

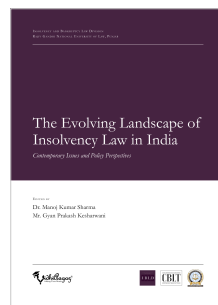
CHAPTER 10

Complexities of Group Cross-Border Insolvency and Arbitration in India

Mansi Jain and Shanya Mishra

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CHAPTER 10

Complexities of Group Cross-Border Insolvency and Arbitration in India

MANSI JAIN* AND SHANYA MISHRA**

The Insolvency and Bankruptcy Code, 2016 (IBC) brought a time-bound and creditor-driven insolvency procedure to India, but it has no comprehensive framework for group or cross-border insolvencies, even though corporate groups and cross-border businesses are now the standard. Since the Code treats each company in a group as a separate debtor, the result is delay, a fragmented resolution process and a loss of value, as happened in the cases of IL&FS and Videocon.

Sections 234 and 235 do provide for cooperation with foreign jurisdictions, but in practice this has not worked because India has no bilateral agreements and no mechanism to allow concurrent proceedings. The draft Part Z also says nothing on group insolvency. The position is made worse by the fact that the IBC, the Arbitration and Conciliation Act, 1996 and the New York Convention operate independently of one another, which leads to conflicts between foreign arbitral awards and the Section 14 moratorium, as well as the public policy exception. This paper examines the IBC along with relevant Indian court decisions, such as those in the Jet Airways and Videocon cases, and compares them with the approaches of the UK, Singapore, the US and the UNCITRAL Model Laws on cross-border and enterprise group insolvency.

It argues that judicial remedies like the one in Jet Airways lack consistency, predictability and international coherence. To address this, the paper suggests that India adopt the 2019 Model Law on Enterprise Group Insolvency and bring its group resolution mechanisms into the IBC. This would include the judicial cooperation provisions in Sections 234 and 235, a moratorium, and approval of the adjudicating authority when foreign judgments are enforced against insolvent debtors, along with a single resolution professional for the group companies.

These reforms would make the system more predictable and rule-based, which should improve value maximization, creditor recoveries and investor confidence. It would also strengthen India's reputation as a reliable insolvency restructuring jurisdiction and reduce forum shopping.

Keywords: Cross-Border Insolvency, Group Insolvency, UNCITRAL, Foreign Arbitral Awards

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1 INTRODUCTION

The Insolvency and Bankruptcy Code (IBC), 2016, represents a significant milestone in India's legal framework for resolving corporate insolvency and plays a crucial role in the management of distressed assets, non-performing assets (NPAs), and fraud containment within the banking sector. By consolidating various fragmented laws into a single, streamlined process, the IBC facilitates a time-bound resolution mechanism aimed at maximizing the value of distressed assets and providing a structured pathway for debt recovery and restructuring. This has contributed to reducing the accumulation of NPAs and enhancing transparency and oversight and thereby mitigating opportunities for fraud in bank transactions and corporate governance. Despite these strengths, the IBC faces challenges such as protracted resolution timelines and comparatively low recovery rates for some creditors, indicating the necessity for ongoing reforms¹. Furthermore, while the code acknowledges cross-border insolvency and foreign proceedings, it currently lacks a comprehensive legislative regime that fully integrates cross-border insolvency with international arbitration standards. This gap is particularly relevant to the evolving context of cross-border insolvency and arbitration in India, which remains an important area for development to align India's Insolvency framework with global best practices. This analysis underscores the foundational impact of IBC on India's insolvency ecosystem while highlighting critical areas aligned with my research on cross-border insolvency and arbitration under the IBC framework. Prior to 2016, India's insolvency was shaped by a patchwork of laws, such as the Sick Industrial Companies (Special Provisions) Act, the Recovery of Debts Due to Banks and Financial Institutions Act, the Companies Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. Inefficient recovery processes and mounting non-performing assets in the banking sector spurred a need for systematic reform.

The deficiencies exposed by India's prior insolvency regime, notably the excessively protracted resolution timelines and the suboptimal recoveries highlighted in the World Bank's annual Ease of Doing Business reports, exerted a profound influence on India's investment environment and the overall availability of credit in the economy. The convoluted web of disparate, often conflicting laws governing corporate distress led to unpredictability and inefficiency, thereby discouraging both domestic and foreign investors and contributing to the escalating burden of non-performing assets across India's banking sector². In response to these systematic impediments, the objective became clear: to institute a

¹ Mahender Pal Arora & Vikalp Shrivastava, *A Critical Review of Corporate Insolvency Resolution Process Under India's Insolvency and Bankruptcy Code, 2016 in Resolution of Distressed Assets and Containment of Non-Performing Assets and Reduction in Occurrence of Frauds of Banks in India*, 11 RUSSIAN L.J. 485, 486–87 (2023).

² Williams C. Iheme, *Remedying the Defects in India's Credit and Insolvency Frameworks with Adapted Solutions from the Anglo-American Legal Scholarships*, 11 PRAVNI ZAPISI 580, 581–610 (2020).

unified, swift, and predictable mechanism for the resolution of insolvency and bankruptcy that would apply uniformly to corporate entities, partnerships, and individuals. It was in this context that the Bankruptcy Law Reforms Committee (BLRC), established by the Ministry of Finance in 2014, played a vital role in shaping substantive reform. The BLRC critically evaluated the existing landscape and identified protracted delays as the principal obstacle to effective resolution and value maximization. The committee's recommendations centered on creating a singular, comprehensive legislative framework underpinned by firm statutory timelines for the resolution of insolvency proceedings. This vision was operationalized through the introduction of the draft bill of Insolvency and Bankruptcy in Parliament in 2015. Following parliamentary scrutiny and debate, the legislation was enacted and brought into force in May 2016. The IBC thus represented a transformative departure from the prior fragmented regime, laying the foundation for a modern Insolvency law in India premised on efficiency, predictability, and global best practices. This paper aims to clarify why a comprehensive group insolvency framework is necessary and how the existing UNCITRAL Model Law on Cross-border Insolvency (MLCBI) can supplement and enhance it.

2 UNDERSTANDING GROUP INSOLVENCY

The Insolvency and Bankruptcy Code (IBC 2016) operates as a comprehensive legal framework that regulates insolvency resolution and bankruptcy proceedings in India for companies, partnerships, and individuals. It replaces a fragmented and inconsistent set of laws with a streamlined, creditor-led mechanism aimed at expediting the insolvency process³. Under the IBC, insolvency proceedings are initiated through a formal application, triggering the appointment of a licensed insolvency professional who manages the debtor's assets and business operations during the resolution phase⁴. The code emphasizes a strict timeline for completion, generally 180 days, with a possible extension up to 270 days - ensuring that insolvency resolution does not drag on indefinitely⁵. If no resolution plan is approved by the Committee of creditors within this timeframe, the company will undergo liquidation to safeguard creditors' interests⁶. The Insolvency and Bankruptcy Board of India (IBBI) serves as the regulatory authority overseeing insolvency professionals, processes, and information utilities, fostering transparency and accountability throughout the insolvency ecosystem. The IBC fundamentally shifts control from the debtor to creditors, who exercise influence through the committee of creditors and hold the authority to approve or reject resolution

³ Insolvency and Bankruptcy Code, 2016, § 6.

⁴ *Id.* §§ 16, 17.

⁵ *Id.* § 12.

⁶ *Id.* § 33.

plans⁷, marking a departure from traditional debtor-in-possession and strengthening creditor confidence in India's insolvency law.

The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, was created to equip states with a modern, harmonized, and equitable legal framework for addressing instances of cross-border insolvency involving debtors facing severe financial distress. Its fundamental purpose is to facilitate effective legal cooperation between courts and authorities of different countries, ensure legal certainty for trade and investment, enable fair and efficient administrations of cross-border insolvencies, protect the interests of all creditors and stakeholders, and maximize the value of the debtor's assets. The model law is structured into four main parts, focusing on access, recognition, cooperation, and coordination, and serves as a reference for national authorities seeking to modernize their insolvency regimes. Accompanying resources, such as the 2009 Practice Guide and the 2013 Judicial perspective, offer practical guidance for courts and insolvency practitioners. Importantly, the model law does not unify substantive insolvency law but introduces a robust procedural mechanism for dealing with concurrent insolvency proceedings across jurisdictions. Recognizing the evolution of insolvency practices, UNCITRAL also adopted the model law on recognition and Enforcement of insolvency-related judgments in 2018, providing a formal framework for the recognition and enforcement of cross-border insolvency judgments to further promote certainty and efficiency in multinational insolvency cases⁸. The term Corporate group or enterprise group refers to a number of companies consisting of parent and subsidiary companies, or generally, two or more distinct legal entities linked through either direct or indirect forms of control or ownership⁹. Such groups are common in cross-border insolvencies, given that they often have branches or separate legal entities in different countries. The need for a comprehensive group insolvency framework in India is increasingly evident as interconnected corporate groups and cross-border business operations become the norm in the modern economy. High-profile cases such as IL&FS and Videocon have revealed how the current entity-based approach under the Insolvency and Bankruptcy Code (IBC) leads to protracted timelines, fragmented resolution, and value erosion as group entities must undergo separate proceedings despite intertwined financial obligations and operations¹⁰. Business press and policy analyses have consistently

⁷ *Id.* § 30.

⁸ G.A. Res. 52/158, annex, UNCITRAL Model Law on Cross-Border Insolvency, U.N. GAOR, 52d Sess., Supp. No. 17, U.N. Doc. A/52/17 (1997).

⁹ Nora Wouters & Alla Raykin, *Corporate Group Cross-Border Insolvencies Between the United States & European Union: Legal & Economic Developments*, 29 EMORY BANKR. DEV. J. 387 (2013).

¹⁰ D. Chakraborty, *Group Insolvency Framework: When One Is Not for All*, NEW INDIAN EXPRESS (2025), <https://www.newindianexpress.com/opinions/2025/Jun/04/group-insolvency-framework-when-one-is-not-for-all> (last visited July 27, 2025).

highlighted that a unified group insolvency mechanism promises significant benefits, including improved recovery rates, preservation of enterprise value, and greater procedural efficiencies for creditors and stakeholders¹¹. Indian scholars and insolvency practitioners emphasize that addressing group insolvency is essential to reflect the commercial realities of complex business groups, where a default in one entity often triggers systemic distress across affiliates¹². There is now a broad academic and policy consensus that India should shift from a rigid company-by-company resolution model toward approaches that enable procedural coordination, joint hearings, and even substantive consolidation – thereby aligning local practice with global standards such as those espoused by the UNCITRAL Model Law on Enterprise Group Insolvency¹³. A coordinated insolvency process for enterprise groups is crucial to maximizing overall enterprise value, ensuring consistent legal application, equitable treatment of creditors, procedural fairness, employment protection, and respecting each entity's separate legal status. The most effective method is a centralized proceeding that reduces costs, expedites resolution, and provides a single forum for decision-making, while preventing unilateral actions that may harm collective interests. However, challenges include respecting creditors' diverse rights under national laws, aligning conflicting interests, and safeguarding national sovereignty. Existing group insolvency solutions vary; joint proceedings facilitate procedural consolidation without merging assets, and substantive consolidation merges estates but is rarely used due to its drastic legal impact. Cross-Border coordination is enhanced by the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), which promotes cooperation, foreign representative access, and recognition of foreign proceedings. Furthermore, the UNCITRAL Model Law on Enterprise Group Insolvency (2019) specifically addresses group insolvency issues, complementing the MLCBI framework. Together with the UNCITRAL Legislative Guide and Practice Guide, these provide a foundation for harmonized and effective cross-border insolvency resolution¹⁴.

Implementing a single, unified insolvency proceeding for corporate groups is challenging due to differing national laws, creditor interests, and respect for sovereignty. To address these challenges, mechanisms such as joint proceedings, which consolidate procedural aspects while maintaining separate estates, are common in the U.S. and Canada but less so in

¹¹ M. Behura, *IBC 2.0: India Greenlights Game-Changing Group Insolvency Framework*, ETLEGALWORLD.COM (2025), <https://legal.economictimes.indiatimes.com/news/law-policy/ibc-2-0-india-greenlights-game-changing-group-insolvency-framework/122183321> (last visited July 27, 2025).

¹² *Group Insolvency: Harnessing Synergies*, Chairperson's Desk, Insolvency and Bankruptcy Board of India (IBBI) (2023) (on file with author).

¹³ Vivek Saurav & Dr. Bhanu Saxena, *Navigating Group Insolvency in India: Analyzing Implementation Challenges and Enterprise Dynamics for Modern Day Business Structure* (Jan. 17, 2024).

¹⁴ *Insolvency*, UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, <https://uncitral.un.org/en/texts/insolvency>.

Europe. Substantive consolidation, which merges assets and liabilities, is rare and reserved for exceptional cases with inseparable entities. Coordination mechanism, notably established by the UNCITRAL Model Law on Cross-Border Insolvency, facilitates cross-border judicial cooperation and recognition of foreign proceedings. Additionally, the UNCITRAL Model Law on enterprise group insolvency offers tailored solutions for group Insolvencies, promoting coordinated planning and restructuring. Together, these frameworks strive to balance efficiency, creditor protection, and sovereignty in cross-border insolvency cases.

3 LEGAL FRAMEWORK ON CROSS-BORDER INSOLVENCY IN INDIA

India's approach to cross-border insolvency is currently governed by Sections 234 and 235 of the Insolvency and Bankruptcy Code (IBC)¹⁵, which enable but do not operationalize cooperation with foreign jurisdictions. Section 234 allows the government to enter into bilateral agreements for mutual recognition and enforcement of insolvency proceedings, while Section 235 permits Indian courts to issue letter of request to foreign court concerning debtor assets abroad but only where reciprocity exists. While promoting the spirit of cooperation, its lacunae include no specific provisions outlining the manner of cooperation between local authorities and foreign court/authorities, no mechanism for dealing with the coordination of concurrent proceedings. In practice, India has not concluded any such bilateral agreements, rendering these provisions largely ineffective and causing fragmentation, delays, and inconsistent outcomes in multinational insolvency cases¹⁶. In order to address these gaps, the Insolvency Law Committee's 2018 draft "Part Z" proposes a comprehensive legislative framework based on the UNCITRAL Model Law¹⁷, emphasizing access for foreign representatives, recognition of foreign proceedings, relief and cooperation, with a notable public policy exception to prevent abuse. Similar to Article 17 of the Model law, it distinguishes between foreign main proceedings (based on COMI) and foreign non-main proceedings (based on establishment).

However, this draft excludes provisions for group insolvency, focusing only on individual entities and failing to address the interconnected realities of modern enterprise groups¹⁸. Indian courts have responded proactively to these legislative shortcomings. In *Jet Airways*, for example, the NCLAT initiated unprecedented cross-border judicial cooperation by

¹⁵ Insolvency and Bankruptcy Code, 2016, §§ 234, 235.

¹⁶ A. Rathore, *Navigating Cross-Border Insolvency: Evaluating India's Legal Framework and the UNCITRAL Model Law 2014 - NLIU Law Review*, NLIU REVIEW (2024), <https://nliulawreview.nliu.ac.in/blog/navigating-cross-border-insolvency-evaluating-indias-legal-framework-and-the-uncitral-model-law-2014/> (last visited July 27, 2025).

¹⁷ A. Avashia, *Cross-Border Insolvency in India – by Aditi Avashia*, IBC LAWS (2023), <https://ibclaw.in/cross-border-insolvency-in-india-by-aditi-avashia/> (last visited July 27, 2025).

¹⁸ D. Kumar, *Cross Border Insolvency Regime in India: Draft Part Z Vis A Vis the UNCITRAL Model Law*, 1 J.L. BUS. & ECON. 104–22 (2022).

approving a protocol with the Dutch trustee, allowing foreign participation in creditors' meetings and demonstrating judicial flexibility in the absence of a formal mechanism¹⁹. Similarly, the Videocon and IL&FS group insolvency cases saw the NCLT and NCLAT apply group-based resolution principles and frameworks out of necessity, despite a lack of express statutory backing, thereby advancing judicial intervention in addressing complex domestic and cross-border group insolvency scenarios.

The Indian Insolvency regime under the Insolvency and Bankruptcy Code, 2016, currently lacks a comprehensive framework for cross-border insolvency, relying instead on Sections 234 & 235, which enable reciprocal agreement and issuance of letters of request to foreign courts. This lacuna has been highlighted in complex cases involving multinational corporate groups, such as the consolidation proceedings concerning Videocon Group companies before the NCLT, Mumbai Bench. The tribunal, while addressing substantive consolidation of multiple CIRPs, acknowledged global practices, including UNCITRAL Model Law and comparative jurisprudence from the U.S. and E.U., to emphasize the need for a structured approach for group cross-border insolvency²⁰. The Judgment reflects the judiciary's recognition that the absence of clear statutory provisions creates challenges in achieving value maximization and coordinated resolution, thereby underscoring legislative urgency for adopting a model cross-border framework aligned with international best practices.

3.1 Indian Jurisprudence on Group and Cross-Border Insolvency

The Jet Airways case represents a landmark instance of ad hoc cross-border cooperation between the Indian NCLT and a Dutch Bankruptcy Trustee. The NCLAT's decision to permit the Dutch administrator's participation and finalize a cross-border insolvency protocol highlighted the court's willingness to innovate and coordinate in the absence of explicit legislative backing. In India there is no explicit legislative framework that governs such coordination. When parallel insolvencies were initiated – one in India and another in the Netherlands – the National Company Law Appellate Tribunal (NCLAT) approved an innovative protocol between jurisdictions despite initial refusal by the National Company Law Tribunal (NCLT) to recognize foreign proceedings. The NCLAT's order on September 26, 2019, formalized this cooperation, marking a significant judicial step towards cross-border insolvency coordination in India and demonstrating a proactive, pragmatic approach by Indian courts in line with International best practices, even in the absence of enabling

¹⁹ A. Yadav, *The Insolvency and Bankruptcy Code at Play: Jet Airways' Legal Battle for Survival*, AY ASSOCIATES (2024), <https://ayassociates.in/2024/11/13/insolvency-and-bankruptcy-code-at-play/> (last visited July 27, 2025).

²⁰ *State Bank of India v. Videocon Indus. Ltd.*, MA 1306 of 2018 (NCLT Mum. Aug. 8, 2019).

legislation²¹. One of the most significant judgments in the realm of cross-border group insolvency is the decision in Eurofood IFSC Ltd. In this landmark ruling, the European Court of Justice (ECJ) addressed the determination of a corporate group member's Centre of Main Interests under the European Insolvency Regulation. The ECJ affirmed that the presumption of COMI being located at the company's registered office is exceptionally strong and can only be rebutted by objective and ascertainable evidence – such as the place of actual management – clearly visible to third parties. This judgment profoundly influenced how insolvencies of multinational corporate groups are handled in Europe, making procedural consolidation far more difficult and typically resulting in separate proceedings for each group entity. The Eurofood ruling underscored the primacy of legal certainty and predictability for creditors in cross-border insolvency, while also highlighting the challenge of aligning legal form with commercial reality in complex group structures²². In another case, the²³ English court refused to recognize a U.S. court-appointed receiver as a foreign representative or the proceedings as a collective proceeding, citing the involvement of the Securities and Exchange Commission to prevent fraud. This illustrates potential challenges when proceedings do not align with “collective proceeding” definitions in other jurisdictions.

4 NEED FOR LEGISLATIVE REFORM IN INDIA

The persistent fragmentation of insolvency proceedings for group companies in India – largely stemming from the inadequacy of sections 234 and 235 of the Insolvency and Bankruptcy Code – creates considerable legal uncertainty, prolongs the resolution process, and increases the risk of inconsistent outcomes due to forum shopping. The lack of a unified approach means parallel proceedings across multiple jurisdictions are common, driving up costs and undermining judicial efficiency. This disjointed system also complicates the administration of parallel arbitration and insolvency cases, as reflected in examples like the Nortel Networks case, where litigation lingered even post-asset sales. For creditors, especially those abroad, these inefficiencies erode confidence over the discretionary and potentially expansive interpretation of the public policy exception in the IBC's proposed cross-border provisions. Moreover, despite the IBC's commitment to swift resolution, data reveal that a lengthy average resolution period persists, undermining both the effectiveness and

²¹ B. Indulia, Editor & Ridhi, *NCLAT: Joint CIRP Against Jet Airways to Continue, Dutch Trustee Allowed to Attend COC Meetings as Observer*, SCC TIMES (2019), <https://www.sconline.com/blog/post/2019/10/07/nclat-joint-cirp-against-jet-airways-to-continue-dutch-trustee-allowed-to-attend-coc-meetings-as-observer/> (last visited July 27, 2025).

²² Nora Wouters & Alla Raykin, *Corporate Group Cross-Border Insolvencies Between the United States & European Union: Legal & Economic Developments*, 29 EMORY BANKR. DEV. J. 387 (2013).

²³ Samuel L. Bufford, *International Insolvency Case Venue in the European Union: The Parmalat and Daisytek Controversies*, 12 COLUM. J. EUR. L. 429 (2006), <https://cjel.law.columbia.edu/print/2006/international-insolvency-case-venue-in-the-european-union-the-parmalat-and-daisytek-controversies/?cn-reloaded=1>.

predictability of the process. Experience from comparative cases such as KPNQwest and General Growth Properties²⁴ underscores that coordinated, group-wide proceedings not only foster economic efficiency and value maximization but are also vital for the robust protection of stakeholder interests in complex, transnational insolvencies. In contrast, the U.S. case of *In re General Growth Properties Inc.* highlights the benefits and controversies of coordinated group insolvency. General Growth, a real estate investment trust with hundreds of subsidiaries, filed for Chapter 11 bankruptcy for both the parent and its special purpose entities (SPEs). Despite objections from lenders who argued that solvent subsidiaries should not be swept into bankruptcy, the court permitted joint proceedings, citing the interconnected cash management and cross-default provisions among group entities. Ultimately, the bankruptcy court denied motions to dismiss the bankruptcies of the SPEs, permitting a centralized restructuring that prioritized the interests of the entire corporate group and resulted in full creditor recovery. This decision established a precedent for pragmatic, group-wide solutions in complex insolvencies, even where entity separateness would otherwise dictate fragmented processes²⁵.

International best practices in cross-border and group insolvency illustrate the importance of robust, coordinated frameworks. The UK, through its adoption of the UNCITRAL Model Law and case law such as *Collins & Aikman*, demonstrates the efficacy of centralized proceedings for corporate groups, promoting efficient restructuring and value maximization across multiple jurisdictions. However, the UK Supreme Court's decision in *Rubin v. Eurofinance*²⁶ clarified that while the Model Law aids recognition of insolvency proceedings, it does not authorize enforcement of foreign judgments in personam against third parties, thereby outlining significant limitations even in advanced regimes. Singapore's insolvency framework²⁷ represents a modern, flexible approach aligned with international standards. It centralizes corporate and personal insolvency laws, restricts contract-terminating clauses triggered by insolvency (ipso facto protection), and improves judicial management of transnational cases, serving as a model for legislative growth. The United States, by incorporating the UNCITRAL Model Law as chapter 15 and permitting both procedural and substantive consolidation under its Bankruptcy Code²⁸ allows complex corporates to

²⁴ Eva M.F. de Vette, *Multinational Enterprise Groups in Insolvency: How Should the European Union Act?*, 7 UTRECHT L. REV. 216 (2011), <https://www.utrechtlawreview.org/articles/10.18352/ulr.145/gallery/145/download> (last visited July 29, 2025).

²⁵ *In re Gen. Growth Props., Inc.*, 409 B.R. 43 (Bankr. S.D.N.Y. 2009).

²⁶ *Rubin v. Eurofinance* (2012), <https://www.supremecourt.uk/cases/uksc-2010-0184> (last visited 2025).

²⁷ Insolvency, Restructuring and Dissolution Act 2018, Act 40 of 2018.

²⁸ Ministry of Law, *Insolvency, Restructuring and Dissolution Act to Commence on 30 July 2020* (2020), <https://www.mlaw.gov.sg/news/press-releases/2020-07-23-insolvency-restructuring-and-dissolution-act-commencement/> (last visited July 27, 2025).

reorganize through joint or, in rare cases, fully consolidated proceedings if their finances are inextricably linked. This flexibility sets a useful precedent for legislative reform²⁹.

The experience of Indian courts, particularly evidenced by the Jet Airways case, shows that innovative, pragmatic judicial solutions can bridge statutory gaps in cross-border group insolvency, but this reliance on ad hoc interventions and judicial discretion lacks the consistency, predictability, and international alignment essential for effective insolvency resolution in today's interconnected commercial world. Codifying a comprehensive legislative framework for group cross-border insolvency, drawing on international best practices like the UNCITRAL Model Law, would ensure uniformity, strengthen international cooperation, and provide clear mechanisms for recognizing and enforcing foreign proceedings. Implementing such reforms is crucial not only to boost creditor and investor confidence, but also to safeguard asset value and streamline insolvency processes, positioning India as a reliable, modern jurisdiction for global business and financial stability³⁰.

5 CROSS-BORDER INSOLVENCY & ARBITRATION OVERLAP

Since the current framework under the IBC, the Arbitration and Conciliation Act, 1996, and the New York Convention³¹ function relatively independently in India, the intersection of cross-border insolvency and international arbitration presents particular legal and procedural challenges. The conflict results from the fact that arbitration is a private, party-driven procedure intended to settle disagreements between agreeing parties, while insolvency is fundamentally a collective enforcement mechanism intended to achieve fair distribution among creditors. Cross-border situations, where domestic insolvency orders and foreign arbitral awards may directly conflict, amplify this dichotomy³².

6 CONFLICT BETWEEN ARBITRATION AWARDS AND INSOLVENCY PROCEEDINGS

In 2015, in the case of *Addhar Mercantile Private Limited v. Shree Jagdamba Agrico Exports Pvt. Ltd.*³³, the Bombay High Court ruled that insolvency supersedes contractual arbitration

²⁹ J. Whiteoak, *UK Supreme Court Refuses to Enforce US Judgment Made in Insolvency Proceedings Against English Resident Defendants* | *Litigation Notes*, HERBERT SMITH FREEHILLS KRAMER (Nov. 1, 2012).

³⁰ *UK Supreme Court Refuses to Enforce US Judgment Made in Insolvency Proceedings Against English Resident Defendants*, HSFNOTES (Nov. 1, 2012), <https://hsfnotes.com/litigation/2012/11/01/uk-supreme-court-refuses-to-enforce-us-judgment-made-in-insolvency-proceedings-against-english-resident-defendants/>.

³¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958), 330 U.N.T.S. 3 (entered into force June 7, 1959).

³² Devna Arora & Didon Misri, *The Intersection Between Arbitration and Insolvency Proceedings: An Indian Perspective*, SCC TIMES (Jan. 1, 2023).

³³ *Addhar Mercantile Pvt. Ltd. v. Shree Jagdamba Agrico Exports Pvt. Ltd.*, Arbitration Application No. 197 of 2014 & Arbitration Petition No. 910 of 2013 (Bomb. H.C. June 12, 2015).

clauses and refused to refer parties to arbitration under Section 8 of the Arbitration Act³⁴, after winding-up proceedings had been started under the Companies Act. Despite existing before the IBC, Addhar Mercantile's tenet, that insolvency procedures take precedence over arbitration in cases where the two are incompatible, continues to shape judicial reasoning.

Similar challenges occur in cross-border insolvency instances when the moratorium under Section 14 of the IBC³⁵ conflicts with a foreign arbitral award that is enforceable under Part II of the Arbitration Act. In *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.* (2017), the Delhi High Court made it clear³⁶ that during insolvency, arbitral proceedings may proceed as long as they do not impact the corporate debtor's assets. However, if an award interferes with the insolvency estate, its enforceability is automatically halted.

7 ENFORCEABILITY ISSUES WITH FOREIGN ARBITRAL AWARDS DURING INSOLVENCY

India's obligations under the New York Convention require recognition and enforcement of foreign arbitral awards, subject to limited defences under Section 48 of the Arbitration Act³⁷, most notably the "public policy" exception. When insolvency proceedings are pending, courts have invoked this exception to stay or refuse enforcement of awards that would disrupt the collective claims process. In cross-border situations, this creates uncertainty for foreign creditors, especially where the seat of arbitration and the insolvency jurisdiction differ, as illustrated in the *Swiss Ribbons Pvt. Ltd. v. Union of India*³⁸ (2019), reasoning that insolvency objectives have a higher systemic priority.

In comparison, nations with more explicit statutory guidance on the relationship between insolvency and arbitration, such as Singapore (under the Insolvency, Restructuring and Dissolution Act 2018)³⁹ and the UK (under the Cross-Border Insolvency Regulations 2006)⁴⁰, frequently give the insolvency court the authority to either stay or allow arbitral enforcement based on whether doing so would benefit all creditors.

³⁴ Arbitration and Conciliation Act, 1996, § 8.

³⁵ Insolvency and Bankruptcy Code, 2016, § 14.

³⁶ *Power Grid Corp. of India v. Jyoti Structures Ltd.*, O.M.P. (Comm.) 397 of 2016 (Del. H.C. Dec. 11, 2017).

³⁷ Arbitration and Conciliation Act, 1996, § 48.

³⁸ *Swiss Ribbons Pvt. Ltd. v. Union of India*, Writ Petition (Civil) No. 99 of 2018, (2019) 3 SCR 535.

³⁹ Insolvency, Restructuring and Dissolution Act 2018, No. 40, 2018 (Sing.).

⁴⁰ Cross-Border Insolvency Regulations 2006, SI 2006/1030 (UK).

8 BLENDING IN PUBLIC POLICY CONSIDERATIONS

The difficulty is in balancing the contractual autonomy that supports arbitration with the “creditor equality” principle of the IBC. India’s support for arbitration, which has been upheld in cases such as *BALCO v. Kaiser Aluminium* (2012)⁴¹ and *Vijay Karia v. Prysmian Cavi* (2020)⁴², must be balanced with the public policy aspect of insolvency, which ensures value maximization and equitable distribution⁴³. Courts continue to make decisions on an individual basis in the absence of statutory clarification, leaving cross-border stakeholders in the dark.

A harmonized approach could include:

- Statutory clarification that foreign arbitral awards made against an insolvent debtor must first be approved by the adjudicating authority or resolution professional and then be subject to a moratorium⁴⁴ before they can be enforced.
- Using the UNCITRAL Model Law on Cross-Border Insolvency,^{45,46} protocols for parallel insolvency and arbitration proceedings are recognized.
- Frameworks for judicial cooperation that minimize duplication and conflicting orders by enabling insolvency courts⁴⁷ to communicate with arbitral tribunals in multi-jurisdictional disputes.

India can be a part of a group of countries that have effectively struck a balance between the public policy requirements of insolvency and the effectiveness and finality of arbitration by enacting legislation that codifies these principles. This would decrease forum shopping and improve predictability for international investors.

⁴¹ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Servs. Inc.*, Civil Appeal No. 7019 of 2005 (S.C. Sept. 6, 2012).

⁴² *Vijay Karia v. Prysmian Cavi e Sistemi S.r.l.*, Civil Appeal No. 1544 of 2020 (S.C. Feb. 13, 2020).

⁴³ *De-Coding Value Maximisation Under the Code*, SHARDUL AMARCHAND MANGALDAS & CO. (July 15, 2019), <https://www.amsshardul.com/insight/de-coding-value-maximisation-under-the-code/>.

⁴⁴ *All About Moratorium Under Section 14 of the Insolvency and Bankruptcy Code, 2016 Including Judicial Pronouncements*, IBC LAWS (Sept. 25, 2020), <https://ibclaw.in/all-about-the-moratorium-under-ibc-including-judicial-pronouncements/>.

⁴⁵ U.N. *Comm’n on Int’l Trade L.*, Consolidated Text of the UNCITRAL Model Laws on Cross-Border Insolvency, Recognition and Enforcement of Insolvency-Related Judgments, and Enterprise Group Insolvency (2021) (UNCITRAL guidance note and illustrative text).

⁴⁶ U.N. *Comm’n on Int’l Trade L.*, UNCITRAL Model Law on Cross-Border Insolvency, adopted May 30, 1997, U.N. Doc. MLCBI (1997).

⁴⁷ *Need for International Harmonisation of Cross-Border Insolvency Laws: Challenges and Prospects*, SCC TIMES (Apr. 19, 2024), <https://www.sconline.com/blog/post/2024/04/19/need-for-international-harmonisation-of-cross-border-insolvency-laws/>.

9 PROPOSAL FOR A HARMONIZED GROUP CROSS-BORDER INSOLVENCY

A progressive legislative conception must be developed according to the fundamental shortcomings in India's management of group and cross-border insolvency, especially the lack of statutory provisions for enterprise groups. The objective should be to bring the IBC into line with international best practices while tackling issues unique to India, like the backlog of cases in court, the existence of multinational corporations, and the rise in cross-border business dealings.

9.1 Adoption of the UNCITRAL Model Law on Enterprise Group Insolvency (2019)

The 1997 Model Law is expanded upon by the UNCITRAL Model Law on Enterprise Group Insolvency⁴⁸, which respects each entity's distinct legal personality while introducing particular tools for the coordinated management of group insolvencies. It includes the following: First, the protocols and agreements for judicial and practitioner cooperation; then, the group representatives to communicate with courts and insolvency practitioners across jurisdictions⁴⁹ and planning proceedings in one jurisdiction to coordinate restructuring across multiple group entities.

As research for the draft of the 2019 Model Law's versatility to both common law and blended legal systems, nations like Singapore and Australia have already included elements of the model law into their respective domestic laws⁵⁰. Adoption in India, perhaps through a particular part of the IBC, would fill the legal void and provide clarity in situations involving global corporations with assets and operations scattered across borders, like the insolvencies of Jet Airways⁵¹ and Videocon groups⁵².

⁴⁸ U.N. Comm'n on Int'l Trade L., UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment, adopted July 15, 2019 (U.N.).

⁴⁹ The Insolvency Service (UK), *Implementation of Two UNCITRAL Model Laws on Insolvency (UK)* (July 7, 2022, updated July 10, 2023), <https://www.gov.uk/government/consultations/implementation-of-two-uncitral-model-laws-on-insolvency>.

⁵⁰ Omar Hisham Al Hyari & Abdullah Rabee Al Ani, *Post-Award Arbitral Tribunal's Mandate Under the UNCITRAL Model Law and National Laws Based Thereon*, 7 HELIYON e07556 (July 2021), <https://doi.org/10.1016/j.heliyon.2021.e07556>.

⁵¹ State Bank of India v. Jet Airways (India) Ltd., C.P. (IB) No. 2205 of 2019 (NCLT Mum. Bench filed June 18, 2019).

⁵² State Bank of India v. Videocon Indus. Ltd., MA 2385 of 2019 in CP(IB)-02/MB/2018, (2020) ibclaw.in 158 NCLT (NCLT Mum. Bench Feb. 12, 2020) (per Smt. Suchitra Kanuparthi, Member (Judicial) & Chandra Bhan Singh, Member (Technical)).

9.2 Amendments to the IBC

9.2.1 *Introduction of Group Insolvency Resolution Mechanisms*

The lack of a framework for the integrated resolution of group enterprises was recognized by the Insolvency Law Committee in its 2021 Report on Group Insolvency⁵³. Based on UNCITRAL's guidelines and the Committee's recommendations, the IBC ought to incorporate:

- Joint application provisions that enable multiple group companies to file for bankruptcy under a single resolution plan in situations where any kind of dependency like managerial, operational, or financial is established.
- In rare instances, such as the U.S. case of *In re General Growth Properties Inc.*⁵⁴, where assets and liabilities are so entwined that separation would be illogical, substantive consolidation may be used.
- Similar to the UK's approach in *Collins & Aikman*, procedural coordination for distinct insolvency proceedings is necessary to prevent duplication and conflicting decisions⁵⁵.

9.2.2 *Judicial Cooperation Clauses*

Express judicial interaction provisions based on Article 25 of the UNCITRAL Model Law⁵⁶ should be incorporated into Sections 234 and 235 of the IBC. This would enable Indian courts to:

- a) Deal directly with insolvency representatives and foreign courts.
- b) Express approval to cross-border insolvency procedures (like the Jet Airways cooperation protocol between the Dutch Bankruptcy Trustee and the NCLT Mumbai).
- c) Subject to reciprocity, acknowledge and support foreign main and non-main proceedings without the need for bilateral treaties.

⁵³ COMM. TO EXAMINE THE ISSUES RELATED TO GROUP INSOLVENCY, REPORT OF THE COMMITTEE TO EXAMINE THE ISSUES RELATED TO GROUP INSOLVENCY AND THE UNCITRAL MODEL LAW ON ENTERPRISE GROUP INSOLVENCY (Dec. 2021).

⁵⁴ *In re Gen. Growth Props., Inc.*, 409 B.R. 43 (Bankr. S.D.N.Y. 2009).

⁵⁵ Craig Montgomery, Alex Thomson & Anna Agnello, *UK Model Law Consultation: Gibbs Preserved, Rubin Overruled*, FRESHFIELDS TRANSACTIONS (U.K.) (July 12, 2022), <https://transactions.freshfields.com/post/102hsos/uk-model-law-consultation-gibbs-preserved-rubin-overruled>.

⁵⁶ UNCITRAL Model Law on Cross-Border Insolvency art. 25 (1997).

9.2.3 Coordination with Cross-Border Arbitrations

Due to frequent clashes in insolvency and arbitration in international disputes, the IBC should specifically address: Initially acknowledging ongoing arbitral proceedings and the procedures for extending, halting, or incorporating them into the process of resolution. Furthermore, priority rules make it clear that, to prevent asset depletion, enforcement of foreign arbitral awards against an insolvent debtor must be subject to a moratorium and adjudicating authority approval⁵⁷. These provisions suggest procedural safeguards that would allow the two systems to coexist without compromising their respective goals.

9.3 Mechanism for Appointment of a Single Resolution Professional for Group Companies

The appointment of a single resolution professional (RP) can guarantee effectiveness, reduce expenses, and avoid competing tactics in situations where group companies have interconnected operations. The following should be part of the RP's mandate⁵⁸:

- Centrally controlled gathering of data among group companies to identify shared assets, cross-guarantees, and intercompany claims.
- Development of a coordinated resolution strategy that strikes a balance between maximizing group value and protecting the rights of individual creditors.
- The right to request court orders for joint hearings in cases where disagreements or approvals impact several group members.

This model is supported by international examples, as seen in the UK's Lehman Brothers⁵⁹. The Coordinated administrators used centralized strategies to manage cross-border entities and in order to facilitate restructuring, Singapore's courts have designated a single judicial manager for affiliated businesses.

9.4 Benefits of a Harmonized Framework

Implementing this integrated model would:

- Boost accuracy and predictability in complicated insolvencies involving multinational corporations with Indian assets.

⁵⁷ *Impact of Insolvency on Ongoing Arbitrations: A Brief Overview of the Legal Framework in India*, IBC LAWS, <https://ibclaw.in/impact-of-insolvency-on-ongoing-arbitrations-a-brief-overview-of-the-legal-framework-in-india-by-adv-pallavi-agrawalla/>.

⁵⁸ Rajeshwar Rao, *Strengthening the Insolvency and Bankruptcy Code (IBC) Framework for Effective Resolution*, speech delivered at the International Conclave (Insolvency & Bankruptcy Board of India/INSOL India), New Delhi (Dec. 7, 2024), BANK FOR INT'L SETTLEMENTS (Dec. 19, 2024), <https://www.bis.org/review/r241218g.htm>.

⁵⁹ *Lehman Bros. Holdings Inc. v. Joint Administrators of Lehman Bros. Int'l (Europe)*, [2017] UKSC 38 (appeal taken from Eng.).

- Increase the confidence of creditors and investors, especially those international parties who are cautious of India's present scattered strategy.
- Since parties would have clear statutory guidance for both domestic and cross-border disputes, there would be less litigation and forum shopping.
- Boost India's standing as a commercially reliable jurisdiction that adheres to the globally recognized insolvency standards set forth by UNCITRAL.

India would transition from depending on judicial spontaneity to a foreseeable, rule-based system that could manage the realities of globalized trade by codifying such a uniform legal framework⁶⁰. This is a strategic reform, not just a technical fix, that is necessary to incorporate India's insolvency regime into the global financial and legal system.

10 ANTICIPATED BENEFITS OF REFORM

Adopting a unified legal framework for group and cross-border insolvency in India that incorporates the UNCITRAL Model Law on Enterprise Group Insolvency, IBC amendments, and organized arbitration coordination would benefit the economy and stakeholders in plenty of ways.

10.1 Value Maximization and Reduced Litigation

Rather than merely dispersing assets through slow liquidation, a coordinated insolvency framework⁶¹ would enable the strategic restructuring of entire enterprise groups, maintaining going-concern value. A single resolution professional and joint resolution procedures can maximize asset sales, prevent duplication of effort, and find synergies among group companies.

10.2 Creditor Recoveries

Simplified group insolvency procedures ensure creditors receive an accurate and transparent distribution process while halting the reduction of the debtor's asset base. The process integration can lead to significantly higher creditor recoveries⁶² than isolated proceedings. Cross-border cooperation protocol's predictability and enforceability give international creditors more confidence to invest in and lend money to Indian companies.

⁶⁰ *India, Cross-Border Insolvency and Legal Reform*, CIVILSDAILY, <https://www.civildaily.com/news/india-cross-border-insolvency-and-legal-reform/>.

⁶¹ *SC Ruling on Liquidation Delays: Implications for Corporate Insolvency Resolution*, ET LEGALWORLD (Nov. 13, 2024), <https://legal.economictimes.indiatimes.com/news/litigation/sc-ruling-on-liquidation-delays-implications-for-corporate-insolvency-resolution/115229173>.

⁶² REPORT OF THE STANDING COMMITTEE ON FINANCE (2024–25) ON INSOLVENCY AND BANKRUPTCY LAW AND NCLT & NCLAT, Eighteenth Lok Sabha, Ministry of Corporate Affairs (Dec. 11, 2024).

10.3 Strengthening India's Global Image in Ease of Doing Business and Cross-Border Trade

An effective insolvency regime is crucial for attracting investment, in line with reports and rankings of the World Bank's Ease of Doing Business. India's standing in international trade and capital markets could grow if it embraced an internationally recognized framework, demonstrating its dedication to modern, accessible, and investor-friendly insolvency procedures. India has the potential to pick up the tracks of nations like the UK and Singapore⁶³, which have made insolvency reform a conscious strategy to serve as cross-border restructuring hubs.

10.4 Prevention of Asset Stripping and Forum Shopping

Gaps that currently allow companies to get involved with asset dispersion or jurisdictional arbitrage prior to or during insolvency would be resolved by a clear legislative framework. It would be less likely for debtors to move assets to less cooperative jurisdictions if judicial cooperation clauses and recognition of foreign main proceedings were in place⁶⁴. As displayed by the disjointed Videocon group insolvency prior to India implementing any official group regime, the coordinated approach also restricts opportunistic litigation by creditors seeking preferential forums.

10.5 Institutionalizing India's Role in Global Insolvency Cooperation

India could shift from being an observing party to a successful leader in establishing international insolvency standards by establishing a strong framework for cross-border insolvency. India's involvement in resolving multi-jurisdictional corporate distress would be institutionalized through active participation in bilateral judicial cooperation agreements and UNCITRAL Working Groups. Additionally, this would establish India as a reliable jurisdiction for both inbound and outbound investments, boosting its credibility in multilateral trade and investment talks.

11 CONCLUSION

India can be the next world leader in establishing international insolvency standards by establishing a strong cross-border insolvency framework. India's role in restitution would be

⁶³ *Singapore's Restructuring and Insolvency Regime Is a Tool for Local and International Companies*, MORGAN LEWIS PUBLICATIONS (Aug. 26, 2022), <https://www.morganlewis.com/pubs/2022/08/singapores-restructuring-and-insolvency-regime-is-a-tool-for-local-and-international-companies>.

⁶⁴ Aparna Ravi, *Filling in the Gaps in the Insolvency and Bankruptcy Code – Cross-Border Insolvency*, INDIA CORPLAW (May 17, 2016), <https://indiacorplaw.in/2016/05/17/filling-in-gaps-in-insolvency-and/>.

institutionalized through active participation in bilateral judicial cooperation agreements and UNCITRAL Working Groups. The ability of India's insolvency regime to formally acknowledge and successfully handle the intricacies of group structures in a globalized business environment will determine its future. The current fragmented approach under the IBC is insufficient to deliver timely, predictable, and value-maximizing outcomes due to the growing prevalence of multi-tiered corporate conglomerates and cross-border financial linkages.

A complete structure that includes judicial cooperation clauses, group insolvency resolution procedures, and harmonization with cross-border arbitration would not only close current legal gaps but also bring India's system into compliance with globally recognized norms like the UNCITRAL Model Law on Enterprise Group Insolvency (2019). India's insolvency law will be future-proofed by this proactive approach, protecting the interests of both domestic and foreign creditors while allowing it to effectively respond to intricate transnational restructurings.

Legislative urgency is crucial given the speed of international trade and the risks associated with cross-border financial distress. In high-stakes insolvencies, delayed action runs the risk of eroding asset value, enabling forum shopping, and eroding creditor confidence. On the other hand, prompt reform will strengthen India's ability to conduct business, raise its profile in the international investment arena, and establish it as a reliable jurisdiction for complex restructuring and insolvency cases.

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