The Indian Journal for Research in Law and Management
Open Access Law Journal – Copyright © 2026
Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

CROSS-BORDER INSOLVENCY IN INDIA

-ROHIT YADAV

INTRODUCTION

Globalization has significantly expanded cross-border commercial activities, enabling businesses to operate, hold assets and incur liabilities across multiple jurisdictions. Although this expansion generates economic opportunities, it also mitigates complex legal challenges that could arise if company becomes insolvent while its assets, creditors or businesses operations are spread across different countries. Cross-border insolvency involves legal proceedings concerning a debtor whose assets or creditors are located in multiple countries.

In India, the framework for insolvency and bankruptcy resolution is primarily governed by the Insolvency and Bankruptcy Code, 2016. The aforesaid code is comprehensive legislation designed to consolidate and amend existing laws concerning insolvency resolution of companies, limited liabilities entities, partnerships, and individuals.[1]

MEANING OF CROSS- BORDER SOLVENCY

Cross-border insolvency, also known as international insolvency. It pertains to scenario where an insolvent debtor holds credits and/or owes obligations to creditors in various jurisdictions across different countries. Although the Insolvency and Bankruptcy Code, 2016 (IBC), has made strides in harmonizing domestic insolvency processes in India, it lacks adequate procedures for regulating cross-border insolvency proceedings. The Ministry of Corporate Affairs (MCA), via its Insolvency Law Committee on Cross-Border Insolvency (ILC),

[1] https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.legal500.com/developments/thought-leadership/recognition-of-cross-border-insolvency-in-india/&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoECCUQAQ&usg=AOvVaw2QL2n20E4gg9xCN1zrP0jZ accessed on 11 September 2026

evaluated the implementation of the IBC and concluded that the current insolvency framework in India is not on par with global standards.[2]

LEGAL FRAMEWORK IN INDIA

As of now, India lacks fully developed legal framework to comprehensively address cross border insolvency issues. Nevertheless, Sections 234 and 235 of the IBC offer a limited mechanism for international cooperation.

Under Section 234, the Central Government is authorized to conclude bilateral agreements with foreign nations to ensure the enforcement of the IBC concerning assets or debtors situated outside India. [3]

Section 235 empowers the resolution professional or liquidator to make an application to the Hon'ble NCLT for a letter of request to a foreign court or authority for evidence taking or action relating to the assets of the debtor located abroad.[4]

Consequently, Indian courts depend on judicial comity and cooperation when handling in cross border cases. Despite these limitations, Indian courts and foreign jurisdictions have started to acknowledge cross border insolvency proceedings.[5]

UNICITRAL MODEL LAW

The United Nations Commission on International Trade Law adopted the UNCITRAL Model Law on Cross-Border Insolvency back in 1997. The four core elements of this law include:

i. Access – Gives foreign insolvency representatives and creditors access to local courts to seek aid.

---

[2] https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://drishtijudiciary.com/editorial/cross-border-insolvency&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoECF8QAQ&usg=AOvVaw0MMXt1HevAZ8g_hShwMYnQ accessed on 11 September 2026

[3] https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.legal500.com/developments/thought-leadership/recognition-of-cross-border-insolvency-in-india/&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoECCUQAQ&usg=AOvVaw2QL2n20E4gg9xCN1zrP0jZ accessed on 11 September 2026

[4] https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://drishtijudiciary.com/editorial/cross-border-insolvency&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoECF8QAQ&usg=AOvVaw0MMXt1HevAZ8g_hShwMYnQ accessed on 11 September 2026

[5] https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.legal500.com/developments/thought-leadership/recognition-of-cross-border-insolvency-in-india/&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoECCUQAQ&usg=AOvVaw2QL2n20E4gg9xCN1zrP0jZ accessed on 11 September 2026

ii. Recognition – It enables courts to recognize foreign insolvency proceedings and determine their effectiveness in domestic jurisdictions.
iii. Relief – Courts can offer relief for the assistance of foreign insolvency proceedings.
iv. Cooperation – Domestic and foreign courts and insolvency practitioners are encouraged to cooperate.

So far, 46 jurisdictions have adopted this model. Some of the major economies are the United States, Japan, the United Kingdom, Australia, and Canada.[6]

INDIA POSITION ON MODEL LAWS FOR CROSS-BORDER INSOLVENCY

The Bankruptcy Law Reform Committee acknowledged the potential advantages of the UNCITRAL Model Law while drafting the Insolvency and Bankruptcy Code (IBC) in 2016. The Indian government has recognized the advantages of the Model Law, as mentioned in the Economic Survey 2022. Despite recommendations from the committee, India has not yet adopted the UNCITRAL Model Law on cross-border insolvency. While India has been actively engaging in Free Trade Agreements (FTAs), Comprehensive Economic Corporation Agreements (CECAs), and Comprehensive Economic Partnership Agreements (CEPAs) with over 54 countries, but these agreements generally lack detailed cross-border insolvency provisions.[7] Free Trade Agreements (FTAs) and similar trade deals are becoming more common, but they don't usually include rules for handling bankruptcies across borders. Even though these agreements are supposed to cover complex trade issues, they mostly just talk about general disputes and trade remedies.[8]

JUDICIAL DEVELOPMENTS

Indian courts have increasingly recognized the importance of cooperation in cases involving multinational insolvency issues. In the landmark case of *Jet Airways Case,* the Hon'ble

[6]https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.maheshwariandco.com/blog/cross-border-insolvency-framework-consequences/&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoFCJIBEAE&usg=AOvVaw3hySeuTqkS604YShpwiAD7 accessed on 11 September 2026

[7]https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://drishtijudiciary.com/editorial/cross-border-insolvency&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoECF8QAQ&usg=AOvVaw0MMXt1HevAZ8g_hShwMYnQ accessed on 11September 2026

[8]https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://drishtijudiciary.com/editorial/cross-border-insolvency&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoECF8QAQ&usg=AOvVaw0MMXt1HevAZ8g_hShwMYnQ accessed on 11September 2026

National Company Law Appellate Tribunal addressed whether separate insolvency resolution proceedings against common debtor can proceed in two different countries, one having no territorial jurisdiction over the other. The Hon'ble tribunal acknowledged the parallel insolvency proceedings in the Netherlands and allowed the Dutch administrator to participate in the Committee of Creditor's meetings as an observer. This decision, though not rooted in explicit statutory authority, marked a significant step towards acknowledging cross border cooperation.[9]

Another significant milestone in India's cross border insolvency jurisprudence was when the US Bankruptcy Code for the District of Delaware recognized the insolvency proceedings of *SBI v. SEL Manufacturing Company Limited*[10] pending before the NCLT, Chandigarh Bench, as a foreign main proceeding under Section 1502(40) of the US Bankruptcy Code, marking the first recognition of the IBC in the US. The Hon'ble Court held that recognition did not violate US public policy and granted the foreign representatives and foreign debtor reliefs under Section 1520, protecting assets and creditor's interest. This recognition facilitates cross border asset recovery, particularly for Indian banks NPAs, while ensuring relief aligns with US bankruptcy principles.

CROSS-BORDER INSOLVENCY ISSUES

Though the international framework is expanding, several cross-border insolvency cases face challenges in the following ways:

i. Conflicting Jurisdictional Claims- Questions regarding the place of insolvency can always be disputed with more than one country holding interests.
ii. Recognition and Enforcement- As mutual recognition platforms are lacking, enforcing insolvency judgments between the borders becomes hard and unpredictable.
iii. Divergent Legal Systems- Differences in laws related to insolvency, creditors' rights, and procedural provisions between countries further add to the complexity of coordination in cross-border insolvency procedures.

[9] Jet Airways(India) limited (offshore Regional Hub) v. State Bank Of India And Others Company Appeal(AT)(Insolvency) No. 707 of 2019
[10] CP(IB) No. 114/Chd/Pb/2017, National Company Law Tribunal, Chandigarh

iv. Asset Recovery- Discovery, protection, and return of assets lying in a foreign country are still one of the huge challenges in cases of cross-border insolvency.[11]

CONCLUSION

That is why the problem of cross-border insolvency is regarded as one of the most significant trends in modern legislation governing this process, especially while progressively more companies are becoming international. Currently, India has an IBC, 2016, that addresses the domestic issue of insolvency but there isn't a well-established framework to handle cross-border insolvency. Even in the areas where NOCs are allowed under Sections 234 and 235 of the IBC through bilateral agreements and assistance from foreign courts, there is evidently little action needed for reform.

Adopting of the UNCITRAL Model Law on Cross-Border Insolvency, tailored to fit Indian legal framework, would establish a structured and predictable mechanism for managing insolvency cases that span multiple jurisdictions. This would bolster economic stability, draw in foreign investment, and facilitate corporate restructuring. Although India has made considerable progress in tackling domestic insolvency challenges, the lack of a holistic cross-border insolvency framework represents a critical gap that need to be closed to facilitate a more efficient and effective resolution process for both international creditors and debtors.

[11] https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.maheshwariandco.com/blog/cross-border-insolvency-framework-consequences/&ved=2ahUKEwjV-c746-aWAxVUTmwGHbjQAg8QFnoFCJIBEAE&usg=AOvVaw3hySeuTqkS604YShpwiAD7 accessed on 11 September 2026