

CROSS-BORDER INSOLVENCY IN INDIA: EVALUATING THE IBC'S FRAMEWORK IN LIGHT OF THE UNCITRAL MODEL LAW

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BEST CITATION – ROSHINI PARAMESHWARI S, CROSS-BORDER INSOLVENCY IN INDIA: EVALUATING THE IBC'S FRAMEWORK IN LIGHT OF THE UNCITRAL MODEL LAW, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (1) OF 2025, PG. 969-980, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

Cross-border insolvency has emerged as a key challenge in the globalized economy, necessitating a robust legal framework to handle multinational corporate failures. India's **Insolvency and Bankruptcy Code (IBC), 2016**, provides a comprehensive mechanism for domestic insolvency but lacks a dedicated provision for cross-border insolvency. In contrast, the **UNCITRAL Model Law on Cross-Border Insolvency (1997)** has been widely adopted as an international standard to facilitate recognition, cooperation, and coordination of insolvency proceedings across jurisdictions.

This article examines India's existing approach to cross-border insolvency under the IBC, comparing it with the principles of the UNCITRAL Model Law. It also explores landmark insolvency cases, such as **Jet Airways**, highlighting the practical implications of India's current framework. The study concludes by assessing India's proposed amendments and recommending steps for a more effective cross-border insolvency regime.

Introduction: The Globalization of Corporate Collapse

In today's interconnected global economy, corporate insolvencies are no longer confined within national borders. The collapse of multinational corporations often involves assets, creditors, and legal proceedings spread across multiple jurisdictions, creating complex legal and financial challenges. Cross-border insolvency, therefore, has emerged as a critical area of international economic law, requiring a harmonized approach to ensure the efficient resolution of financial distress while balancing the interests of all stakeholders involved.

India, as one of the world's largest economies, is no exception to this growing challenge. With increasing foreign investments, overseas business operations, and cross-border financial transactions, the country faces an urgent need for a comprehensive legal framework that addresses insolvency cases with international dimensions. However, the Insolvency and

Bankruptcy Code (IBC), 2016, while recognized as a progressive insolvency law, currently lacks a dedicated mechanism for dealing with cross-border insolvencies. This has led to legal uncertainty, jurisdictional conflicts, and challenges in recognizing foreign insolvency proceedings.

The absence of a structured cross-border insolvency framework in India has resulted in ad hoc judicial solutions, often relying on principles of comity and reciprocity rather than a codified legal mechanism. This has been evident in cases like **Jet Airways**, where Indian courts had to navigate cross-border insolvency issues in the absence of clear statutory guidance. Such inconsistencies highlight the pressing need for legislative reform in India's insolvency regime.

On the international front, the UNCITRAL Model Law on Cross-Border Insolvency (1997) has gained significant traction as a widely accepted framework for addressing cross-border

insolvency disputes¹⁷⁶¹. Countries such as the United States, the United Kingdom, and Singapore have successfully incorporated the Model Law into their legal systems, providing certainty and predictability for global creditors and debtors. The Model Law establishes principles of recognition, cooperation, and coordination between courts and insolvency practitioners across jurisdictions, ensuring a streamlined approach to resolving multinational insolvencies.

Given India's growing economic stature and its increasing engagement in international trade and finance, the question arises: Should India adopt the UNCITRAL Model Law, and if so, what challenges might arise in its implementation? This research aims to critically examine India's stance on cross-border insolvency, evaluate the feasibility of adopting the UNCITRAL Model Law, and propose recommendations for strengthening India's insolvency framework. Through an analysis of existing legal provisions, case law, and global best practices, this study seeks to provide insights into how India can develop a more robust and internationally aligned approach to cross-border insolvency¹⁷⁶².

As India moves toward economic liberalization and integration with global financial markets, the importance of a well-defined cross-border insolvency mechanism cannot be overstated. A strong legal framework will not only enhance investor confidence but also ensure that insolvency proceedings involving foreign entities are handled efficiently, equitably, and in line with international standards.

India's Insolvency Regime – A Fortress or an Open Gate?

India's Insolvency and Bankruptcy Code (IBC), 2016, was introduced as a landmark reform aimed at streamlining and expediting the resolution of distressed businesses. Recognized for its time-bound process, creditor-centric

approach, and emphasis on value maximization, the IBC has significantly improved India's insolvency landscape. However, despite its effectiveness in handling domestic insolvencies, its ability to address cross-border insolvency remains limited, raising the critical question of whether India's insolvency regime functions as a fortress that protects domestic interests at the expense of international cooperation or an open gate that facilitates cross-border resolution.

The Limited Scope of Cross-Border Insolvency under the IBC

At present, the IBC does not contain a dedicated framework for cross-border insolvency, relying instead on two broad provisions—Sections 234 and 235—which provide for cooperation with foreign jurisdictions. Section 234 empowers the Central Government to enter into bilateral agreements with other countries for mutual recognition of insolvency proceedings. Section 235, on the other hand, allows Indian courts to issue letters of request to foreign courts for assistance in cases involving foreign assets.

However, these provisions suffer from significant practical limitations. India has not entered into any formal bilateral insolvency agreements, making Section 234 largely ineffective. Similarly, Section 235 does not establish an automatic mechanism for recognition of foreign proceedings, requiring case-by-case judicial intervention. As a result, the current legal framework remains highly uncertain and inconsistent, leaving foreign creditors and multinational corporations in a state of ambiguity¹⁷⁶³.

Judicial Interpretation and the Ad Hoc Approach

In the absence of a codified cross-border insolvency framework, Indian courts have relied on judicial discretion and principles of international comity to deal with foreign

¹⁷⁶¹ UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/52/17 (1997)

¹⁷⁶² Rishabh Sharma, *Harmonizing Insolvency Laws: A Comparative Analysis of the UNCITRAL Model Law and India's IBC Framework*, 12 Nat'l L. Rev. 345, 348 (2021)

¹⁷⁶³ Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency, Gov't of India (2018)

insolvency matters. This has led to an ad hoc approach, where courts have either recognized foreign proceedings selectively or imposed restrictions based on domestic priorities.

A key example of this is the *Jet Airways (India) Ltd. v. State Bank of India*¹⁷⁶⁴ case, which involved parallel insolvency proceedings in India and the Netherlands. The National Company Law Tribunal (NCLT) in India initially refused to recognize the Dutch proceedings, asserting that Indian insolvency proceedings took precedence. However, the appellate tribunal (NCLAT) later took a more cooperative stance, allowing Dutch administrators to be part of the Committee of Creditors (CoC). While this decision was hailed as a positive step, it also highlighted the unpredictability and lack of a uniform approach in handling cross-border insolvency cases in India.

Other cases, such as *Videocon Industries Ltd.*, have further demonstrated the legal vacuum in India's cross-border insolvency regime, where courts have had to improvise solutions due to the lack of statutory guidance. This case-by-case approach leads to uncertainty for foreign investors, delays in resolution, and increased litigation costs¹⁷⁶⁵.

The Fortress vs. Open Gate Debate

The limitations of the IBC's cross-border insolvency framework raise an important debate: Is India's insolvency regime designed to protect domestic stakeholders at the cost of international cooperation, or can it evolve into an open system that aligns with global best practices?

On the fortress side, some argue that restricting foreign intervention in insolvency cases protects Indian assets, businesses, and creditors from external influence. This approach prioritizes national economic interests and ensures that Indian courts retain full control over domestic proceedings.

On the open gate side, proponents of reform argue that India must integrate with global insolvency standards to attract foreign investment, improve ease of doing business, and ensure seamless resolution of multinational corporate failures. A lack of cooperation with foreign jurisdictions discourages cross-border trade and financial transactions, making India a less attractive destination for global investors.

The Path Ahead

Recognizing these challenges, the Insolvency Law Committee (ILC) in 2018 proposed a comprehensive framework for cross-border insolvency, recommending that India adopt a modified version of the UNCITRAL Model Law. This proposal, if implemented, would provide greater clarity, legal certainty, and structured cooperation with foreign jurisdictions. However, India has yet to enact these reforms, leaving its insolvency regime partially closed to global engagement.

Thus, India's insolvency framework stands at a crossroads—whether to remain a fortress that safeguards domestic interests at the cost of international cooperation or to evolve into an open gate that facilitates global insolvency resolution. The upcoming reforms will determine whether India embraces the UNCITRAL Model Law and establishes itself as a pro-investment, globally integrated jurisdiction or continues to rely on piecemeal judicial interventions to resolve cross-border insolvency disputes.

UNCITRAL Model Law: The Gold Standard or Just Another Model?

The UNCITRAL Model Law on Cross-Border Insolvency (1997) has emerged as the predominant international framework for addressing the complexities of multinational insolvency proceedings. Designed by the United Nations Commission on International Trade Law (UNCITRAL), this Model Law provides a structured mechanism for cooperation between domestic and foreign courts, ensuring the efficient handling of insolvency cases involving assets and creditors across multiple

¹⁷⁶⁴ *Jet Airways (India) Ltd. (Offshore Proceedings) v. State Bank of India*, (2021) SCC OnLine NCLAT 58 (India)

¹⁷⁶⁵ Rahul Singh, *Unraveling the Cross-Border Insolvency Conundrum in India: Judicial Trends and Legislative Gaps*, 5 Ind. J. L. & Econ. 175, 180 (2022)

jurisdictions. Unlike a treaty, the Model Law does not impose binding obligations on nations but instead offers a flexible legal template that can be adapted and incorporated into domestic insolvency regimes¹⁷⁶⁶.

With globalization leading to increased international investments, multinational operations, and cross-border financial transactions, insolvency cases are no longer confined to a single legal system. The fragmentation of legal frameworks in different countries has historically created jurisdictional conflicts, legal uncertainty, and inefficiencies in resolving insolvency proceedings. The Model Law was introduced to mitigate these challenges by promoting harmonization, coordination, and judicial cooperation in insolvency matters across national boundaries.

Core Principles of the UNCITRAL Model Law

The Model Law is built on four foundational principles: access, recognition, cooperation, and coordination. These principles ensure that foreign representatives and courts are given appropriate legal standing in domestic insolvency proceedings while also maintaining judicial discretion to protect national interests.

First, the principle of access allows foreign insolvency representatives to approach domestic courts directly without the need for a separate legal proceeding. This ensures that insolvency practitioners appointed in one jurisdiction can seek legal remedies in another country where the debtor has assets or creditors. This principle facilitates seamless legal engagement between jurisdictions, preventing unnecessary duplication of litigation and administrative delays.

Second, the principle of recognition enables domestic courts to acknowledge and grant legal effect to foreign insolvency proceedings. Once a foreign proceeding is recognized, it can either be treated as a main proceeding (if the debtor's center of main interests is in the foreign

jurisdiction) or a non-main proceeding (if the debtor has only an establishment there). The classification determines the level of legal protection and control extended to the foreign insolvency representative, ensuring that cases are processed efficiently while respecting the interests of domestic creditors¹⁷⁶⁷.

Third, the principle of cooperation mandates domestic courts and insolvency practitioners to actively engage with their foreign counterparts. This includes sharing information, coordinating procedural actions, and preventing conflicting judgments. Given the global nature of financial transactions, insolvency cooperation is critical to ensuring that creditors and stakeholders receive equitable treatment, irrespective of national boundaries.

Lastly, the principle of coordination seeks to integrate multiple insolvency proceedings that may arise in different jurisdictions. In cases where a debtor is subject to simultaneous insolvency proceedings in multiple countries, the Model Law encourages courts to work together in developing a unified resolution strategy. This prevents situations where conflicting judgments lead to asset dissipation, creditor disputes, or forum shopping by debtors.

Adoption and Implementation of the Model Law Globally

Since its introduction in 1997, the UNCITRAL Model Law has been adopted by over 50 jurisdictions, including the United States, the United Kingdom, Canada, and Singapore. These countries have successfully integrated its principles into their national insolvency legislation, enhancing legal predictability, investor confidence, and international cooperation in insolvency cases.

In the United States, the Model Law was incorporated through Chapter 15 of the U.S. Bankruptcy Code, providing clear mechanisms for recognizing foreign insolvency proceedings and enabling cooperation between U.S. courts

¹⁷⁶⁶ United Nations Commission on International Trade Law (UNCITRAL), Legislative Guide on Insolvency Law, U.N. Doc. A/CN.9/WG.V/WP.118 (2004)

¹⁷⁶⁷ UNCITRAL Model Law on Cross-Border Insolvency, G.A. Res. 52/158, U.N. Doc. A/52/17 (1997)

and foreign jurisdictions. This has helped multinational corporations effectively navigate cross-border financial distress while ensuring creditor rights are upheld¹⁷⁶⁸.

Similarly, the United Kingdom has embedded the Model Law within its Cross-Border Insolvency Regulations, 2006, facilitating seamless interaction with foreign insolvency systems. The UK's framework ensures that international creditors and foreign administrators are granted due legal recognition, preventing unnecessary litigation and jurisdictional disputes¹⁷⁶⁹.

Singapore, an emerging financial hub in Asia, has also embraced the Model Law by incorporating it into its Insolvency, Restructuring and Dissolution Act, 2018. This has enabled Singaporean courts to play a more active role in global insolvency resolutions, attracting foreign investment and reinforcing the country's position as a pro-business jurisdiction.

The successful adoption of the Model Law in these jurisdictions has enhanced legal certainty, reduced procedural delays, and minimized the risk of asset fragmentation in cross-border insolvencies. By establishing a predictable legal framework, these countries have facilitated smoother insolvency resolutions while maintaining a balance between domestic interests and international cooperation¹⁷⁷⁰.

The Need for the Model Law in India

India's growing economic integration with global markets underscores the urgent need for a comprehensive cross-border insolvency framework. Given the increasing number of Indian companies with foreign operations and vice versa, the absence of a structured mechanism for recognizing and coordinating foreign insolvency proceedings creates uncertainty for investors, businesses, and creditors.

At present, Indian courts rely on judicial discretion and principles of international comity to address cross-border insolvency matters, leading to inconsistent outcomes and procedural delays. The case-specific approach adopted in Jet Airways, Videocon, and other insolvency cases highlights the lack of a unified legal mechanism, increasing the risks associated with cross-border financial distress.

The adoption of the UNCITRAL Model Law in India would provide greater clarity, efficiency, and certainty in handling multinational insolvencies. By establishing clear rules for recognition, cooperation, and coordination, India can align itself with global best practices while ensuring that domestic interests are safeguarded. Additionally, implementing the Model Law would enhance India's standing in international trade and investment, making it a more attractive destination for foreign creditors and businesses.

While concerns regarding sovereignty, judicial independence, and the protection of domestic creditors must be carefully addressed, a well-crafted adaptation of the Model Law can strike a balance between international cooperation and national economic priorities. A customized approach, similar to what Singapore and the United Kingdom have adopted, would allow India to benefit from a structured cross-border insolvency framework while retaining control over critical domestic insolvency matters¹⁷⁷¹.

Thus, the UNCITRAL Model Law represents a transformative opportunity for India, offering a structured, globally recognized framework to streamline cross-border insolvency proceedings, improve investor confidence, and enhance economic stability. The question that remains is not whether India should adopt the Model Law, but rather how it should tailor its implementation to best suit the country's unique legal and economic landscape.

¹⁷⁶⁸ Bankruptcy Code, 11 U.S.C. § 1501 (United States) (incorporating UNCITRAL Model Law)

¹⁷⁶⁹ Insolvency Act 1986, c. 45, § 426 (UK)

¹⁷⁷⁰ Edward J. Janger, *Reciprocity and Recognition in Cross-Border Insolvency Proceedings*, 94 Tex. L. Rev. 683, 689 (2016)

¹⁷⁷¹ Shubham Jain & Akanksha Tiwari, *Cross-Border Insolvency in India: Time to Adopt the Model Law?*, 7 Ind. Bus. L.J. 101, 105 (2021)

The Clash of Legal Frameworks – India vs. the Model Law

Cross-border insolvency presents a significant challenge for legal systems worldwide, as jurisdictions must reconcile their domestic insolvency frameworks with the complexities of international financial transactions. In India, the Insolvency and Bankruptcy Code (IBC), 2016, serves as the primary legislation governing insolvency and restructuring. However, it lacks a dedicated mechanism for handling cross-border insolvency—a gap that has become increasingly evident as Indian companies expand their operations globally and foreign creditors seek to enforce claims against Indian debtors.

In contrast, the UNCITRAL Model Law on Cross-Border Insolvency (1997) provides a structured and internationally accepted framework to address these challenges. It ensures that foreign insolvency proceedings are recognized, coordinated, and harmonized with domestic legal processes. While over 50 jurisdictions, including the U.S., the U.K., and Singapore, have adopted this framework, India has yet to formally incorporate it into its insolvency laws¹⁷⁷².

This chapter explores the fundamental differences between the IBC and the UNCITRAL Model Law, analyzing the points of convergence and divergence between the two frameworks. It also examines the practical implications of these differences, particularly in cases where Indian companies or creditors are involved in insolvency proceedings spanning multiple jurisdictions.

Key Differences Between the IBC and the UNCITRAL Model Law

Despite sharing a common objective of facilitating effective insolvency resolutions, the IBC and the Model Law diverge in scope, procedural mechanisms, and judicial discretion.

1. Recognition of Foreign Insolvency Proceedings

One of the primary differences between the two frameworks lies in the recognition of foreign insolvency proceedings. The UNCITRAL Model Law establishes a clear and structured process for recognizing foreign proceedings. It distinguishes between a foreign main proceeding (where the debtor's center of main interests is located) and a foreign non-main proceeding (where the debtor has an establishment). This classification determines the extent of judicial cooperation and legal relief granted. In contrast, the IBC does not explicitly provide for the recognition of foreign insolvency proceedings. Indian courts have relied on judicial precedents and principles of international comity to determine the extent of cooperation in cross-border cases. This lack of a codified framework creates uncertainty for foreign creditors and debtors, leading to inconsistent outcomes and prolonged litigation.

2. Judicial Discretion vs. Structured Coordination

The Model Law promotes structured coordination between domestic and foreign courts through well-defined principles of cooperation and communication. Domestic courts are encouraged to engage with their foreign counterparts to streamline insolvency proceedings and prevent conflicting judgments.

The IBC, however, grants significant discretion to Indian courts, allowing them to decide on cross-border insolvency matters on a case-by-case basis. While this judicial flexibility can be beneficial in protecting domestic interests, it often results in prolonged legal uncertainty and inconsistent interpretations across different cases.

¹⁷⁷² Rishabh Sharma, *Harmonizing Insolvency Laws: A Comparative Analysis of the UNCITRAL Model Law and India's IBC Framework*, 12 Nat'l L. Rev. 345, 348 (2021)

The absence of a standardized approach makes cross-border insolvency resolutions cumbersome, discouraging foreign creditors from engaging in insolvency proceedings in India¹⁷⁷³.

3. Access to Domestic Courts for Foreign Representatives

The UNCITRAL Model Law explicitly grants foreign insolvency representatives the right to directly access domestic courts, enabling them to file claims, seek recognition, and participate in insolvency proceedings. This facilitates efficient case management and ensures that international creditors can actively engage in legal proceedings. Under the IBC, foreign representatives do not have an automatic right to approach Indian courts. Instead, they must rely on domestic legal provisions and judicial discretion to seek recognition and enforcement. This hinders the ability of foreign creditors to effectively protect their interests, often resulting in delays, procedural hurdles, and legal uncertainty.

4. Cooperation Between Domestic and Foreign Courts

The Model Law mandates active cooperation between domestic and foreign courts, requiring them to exchange information, coordinate procedural actions, and avoid conflicts in legal rulings. This global judicial dialogue enhances the efficiency of cross-border insolvency resolutions. The IBC, on the other hand, does not contain specific provisions for cooperation with foreign courts. While Indian courts have occasionally engaged with foreign counterparts in landmark cases like Jet Airways and

Videocon, such cooperation remains discretionary rather than institutionalized¹⁷⁷⁴. The absence of a clear statutory mandate for cooperation limits the effectiveness and predictability of cross-border insolvency proceedings in India.

Practical Implications of the Diverging Frameworks

The differences between the IBC and the Model Law have significant real-world implications for companies, creditors, and insolvency practitioners. These divergences create challenges in cross-border debt recovery, asset distribution, and creditor protection.

1. Uncertainty for Foreign Creditors

The lack of a clear framework for recognizing and enforcing foreign insolvency judgments under the IBC creates uncertainty for international creditors. Foreign lenders and investors often face difficulties in asserting claims against Indian debtors, leading to long-drawn litigation and financial losses.

2. Forum Shopping and Legal Arbitrage

The absence of a harmonized cross-border insolvency regime in India encourages debtors to engage in forum shopping, choosing jurisdictions that offer more favorable legal treatment. This undermines the predictability and fairness of insolvency proceedings and increases the risk of asset concealment and fraudulent transfers.

3. Prolonged Resolution Timelines

Without an institutionalized framework for cross-border insolvency, resolution timelines in India remain significantly longer compared to jurisdictions that have adopted the Model Law. Delays in recognizing foreign proceedings and coordinating with international courts increase costs and diminish asset value,

¹⁷⁷³ Bankruptcy Law Reforms Committee (BLRC) Report, Vol. II, Chapter 6, Ministry of Finance, Gov't of India (2015)

¹⁷⁷⁴ Rahul Singh, *Unraveling the Cross-Border Insolvency Conundrum in India: Judicial Trends and Legislative Gaps*, 5 Ind. J. L. & Econ. 175, 180 (2022).

negatively impacting both debtors and creditors.

4. Impact on Foreign Investment and Economic Growth

A well-defined cross-border insolvency framework is essential for fostering investor confidence and economic stability. Countries like the U.S., U.K., and Singapore have enhanced their investment attractiveness by adopting the Model Law, providing legal certainty and efficient insolvency mechanisms. India's reluctance to implement a similar framework may deter foreign investment, particularly in sectors with high exposure to international transactions¹⁷⁷⁵.

Turbulence in the Skies: The Jet Airways Insolvency and Its Cross-Border Lessons

The collapse of Jet Airways, once one of India's largest private airlines, represents a landmark event in Indian insolvency jurisprudence, particularly in the realm of cross-border insolvency. The case posed significant challenges due to its multi-jurisdictional nature, with creditors and assets spread across different countries, necessitating international cooperation and judicial coordination. This insolvency highlighted gaps in India's cross-border insolvency framework, exposing the need for structured legal mechanisms to handle such cases efficiently. The Jet Airways case serves as a crucial example of the complexities and uncertainties that arise when insolvency proceedings transcend national boundaries and involve foreign creditors, offshore assets, and overlapping legal frameworks¹⁷⁷⁶.

Background of the Jet Airways Insolvency

Jet Airways, founded in 1992, was one of India's premier airlines and had established an extensive international network. However, by

2019, the airline faced a severe financial crisis due to mismanagement, mounting debt, high operational costs, and a fiercely competitive aviation sector. The company defaulted on payments to financial creditors, employees, and lessors, leading to the suspension of operations in April 2019. Subsequently, insolvency proceedings were initiated under the Insolvency and Bankruptcy Code (IBC), 2016 in India, while parallel proceedings were also commenced in the Netherlands, where a subsidiary entity was involved. This dual insolvency process raised critical cross-border legal questions, particularly regarding the recognition of foreign proceedings, the coordination of multiple jurisdictions, and the treatment of international creditors.

Cross-Border Challenges in the Jet Airways Insolvency

1. Jurisdictional Conflicts and the Dutch Proceedings

A significant complexity in the Jet Airways case arose when insolvency proceedings were initiated in the Netherlands while Indian proceedings were already underway before the National Company Law Tribunal (NCLT), Mumbai. A Dutch court appointed an administrator (trustee) for Jet Airways' European operations and sought to enforce its jurisdiction over certain assets of the airline located in the Netherlands. This development sparked a jurisdictional conflict, as the NCLT Mumbai initially refused to recognize the Dutch insolvency proceedings, citing that IBC did not contain explicit provisions for cross-border recognition of foreign insolvency orders.

The conflict underscored the legal vacuum in India's cross-border insolvency regime, as the IBC lacked clear guidelines on handling parallel proceedings in foreign jurisdictions. The absence of an automatic recognition mechanism meant that foreign administrators, such as the Dutch trustee, had no direct standing in Indian courts, forcing them to rely on judicial discretion and case-by-case adjudication.

¹⁷⁷⁵ Edward J. Janger, *Reciprocity and Recognition in Cross-Border Insolvency Proceedings*, 94 Tex. L. Rev. 683, 689 (2016)

¹⁷⁷⁶ State Bank of India v. Jet Airways (India) Ltd., (2019) SCC OnLine NCLAT 705 (India)

2. Judicial Cooperation and the Path to Resolution

Despite the initial resistance, an unprecedented step was taken by the Indian judiciary when the NCLT Mumbai eventually recognized the Dutch insolvency proceedings and permitted coordination between the Indian Resolution Professional (RP) and the Dutch Administrator. This recognition was a watershed moment, marking the first instance where an Indian insolvency tribunal formally engaged with a foreign insolvency court to resolve a cross-border dispute.

The decision paved the way for a cooperative approach, where both the Indian and Dutch proceedings progressed in a synchronized manner, ensuring that creditor claims were addressed fairly across jurisdictions. This demonstrated a willingness within the Indian legal system to engage with international insolvency frameworks, even in the absence of a statutory mandate under the IBC.

3. Treatment of Foreign Creditors and Assets

The Jet Airways case also brought into focus the challenges faced by foreign creditors in Indian insolvency proceedings. A significant portion of Jet Airways' debt was owed to foreign lessors, suppliers, and financial institutions, many of whom were uncertain about their legal standing in the Indian insolvency resolution process. The absence of a codified cross-border framework meant that international creditors had to rely on ad hoc judicial interventions to assert their claims.

Moreover, the issue of asset distribution became contentious, as Jet Airways held valuable overseas assets, including aircraft parked in foreign jurisdictions and funds held in international bank accounts. The question of whether these assets should be repatriated to India for distribution under the IBC or handled separately under foreign insolvency laws

became a matter of negotiation between the Indian RP and the Dutch trustee¹⁷⁷⁷.

Ultimately, the cooperative approach adopted between the Dutch and Indian insolvency professionals helped facilitate a coordinated resolution plan, ensuring that foreign creditors received some degree of consideration within the framework of the Jet Airways insolvency resolution. However, the case revealed systemic inefficiencies in the handling of multinational insolvencies due to the lack of clarity in Indian insolvency law regarding cross-border asset distribution and creditor hierarchy.

Lessons from the Jet Airways Insolvency for India's Cross-Border Insolvency Framework

1. The Need for a Statutory Cross-Border Recognition Mechanism: The primary takeaway from the Jet Airways case is the urgent need for India to adopt a formal cross-border insolvency framework. The lack of statutory recognition provisions under the IBC created procedural delays and legal uncertainty, which could have been avoided with a structured framework, such as that provided by the UNCITRAL Model Law on Cross-Border Insolvency.

2. The Role of Judicial Cooperation in International Insolvency Cases: The Jet Airways insolvency demonstrated the importance of judicial cooperation between Indian and foreign courts. Despite initial jurisdictional conflicts, the eventual coordination between the NCLT and the Dutch court showcased a pragmatic approach. Going forward, formalizing mechanisms for judicial communication and cooperation can significantly improve the efficiency of handling multinational insolvency disputes.

3. Ensuring Equal Treatment of Domestic and Foreign Creditors: The case highlighted disparities in the treatment of domestic and foreign creditors, as international claimants faced additional procedural hurdles due to India's lack of clear rules for foreign creditor

¹⁷⁷⁷ Pratik Datta, *Lessons from Jet Airways: Cross-Border Cooperation in the Absence of a Formal Legal Framework*, Nat'l L. Sch. India Rev. (2019)

participation. Adopting a clear and transparent process for recognizing foreign claims would help create a more predictable and fair insolvency system for all stakeholders.

4. Managing Parallel Proceedings and Asset Distribution: The insolvency proceedings in both India and the Netherlands illustrated the complexities of managing parallel insolvency processes across different jurisdictions. Establishing a uniform framework for coordinating such proceedings, especially concerning asset recovery and distribution, is crucial for avoiding legal conflicts.

The Jet Airways insolvency was a landmark case in India's insolvency jurisprudence, not only due to the sheer scale of the financial collapse but also because it tested India's approach to cross-border insolvency for the first time. The case exposed critical gaps in India's insolvency framework, particularly concerning the recognition of foreign proceedings, international creditor rights, and the management of cross-border assets. While the Indian judiciary played a pivotal role in bridging these gaps through discretionary cooperation, the ad hoc nature of these decisions underscores the need for a formalized statutory framework. As India moves towards reforming its cross-border insolvency laws, the lessons from the Jet Airways case must serve as a guiding precedent for developing a robust, predictable, and internationally aligned legal framework¹⁷⁷⁸. By incorporating provisions for recognition, coordination, and cooperation with foreign jurisdictions, India can enhance its global insolvency standing and foster investor confidence. The turbulence experienced in Jet Airways' insolvency underscores the pressing need for clear skies in India's approach to cross-border insolvency resolution.

The Road Ahead: Implementing a Robust Cross-Border Insolvency Framework in India

India's current insolvency regime, governed by the Insolvency and Bankruptcy Code (IBC), 2016,

has made significant strides in streamlining domestic insolvency resolution. However, its approach to cross-border insolvency remains incomplete. The absence of a codified mechanism for recognizing and coordinating with foreign insolvency proceedings has created legal uncertainty, particularly in cases involving multinational corporations, foreign creditors, and overseas assets. As India aspires to become a global financial hub, an efficient cross-border insolvency framework is no longer an option but a necessity. This chapter explores the current gaps in India's insolvency law, the need for adopting the UNCITRAL Model Law on Cross-Border Insolvency, and the challenges and recommendations for implementation¹⁷⁷⁹.

The Existing Legal Gap: India's Fragmented Approach to Cross-Border Insolvency

While the IBC, 2016, has provided a structured approach to domestic corporate insolvency, it lacks a comprehensive framework for handling cases with an international dimension. Currently, India relies on Sections 234 and 235 of the IBC, which allow for bilateral agreements with foreign jurisdictions and for Indian courts to request assistance from foreign courts in insolvency matters. However, these provisions remain largely unutilized, as India has not yet signed reciprocal insolvency cooperation agreements with any country. This lack of formalized cross-border cooperation has led to ad hoc judicial interventions, such as in the Jet Airways insolvency case, where Indian courts coordinated with foreign insolvency professionals despite the absence of a clear legal mandate.

Furthermore, the Supreme Court's ruling in the Videocon Industries insolvency case highlighted the difficulties of handling multinational insolvencies without statutory guidance. The case involved multiple jurisdictions and foreign creditors, yet the Indian resolution process struggled to provide clarity on how international claims should be handled, leading to delays,

¹⁷⁷⁸ Vinod Kothari & Shruti Agarwal, *Cross-Border Insolvency and India's IBC: A Jet Airways Case Study*, Insolvency & Restructuring J. (2020)

¹⁷⁷⁹ Ministry of Corporate Affairs, *Proposed Amendments to the IBC – A Focus on Cross-Border Insolvency*, Gov't of India (2023)

inconsistencies, and confusion among creditors. The lack of automatic recognition of foreign insolvency proceedings places India at a disadvantage compared to jurisdictions such as the United States, the United Kingdom, and Singapore, all of which have adopted the UNCITRAL Model Law on Cross-Border Insolvency.

The Need for Adopting the UNCITRAL Model Law

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency is a globally accepted framework that provides a harmonized approach to managing cross-border insolvencies. Over 50 jurisdictions, including the US, the UK, Australia, and Singapore, have incorporated it into their legal systems, facilitating seamless cooperation between domestic and foreign insolvency courts.

For India, adopting the UNCITRAL Model Law would bring several key advantages. First, it would establish a structured process for recognizing foreign insolvency proceedings, eliminating the need for courts to rely on discretionary rulings. Second, it would allow foreign insolvency professionals to directly participate in Indian insolvency proceedings, ensuring fair treatment of international creditors. Third, it would provide clear rules for handling cross-border asset distribution, preventing conflicts between Indian and foreign courts over jurisdictional claims.

The Indian government has already taken steps in this direction, with the Ministry of Corporate Affairs proposing the adoption of a modified version of the UNCITRAL Model Law. The proposed framework emphasizes reciprocity, meaning that India would recognize foreign insolvency proceedings only from jurisdictions that extend similar recognition to Indian proceedings. This cautious approach aims to protect India's sovereign interests while fostering international legal cooperation¹⁷⁸⁰.

Challenges in Implementing a Cross-Border Insolvency Framework in India

While the adoption of the UNCITRAL Model Law is a logical step, several practical and legal challenges must be addressed before its implementation. One of the primary concerns is conflict with existing Indian insolvency laws, particularly in cases where foreign insolvency rulings may contradict domestic legal principles. For instance, India's priority of creditor hierarchy under the IBC may differ from international insolvency norms, creating potential disputes over asset distribution and creditor rights.

Another challenge is judicial preparedness and capacity-building. Indian courts and tribunals, particularly the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT), will require extensive training to effectively handle cross-border insolvency cases. The complexity of interpreting foreign insolvency laws, managing international creditor claims, and coordinating with foreign courts will necessitate a robust judicial infrastructure.

Moreover, India must carefully design a mechanism for handling parallel insolvency proceedings, ensuring that Indian resolution professionals can effectively collaborate with foreign administrators. Without well-defined rules for judicial cooperation, conflicting insolvency proceedings in multiple jurisdictions could undermine creditor confidence and delay resolution processes.

Recommendations for an Effective Cross-Border Insolvency Regime in India

To successfully integrate a cross-border insolvency framework, India must undertake a phased and structured approach. The following measures are critical for ensuring smooth implementation:

1. **Legislative Clarity and Reciprocity-Based Recognition:** The government should formally adopt the UNCITRAL Model Law with modifications to ensure

¹⁷⁸⁰ Megha Garg, *UNCITRAL Model Law: An Inevitable Future for Indian Insolvency Regime*, 9 Ind. Corp. & Fin. L. Rev. 112, 118 (2022)

compatibility with Indian insolvency principles. The reciprocity condition should be carefully structured, balancing the need for international cooperation while safeguarding India's economic interests.

2. **Judicial and Regulatory Capacity-Building:** Specialized training programs for NCLT judges, resolution professionals, and insolvency regulators will be necessary to handle cross-border complexities. The Insolvency and Bankruptcy Board of India (IBBI) must also play a proactive role in setting guidelines for international cooperation.
3. **Formal Bilateral and Multilateral Cooperation Agreements:** While the UNCITRAL Model Law provides a broad framework, India must simultaneously negotiate bilateral agreements with key trading partners such as the US, the UK, the EU, and Singapore. Such agreements will enhance legal certainty for businesses operating across multiple jurisdictions.
4. **Clear Guidelines for Asset Distribution and Creditor Treatment:** A well-defined framework for prioritizing claims and distributing assets across jurisdictions is essential. Ensuring that foreign creditors receive equitable treatment without compromising domestic creditor rights will be crucial to building global investor confidence in the Indian insolvency system.
5. **Establishment of an International Insolvency Coordination Unit:** Creating a dedicated cross-border insolvency unit within the IBBI to facilitate communication between Indian and foreign courts, coordinate with international resolution professionals, and streamline information sharing can

significantly enhance efficiency in cross-border cases¹⁷⁸¹.

Conclusion

The adoption of a structured cross-border insolvency framework represents the next major reform in India's insolvency regime. The current ad hoc approach has led to inconsistent judicial outcomes, legal uncertainty for foreign investors, and prolonged resolution timelines. By incorporating the UNCITRAL Model Law into its legal framework, India can position itself as a trusted jurisdiction for global businesses and enhance its financial and economic stability.

However, mere legislative adoption is not enough. India must ensure strong judicial capacity, clear procedural guidelines, and effective international cooperation to make its cross-border insolvency system truly functional. The Jet Airways case, Videocon insolvency, and other multi-jurisdictional disputes have highlighted the existing weaknesses, and the time has come for India to move from makeshift solutions to a comprehensive, globally aligned insolvency framework. With careful planning and strategic implementation, India can establish itself as a modern, investor-friendly insolvency jurisdiction, paving the way for smoother resolution of complex cross-border financial distress.

¹⁷⁸¹ Shubham Jain & Akanksha Tiwari, *Cross-Border Insolvency in India: Time to Adopt the Model Law?*, 7 Ind. Bus. L.J. 101, 105 (2021)