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CROSS-BORDER INSOLVENCY IN INDIA:
FROM LEGAL UNCERTAINTY TO LEGAL CLARITY

"*When businesses transcend borders, insolvency should not remain confined within them*."

Tanu Agrawal

INTRODUCTION

Globalisation has turned many businesses into multinational enterprises, with assets, creditors, and operations spread across jurisdictions. That expansion has created a practical legal question: when a company fails in one country but owns property, owes debt, or has pending proceedings in another, which court should lead the process? In India, the answer is still not fully settled, and that is precisely why cross-border insolvency remains one of the most important unfinished areas of insolvency reform.

India's Insolvency and Bankruptcy Code, 2016, transformed domestic insolvency by promoting time-bound resolution and value maximisation. But the Code still does not contain a complete framework for insolvencies involving foreign jurisdictions, leaving courts, insolvency professionals, and creditors to navigate uncertainty through limited provisions and case-by-case innovation.

THE LEGAL STARTING POINT

The IBC contains only two express provisions on cross-border insolvency. Section 234 allows the Central Government to enter into reciprocal arrangements with foreign countries, while Section 235 enables the resolution professional to seek assistance from a foreign court or authority through such arrangements. These sections acknowledge the need for cooperation, but they do not create a full recognition regime for foreign proceedings or representatives.

In practice, that means India still lacks a clear statutory answer regarding the recognition of foreign main proceedings, the coordination of parallel proceedings, or the enforcement of relief across borders. The result is not just doctrinal incompleteness; it is commercial inefficiency.

JUDICIAL INNOVATION IN ACTION

The most important Indian illustration is *Jet Airways*. In that matter, insolvency proceedings were pending in India and in the Netherlands, and the National Company Law Appellate Tribunal had to address the consequences of simultaneous proceedings involving the same debtor. The NCLAT permitted the Indian resolution professional and the Dutch administrator to cooperate, including by collating offshore creditors' claims and protecting Jet Airways' overseas assets pending further proceedings.

That was a valuable stopgap, but it also revealed the weakness of the current system. The outcome depended on judicial discretion, not on a settled legislative mechanism. In other words, the law succeeded because the tribunal adapted creatively, not because the statute was ready.

Another useful marker is *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, where the Supreme Court reinforced the non-discriminatory treatment of creditors under the IBC, including foreign operational creditors. Although not a cross-border insolvency case in the strict sense, it reflects the Code's broader pro-creditor and pro-value philosophy.

THE CONTEMPORARY PROBLEM

The most pressing issue today is India's continued failure to enact a comprehensive cross-border insolvency regime based on internationally recognised standards. This gap matters because Indian companies increasingly hold overseas assets, and foreign corporations increasingly do business in India. Without a recognition-and-cooperation framework, creditors are left exposed to duplication, delay, and conflicting orders.

The effect is visible in six ways: duplication of proceedings, conflicting judicial directions, slower recovery of overseas assets, higher litigation costs, reduced investor confidence, and lower creditor recoveries. These problems are especially serious in aviation, infrastructure, technology, and financial services, where assets and operations are often distributed across countries.

WHAT CAUSES THE DELAY

The delay in reform is usually linked to concerns about reciprocity, judicial sovereignty, domestic creditor protection, and national security in strategic sectors. Those concerns are not trivial, but they do not justify indefinite inaction. The economic cost of uncertainty is already being borne by lenders, investors, and insolvency professionals who must operate without predictable rules.

The deeper issue is that the present framework assumes bilateral arrangements will be enough, while modern insolvency practice requires a general recognition system. Bilateralism is too slow, too selective, and too narrow for large commercial failures in a global economy.

THE UNCITRAL ANSWER

India’s reform path is already visible. The Insolvency Law Committee recommended the adoption of the UNCITRAL Model Law on Cross-Border Insolvency, with suitable modifications to protect Indian public policy and strategic interests. The Model Law is attractive because it creates a predictable framework built on four pillars: access for foreign representatives, recognition of foreign proceedings, cooperation between courts, and coordination of multiple proceedings.

UNCITRAL currently records that 62 States across 65 jurisdictions have used the Model Law and its accompanying Guide in reforming their cross-border insolvency laws including the United States, the United Kingdom, Singapore, Australia, Japan, and South Africa. The key advantage is not just uniformity; it is legal confidence. Parties know in advance how foreign proceedings will be treated, which reduces satellite disputes and preserves asset value.

THE SOLUTION INDIA NEEDS

India should move from judicial improvisation to legislative certainty. The solution should include: adoption of the UNCITRAL Model Law with a narrow public policy exception; statutory recognition of foreign insolvency representatives; cooperation mechanisms between Indian and foreign courts; coordination rules for concurrent proceedings; and specialised training, forms, and procedural rules for NCLT benches and insolvency professionals.

A phased approach would be wise. Begin with corporate debtors, where the need is greatest and international exposure is highest, and then expand once institutions are prepared. That approach balances reform with realism and avoids overburdening the system while still delivering a credible legal framework.

CONCLUSION

Cross-border insolvency in India has reached a turning point. Jet Airways proved that Indian institutions can cooperate across borders, but it also exposed the fragility of relying on ad hoc solutions. The IBC made domestic insolvency faster and more disciplined; the next step is to make cross-border insolvency equally clear, predictable, and enforceable.

For India's insolvency system to mature fully, legal certainty must replace legal improvisation. Only then can India protect creditor value, attract investment, and meet the realities of a global commercial economy.

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