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**COMPARATIVE ANALYSIS OF CROSS-BORDER INSOLVENCY**- Shashi Suman & Shreya<sup>1</sup>**Abstract**

Cross-border insolvency has emerged as a pivotal facet of contemporary global commerce, necessitating a nuanced examination of how diverse jurisdictions navigate and resolve insolvency issues with international dimensions. This research conducts a comparative analysis of the insolvency laws of select countries, with a specific focus on their approaches to cross-border insolvency. The primary objective is to assess the effectiveness of these legal frameworks in fostering international cooperation and ensuring the smooth resolution of complex cross-border insolvency cases.

The methodology involves carefully selecting countries based on economic significance, legal diversity, and relevance in cross-border insolvency scenarios. This research illuminates the intricate legal landscapes governing insolvency matters across jurisdictions by scrutinising statutory laws, landmark court decisions, and scholarly commentary. Each country's insolvency laws are dissected, emphasising key provisions pertinent to cross-border cases. The analysis extends to the mechanisms for recognising and enforcing foreign insolvency proceedings, examining the coordination mechanisms in place, and providing illustrative case studies to demonstrate the practical application of these legal frameworks.

The effectiveness of the legal frameworks is then systematically evaluated, considering factors such as the efficiency of cross-border communication, the clarity of legal provisions, and the adaptability of laws to the ever-evolving global economic landscape. Common strengths and weaknesses are identified across the selected countries, offering insights into the broader implications for international cooperation.

Challenges inherent in handling cross-border insolvency cases are explored, emphasising the

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legal, logistical, and procedural hurdles different jurisdictions face. The research also highlights best practices and innovative solutions that emerge from the comparative analysis, serving as potential models for enhancing global collaboration in cross-border insolvency matters.

This research contributes to the scholarly discourse on cross-border insolvency by providing a comprehensive and comparative analysis of the legal frameworks employed by different countries. The findings offer valuable insights for policymakers, legal practitioners, and scholars seeking to enhance international cooperation in the face of complex cross-border insolvency challenges.

**Keywords:** CROSS BORDER, INSOLVENCY, INTERNATIONAL DIMENSION

## **Introduction**

### **Background**

In today's interconnected world, the dynamics of commerce and business transactions have transcended national boundaries. As a consequence, the increasing prevalence of cross-border transactions has given rise to complex challenges in the realm of insolvency. Cross-border insolvency, a term denoting the intricate intersection of insolvency proceedings in multiple jurisdictions, is a multifaceted legal phenomenon that demands careful consideration. Understanding the background is crucial to unravel the nuances of this evolving landscape.

### **Definition of Cross-Border Insolvency**

Cross-border insolvency refers to the legal implications and proceedings that arise when a financially distressed entity operates or has assets in multiple jurisdictions. It is characterised by the intricate interplay of diverse legal systems, posing unique challenges to effectively resolving insolvency matters. As companies increasingly engage in international activities, a clear and efficient cross-border insolvency framework becomes paramount. Cross-border insolvency within the Indian context refers to the legal implications and proceedings arising when an insolvent entity based in India has assets, creditors, or operations in multiple jurisdictions. As India experiences heightened economic globalisation, a robust legal framework to address

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cross-border insolvency becomes imperative<sup>2</sup>.

### **Globalisation and its Impact on Indian Insolvency**

The pervasive force of globalisation has significantly altered the landscape of commerce and business operations. Companies routinely engage in cross-border activities, establishing operations and holding assets in various jurisdictions.<sup>3</sup> The seamless flow of capital and diverse legal environments have heightened the complexity of insolvency proceedings. Globalisation, while fostering economic growth, has also necessitated a reevaluation of traditional insolvency laws to accommodate the intricacies of international business relationships. India's integration into the global economy has witnessed increased cross-border transactions. As Indian companies expand internationally, the impact of globalisation on insolvency proceedings cannot be overstated. The interconnectedness of financial markets and the cross-jurisdictional nature of modern business transactions necessitate examining how Indian insolvency laws align with international standards.

### **Rationale for Comparative Analysis**

The need for a comparative analysis of cross-border insolvency laws arises from the diverse approaches adopted by jurisdictions worldwide. Recognising the lack of a universally accepted framework, this analysis explores the variations in legal systems and mechanisms for dealing with cross-border insolvency. By comprehensively examining different jurisdictions, we can identify common challenges, best practices, and potential areas for harmonisation. This comparative study is a foundation for proposing solutions that foster a more cohesive and efficient global approach to cross-border insolvency.<sup>4</sup>

The rationale for a comparative analysis lies in the evolving nature of cross-border insolvency and its implications for Indian businesses. By juxtaposing Indian insolvency laws with other jurisdictions, this paper aims to identify areas of convergence, divergence, and potential enhancements. Understanding the global landscape will enable policymakers, practitioners, and academics to refine Indian insolvency laws and ensure they can handle the complexities of

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<sup>2</sup><https://ibbi.gov.in/uploads/resources/c3593c9f41984c6f31f278974de3cf37.pdf>

<sup>3</sup>Sharma, A., & Sengupta, R. (2015). Corporate insolvency resolution in India: Lessons from a cross-country comparison (Working Paper No. WP-2015-029). IGIDR

<sup>4</sup>Government of India. (2016). Economic Survey 2015–2016. Ministry of Finance.

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cross-border insolvency effectively.

## **Evolution of Indian Insolvency**

### **1. Historical overview**

#### **a. Pre-Insolvency and Bankruptcy Code (IBC) Era**

Before implementing the Insolvency and Bankruptcy Code (IBC) in 2016, the legal landscape governing insolvency in India was fragmented and lacked a comprehensive framework. The Companies Act of 1956<sup>5</sup>, and the Sick Industrial Companies (Special Provisions) Act of 1985<sup>6</sup>, were among the key legislations dealing with corporate insolvency. However, these laws were criticised for their inefficiency, delays, and lack of a coherent resolution mechanism. During this era, insolvency proceedings in India were marred by prolonged litigation, inadequate creditor protection, and a lack of an effective mechanism for rescuing financially distressed companies. The absence of a unified legal framework led to inconsistent outcomes and hindered the timely resolution of insolvency cases, adversely impacting creditors and debtors.

#### **b. Introduction and Implementation of IBC**

The IBC was introduced to address the shortcomings of the earlier insolvency laws and provide a robust and time-bound resolution process for distressed companies. The IBC received Presidential assent on May 28, 2016<sup>7</sup>, marking a significant paradigm shift in the Indian insolvency landscape.

Envisioned as a comprehensive legislation, the IBC aimed to consolidate and amend existing laws related to insolvency resolution of corporate persons, partnership firms, and individuals. Its implementation marked the establishment of dedicated adjudicating authorities, such as the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT), to streamline the resolution process.

### **2. Key Provisions of the Insolvency and Bankruptcy Code, 2016**

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<sup>5</sup>The Companies Act, 1956.

<sup>6</sup>The Sick Industrial Companies (Special Provisions) Act, 1985.

<sup>7</sup>Insolvency and Bankruptcy Code, 2016.

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**a. Corporate Insolvency Resolution Process (CIRP)**

The CIRP is a cornerstone of the IBC, providing a structured and time-bound process for resolving corporate insolvency. When a company defaults on its financial obligations, creditors or the debtor can initiate the CIRP by applying with the NCLT. The appointment of an insolvency professional, formulation of a resolution plan, and the approval process within a stipulated timeframe are critical components of the CIRP.

The CIRP encourages reviving distressed companies, ensuring a fair and transparent resolution process. The emphasis on time-bound proceedings seeks to prevent value erosion and promote the interests of all stakeholders involved, including creditors, shareholders, and employees.

**b. Cross-Border Insolvency under Section 234<sup>8</sup>**

Section 234 of the IBC addresses the cross-border dimensions of insolvency, allowing for the coordination of proceedings involving companies with assets or creditors in multiple jurisdictions. This provision aligns with the global trend towards recognising the challenges posed by cross-border insolvency cases. Under Section 234, the Central Government may enter into agreements with foreign countries to enforce the provisions of the IBC outside India and to reciprocate the enforcement of foreign insolvency laws within India. This provision recognises that modern business transactions often transcend national borders, necessitating a framework for practical cooperation between jurisdictions.

The inclusion of Section 234 is a testament to India's commitment to aligning its insolvency laws with international best practices, fostering an environment conducive to global business operations and cross-border investments. The evolution from the pre-IBC era to the current legal framework signifies a transformative journey for Indian insolvency laws. The IBC has not only streamlined the resolution process domestically but has also acknowledged the importance of cross-border cooperation in addressing the complexities of contemporary business structures. As India continues fine-tuning its insolvency laws, it remains an integral player in the global discourse on cross-border insolvency and international business transactions.

**Comparative Analysis: Indian Perspective**

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<sup>8</sup> § 234 of Insolvency and Bankruptcy Code, 2016.

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## **1. International Approaches to Cross-Border Insolvency**

### **a. United States: Chapter 15 of the Bankruptcy Code**

The United States addresses cross-border insolvency through Chapter 15 of its Bankruptcy Code. Chapter 15 enables foreign representatives to seek recognition of foreign insolvency proceedings in U.S. courts. The primary objective is to provide a framework for cooperation between U.S. and foreign courts handling insolvency matters.<sup>9</sup>

The U.S. approach emphasises comity, recognising foreign proceedings, and facilitating coordination among jurisdictions. Chapter 15 allows the court to grant various forms of relief, including the stay of litigation, the appointment of a foreign representative, and the recognition of foreign creditors' claims. The effectiveness of Chapter 15 lies in its ability to balance the interests of domestic and foreign stakeholders while promoting efficient cross-border insolvency resolutions.

### **b. European Union: European Insolvency Regulation (Recast), 2015**

The European Insolvency Regulation (Recast) governs cross-border insolvency matters in the European Union. The regulation aims to provide a unified framework for the recognition and enforcement of insolvency proceedings across EU member states<sup>10</sup>. The main proceedings, where the insolvency process is opened, and secondary proceedings, which may be opened in other member states, are distinguished to ensure coherence and efficiency.

The European approach automatically recognises insolvency proceedings, reducing the need for parallel proceedings in different jurisdictions. The regulation establishes a hierarchy for the distribution of assets, fostering a harmonised approach to treating creditors. By promoting cooperation and coordination among member states, the European Insolvency Regulation (Recast) aims to enhance the effectiveness of cross-border insolvency proceedings within the EU.

### **c. United Nations Model Law on Cross-Border Insolvency**

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<sup>9</sup> Chapter 15 of the U.S Bankruptcy Code

<sup>10</sup>European Insolvency Regulation (Recast), 2015.

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The UNCITRAL Model Law on Cross-Border Insolvency (1997) (MLCBI). The United Nations Model Law on Cross-Border Insolvency provides a template for countries to adopt consistent legal frameworks for cross-border insolvency.<sup>11</sup> It encourages the recognition of foreign proceedings and cooperation between jurisdictions. The Model Law emphasises the importance of communication and coordination among courts, insolvency representatives, and creditors to facilitate effective cross-border insolvency resolutions.

Adopting a flexible and adaptable approach, the Model Law allows countries to customise its provisions to suit their legal systems. By providing a common language and set of principles, it fosters a more predictable and streamlined cross-border insolvency process. The Model Law has been implemented in various jurisdictions, contributing to a more cohesive global approach to cross-border insolvency.

## **2. Indian Framework vs. International Standards**

### **a. Recognition and Enforcement Mechanisms**

Section 234 of the Insolvency and Bankruptcy Code (IBC) addresses cross-border insolvency in India. While India has made strides in recognising the importance of international cooperation, the mechanism provided under Section 234 is not as comprehensive as Chapter 15 of the U.S. Bankruptcy Code or the European Insolvency Regulation (Recast). There is room for improvement in providing more robust recognition and enforcement mechanisms to align with international standards.

### **b. Treatment of Foreign Creditors**

The treatment of foreign creditors under the IBC reflects a commitment to equal treatment, aligning with international standards. However, challenges may arise in practice, and the efficiency of the process may benefit from further refinements. Comparative analysis with the European Union and the United States could shed light on best practices for ensuring fair and equitable treatment of foreign creditors in the Indian context.

### **c. Cooperation with Foreign Courts**

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<sup>11</sup>The UNCITRAL Model Law on Cross-Border Insolvency (1997) (MLCBI).

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The IBC acknowledges the need for cooperation with foreign courts through Section 234. However, the level of collaboration might be enhanced by drawing insights from the experiences of the United States and the European Union. Establishing more robust mechanisms for information exchange and coordination between Indian and foreign courts could contribute to a more effective resolution of cross-border insolvency cases<sup>12</sup>.

## **CHALLENGES In Cross-Border Insolvency: Indian Context**

### **1. Legal and Jurisdictional Challenges**

#### **a. Conflict of Laws Issues**

In the Indian context of cross-border insolvency, conflict of laws arises due to the diversity of legal systems across jurisdictions. The challenge lies in determining which legal framework takes precedence when addressing issues such as creditor rights, priority of claims, and the treatment of assets. The absence of clear guidelines can result in legal uncertainty, making navigating the complexities of insolvency proceedings involving multiple jurisdictions challenging.

#### **b. Divergent Legal Systems**

Cross-border insolvency involves navigating through legal systems with varying principles and procedures. India's legal system may differ significantly from other countries involved in insolvency proceedings. Divergence in legal norms poses challenges in understanding and reconciling different legal concepts, leading to delays and potential conflicts in the resolution process.

#### **c. Jurisdictional Conflicts**

Jurisdictional conflicts emerge when multiple countries claim authority over a cross-border insolvency case. Determining the primary jurisdiction for initiating proceedings and addressing conflicting claims can be complex. The lack of a standardised approach often results in forum shopping, where stakeholders choose jurisdictions favouring their interests. Resolving

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<sup>12</sup>PRS Legislative Research, Report Summary Insolvency Law Committee on Cross-Border Insolvency, PRS India(1-11-2018),

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jurisdictional conflicts is crucial for ensuring a fair and efficient cross-border insolvency resolution.

## **2. Recognition and Enforcement Challenges**

### **a. Lack of Uniform Recognition Mechanisms**

One significant challenge in the Indian context is the absence of a uniform mechanism for recognising foreign insolvency proceedings. While Section 234 of the Insolvency and Bankruptcy Code (IBC) addresses cross-border insolvency, the lack of detailed provisions and a standardised recognition process can lead to inconsistent outcomes. A more structured and predictable mechanism is necessary for recognising and enforcing foreign insolvency judgments<sup>13</sup>.

### **b. Enforcement of Foreign Judgments**

Enforcing foreign judgments in Indian courts poses challenges due to procedural differences and the need to comply with local laws. The process may be time-consuming and resource-intensive, hindering the expeditious resolution of cross-border insolvency cases. Developing more explicit guidelines and streamlined procedures for enforcing foreign judgments is essential to enhance the effectiveness of cross-border insolvency proceedings in India.

### **c. Inconsistencies in Treatment**

The treatment of foreign creditors in Indian cross-border insolvency cases may lack uniformity. Inconsistencies in the recognition and satisfaction of foreign claims can discourage international creditors from participating in insolvency. Achieving a fair and equitable treatment of all creditors, irrespective of origin, requires addressing inconsistencies and promoting a more predictable framework.

## **3. Communication and Cooperation Challenges**

### **a. Language Barriers**

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<sup>13</sup> § 234 of Insolvency and Bankruptcy Code, 2016.

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Effective communication is essential in cross-border insolvency, but language barriers can impede the exchange of information between stakeholders from different jurisdictions. Language differences may hinder legal documents, court proceedings, and communication between insolvency practitioners. Overcoming language barriers fosters clear communication and facilitates a smoother resolution process.

### **b. Cultural Differences**

Cultural nuances can impact the understanding and interpretation of legal proceedings. Different cultural perspectives on insolvency and business practices may lead to misunderstandings or conflicts. Promoting cultural awareness and understanding can contribute to more effective communication and cooperation among stakeholders involved in cross-border insolvency cases.

### **c. Practical Issues in Coordination**

Practical coordination challenges, such as time zone differences and logistical issues, can hinder the seamless collaboration required in cross-border insolvency cases. Scheduling meetings, conducting hearings, and coordinating activities across diverse jurisdictions may be logistically challenging. Implementing practical solutions, such as leveraging technology for virtual collaboration, is crucial to overcoming these coordination challenges<sup>14</sup>.

## **Proposed Enhancement To Indian Cross-Border Insolvency Framework**

### **1. Amendments to the Insolvency and Bankruptcy Code**

#### **a. Strengthening Recognition and Enforcement Provisions**

To enhance the Indian cross-border insolvency framework, amendments to the Insolvency and Bankruptcy Code (IBC) should focus on strengthening the provisions related to the recognition and enforcement of foreign insolvency proceedings. Apparent and standardised guidelines should be introduced, specifying the criteria for recognising foreign judgments and ensuring seamless enforcement within the Indian legal system. This may involve adopting best practices from international models, such as Chapter 15 of the U.S. Bankruptcy Code and the European

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<sup>14</sup>“Cross-Border Insolvency: A Way Forward For The Indian Framework - Insolvency/Bankruptcy - India”.

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Insolvency Regulation (Recast), to provide a more robust legal foundation for cross-border cooperation.

### **b. Improving Cooperation Mechanisms**

Amendments should be considered to refine and expand the cooperation mechanisms outlined in Section 234 of the IBC. The legislation could be further developed to establish a formal framework for communication and coordination between Indian and foreign courts, insolvency professionals, and other stakeholders. Creating a more structured approach to cooperation will help address jurisdictional challenges and conflicts of laws and streamline the overall cross-border insolvency resolution process.<sup>15</sup>

### **c. Addressing Treatment Disparities**

Proposed amendments should explicitly address and rectify any disparities in treating domestic and foreign creditors under the IBC. The objective is to ensure equitable treatment for all creditors, regardless of origin, by establishing clear guidelines for recognising and satisfying foreign claims. This may involve refining the hierarchy of claims and distribution mechanisms to align with international standards, fostering a fair and transparent cross-border insolvency process.

## **2. Bilateral and Multilateral Agreements**

### **a. Enhanced Collaboration with Key Trading Partners**

India should actively engage in bilateral agreements with key trading partners to facilitate more effective cross-border insolvency resolutions. These agreements can establish reciprocal recognition mechanisms and cooperation frameworks, enabling a smoother exchange of information and coordination between jurisdictions. By tailoring agreements to the specific needs of each trading partner, India can create a network of reliable collaborations that enhance the global efficiency of cross-border insolvency proceedings.

### **b. Participation in International Initiatives**

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<sup>15</sup><https://ibbi.gov.in/uploads/resources/c7c2ac1cf824e7ec6d90d165d8725630.pdf>

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Active participation in international initiatives, such as the UNCITRAL Model Law on Cross-Border Insolvency<sup>16</sup>, will contribute to the development of a globally harmonised approach. India can work towards aligning its cross-border insolvency framework with international best practices through collaboration with international organisations. By participating in forums and initiatives focused on cross-border insolvency, India can contribute to the evolution of global standards and benefit from shared knowledge and experiences.<sup>17</sup>.

### **3. Capacity Building and Training**

#### **a. Training Programs for Insolvency Professionals**

Special training programs should be established to equip insolvency professionals with the skills needed for cross-border cases. These programs can cover the intricacies of handling international insolvency proceedings, including understanding foreign legal systems, navigating recognition procedures, and fostering effective communication in a global context. Developing a pool of well-trained professionals will enhance the competence and efficiency of cross-border insolvency practitioners in India.

#### **b. Cross-Border Insolvency Awareness Initiatives**

Raising awareness about cross-border insolvency issues is crucial for stakeholders in the Indian legal and business communities. Initiatives should be launched to educate judges, legal professionals, creditors, and other stakeholders about the complexities and advantages of cross-border insolvency frameworks. India can promote informed decision-making and facilitate smoother cross-border insolvency resolutions by fostering a deeper understanding of international insolvency practices.

### **CASE STUDIES: Lessons Learned From Indian Cross-Border Insolvency Cases**

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<sup>16</sup>Article 16(3) UNCITRAL, Model Law on Cross-Border Insolvency 1997.

<sup>17</sup> Available at: [https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\\_insolvency/status](https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status).

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1. JUDICIAL RECOGNITION- JET AIRWAYS DISPUTE [State Bank of India v. Jet Airways (India) Ltd.]<sup>18</sup>

In 2019, Jet Airways became the first Indian company involved in a cross-border ruling in India. With the direction to conduct a “Joint Corporate Insolvency Resolution Process”, the National Company Law Tribunal (NCLT) set a leading precedent for the coming cross-border insolvency disputes.

An application under Section 7 of the IBC was filed by the State Bank of India against Jet Airways, on the admission of which the corporate insolvency resolution process began on 20.06.2019. The NCLT was aware of the commencement of insolvency proceedings against Jet Airways in the Dutch Court, with a bankruptcy administrator appointed in the Netherlands to decide the fate of Jet Airways' assets in the Netherlands. The Dutch proceedings began when two European creditors filed a bankruptcy petition against Jet Airways, claiming unpaid dues amounting to INR 280 crores.<sup>19</sup>

The Bankruptcy Administrator appointed by the Dutch Court moved the Mumbai Bench of NCLT, praying the Bench to recognise the insolvency proceedings which had commenced in The Netherlands and stay the insolvency proceeding in India against Jet Airways since a competent Court as per Article 2(4) of the Dutch Bankruptcy Act was adjudicating the matter in The Netherlands.

Parallel proceedings in separate jurisdictions would detriment the interest of the creditors and have a bearing on the restructuring of the assets and claims against the corporate debtor. The NCLT, however, refused to stay the proceedings since Sections 234 and 235 of the IBC, which covered cross-border insolvency, had not been into effect, barring the Bankruptcy Administrator from participating in the Indian insolvency proceedings. The NCLT also refused to recognise the proceedings that had commenced in the Netherlands and declared them void. On an Appeal before the National Company Law Appellate Tribunal (NCLAT) filed by the Bankruptcy

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<sup>18</sup>*State Bank of India v. Jet Airways (India) Ltd* [CP(IB) 2205(MB)/2019].

<sup>19</sup> “Boeing 777 Held by Dutch Sold; Insolvency Process to Close Now: Jet Airways” (Business Standard, September 4, 2021).

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Advisor, the Order passed by the NCLT was set aside on an assurance that the alienation of any offshore assets of Jet Airways shall not happen by the Bankruptcy Administrator.

Further, cooperation between the bankruptcy administrator and resolution professional was directed by the NCLAT, which allowed the bankruptcy administrator to participate solely in the meetings of the committee of creditors as well as an observer.

Under the decision, a cross-border insolvency protocol was devised by the Resolution Professional and the Bankruptcy Administrator, who had considered the principles of the Model Law. India was identified as the COMI, and the Dutch proceedings were non-main centre proceedings.

## **2. The Curious Case of Videocon Industries: First Indian “Group Insolvency”**

*State Bank of India v. Videocon Industries Ltd*, MA 2385/2019 in C.P.(IB)-02/MB/2018, decided on 12-2-2020<sup>20</sup>.

Case In August 2019, the Mumbai Bench of NCLT recognised the principle of “substantial consolidation” and allowed 13 of the 15 Videocon Group companies to be consolidated. It was for the first time when consolidation of group companies for insolvency proceedings received a green signal under IBC, given the rationale that it would help maximise the debtor's asset value, thereby setting a benchmark for group insolvency. The doctrine of “substantial consolidation” is primarily an enabling doctrine by way of which adjudicating authority combines/merges the assets and liabilities of the individual corporate entities and proceeds with a joint insolvency resolution and restructuring process to achieve a fair value for the stressed assets of group companies while keeping in mind the interests of the creditors. In December 2017, SBI filed an insolvency application against Videocon Industries at NCLT, Mumbai Bench, seeking to admit and initiate CIRP proceedings. Soon after the admission of Videocon Industries to CIRP, the SBI-led consortium moved an application seeking “substantial consolidation” of the 15 companies belonging to the corporate debtor, where the consortium was the joint creditor. Meanwhile,

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<sup>20</sup>*State Bank of India v. Videocon Industries Ltd*, MA 2385/2019 in C.P.(IB)-02/MB/2018, decided on 12-2-2020.

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separate CIRP proceedings were instituted against all the individual entities. However, they failed to obtain any attractive bid because of the lack of collateral assets and their inability to survive individually. In the absence of any express provision in the Code, the Tribunal analysed bankruptcy jurisprudence in the US and the UK and subsequently, using its equity jurisdiction, decided in favour of the consortium. Interestingly, in February 2020, NCLT allowed the second round of group insolvency of Videocon Industries with four foreign-based companies. The Tribunal ordered to club overseas oil and gas businesses in the ongoing insolvency proceedings on a plea filed by the managing director of the Videocon Group for an extension of the moratorium, thereby questioning the extraterritorial applicability of IBC and procedure involved in the collation of foreign subsidiaries assets with the ones in India. This case, all over again, voiced the issues surrounding coordination theory in cross-border insolvency and expressed the need for legislation.

## **Conclusion**

### **1. Recapitulation of Findings**

#### **a. Areas of Alignment with Global Standards**

The analysis reveals that India has made significant strides in aligning its cross-border insolvency framework with global standards. The enactment of Section 234 of the Insolvency and Bankruptcy Code (IBC) reflects a commitment to addressing cross-border insolvency issues. The paper identified areas of alignment with international models, such as the United States' Chapter 15 and the European Union's Insolvency Regulation (Recast), particularly in recognising the importance of foreign insolvency proceedings and fostering cooperation between jurisdictions.

#### **b. Key Challenges Faced by Indian Entities**

Indian entities grappling with cross-border insolvency encounter various challenges. These include conflicts of laws, divergent legal systems, and jurisdictional conflicts, hindering a seamless resolution process. Recognition and enforcement issues, disparities in treating foreign

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creditors, and communication barriers pose additional hurdles. Understanding these challenges is crucial for proposing targeted solutions and refining the Indian cross-border insolvency framework<sup>21</sup>.

### **c. Proposed Solutions for a Harmonized Framework**

The proposed enhancements encompass legislative amendments, bilateral and multilateral agreements, and capacity-building initiatives. Amendments to the IBC aim to strengthen recognition and enforcement provisions, improve cooperation mechanisms, and address treatment disparities<sup>22</sup>. Engaging in bilateral agreements and participating in international initiatives are crucial for enhancing collaboration with key trading partners and aligning India's framework with global best practices. Capacity building, including training programs for insolvency professionals and awareness initiatives, ensures a skilled workforce and fosters a deeper understanding of cross-border insolvency issues.

## **2. Future Outlook for Indian Cross-Border Insolvency**

### **a. Anticipated Developments in Indian Insolvency Laws**

The future outlook for Indian cross-border insolvency involves anticipated developments in the country's insolvency laws. Influenced by international experiences and best practices, legislative amendments are likely to refine and enhance the existing framework. Incorporating more precise guidelines for recognising and enforcing foreign judgments, streamlined cooperation mechanisms, and more equitable treatment of foreign creditors can be expected.

### **b. The Role of International Collaboration in Shaping the Future**

International collaboration will play a pivotal role in shaping the future of Indian cross-border insolvency. Continued participation in global initiatives and partnerships with key trading partners will contribute to developing a harmonised global approach. Learning from the experiences of other jurisdictions, sharing best practices, and actively participating in international forums will inform the evolution of India's cross-border insolvency laws.

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<sup>21</sup> [https://www.mca.gov.in/Ministry/pdf/constitutionOrder\\_30012020.pdf](https://www.mca.gov.in/Ministry/pdf/constitutionOrder_30012020.pdf)

<sup>22</sup> <https://www.ibbi.gov.in/uploads/resources/c3593c9f41984c6f31f278974de3cf37.pdf>

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This comprehensive seminar paper seeks to contribute valuable insights to the academic discourse on cross-border insolvency from an Indian perspective. By analysing the historical evolution of Indian insolvency laws, comparing them with international standards, and proposing targeted enhancements, the paper aims to foster a more effective, efficient, and harmonised approach to cross-border insolvency. As India continues to be an integral part of the global economic landscape, the evolution of its cross-border insolvency framework will be critical for ensuring the smooth resolution of complex international insolvency cases and promoting investor confidence in the Indian business environment.

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