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NAVIGATING INSOLVENCY ACROSS BORDERS: CHALLENGES OF CORPORATE GOVERNANCE IN INDIA

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Abstract

This study focuses on the challenges involved in dealing with cross-border insolvency in India, with particular attention to the role of corporate governance in ensuring transparency, accountability and effective management during insolvency proceedings. It explores the existing Indian legal framework, primarily the Insolvency and Bankruptcy Code, 2016 (IBC), and examines how far it addresses the insolvency-related issues involving foreign jurisdictions. The study discusses the importance of directors' responsibilities, creditors' rights, protection of stakeholders, corporate accountability and cooperation between domestic and foreign regulatory authorities. It further identifies the existing shortcomings in India's cross-border insolvency mechanism and suggest appropriate legal and corporate governance reforms to strengthen the insolvency resolution process. It overall highlights an effective cross-border insolvency framework, supported by sound corporate governance practices and international cooperation, is essential for maintaining investor confidence, protecting stakeholders' interests and promoting a transparent, accountable and stable corporate environment in India.

KEY WORDS: Cross-border Insolvency, Corporate Governance, Legal Framework

• Introduction

Globalisation has changed the way businesses operate in the modern world. Due to the increased rate of globalisation there has been an increase in the insolvency matters which is called cross border insolvency. Cross border insolvency means when a company who is a debtor or insolvent has assets, credits over more than one country. Cross border insolvency is different from domestic insolvency; it is governed under Insolvency and Bankruptcy Code 2016 [IBC]. However, each country has its own laws and courts for insolvency matters due to which difficulty is created. For instance, if XYZ ltd is an Indian Company but it has its creditors

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in Singapore and owns property in the USA after sometime XYZ ltd becomes insolvent. The main office of the company is in India and the insolvency proceedings start in India. Since the creditors, property of the company is in different jurisdiction this is a cross border insolvency. The UNCITRAL Model law on cross border insolvency was adopted in 1997 which plays a crucial role in dealing with insolvency cases between states. The aim of this model law is to facilitate cooperation, harmonisation between the states and creating a common legal framework for effective coordination and settlement. In simple words, it established various mechanisms for recognition of foreign proceedings. The following are the 5 elements of the Model law:

Access - The model law provides the foreign representatives access to domestic courts or courts of another country for participation in insolvency proceedings. Access to courts of another country avoids procedural barriers. Article 9 of the UNCITRAL Model law on cross border insolvency states that a foreign representative is entitled to apply directly to a court in the enacting state.

Recognition - The Model law recognises the foreign proceedings this means when a court gives recognition to the case of insolvency started in a different country. There are 2 types of foreign proceedings: foreign main proceedings [Article 2(b) of UNCITRAL Model law on cross border insolvency] and foreign non main proceedings [Article 2(c) of UNCITRAL Model law on cross border insolvency]. Foreign main proceedings mean proceedings taking place in a country where the debtor has its center of main interest and in foreign non main proceedings the debtor has only an establishment.

Relief - Relief comes after the recognition of foreign proceedings for immediate protection of the assets.

Cooperation - The main aim of the model law is to coordinate and cooperate between courts for cross border insolvency. It also regulates cooperation between insolvency professionals and re-presentative.

Public policy - the model law recognises public policy as an important element; this means the domestic court can set aside any judgement or court proceeding if they are affecting the public policy of a country.

- **Cross Border Insolvency legal framework**

The IBC (Insolvency and Bankruptcy Code 2016) provides provisions dealing with cross border insolvency in India. Although when compared to UNCITRAL Model law it does not

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provide a comprehensive cross border insolvency framework. The code has transformed the entire landscape of insolvency in our country by providing for reorganisation, liquidation process and bankruptcy processes, promoting entrepreneurship and balance of stakeholder interest. There was no provision relating to cross border insolvency at the initial stage of drafting the bill. It was after the Bankruptcy Law Reforms Committee (BLRC) gave recommendation which was reviewed by Joint Parliamentary Committee (JPC) certain observations were made about the cross-border insolvency in the report. After that, 2 provisions were added in the bill that dealt with cross border insolvency. IBC has only two provisions for cross border insolvency matters.

Section 234 - Bilateral Agreements with other countries

The Central Government can enter into bilateral agreements with the foreign countries, this provision allows the government to declare that the provisions of the Code shall be applicable to any country outside India. The Central government can also enter into reciprocal arrangements with foreign countries regarding insolvency matters involving assets or properties of parties located in those countries. However, despite the existence of this provision India has not entered such bilateral agreements for recognising this provision and enforcement of cross border insolvency proceedings.

Section 235 - Letter of request to a country outside India in certain cases

During the insolvency resolution, liquidation or bankruptcy proceedings if the resolution professional, liquidator or bankruptcy trustee believes that the debtor has assets in a foreign country then they may apply to the adjudicating authority for assistance. The foreign country must have a reciprocal arrangement with India as per section234 of the IBC. The application must explain why evidence or some action concerning foreign assets is necessary for the insolvency proceedings. After receiving the application, the adjudicating authority examines whether the requested evidence or action is necessary for the insolvency proceedings. If the authority is satisfied it may issue a letter of request to the competent court or authority in the foreign country. The foreign court or authority is then requested to provide the necessary assistance subject to the applicable legal arrangements and its own law.

However, this provision shall only work if India has signed a formal two-way treaty with that specific foreign country since the Indian government has not signed any treaties with other nations yet such power given under the provision remains theoretical which means it exists only on paper. In the absence of a detailed instruction manual regarding the way of handling global bankruptcies only a basic overview is given.

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The need for a cross border insolvency framework under the IBC had arisen because most of the Indian companies now have a global footprint and even the foreign companies have the same in multiple countries which includes India. With the help of a cross border insolvency framework there will be greater confidence among the foreign investors, a mechanism for cooperation at international level.

In order to bridge the gaps in the existing provisions, the Insolvency Law Committee had proposed to Draft Part Z as an amendment to IBC based on the UNCITRAL Model Law on Cross-Border Insolvency. It has provided various legal mechanisms for recognition of foreign proceedings. It has incorporated various key concepts from the Model Law:

1. Foreign re-presentative access to courts - Officially appointed foreign representatives have access to Indian courts (NCLT) for managing debtor's assets and apply for various forms of relief.
2. Foreign proceedings - Effects of recognition and extent of relief is determined by the help of distinction between foreign main proceedings and non-main proceedings which is provided under the framework. Once a foreign proceeding is recognised automatic freeze is triggered to protect the debtor's assets immediately.
3. Reliefs- Various kinds of relief like stays on actions against debtors, examining witnesses, for managing assets representatives are appointed are included in the draft. It provides for both interim and final relief, interim relief is granted when application is filed for recognition and final relief granted upon recognition of foreign proceedings,
4. COMI - The draft aims to determine a debtor's center of main interests (COMI). COMI is generally presumed to be the corporate debtor's registered office unless otherwise proven. The Cross-border Insolvency Rules have listed various factors for COMI such as location of assets and primary bank accounts etc.

However, Part Z is only limited to the corporate debtors and does not apply for individuals or partnerships. Even Part Z has not been enacted yet despite everyone agreeing that it is necessary and has been reviewed by stakeholders thoroughly. This shows a complex concern for national sovereignty and the protection of local creditors and regulatory control over international cooperation.

- **The IBC Amendment Act 2026**

The Insolvency and Bankruptcy Code (Amendment) Act, 2026 received Presidential assent on 6th April 2026 and introduced Section 240C into the IBC. This provision empowers the Central

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Government to prescribe rules for administering cross border insolvency proceedings including recognition of foreign proceedings, granting relief, judicial cooperation, assistance and coordination, Although Section 240C has been enacted it has not yet been brought into force. Hence, the detailed framework for cross border insolvency under this provision is yet to become operational.

- **Jurisdictional Conflicts**

The **UNCITRAL Model Law on Cross-Border Insolvency**, adopted in **1997**, offers a procedural framework for dealing with insolvency cases that involve more than one country. It does not attempt to make the insolvency laws of all countries identical. Instead, it creates procedural bridges enabling cooperation despite substantive differences. It provides mechanisms for recognizing foreign proceedings and coordinating action while allowing countries to protect their public-policy interests. United States, United Kingdom and Singapore are among the jurisdictions that have incorporated the Model Law into domestic law. The experience demonstrates that codified cross-border mechanisms enhance legal certainty, reduce jurisdictional disputes, and strengthen investor confidence by ensuring coordinated administration of multinational insolvencies.

For India, adoption of the Model Law would signal to international investors and creditors that Indian insolvency proceedings will be conducted in accordance with globally recognized standards. As Indian corporations expand internationally and foreign investment deepens, cross-border insolvency disputes are likely to become more complex. Without a comprehensive statutory framework, Indian courts continue to rely on ad hoc solutions, leading to inconsistent outcomes. Without a dedicated framework, courts and tribunals may have to develop case-by-case arrangements, which can produce uncertainty. Individual reciprocal agreements may also be inadequate where a corporate group has connections with several jurisdictions at once. In the absence of effective statutory cooperation mechanisms, Indian authorities may have to rely on principle such as judicial comity or on arrangements made for a particular case.

Section 60 of **Insolvency and Bankruptcy Code, 2016 (IBC)** establishes territorial jurisdiction for insolvency proceedings. This provision of IBC mandates that applications must be filed before the **National Company Law Tribunal (NCLT)** where the corporate debtor's registered office is situated. The rule provides a clear starting point for domestic proceedings, but cross-border cases can rise additional questions. For example, where a company's main business interests or significant assets are located outside India. India has not historically had

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a comprehensive mechanism under the IBC for recognizing foreign main and non-main proceedings, granting access to foreign representatives and coordinating parallel proceedings. The practical usefulness of cross-border cooperation has therefore been limited; particularly where effective reciprocal arrangements are unavailable.

Indian adjudicatory bodies, including the **National Company Law Tribunal (NCLT)**, have comparatively limited experience in handling complex multi-jurisdictional insolvency matters. In cross-border cases, they require international insolvency principles, foreign legal systems, and coordinated judicial communication and areas where consistent institutional expertise is still evolving. India lacks formal mechanisms to facilitate cooperation between domestic courts, foreign courts, and insolvency professionals. The absence of clear communication protocols or cooperation guidelines may lead to conflicting decisions and duplication of proceedings.

- **Role of Insolvency Professionals and Adjudicating Authorities**

Insolvency professionals (IPs) play a central role in the corporate insolvency resolution process under the IBC. The responsibilities of insolvency professionals (IPs) include examining claims submitted by creditors, managing the process in accordance with statutory requirements and helping ensure that resolution plans are considered through the prescribed. They are crucial in ensuring that **Corporate Insolvency Resolution Processes (CIRP)** progress smoothly by presenting and reviewing resolution plans, managing creditor claims and ensuring compliance with **Section 30** of the **Insolvency and Bankruptcy Code, 2016 (IBC)**. An IP may also need to review claims, oversee asset valuations, protect the interests of stakeholders and support discussions within the **Committee of Creditors (CoC)**. The **Insolvency and Bankruptcy Board of India (IBBI),** through its regulations and guidance, has an important role in setting professional standards and developing the regulatory framework for these responsibilities.

The **2026 amendments** insert a dedicated chapter into the Insolvency and Bankruptcy Code, 2016, widely referred to as **"Part Z"** during the consultation phase, that establishes a self-contained cross-border insolvency regime. It states that a foreign representative would be able to approach the NCLT directly without needing prior government authorisation under **Section 234**. The Act adopts the **center-of-main-interests (COMI)** test to distinguish between main and non-main proceedings, closely mirroring the UNCITRAL Model Law framework. It also describes provisions for coordinating insolvency proceedings involving corporate groups and

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for cooperation between Indian and foreign courts and IPs. New sections allow coordinated proceedings for corporate groups with entities across multiple jurisdictions, including the appointment of a group insolvency coordinator. Indian courts and IPs are required to cooperate with their foreign counterparts to the maximum extent permitted by Indian law. Practitioners should monitor the IBBI website and the **Ministry of Corporate Affairs (MCA)** notification portal for gazette notifications confirming the operative dates of each section.

The Supreme Court's ruling in the **Bhushan Power & Steel Ltd. (BPSL)** matter has delivered significant guidance on the role, responsibilities, and statutory duties of the Resolution Professional and the Committee of Creditors under the Insolvency and Bankruptcy Code, 2016. In this case the Supreme Court set aside the approved resolution plan owing to procedural violations, including failure to comply with mandatory provisions of the IBC and the CIRP Regulations. The judgment underscores that the commercial wisdom of the CoC and the autonomy of the RP must operate strictly within the statutory framework, and cannot override or circumvent express legal requirements.

- **Judicial Developments in India**

Growth in international business and cross-borderless transactions among countries and businesses has made insolvency proceedings more complex. Cross-border insolvency occurs when the debtors placed their assets in more than one country, when creditors are based abroad, or when proceedings concerning the same debtor are taking place in different jurisdiction. Thus, cross border Insolvency is an international insolvency which administers the protection of debtors who are in financial trouble and have their assets and creditors residing in a foreign nation. Insolvency law determines how a financially distressed entity is dealt with and how claims against its assets are addressed.

In India, the jurisdiction to initiate an insolvency resolution process lies with **National Company Law Tribunal (NCLT)**. A default may lead to an application to commerce the **Corporate Insolvency Resolution Process (CIRP)**, provided the relevant statutory requirement are met. Under **Section 7** of the IBC, 2016 a creditor can initiate the Corporate Insolvency Resolution process and under **Section 8** of the IBC 2016 a corporate applicant of the corporate debtor can initiate the Corporate Insolvency Resolution Process. In cross-border insolvency, the difficulty is that the debtor's assets or creditors may be located in another country, where separate laws and proceedings may apply. The Law on Cross border insolvency protects the rights of foreign creditors against the corporate debtor's assets who are residing in

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a different jurisdiction.

Judicial innovation and flexibility of interpretation have helped Indian courts to complexities of CBI. The most notable case in this regard is that **Jet Airways (India) Ltd. v. State Bank of India** the parallel insolvency was instituted in both India and Netherlands. The National Company Law Tribunal (NCLT) took a pragmatic stance by ensuring that the Indian resolution professional and the Dutch administrator worked together, thus it was a move towards modified universalism. The case also underscored the eagerness of the Indian judiciary to address international principles of insolvency even though there was no formal law. It also highlighted the significance of judicial cooperation and communication in solving cross-border disputes. Nevertheless, these case-specific solutions cannot replace a large-scale legislative framework.

The **Insolvency Law Committee (ILC)** has proposed the adoption of the UML with changes suited to India's legal and economic circumstances. The proposed approach has focused on issues such as recognition of foreign insolvency proceedings, access for foreign representative and cooperation between Indian and overseas courts. Any discussion of the present position should distinguish committee recommendations or draft proposals from provisions that have been enacted and brought into force.

Conclusion

The cross-border insolvency has become an important concern due to the rapid growth of globalisation, international trade and investment. As companies continue in increasing their operation across different countries insolvency cases have become more complex, particularly when the debtor's assets, creditors and business operations are spread across multiple jurisdictions. In India, Section 234 and 235 of the IBC 2016 provides certain mechanisms for dealing with cross border insolvency they are limited in scope and do not establish a comprehensive legal framework. In this regard, the UNCITRAL Model Law on Cross border insolvency offers a more effective international framework by promoting cooperation between courts, recognition of foreign proceedings, access for foreign representatives and protection of creditor's interests. India's efforts to introduce this framework through the proposed Part Z and subsequent legislative developments demonstrate its commitment to strengthening the existing insolvency system.

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