

# Cross-Border Insolvency in India: Challenges and Opportunities for Reform

Sidhi M Jain

Student, School of Law, CHRIST (Deemed to be University)

## ABSTRACT

The rapid globalization of trade and commerce has made cross-border insolvency a significant concern for multinational corporations and investors. With the growth of international transactions and foreign direct investment, the need for an efficient legal framework to resolve insolvency cases that transcend national borders has become critical. This research paper delves into cross-border insolvency under India's Insolvency and Bankruptcy Code (IBC), 2016, identifying the key gaps in the current framework, particularly in the handling of cross-border insolvency cases. By examining global best practices, including the UNCITRAL Model Law on Cross-Border Insolvency, the paper underscores the urgent need for India to adopt a harmonized approach to cross-border insolvency resolution. Through case studies and legal analysis, the paper highlights the challenges faced by Indian courts and stakeholders in managing transnational insolvency proceedings, emphasizing the importance of international cooperation and judicial coordination to protect creditor rights and ensure equitable asset recovery.

**Keywords:** Bankruptcy, Creditors, Cross-Border, Insolvency, Investors.

## INTRODUCTION

The rapid globalisation of trade and commerce, coupled with the growing interconnectivity of economies, has thrown cross-border insolvency into sharp focus. It requires a proper legal framework and guidelines to resolve the issues that arise when a company's assets and liabilities extend beyond its borders and it goes into insolvency. In India, the Insolvency and Bankruptcy Code (IBC), 2016, has been a landmark piece of legislation<sup>1</sup>, that aims to streamline insolvency processes, enhance creditor confidence, and promotion of economic stability. "Cross-border insolvency refers to instances in which insolvency circumstances cross the borders of a single legal system and where the provisions of domestic insolvency law cannot be applied without taking into account the issues raised by the foreign elements of the case."<sup>2</sup> With the rise of multinational companies (MNCs) engaged in cross-border transactions and the increasing inflow of foreign direct investment, the need for an effective mechanism to address cross-border insolvency cases has become more urgent than ever. The current framework under the Insolvency and Bankruptcy Code (IBC), 2016, lacks comprehensive provisions to navigate the intricate challenges posed by cross-border insolvency, leaving a significant gap in resolving complex, multi-jurisdictional cases. This

<sup>1</sup> Dr. Seema Surendran & Ashik G. Swamy, Cross-Border Insolvency in India: A Legal Study, 3 Int'l J. Humanities Soc. Sci. & Mgmt. 493 (2023).

<sup>2</sup> Vaibhav Sangam Mishra & Janmejay Singh, Alternative Dispute Resolution & Its Comparative Study with India and USA, 1 Jus Corpus L.J. 78 (2021).

gap creates uncertainty for stakeholders, from creditors and investors to the distressed companies themselves, as the legal framework struggles to coordinate effectively across national borders.

This study aims to critically examine the existing legal structure governing insolvency proceedings in India, focusing specifically on the deficiencies in cross-border insolvency regulations within the IBC. The research will highlight the challenges faced by various parties involved in transnational insolvency cases, including difficulties in asset recovery, recognition of foreign proceedings, and judicial cooperation. Additionally, this study will explore the potential role of the UNCITRAL Model Law on Cross-Border Insolvency as a solution to these challenges, assessing how its adoption could help bridge the gaps in the IBC and bring India's insolvency regime in line with international best practices. By evaluating the prospects for harmonization, the research seeks to provide a pathway for enhancing the resolution of cross-border insolvency cases in India

### **CROSS BORDER INSOLVENCY IN INDIA AND THE INTRODUCTION TO UNCITRAL MODEL LAW**

Insolvency is the financial condition where an individual, firm, or corporate entity is unable to meet its debt obligations as they become due<sup>3</sup>. It is the situation where an entity's liabilities exceed the assets, making it impossible for the debtor to pay off creditors. Insolvency can trigger legal proceedings, the creditors may knock the door of law and initiate a insolvency proceeding to recover it's dues. To repay debts, the entity's assets might be sold off to cover the costs.

#### **1. INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016**

To address insolvency and bankruptcy issues, the Insolvency and Bankruptcy Code, 2016 (IBC) was introduced in India as a comprehensive legal framework aimed at resolving insolvency for individuals, partnerships, and corporations. The IBC's primary goal is to streamline and modernize the insolvency resolution process, safeguard the interests of all stakeholders, and foster economic growth by ensuring the prompt and efficient handling of financial distress. While the application of the IBC is relatively straightforward when parties are within India's borders, the complexities intensify when dealing with cross-border insolvency cases, requiring a more nuanced approach.

Cross-border insolvency presents complex legal and administrative challenges when an insolvent entity has assets, creditors, or operations in multiple countries<sup>4</sup>. Addressing these challenges in a global context requires harmonizing liquidation procedures across diverse legal landscapes. Each country contributes its own laws, customs, and positions regarding lender protections and asset management. A significant challenge in these international cases is determining which country's judicial system should initiate and oversee the liquidation process. Territorial disputes can arise when multiple countries claim jurisdiction, potentially leading to duplicated efforts, inefficiencies, and difficulties in enforcing decisions.

The involvement of international lenders adds another layer of complexity to cross-border bankruptcy cases. These lenders operate under different legal systems, raising important questions about the recognition and priority of their claims. A unified and consistent approach is necessary to ensure fair treatment of creditors from various jurisdictions during asset distribution.

Current insolvency laws do not address the rights of foreign creditors to appeal to the National Company Law Tribunal (NCLT)<sup>5</sup>. Frameworks for cross-border insolvency seek to address these complexities by

<sup>3</sup> Ramesh Kumar, Understanding Cross Border Insolvency: An Indian Overview, 1 JUS CORPUS L.J. 98 (2021).

<sup>4</sup> Sean E. Story, Cross-Border Insolvency: A Comparative Analysis, 32 Ariz. J. Int'l & Comp. L. 431 (2015).

<sup>5</sup> Dr. Seema Surendran & Ashik G. Swamy, Cross-Border Insolvency in India: A Legal Study, 3 Int'l J. Humanities Soc. Sci. & Mgmt. 493 (2023).

promoting international cooperation and aligning legal standards. This approach aims to create an effective system for resolving cross-border insolvency issues while protecting the interests of creditors and other stakeholders. As economies become more interconnected and international transactions increase, managing cross-border insolvency has become a critical component of the Insolvency and Bankruptcy Code (IBC). The Sections 234 and 235 of the IBC are solely the standing provisions under the code that deal with such cross border cases.<sup>6</sup> The resultant ad hoc framework has caused delays and uncertainty for creditors, debtors, and courts.<sup>7</sup>

## 2. OVERVIEW OF UNCITRAL MODEL LAW

The UN trade law body crafted a blueprint in 1997 to tackle the mounting intricacies of bankruptcy cases spanning multiple nations. This template aims to provide a methodical approach for managing such cases, serving as a structure for acknowledging and implementing insolvency actions across borders.

Unlike binding international agreements, this blueprint merely offers legislative guidance. Its stated purpose is to aid nations in modernizing their insolvency laws with a balanced, harmonized structure to effectively address transnational bankruptcy instances. The blueprint rests on four cornerstones<sup>8</sup>: Admission, Acknowledgment, Collaboration, and Synchronization.

To meet its goals, the blueprint sets specific standards for recognizing foreign bankruptcy proceedings, categorizing them as primary or secondary. Primary proceedings start where the debtor's main operational hub is located, ensuring the key jurisdiction aligns with the debtor's business focal point its Centre of Main Interests (COMI)<sup>9</sup>. Auxiliary proceedings can begin where the debtor has a business presence, allowing for localized asset management.

The blueprint empowers foreign agents to seek local court recognition of bankruptcy proceedings. Once accepted, these agents can represent the debtor, accessing assets within that jurisdiction. This provision is vital for safeguarding creditor interests and ensuring fair, efficient bankruptcy processes<sup>10</sup>.

Over 50 nations<sup>11</sup> have embraced this blueprint, including major economies like the US, Canada, UK, and Australia. Its adoption marks a significant stride towards a more coherent, predictable framework for handling cross-border bankruptcies, bolstering international commerce and investment by enhancing legal clarity.

## CHALLENGES IN CROSS-BORDER INSOLVENCY UNDER THE INSOLVENCY AND BANKRUPTCY CODE (IBC) AND THE REALM OF UNCITRAL MODEL LAW.

The cross-border insolvency landscape in India, governed by the Insolvency and Bankruptcy Code (IBC) of 2016, faces several significant challenges that hinder effective resolution of insolvency cases involving foreign entities. "The incumbent statutes under the IBC that directly address cross-border insolvencies (i.e. §§234, 235), completely lack teeth to address the issues and complexities that arise in cross-border

---

<sup>6</sup> Pranav Khatavkar, India's Rendezvous with Cross-Border Insolvency and Its Suggested Marriage to the UNCITRAL Model Law on Cross-Border Insolvency, 4 INT'L J.L. MGMT. & HUMAN. 1209 (2021).

<sup>7</sup> Simran Singh, "Comparative Study of Cross-Border Insolvency in India and U.K"., 4 INT'L J.L. MGMT. & HUMAN. 2727 (2021).

<sup>8</sup> Report of the Insolvency Law Committee on Cross-Border Insolvency (Oct. 2018).

<sup>9</sup> Simran Singh, Comparative Study of Cross-Border Insolvency in India and U.K., 4 INT'L J.L. MGMT. & HUMAN. 2727 (2021).

<sup>10</sup> UNCITRAL Model Law on Cross-Border Insolvency (1997), art. 15,

<sup>11</sup> P. Macfadyen & Co. Ex parte Vizianagaram Co., Ltd., [1908] 1 K.B. 67 (Eng.)

insolvencies, and thus the IBC practically does not contain any statute on cross-border insolvency”<sup>12</sup>. The adoption of the UNCITRAL Model Law on Cross-Border Insolvency can significantly address key issues that India faces in managing cross-border insolvencies. Given India’s growing role in the global economy, with an increasing number of multinational corporations and cross-border trade and investments, a comprehensive framework is needed to efficiently handle cross-border insolvency matters. The UNCITRAL Model Law offers a structured and predictable legal mechanism for dealing with these complex situations.

### 1. RECOGNITION OF FOREIGN INSOLVENCY PROCEEDINGS

One of the central features of the UNCITRAL Model Law is its focus on the recognition of foreign insolvency proceedings. In the absence of such a framework, Indian courts face significant difficulties when a company involved in insolvency proceedings abroad also has assets or creditors in India. The current Indian framework under the Insolvency and Bankruptcy Code (IBC), 2016, lacks clear rules for recognizing and cooperating with foreign insolvency judgments.

Foreign judgments in India are governed by the Foreign Procedures Act of 1961 and the Civil Procedure Code (CPC) of 1908. Under Section 44A of the CPC<sup>13</sup>, Indian courts can enforce judgments from non-Indian tribunals in “reciprocating territories”, provided such recognition is published in the Official Gazette.

- Many insolvency rulings in India remain unenforceable due to the limited jurisdiction of the CPC, particularly when these rulings are interim orders or reorganization decisions.
- In India, many insolvency verdicts and decrees have been rendered unenforceable due to the CPC’s limited scope of authority. This is because they were issued during reorganisation or as an interim order<sup>14</sup>.
- Recognition of Indian insolvency proceedings abroad depends on the laws of the foreign country.
- India’s adoption of the UNCITRAL Model Law is voluntary, but it would facilitate the recognition of Indian insolvency proceedings in countries that have adopted the Model Law<sup>15</sup>.
- The UNCITRAL Model Law addresses this by allowing foreign representatives to directly access Indian courts to participate in domestic insolvency proceedings. This streamlines processes and avoids jurisdictional hurdles.

This would help Indian courts efficiently deal with cases where companies with global operations face insolvency, ensuring that Indian creditors can participate fairly in foreign insolvency proceedings and vice versa.

### 2. COORDINATION BETWEEN MULTIPLE JURISDICTIONS

Cross-border insolvency cases often involve proceedings in multiple jurisdictions, which can lead to conflicting decisions and duplication of efforts, resulting in delays and legal uncertainty<sup>16</sup>. The Model Law promotes cooperation between courts in different jurisdictions handling the same insolvency matter.

---

<sup>12</sup> Pranav Khatavkar, India's Rendezvous with Cross-Border Insolvency and Its Suggested Marriage to the UNCITRAL Model Law on Cross-Border Insolvency, 4 INT’L J.L. MGMT. & HUMAN. 1209 (2021).

<sup>13</sup> Code of Civil Procedure, 1908, § 44A, Acts of Parliament (India).

<sup>14</sup> *Id*

<sup>15</sup> Dr. Seema Surendran & Ashik G. Swamy, Cross-Border Insolvency in India: A Legal Study, 3 Int’l J. Humanities Soc. Sci. & Mgmt. 493 (2023).

<sup>16</sup> Ishita Das, Cross-Border Insolvency Under the Insolvency and Bankruptcy Code 2016: Opportunities and Challenges, CBCL (June 4, 2018).

The advocacy for adopting the UNCITRAL Model Law is largely based on its flexibility, allowing it to be adapted to fit India's domestic laws with necessary modifications. However, the key challenge lies in the fact that it is primarily a procedural law rather than a substantive one, which permits customization. This flexibility, though beneficial, may undermine the broader goal of achieving harmonization across jurisdictions<sup>17</sup>.

For India, adopting the Model Law would allow for better coordination between the National Company Law Tribunal (NCLT) and foreign courts, reducing litigation delays and increasing the chances of a successful resolution as it has provisions that facilitate joint hearings and decision-making between domestic and foreign courts, reducing jurisdictional conflicts and ensuring more consistent outcomes.

### 3. EFFICIENT ASSET RECOVERY

In cross-border insolvency cases, recovering assets located in foreign jurisdictions can be a significant challenge. The lack of collaboration between jurisdictions complicates the enforcement of creditor rights, as local laws may not adequately protect foreign creditors' interests, resulting in potential disparities in treatment among creditors based on their jurisdiction of origin<sup>18</sup>.

The UNCITRAL Model Law allows foreign creditors to effectively Access local courts to claim a debtor's assets within that jurisdiction and also seek judicial assistance for the repatriation of assets to the main insolvency proceeding's jurisdiction, ensuring that asset recovery is conducted in a more efficient manner. Article 21(2), which mandates that a court must be convinced that the interests of local creditors are "adequately protected" before allowing the Foreign Representative to manage the distribution of the debtor's assets within the country, was added to the Model Law after extensive discussion.<sup>19</sup>

For Indian companies with global operations, this framework would provide easier access to recover assets located abroad and facilitate a more equitable distribution of assets to both domestic and foreign creditors. It also ensures that Indian assets are not subject to arbitrary foreign court decisions without proper representation of Indian stakeholders.

## DEVELOPMENTS IN CROSS-BORDER INSOLVENCY CASES THROUGH JUDICIAL PRONOUNCEMENT'S

### 1. Macquarie Bank Limited vs. Shilpi Cable Technologies Ltd.<sup>20</sup>

the Supreme Court of India provided a significant ruling concerning the inclusion of foreign entities in the insolvency process under the Insolvency and Bankruptcy Code (IBC), 2016.

The argument was whether the definition of "person" under the Code extended to include foreign creditors, enabling them to file applications to initiate insolvency proceedings in Indian courts.

The Court clarified that the term "person" in Section 3(23) includes "a person resident outside India," thereby extending the right to participate in insolvency proceedings to foreign creditors, foreign financial institutions, and foreign banks. This was a significant ruling as it recognized the rights of foreign creditors to initiate and participate in insolvency proceedings under Indian law, which had previously been a grey area.

<sup>17</sup>Sudhaker Shukla & Kokila Jayaram, "Cross Border Insolvency: A Case to Cross the Border Beyond the UNCITRAL", in *Insolvency and Bankruptcy Regime in India - A Narrative* (Insolvency and Bankruptcy Board of India, 2020).

<sup>18</sup> Manisha Arora & Raushan Kumar, India's Tryst with Cross-Border Insolvency Law: How Series of Judicial Pronouncements Pave the Way?, SCC Online Blog (Apr. 16, 2021), <https://www.sconline.com/blog/post/2021/04/16/cross-border-insolvency-law/>

<sup>19</sup> MOHAN, S. Chandra. Cross-border Insolvency Problems: Is the UNCITRAL Model Law the Answer?. (2012). *International Insolvency Review*. 21, (3), 199-223.

<sup>20</sup> Macquarie Bank Limited v. Shilpi Cable Technologies Ltd., (2018) 2 SCC 674.

## 2. M/s Stanbic Bank Ghana Limited v. M/s Rajkumar Impex Pvt Limited<sup>21</sup>

In Stanbic Bank Ghana (2017), the context involved a loan provided by Stanbic Bank Ghana to Rajkumar Impex Ghana Limited, which was a subsidiary of Rajkumar Impex Private Limited in India. After the borrower defaulted on repayment, the bank initiated insolvency proceedings in Ghana against the principal borrower while simultaneously pursuing action against the Indian guarantor in an English court.

During the proceedings, the English court issued an order against the Indian guarantor, which the bank sought to enforce in India. The National Company Law Tribunal (NCLT), however, acknowledged that while it could not directly enforce the foreign decree, it had the jurisdiction to take cognizance of it. This means that the NCLT recognized the existence of the foreign order but did not have the power to enforce it directly as a domestic decree would be enforced.

This decision was subsequently challenged but affirmed by the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court. This acknowledgment signifies a progressive step towards incorporating foreign judgments into the Indian insolvency framework, allowing foreign creditors to initiate proceedings under Section 7 of the IBC based on a foreign court order.

The recognition of foreign awards was also observed in another case of **Agrocorp International Private vs National Steel and Agro Industries Limited**<sup>22</sup>

## 3. SBI v. Jet Airways (India) Ltd.<sup>23</sup>

Jet Airways, once one of India's largest airlines, was facing severe financial distress in 2019. A consortium of creditors led by the State Bank of India (SBI) filed an application before the National Company Law Tribunal (NCLT), Mumbai Bench, under Section 7 of the IBC, seeking to initiate a CIRP against Jet Airways. The NCLT declared a moratorium under Section 14 of the IBC to prevent asset transfers and further financial deterioration.

However, even before the Indian insolvency proceedings were initiated, two European creditors of Jet Airways had already filed a bankruptcy petition in the Netherlands. These creditors sought the seizure of one of Jet Airways's aircraft, which was parked in Amsterdam. The Dutch Court, in response, declared Jet Airways bankrupt in the Netherlands and appointed a Dutch administrator to oversee the airline's assets in that country.

The Dutch insolvency proceedings created a complex situation of concurrent insolvency proceedings in India and the Netherlands. In response, the Dutch administrator sought recognition of the foreign insolvency proceedings in India and asked the NCLT to cooperate with the Dutch court.

### **The National Company Law Tribunal (NCLT's) Initial Decision**

The NCLT Mumbai Bench<sup>24</sup>, in its initial decision, refused to recognize the foreign insolvency proceedings initiated in the Netherlands. The NCLT based its decision on the fact that India had not yet adopted formal cross-border insolvency provisions under the IBC. Specifically, the IBC did not, at that time, include the provisions of the UNCITRAL Model Law on Cross-Border Insolvency, which provides a framework for the recognition and coordination of concurrent insolvency proceedings across jurisdictions. As a result, the NCLT held that it could not officially acknowledge or cooperate with the Dutch proceedings in the absence of a specific legislative framework.

<sup>21</sup> M/s Stanbic Bank Ghana Limited v. M/s Rajkumar Impex Pvt Limited, CP/670/IB/2017

<sup>22</sup> Agrocorp International Private v. National Steel and Agro Industries Limited, CP IB No 798/MB/C-IV/2019

<sup>23</sup> Jet Airways (India) Ltd v. State Bank of India, Company Appeal (AT) (Insolvency) No 707 of 2019.

<sup>24</sup> SBI v. Jet Airways (India) Ltd., CP 2205 (IB)/MB/2018

### **The National Company Law Appellant Tribunal's (NCLAT) Ruling**

The Dutch administrator, unsatisfied with the NCLT's refusal, appealed the decision to the National Company Law Appellate Tribunal (NCLAT). The NCLAT, in its landmark judgment, overturned the NCLT's order and allowed the Dutch administrator to participate in the insolvency process in India<sup>25</sup>.

The NCLAT permitted the Dutch administrator to be part of the Committee of Creditors (CoC) meetings. The administrator was allowed to work alongside the Indian Insolvency Resolution Professional (IRP) to ensure that the Dutch creditors' interests were adequately represented in the ongoing insolvency process. This joint participation allowed for greater cooperation between Indian and Dutch creditors, preventing the duplication of efforts and ensuring a cohesive approach to resolving Jet Airway's financial crisis.

This decision facilitated cooperation between the Dutch administrator and the Indian IRP. By enabling communication and collaboration between the two, the tribunal sought to maximize the value of Jet Airway's assets and ensure that the resolution plan was in the best interests of all stakeholders, both domestic and foreign.

Although the NCLAT did not formally recognize the Dutch proceedings as a "foreign main proceeding" under the UNCITRAL Model Law (due to the absence of such provisions in Indian law), it allowed practical cooperation. This decision mirrored the objectives of the Model Law, which seeks to facilitate cross-border insolvency cooperation, protect creditors' interests, and promote efficient insolvency resolutions. This ruling struck a balance between safeguarding the interests of Indian creditors and providing relief to foreign representatives. By permitting joint participation, the tribunal ensured that no party's interests were unduly affected, and the proceedings could continue smoothly in both jurisdictions. It demonstrated India's willingness to cooperate with foreign courts and insolvency professionals, even in the absence of formal legal provisions for cross-border insolvency. The case set a precedent for future insolvency matters involving multiple jurisdictions and emphasized the need for India to adopt a comprehensive cross-border insolvency framework under the IBC.

### **4. State Bank of India v. Videocon Industries Ltd.<sup>26</sup>**

The Videocon Group insolvency case is a significant development in India's evolving insolvency regime, particularly because it introduces the concept of group insolvency and deals with cross-border complexities. It serves as a case study on the doctrine of substantial consolidation, which allows the combination of assets and liabilities of related corporate entities to create a more efficient insolvency resolution and restructuring process. This case is also important because of its international dimensions, involving cross-border operations, foreign creditors, and issues surrounding the extraterritorial applicability of the Insolvency and Bankruptcy Code (IBC), 2016.

In the context of insolvency, the doctrine of substantial consolidation permits the pooling of assets and liabilities of multiple entities within a corporate group. This doctrine is particularly useful for large, diversified conglomerates like the Videocon Group, where several interdependent subsidiaries and affiliates operate under the same umbrella, often with overlapping financial relationships and common creditors.

In the Videocon Group's insolvency, the creditors, particularly the State Bank of India (SBI)-led consortium, sought consolidation of 15 companies affiliated with Videocon Industries. These companies had common creditors, and their assets were interlinked, making it impractical to resolve their insolvency on an individual basis. The National Company Law Tribunal (NCLT), after considering global

<sup>25</sup> Jet Airways (India) Ltd v. State Bank of India, Company Appeal (AT) (Insolvency) No 707 of 2019.

<sup>26</sup> State Bank of India v. Videocon Industries Ltd, CP No. 559/2018.

jurisprudence, decided to consolidate the insolvency proceedings of these group entities to maximize asset value and simplify the resolution process.

### **Cross-Border Complexities and Extraterritorial Applicability of the IBC**

The Videocon Group insolvency also involved significant cross-border complexities, as the conglomerate had operations in multiple countries, including the United States, which added another layer of legal challenges to the insolvency process. Notably, in February 2020, the NCLT expanded the group insolvency by incorporating four foreign-based Videocon subsidiaries, primarily engaged in the oil and gas business. These foreign subsidiaries were operating in jurisdictions outside India, such as the United States, which raised critical legal questions regarding the extraterritorial application of the IBC.

- In the absence of a formal framework for cross-border insolvency under the IBC, this case underscored the challenges of international cooperation. One of the critical issues was the need for recognition of Indian insolvency proceedings in foreign courts, as well as the recognition of foreign insolvency orders in India.
- The NCLT's decision to include foreign subsidiaries in the ongoing insolvency proceedings created a complex situation, as it required the consolidation of foreign and domestic assets. This raised questions about how these foreign assets would be treated under Indian insolvency laws, and how claims from international creditors would be handled. The extraterritorial applicability of the IBC became a significant concern, as the IBC does not explicitly provide for managing assets located outside India.

In February 2020, the NCLT<sup>27</sup> approved a second phase of group insolvency for Videocon Industries, extending the proceedings to include four foreign-based subsidiaries, primarily engaged in the oil and gas sector. This inclusion was prompted by a plea from the managing director of Videocon Group, who sought to extend the moratorium to these international entities. The NCLT's decision raised significant questions about the extraterritorial reach of the Insolvency and Bankruptcy Code (IBC), as well as the complexities involved in consolidating the assets of foreign subsidiaries with those in India. The order from February 2020 has been contested by the State Bank of India (SBI), which filed an appeal with the NCLAT. The arguments in the appeal are still ongoing, and the tribunal has yet to issue a final ruling on the matter<sup>28</sup>.

### **REFORMS IN CONSONANCE WITH INSOLVENCY AND BANKRUPTCY CODE, 2016 TO FACILITATE SEAMLESS CROSS-BORDER INSOLVENCY PROCEDURE.**

Reforms to align the Insolvency and Bankruptcy Code (IBC), 2016, with the evolving demands of cross-border insolvency can be significantly enhanced by integrating internationally recognized frameworks like the Judicial Insolvency Network (JIN) Guidelines. Introduced in 2016, the JIN Guidelines are designed to foster judicial cooperation and streamline the complexities inherent in multi-jurisdictional insolvency cases<sup>29</sup>. Their emphasis on direct communication between courts and insolvency practitioners ensures more efficient decision-making while reducing jurisdictional conflicts and procedural delays.

Incorporating these guidelines into the IBC could transform India's cross-border insolvency framework. Direct judicial communication, a cornerstone of the JIN Guidelines, would enable Indian courts to engage seamlessly with foreign counterparts, expediting the resolution process. For example, Sections 234 and 235 of the IBC could be amended to include specific provisions that formalize such court-to-court

<sup>27</sup> State Bank of India v. Videocon Industries Ltd., MA 2385/2019 in C.P.(IB)-02/MB/2018

<sup>28</sup> State Bank of India v. Venugopal Dhoot & Ors- Company Appeal (AT)(Ins) No. 299/ND/2020

<sup>29</sup> Meenakshi Kurpad, *Formulating an Effective Cross-Border Insolvency Framework under the Indian Insolvency and Bankruptcy Code* (Apr. 29, 2020) (unpublished manuscript), available at SSRN: <https://ssrn.com/abstract=3621428>



communication, ensuring transparency and safeguarding stakeholder interests. This would make it possible to coordinate proceedings in multiple jurisdictions effectively, promoting consistency in outcomes and reducing duplication of efforts.

Section 234 of the IBC, which authorizes the Central Government to negotiate bilateral agreements with foreign nations, holds immense potential but remains underutilized due to its lack of procedural clarity. Refining this section to include explicit steps for negotiating and finalizing bilateral agreements is crucial. Such agreements should define the mechanisms for recognizing and enforcing foreign insolvency proceedings, addressing creditor coordination, and recovering cross-border assets. A standardized framework for these agreements would enhance predictability and uniformity in cross-border insolvency cases, ensuring that Indian creditors and debtors are adequately protected in international proceedings.

Similarly, Section 235, which enables Indian courts to request assistance from foreign courts, needs broader and more detailed provisions. Expanding this section to facilitate multilateral cooperation would align it with global best practices, such as those outlined in the UNCITRAL Model Law<sup>30</sup>. Incorporating mechanisms for joint hearings, synchronized court orders, and shared jurisdictional responsibilities would significantly improve the procedural efficiency of cross-border insolvency cases. This alignment would not only resolve jurisdictional conflicts but also ensure timely recovery of assets.

Addressing the gaps in cross-border insolvency provisions is no longer just a procedural necessity but a strategic imperative for India as it cements its position in the global economy. By integrating the JIN Guidelines, refining Sections 234 and 235, and adopting a robust multilateral approach, India can establish itself as a leader in insolvency resolution. These reforms would enhance equitable and efficient asset recovery, protect creditor rights, and foster greater confidence among international investors. In doing so, India would not only modernize its insolvency framework but also reinforce its standing as a reliable and attractive jurisdiction for resolving complex cross-border insolvency cases.

## CONCLUSIONS

The current framework under the Insolvency and Bankruptcy Code (IBC), 2016, falls short in addressing the complexities of cross-border insolvency, leaving significant gaps in managing cases with international dimensions. The provisions under Sections 234 and 235 of the IBC are limited in scope and fail to provide a comprehensive solution for handling insolvency cases involving foreign entities. The adoption of the UNCITRAL Model Law on Cross-Border Insolvency presents a viable solution for India, offering a structured mechanism for recognizing foreign insolvency proceedings, coordinating between jurisdictions, and ensuring the efficient recovery of assets. Case studies like Jet Airways and Videocon highlight the pressing need for a robust cross-border insolvency framework in India, as the lack of coordination between domestic and foreign jurisdictions results in inefficiencies and delays. By embracing the Model Law, India can enhance its ability to deal with transnational insolvency cases, align itself with international best practices, and foster greater confidence among global investors and creditors. The paper advocates for the immediate adoption of the UNCITRAL Model Law with necessary adaptations to the Indian legal system, facilitating better coordination, asset recovery, and protection of stakeholder interests in an increasingly globalized economy.

---

<sup>30</sup> Shashi Suman & Shreya, *Comparative Analysis of Cross-Border Insolvency*, 4 INT'L J. ADVANCED LEGAL RES. 4 (2024).