposed to be enacted to solve CBI issues and its main features are:

1. The applicability of this chapter is only limited to Corporate Debtors (CD), which also includes foreign companies, and it excludes personal insolvencies and individual debtors[17].
2. It follows the principle or reciprocity, i.e., it only applies only to jurisdictions that have implemented the UNCITRAL Model Law[18].
3. There must be a Centre of Main Interest (COMI)[19] established of the company and if the registered office of the CD has not relocated to another territory outside India in the preceding 3 months, then the COMI will be the registered office of the CD. Another factor which will help determine the COI of the Corporate debtor is that an assessment may be conducted by the Adjudicating authority as and when required[20].
4. There will be two kinds of proceedings as mentioned under the Draft part Z they are:

8-10-22%2018:55:11.pdf.
[16] https://ibbi.gov.in/uploads/resources/47fe7576712190d5554e2e50ce646e2f.pdf
[17] Insolvency Law Committee, Report on Cross Border Insolvency (ILC Report) (Ministry of Corporate Affairs, Government of
India, October 2018) 16.
[18] ILC Report, 17
[19] ILC Report, 32
[20] Section 14, Draft Part Z, Insolvency Law Committee Report, available at: http://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf

- Foreign main proceeding-It will be held in the jurisdiction where the CD has its COMI.
- Foreign non-main proceeding- It will take place in a jurisdiction other than where the COMI is located and where the CD has an establishment.

5. Upon acknowledgement of foreign main proceeding, legal proceedings can be initiated under this Code if it is observed that the CD possesses assets within the territory of India which will be confined to the assets situated in India and it may extend if required for facilitating cooperation and coordination related to other assets that according to Indian law should be managed in that proceeding.
6. Appeals to be made in opposition to the judgement of the Adjudicating authority to the NCLAT within 30 days, given that NCLAT might permit the extension for up to 15 days if the NCLAT is satisfied that the conditions were sufficient for not being able to file the appeal within the stipulated time.

UNCITRAL Model Law On Cross-Border Insolvency, 1997

The UNCITRAL drafted a model law for the facilitation of CBI proceedings and safeguarding the interests of the CD as well as the creditors of different countries involved therein. This model law is mainly based on four principles for the proper facilitation and management of the CBI proceedings which are majorly providing access for the foreign courts and professionals to the domestic court's proceedings, recognizing the foreign proceedings, maintaining cooperation and coordination among the courts of various jurisdictions.[21] The focus of the framework is on the cooperation and coordination of different laws and related procedures rather than unifying them as one cross border insolvency procedure, as this will ensure the interests of the creditors who are not residing where the insolvency proceeding is actually being carried out and also protect those assets of the CD which are located outside the purview of the debtor's COMI.[22] These CBI provisions allow the stakeholders to protect their interests and help in recognizing and assisting the proceedings being conducted in different jurisdictions.

The UNCITRAL Model Law primarily deals with access to the domestic courts of the foreign

[21] J. L. Howell, International Insolvency Law, 42 The International Lawyer 113 (2008), http://www.jstor.org/stable/23824440 (last visited Mar. 23, 2024).
[22] Dr. Seema Surendran, Ashik G Swamy, Cross border insolvency in India: A Legal Study, 3 IJHSSM (2023), https://ijhssm.org/issue_dcp/Cross%20border%20insolvency%20in%20India%20A%20Legal%20Study.pdf.

insolvency proceedings and foreign representatives along with the creditors interested thereof, recognition of the foreign court's insolvency procedure and order passed in pursuance to it, maintain cooperation and coordination among the courts of various jurisdictions in which the CD has establishments and where there is any related proceeding going on, and in addition to this assistance to be given for the continuation of an effective foreign insolvency proceeding. Chapter II of this model law deals with the admission of foreign representatives and creditors to the adjudicating authority of the domestic country, which includes direct access of the representatives from other countries to the domestic court and granting same rights pertaining to insolvency proceedings as the creditors of the domestic state.[23] Then Chapter III accords with the acknowledgement of a foreign proceeding and relief, which entails validation of foreign proceedings going on in the jurisdiction where the CD has a COMI and relief granting protection of the debtor's assets are situated beyond such jurisdiction.[24] The matter pertaining to the acknowledgement of a foreign proceeding in a domestic court and the enforcement of a decision passed by the foreign court where the debtor does not belong was raised in Rubin vs. Euro finance[25] case and the court adjudicated that there exists no legitimate reason as to avoid the enforceability of foreign judgment relating to insolvency proceedings. In addition to this, Chapter IV deals with the collaboration and direct communication between the adjudicating author of the domestic state and the foreign courts or foreign representatives and Chapter V which deals with the coordination between the proceedings taking place in different jurisdictions.[26] In the Maxwell Communication Corp. case[27], the issue related to cooperation and coordination between the laws of the US and UK courts was put forth before the adjudicating authority and the court has observed that these proceedings have a significant degree of global collaboration and reconciliation between the laws of these two countries.

Therefore, in a nutshell, the UNCITRAL Model Law on CBI enumerates a resilient outline for the facilitation and management of the ongoing insolvency resolution proceedings being carried out in different jurisdictions. The purpose of this framework was to encourage cooperation, coordination, fairness and effectiveness in the resolution of international insolvency disputes and maintain and safeguard the rights and interests of the CD and creditors

[23] UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf (last visited Mar. 22, 2024).
[24] Id. at 28.
[25] Rubin vs. Eurofinance, [2012] UKSC 46.
[26] Id. at 28.
[27] Maxwell Communication Corp. ex rel. Homan v. Societe Generale (In re Maxwell Communication Corp.), 93 F.3d 1036 (2d Cir. 1996).

residing at different locations. However, there exist challenges too with regards to the implementation of this model law as having diverse legal systems, interpretation of laws, regional and cultural barriers, and political considerations.

Evolution through Legal precedents

Regarding the case of Jet Airways pvt limited insolvency case[28] there was a parallel proceeding going on in a Dutch court, which had begun a month earlier, the Dutch had appointed a Bankruptcy Trustee in Netherlands and the Dutch court filed an application to the NCLT to recognize the Dutch proceedings. However, the application was rejected by NCLT stating that no provision in the IBC that recognizes the judgement of a foreign court even if the judgement is found to be true still since there is no such provision in the IBC hence it cannot be upheld. The Dutch administrator then approached NCLAT, and the NCLAT recognised the legal process in Netherlands[29]. The Dutch administrator and the Resolution Professional entered into a CBI protocol with certain terms and conditions.

This protocol is seen as a sign in the direction of progression as the coordinated proceedings were conducted and this case will become a precedent for further cases.

In State Bank of India Videocon Industries Limited[30], a case before the NCLT although there was no question of parallel proceedings, the question arose as to whether assets in foreign jurisdiction may be involved in the Indian insolvency proceedings and whether section 14 of the code will be applicable in regards to foreign assets. This question was deliberated and it was decided that it will be applicable. It was also decided that India to a certain degree may request for insolvency proceedings in foreign territory but only in select nations. However, a request for such issues requires a formal agreement to be entered into which is laborious and complex.

The sections 234 and 235 of the code have created uncertainty regarding involvement of foreign creditors in insolvency proceedings as can be seen in Macquarie Bank Ltd vs Shilpi[31] cable technologies ltd, where the Supreme Court clarified that the term person will also include

[28]State Bank of India v. Jet Airways (India) Ltd., CP 2205 (IB)/MB/2019, CP 1968(IB)/MB/2019, CP 1938(IB)/MB/2019.
[29] Jet Airways (India) Ltd v. State Bank of India, Company Appeal(AT)(Insolvency) No. 707 of 2019,
[30] State Bank of India Videocon Industries Limited, MANU/NC/7959/2020
[31] Civil Appeal No.15135 OF 2017

persons residing outside India. Therefore, foreign creditors as well as financial institutions can be a part of insolvency proceedings in India[32]. However, the extent to which they can participate has not been mentioned.

In the case of Usha Holding[33], the NCLAT held that the insolvency adjudicating authorities in our country do not have jurisdiction to decide matters concerning the validity of foreign judgements or orders. To facilitate knowledge regarding reasons for CBI regulations in India, we can classify them in three aspects: to safeguard the interests of overseas creditors who have extended loans to insolvent companies, assisting companies who wish to facilitate insolvency proceedings but their business operations are in multiple locations, and for assisting debtors whose assets are situated in different jurisdictions during the time of insolvency.

Regulation on Insolvency Proceedings of foreign countries

United Kingdom

The European Commission ("EC") has developed laws concerning CBI, establishing a structure applicable to the countries within the European union (EU). The EC passed council regulations which came into effect on May 31, 2002[34].It will apply to all countries of EU excluding Denmark.

The EC laws do not aim to establish a standardized framework for domestic insolvency procedures. Instead, it assists member states in defining jurisdiction and determining the appropriate laws for CBI proceedings. It facilitates the acknowledgment of insolvency proceedings across all EU member states.

According to the EC Regulation there could be three kinds of insolvency proceedings:
Main proceeding[35]: When the COMI of the debtor is under the territorial jurisdiction of EU.
Secondary proceeding: When the debtor has an establishment[36], which means a place where business operations has been established, in the member state and the secondary proceeding may be conducted in the member state in which the establishment has been set up.

[32]http://www.nishithdesai.com/information/research-andarticles/nda-hotline/nda-hotline-single-view/newsid/4417/html/1.html?no_cache=1..
[33] Usha Holdings LLC v Francorp Advisors Pvt Ltd, Decided on 30 November 2018, Company Appeal (AT) (Insolvency) No. 44 of 2018
[34] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000R1346&from=en.
[35] Council Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, 2015/848, 2015 O.J. (L141).

Territorial proceeding: Where the debtor has an establishment[37] but main proceedings have not begun in any other territory[38].

The UK instituted the CBI Regulations in conformity with the UNCITRAL Model Law and left its domestic law as it was for CBI matters as well[39]. In the UK, foreign representatives are granted authority to initiate insolvency proceedings with permission from the relevant court, especially in cases where concurrent cross-border insolvency proceedings involve the same corporate debtor within British jurisdiction. Subsequent to the acknowledgement of foreign "main" proceedings in the UK, these representatives have the freedom to handle the assets of the insolvent company, extending beyond the local jurisdiction of Great Britain[40].

Singapore

Singapore has adopted the UNCITRAL model law after a committee has been established known as 'Insolvency Law Review Committee' whose task was to evaluate the current laws linked to CBI matters in the territory. The committee then suggested to implement the UNCITRAL Model Law after which it was implemented after amendments were made to the Companies Act[41].The amendment has allowed acknowledgement of foreign insolvency procedures and insolvency representatives within Singapore. The ease of acknowledgement of overseas insolvency proceedings by the Foreign Representatives has become effortless except for completing certain small formalities.

The comprehensive framework of CBI laws has also made provisions for conducting joint Insolvency Proceedings which would include a stipulated number of debtors overseen by an assigned liquidator.

United State of America

The UNCITRAL Model Law has been developed with the influence of the US Bankruptcy Code[42].After implementation of the model law the courts[43] began to recognise foreign courts

[37] Id.
[38] Article 3, EC Regulation
[39] www.uklegislation.hmso.gov.uk/si/si2006/2006 1030.htm.
[40] Williams, G. Ian & Walters, J. Adrian (2016) "The Model law: Is it time for the U.K to change tack", The International Scene, American Bankruptcy Institute Journal.
[41] https://sso.agc.gov.sg/Act/CoA1967?ProvIds=Sc10-
[42] U.S. Code, section 1501, Purpose and scope of application - https://www.law.cornell.edu/uscode/text/11/1501.
[43] Westbrook J. L. (2013), "An empirical study of the implementation in the United Sates of the Model Law on

and foreign representatives during insolvency procedures. Although if any inconsistencies between laws of two nations arise the US laws will become applicable on such matters. However, the US laws also have some setbacks such as the US courts have established a requirement seeking acknowledgement of a foreign proceeding must initially meet the criteria as a debtor stipulated under the domestic code which is different from the model law. Once a domestic representative is designated to oversee insolvency proceedings, then they are not permitted to engage in foreign proceedings or manage the assets of the insolvent company beyond the borders of USA[44].

Challenges pertaining to the current Insolvency framework in India

While Sections 234 and 235 were added to the code with the intention of easing the settlement of CBI, it has been noted that no significant efforts have been done in order to made to execute the intergovernmental agreements effectively. Presently, an NCLT order in a CBI case would not be receive direct acknowledgement or implementation in any foreign jurisdiction. Moreover, even if recognized, they prove to be inadequate to tackle the intricate challenges arising from CBI cases. These provisions fail to tackle the actual issues within the process and shows numerous drawbacks.

- There are no provisions for a situation to deal with CBI problems when the debtor's assets or creditors are located in such a country where there is no bilateral treaty in effect.
- To bring implement the provisions of Draft Z certain modifications will need to be done
- The timelines for resolution of cases in the code are rigid and have been determined as inviolable.
- For smooth facilitation of CBI, the ability to establish bilateral agreements with international jurisdictions is one of the perquisites. However, the task of entering into such agreements is cumbersome and laborious hence it is not a preferable way.
- There have been instances wherein a company has multiple branches across various jurisdictions, in these cases separate bilateral agreements will be made to further resolve the insolvency dispute which will turn out to be cumbersome. The current mechanism does not offer a comprehensive mechanism to deal with this issue effectively.

Cross Border Insolvency", American Bankruptcy Law Journal, p. 247.

[44] Leong, Jeremy (2010), "Is Chapter 15 universalist or territorialist? Empirical evidence from the United States Bankruptcy Court cases", Wisconsin International Law Journal, August.

Recommendations

After conducting research and analysing all the pros and cons of the established legal provisions and policies on CBI, it can be recommended to the policymakers that there is a prompt need to harmonize the CBI laws of different jurisdictions so as to promote cooperation, coordination, and effectiveness of the international insolvency proceedings. This will help in eliminating the challenge of diverse legal systems and diverse legal perspectives on CBI and protect and preserve the rights of the creditors residing at different locations along with corporate debtors. Moreover, there is a need to work upon eliminating the impact of regional and cultural differences by framing regional legal frameworks in the form of any regional agreement or convention on CBI.

By putting into action these proposed recommendations, the lawmakers and other appropriate authorities can aid the adjudicating authority dealing with cross-border insolvency disputes to cope with some of the challenges they face, in order to have a harmonious, fair, effective and efficient insolvency process. This will result in the overall growth and advancement of the CBI related legal frameworks, thereby promoting economic stability.

The draft provisions should be implemented in India as it will help bring a comprehensive framework into picture and will provide relief that is not available in case of insolvency proceedings right now and this draft provision which is based while incorporating the provisions of the model law which is the most acknowledged models in the world as it provides a comprehensive and complete structure for insolvency proceedings.

If this is done then some amendments should also be made to section 234 and section 235 of the code to ease the procedure of recovery of assets of debtors from an insolvent company situated outside Indian territory which will also help in facilitating the process of bilateral treaties between other countries and India.

This could help in increasing the foreign direct investment in India as investors would feel more secure about their investment which could be a boon for India. This would not only help increase the financial stability but also provide means for better market integration.

NCLTs in India should be empowered in cases related to insolvency, after incorporation of

insolvency laws, as they are the only adjudicating authority with respect to insolvency proceedings.

Conclusion

Since transnational transactions are on the rise and so are the problems associated with them it has become imperative for the insolvency structure in India to be synced with not just the model law but also the laws of insolvency of other countries which would help resolve conflicts easily. There is not much of a legal framework related to CBI in India and the existing provisions also have some shortcomings and they would not be able to provide a comprehensive framework for resolving CBI related issues. With the inclusion of the draft provisions facilitation of these laws will become easier but much needs to be done before the insolvency proceedings provide benefit to all those involved.

Although the Model law still has some defects as the countries that have incorporated it have faced issues but it is still the only model that gives some relief to matters related to CBI. India will also need to consider provisions outside the Model law and in this regard the Financial Stability Board (FSB), which works in collaboration with the G20 has issued certain principles aimed at facilitating cross-border resolution of banks and other financial institutions effective and feasible. Hence India should check all the possibilities and begin their incorporation to the code.

Earlier the laws relating to CBI were not as vast as they are now, this shows that laws related to CBI are being developed although the pace is slow but after incorporation of the Draft in the Indian legal system India would move several steps forward in this regard.