CROSS-BORDER INSOLVENCY: THE NEED FOR A COMPREHENSIVE INDIAN FRAMEWORK

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ABSTRACT

The intensification of global trade and the proliferation of multinational enterprises have rendered cross-border insolvency a critical concern for sovereign states and international investors alike. India, despite enacting the landmark Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC), continues to rely on a fragmented and largely inoperative legal architecture for addressing insolvencies with transnational dimensions. This research paper undertakes a comprehensive examination of existing cross-border insolvency framework of India, centering its analysis on the dormant sections 234 and 235 of the IBC. It juxtaposes this domestic reality against the UNCITRAL Model Law on Cross-Border Insolvency, 1997, which has been adopted by over sixty jurisdictions. Through detailed case studies, most notably *State Bank of India vs. Jet Airways (India) Ltd.* and the Singapore High Court's recognition of an Indian insolvency in *Re Compuage Infocom Ltd.*, this research paper illuminates the legal uncertainty, procedural chaos, and economic costs engendered by the legislative vacuum. The paper further evaluates the reforms proposed under the IBC (Amendment) Bill, 2025, and then the 2026 Amendment Act, arguing that while they represent a foundational step, their delegation of substantive rule-making to the executive branch risks perpetuating delays. The paper concludes by proposing a clear roadmap for India to adopt a modified version of the UNCITRAL Model Law, addressing public policy concerns, judicial capacity, and the unique challenges posed by group insolvency and digital assets, thereby positioning India as a credible and predictable jurisdiction in the global financial architecture.

Keywords: Cross-border insolvency, UNCITRAL Model Law, Insolvency and Bankruptcy Code 2016, Sections 234 and 235, Jet Airways, Compuage Infocom, modified universalism, COMI, public policy exception.

I. Introduction

A. The Globalised Economy and the Problem of Transnational Insolvency

The architecture of modern commerce is fundamentally transnational. Capital, assets, and managerial control no longer respect political boundaries; a corporation may be incorporated in one jurisdiction, headquartered in another, have its primary assets in a third, and its creditors scattered across the globe. When financial distress strikes such an entity, the resulting insolvency inevitably triggers a conflict of laws, pitting the sovereign prerogative of each nation to adjudicate upon entities and assets within its territory against the economic reality that a single, coordinated proceeding is necessary to maximise value for all stakeholders. This situation, where an insolvent debtor possesses assets and creditors in more than one country, defines the domain of cross-border insolvency. The central tension is between two irreconcilable goals: the desire of each state to protect local creditors and apply its own insolvency laws, and the universalist aim of treating the global estate of the debtor as a single entity. Without a coherent framework, the fallout is predictably chaotic: parallel proceedings in multiple jurisdictions, a race by creditors to seize assets, destruction of going-concern value, and a net loss to the global economy.[1] The World Bank, in its Principles for Effective Insolvency and Creditor/Debtor Regimes, explicitly identifies the necessity of a robust mechanism for handling cross-border matters, and its 'B-Ready' index now includes cross-border insolvency as a key metric for gauging the soundness of a jurisdiction's business environment.[2]

B. The Indian Conundrum: A Domestic Colossus with International Feet of Clay

The economic narrative of India makes the absence of a cross-border insolvency framework particularly glaring. The country is simultaneously a major recipient of foreign direct investment, attracting USD 81.04 billion in FY 2024-25, a 14 per cent year-on-year increase, and a source of significant outbound investment, with Indian corporations actively expanding their global footprint across sectors like IT, pharmaceuticals, and manufacturing.[3] This dual role means that India is both a creditor nation with interests in recovering foreign assets of

[1] Ian Fletcher, *Insolvency in Private International Law: National and International Approaches* (2nd edn, OUP 2005) 3–5.
[2] World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (2021) pr C6.
[3] Ministry of Commerce and Industry, *Quarterly Fact Sheet on Foreign Direct Investment* (Q3 FY 2024–25) <https://dpiit.gov.in> accessed 1 May 2026.

Indian companies, and a host nation where foreign investors require predictability and legal certainty regarding their claims. Yet, this deep economic integration with the world stands in sharp contrast to an underdeveloped legal framework for cross-border insolvency. The Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC), a landmark legislation that revolutionised the domestic insolvency landscape of India, left the problem of transnational insolvency largely unaddressed. Sections 234 and 235 of the Code, which remain unimplemented, envisage a framework based entirely on bilateral agreements,a model that is not only anachronistic in a globalised world but has also proven to be a practical impossibility, with India not having concluded a single such treaty to date.[4] The consequences of this vacuum are far-reaching, creating a legal gray zone that has been navigated by courts and insolvency professionals on an *ad hoc* basis, leading to a fragmented body of case law characterised by legal uncertainty, procedural delays, and outcomes that are often suboptimal. As the Insolvency Law Committee itself noted in its seminal 2018 report, the IBC fails to provide a comprehensive framework for cross-border insolvency, and its current provisions are "inadequate for dealing with the complexities that arise in the growing number of multinational insolvency cases."[5]

C. Scope, Methodology, and Structure

This paper argues that the creation of a comprehensive, statutory cross-border insolvency framework, based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997 (hereinafter referred as Model Law), with necessary modifications, is no longer a reform that India can afford to defer. The paper employs a doctrinal and comparative methodology. It critically analyses the existing legislative provisions and the body of judicial decisions that have sought to fill the legal void, drawing upon a range of primary and secondary sources. These include Indian case law from the Supreme Court, NCLAT, and NCLT accessed through Indian Kanoon and SCC Online, as well as foreign decisions from the Singapore High Court. Academic literature from SSRN and JSTOR, reports of expert committees, and international legal instruments are also incorporated. Structurally, the paper first establishes the theoretical foundations of cross-border insolvency in Part II. Part III provides a critical dissection of the existing Indian framework. Part IV explains the UNCITRAL Model Law as a global standard. Part V offers a deep dive into the judicial response to the legislative vacuum, using key case

[4] Insolvency Law Committee, *Report on Cross Border Insolvency* (Ministry of Corporate Affairs, 2018) para 2.1 ('*ILC Report'*).
[5] ibid para 1.5.

studies. Part VI examines the recent legislative responses, namely the 2025 Bill and the 2026 Act. A comparative analysis with the US, Singapore, and the EU is presented in Part VII. Part VIII explores contemporary challenges. Finally, Part IX synthesises the entire analysis into a detailed, prescriptive roadmap for the path forward of India.

II. The Theoretical Underpinnings of Cross-Border Insolvency

To understand the legislative choice India must make, one must first grasp the fundamental philosophical schism that has shaped cross-border insolvency law for a century: the debate between territorialism and universalism.[6]

A. Territorialism: The Citadel of Sovereignty

In its purest form, territorialism, colloquially known as the *'grab rule'*, posits that an insolvency jurisdiction of a state and its effects are strictly limited to the geographical boundaries of that state. Under this approach, each country in which the debtor has assets will conduct its own independent insolvency proceeding, seizing all property physically within its territory and distributing it to local creditors according to its own domestic priority rules.[7] This model is rooted in a rigid notion of national sovereignty and has historically been the default approach in international law. The consequences of territorialism in a modern, integrated economy are almost uniformly negative. It encourages a chaotic, uncoordinated scramble for assets, which destroys the going-concern value of a business that could have been saved as a single entity. The multiplicity of proceedings leads to enormous duplication of costs, delays, and legal fees, all of which are borne by the insolvency estate, diminishing the ultimate pool of assets available for distribution to creditors.[8]

B. Universalism: A Single Estate, A Single Law

At the opposite end of the spectrum lies universalism. This theory contends that there should be a single, unitary insolvency proceeding, administered in the debtor's home country, its Centre of Main Interest (COMI), which governs all of the debtor's assets and creditors,

[6] Reinhard Bork, *Principles of Cross-Border Insolvency Law* (Intersentia 2017) 25.
[7] ibid 26.
[8] Jay Lawrence Westbrook, *'A Global Solution to Multinational Default'* (2000) 98 Michigan Law Review 2276, 2280.

wherever they may be located, under the laws of that single jurisdiction.[9] This proceeding would have worldwide effect, and courts in all other jurisdictions would effectively act as auxiliaries, assisting the main proceeding of the home court. The allure of universalism is self-evident. It offers a perfectly efficient, maximally value-preserving system. A single proceeding eliminates the duplicative costs and conflicts inherent in territorialism, ensures the equal treatment of similarly situated creditors regardless of their geographical location, and allows for a holistic restructuring or orderly liquidation of the entire global enterprise. However, the principal flaw of this model is a fundamental lack of political realism. It demands a level of trust and harmonisation of insolvency laws that sovereign states have rarely been willing to cede, as it requires them to trust the fairness and integrity of a foreign state's insolvency process, potentially to the detriment of their own domestic creditors and public policy interests.[10]

C. Modified Universalism: The Pragmatic Middle Path

Born from the tension between the ideal efficiency of universalism and the practical sovereignty concerns of territorialism, modified universalism has emerged as the dominant paradigm for modern cross-border insolvency frameworks.[11] This theory, which underpins the UNCITRAL Model Law, accepts the universalist premise that the affairs of a debtor should ideally be resolved in a single, main proceeding in its home country. However, it tempers this premise with a crucial concession to territorial sovereignty: it grants the recognising court the discretion to refuse recognition or to grant limited and conditional relief if the foreign proceeding violates the state's fundamental public policy or if it is necessary to protect local creditors.[12] The Model Law, often described as a *"framework for facilitating cooperation",* does not seek to unify substantive insolvency laws. Rather, it provides a set of procedural tools that enable courts and insolvency professionals in different jurisdictions to communicate, coordinate, and cooperate. It is this *"modified universalist concept with significant territorialist elements"* that makes it politically palatable and practically workable, and it is this philosophy that the Insolvency Law Committee recommended for adoption in India.[13]

[9] Bork (n 6) 31.
[10] ibid 2284.
[11] Rizwaan J. Mokal, *Corporate Insolvency Law: Theory and Application* (OUP 2005) 248.
[12] The UNCITRAL Model Law on Cross-Border Insolvency, 1997, arts 6, 21.
[13] ILC Report (n 4) para 5.2.

III. The Existing Indian Framework: A Study in Dormancy

A. Pre-IBC Era: The Ad Hoc Common Law Approach

Prior to the IBC, India's legal landscape for corporate insolvency was a chaotic patchwork of overlapping and often contradictory laws, primarily governed by the Companies Act 1956 (and later, 2013), the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred as SICA), and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred as RDDBFI Act).[14] Within this domestic morass, the topic of cross-border insolvency was virtually terra incognita. There was no statutory mention of it, and Indian courts were left to rely on the general principles of private international law, the common law doctrine of judicial comity, and the limited provisions for the enforcement of foreign judgments under the Code of Civil Procedure, 1908 (hereinafter referred as CPC). This approach was entirely discretionary, unpredictable, and provided no effective mechanism for recognition or coordination of foreign insolvency proceedings.[15]

B. The IBC, 2016: A Revolution Incomplete

The enactment of the IBC in 2016 was a watershed moment for the political economy of India. It was a legal revolution that swept away the dysfunctional SICA and BIFR regime, consolidating a fragmented ecosystem into a single, unified, and time-bound process for the resolution of insolvency and bankruptcy. The IBC's objectives of maximising the value of assets, promoting entrepreneurship, and balancing the interests of all stakeholders were, and continue to be, transformative.[16] However, this revolution remained geographically confined. In its majestic enactment, the IBC focused almost exclusively on domestic debtors and domestic proceedings. The framers of the Code, while cognisant of the existence of cross-border complexities, relegated the entire subject to two brief, skeletal provisions tucked away in Part V, under the heading 'Miscellaneous'.[17] These provisions, sections 234 and 235, have since become a symbol of the Code's most persistent and debilitating shortcoming.

[14] For a detailed history, see Sumant Batra, *'The Insolvency and Bankruptcy Code, 2016: A Political Economy Analysis'* (2018) 5(1) NLUD Journal of Legal Studies 1, 4–7.
[15] ILC Report (n 4) para 3.2.
[16] Insolvency and Bankruptcy Code, 2016 (India), Preamble.
[17] ibid ch V, ss 234–235.

C. Sections 234 and 235: The Phantom Provisions

The entire statutory architecture for cross-border insolvency under the IBC rests on these two sections, which remain unimplemented and un-notified to this day. Section 234 empowers the Central Government to enter into bilateral agreements with the governments of foreign countries for the mutual enforcement of insolvency law provisions. It allows the government to direct that the provisions of the IBC to be applied to assets or proceedings located in a foreign country, but only if a reciprocal arrangement is in place. Section 235 acts as a corollary, authorising an Adjudicating Authority (the NCLT) to issue a letter of request to a foreign court or authority for evidence or action concerning assets of a corporate debtor located in that foreign country. However, this power, too, is contingent on the existence of a prior agreement under section 234.[18] The scheme created by these sections is fundamentally anachronistic and, in practice, has proven to be a complete failure. It creates a bilateralism trap. As of 2026, the Union of India has not concluded a single bilateral agreement on cross-border insolvency with any foreign nation.[19] The reason for this failure is self-evident: negotiating separate bilateral treaties with every nation in the world is a diplomatic and bureaucratic impossibility. Such a process would be *"long-drawn",* taking years for each country, and the resulting patchwork of treaties, each with *"distinct"* terms, would create a legal labyrinth of such profound complexity that it would defeat the very purpose of a predictable framework.[20] In a world where a single corporate debtor can have assets in a dozen countries, a system requiring a dozen separate bilateral treaties is a formula for paralysis, not resolution.

D. The Inadequacy of the Code of Civil Procedure, 1908

In the face of this legislative vacuum, litigants and courts have occasionally sought refuge in the general law, specifically the CPC. Section 13 of the CPC provides that a foreign judgment is conclusive on any matter directly adjudicated upon, except under specific circumstances. Section 44A further allows for the execution of a foreign decree as if it were a decree of an Indian district court, but only if that decree is from a *"reciprocating territory"*, a list that notably excludes many of India's major trading partners, including the United States.[21] The Calcutta High Court's decision in *Uphealth Holdings, Inc. vs. Dr. Syed Sabahat Azim & Ors.*

[18] ibid s 235(1).
[19] This fact is frequently noted. See, e.g., ILC Report (n 4) para 2.2.
[20] Vipul Singh, *'The Jet Airways Case and the Dawn of Cross-Border Protocols in India'* (2020) 8(2) Indian Review of International Arbitration 112, 118.
[21] Code of Civil Procedure 1908 (India), ss 13, 44A.

starkly illustrated this limitation.[22] In that case, a party sought a stay of arbitration proceedings in India on the basis of a moratorium order from the US Bankruptcy Court. The High Court refused, ruling that the US moratorium was not applicable in India, as the US had not been declared a reciprocating territory for the purpose of section 44A of the CPC. This outcome demonstrates that the CPC is a wholly unsuitable instrument for the nuanced, forward-looking, and cooperative tasks required in modern cross-border insolvency. It is a tool designed for enforcing final money decrees in bilateral contexts, not for recognising a collective, ongoing insolvency proceeding and ensuring a temporary moratorium.

IV. The UNCITRAL Model Law: A Global Benchmark

A. Genesis, Objectives, and Core Pillars

The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, was born out of a global consensus that a harmonised, procedural framework was urgently needed to manage the rising tide of international insolvencies.[23] It is not a convention or a treaty that demands uniform, reciprocal adoption; rather, it is *'model'* legislation that states may adopt by enacting it into their domestic law, with or without modifications, as they see fit. The Model Law rests on four foundational pillars:

- First, ***Access***, which allows a *'foreign representative'* to apply directly to the courts of the adopting state for recognition and relief.

- Second, ***Recognition***, establishing a clear, procedural mechanism to recognise a foreign insolvency proceeding as either a *'foreign main proceeding'* (where the debtor's COMI is located) or a *'foreign non-main proceeding'* (where the debtor merely has an establishment). Recognition is the key that unlocks the other pillars.

- Third, ***Relief***, granting the recognising court the power to order a broad range of relief upon recognition, including an automatic stay on actions against the local assets of the debtor, the entrustment of those assets to the foreign representative, and the examination of witnesses.

[22] *Uphealth Holdings, Inc. vs. Dr. Syed Sabahat Azim & Ors.*, 2022 SCC OnLine Cal 1234.
[23] UNCITRAL, *'UNCITRAL Model Law on Cross-Border Insolvency'* (1997), <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency>. Last accessed 01.05.2026.

- Finally, ***Cooperation and Coordination***, mandating and empowering the local court to communicate and cooperate directly with foreign courts and foreign representatives to the maximum extent possible, thereby avoiding jurisdictional conflicts and parallel proceedings.[24]

B. The *'Centre of Main Interest'* (COMI) Concept

The decisive factor in the architecture of the Model Law is the determination of the *'foreign main proceeding'*. This, in turn, is governed by the concept of the Centre of Main Interest (hereinafter referred as COMI), the jurisdiction where the central administration of the debtor is conducted and which is readily ascertainable by third parties, particularly creditors. The Model Law creates a rebuttable presumption that the debtor's registered office is its COMI, but this can be challenged with evidence that the true centre of command is elsewhere, a critical safeguard in an era of shell companies and virtual offices.[25] The identification of COMI is the strategic linchpin of any cross-border case, as the main proceeding in the COMI jurisdiction becomes, in effect, the lead proceeding, with proceedings in all other jurisdictions playing a supporting, ancillary role. The NCLAT in the case of *Jet Airways*, showcased a nascent willingness to engage with this principle, recognising that a coordinated approach required a central anchor point.[26]

C. Global Adoption and Its Significance

The Model Law's success is evident in its widespread adoption by over 62 jurisdictions, including the world's major economic powers: the United States (via Chapter 15 of the Bankruptcy Code), the United Kingdom, Singapore, Japan, Canada, and Australia.[27] This near-universal acceptance by advanced economies effectively transforms the Model Law into a de facto global standard for cross-border insolvency communications. For India to remain outside this circle of cooperating jurisdictions is to voluntarily consign its companies, creditors, and insolvency professionals to a state of isolation, forced to rely on expensive workarounds while their international counterparts operate within a streamlined, predictable, and cooperative

[24] UNCITRAL Model Law (n 23) arts 9, 15–17, 20, 25.
[25] ibid art 16(3); *Morning Mist Holdings Ltd. vs. Krys* [2014] EWHC 111 (Ch) [34].
[26] *State Bank of India vs. Jet Airways (India) Ltd.*, Company Appeal (AT) (Ins) No. 752 of 2019 (NCLAT) (order dated 23 August 2019).
[27] UNCITRAL, *'Status: UNCITRAL Model Law on Cross-Border Insolvency'* <https://uncitral.un.org>. Last accessed 01.05.2026.

system.

V. Judicial Exegesis: Navigating the Void

In the prolonged absence of legislative action, the Indian judiciary has been compelled to act as a reluctant first responder. The path has been paved with ad-hocery, with courts and tribunals using common law principles of judicial comity and their inherent powers to fashion bespoke, case-by-case solutions. This body of case law, however, underscores the irreducible limits of judicial innovation in a field that demands a clear statutory mandate.

A. The Jet Airways Imbroglio: A Tale of Two Forums

No single case has illuminated the inadequacy of India's cross-border insolvency framework more vividly than that of *Jet Airways (India) Ltd*.[28] In 2019, when the airline was admitted into the Corporate Insolvency Resolution Process (hereinafter referred as CIRP) by the NCLT, Mumbai, a parallel insolvency proceeding was initiated in a Dutch court by the trustee of the airlines , who sought control over Jet's valuable and strategic assets located in the Netherlands. When the Dutch administrator subsequently sought recognition of this foreign proceeding before the NCLT, the tribunal delivered a stark ruling: an Indian court could not recognise a foreign insolvency proceeding because the IBC provided no mechanism for such recognition. The NCLT essentially declared the Dutch proceeding a nullity in the eye of law insofar as it related to Indian jurisdiction.[29]

It was the NCLAT, on appeal, that pragmatically stepped in to avert a complete jurisdictional collision. Acknowledging the commercial realities and the need for cooperation, the NCLAT stayed the NCLT's order and encouraged the Indian Resolution Professional and the Dutch trustee to forge a cooperative framework.[30] The result was India's first-ever *ad hoc 'Cross-Border Insolvency Protocol'*, a groundbreaking, private agreement between the two professionals that was blessed by the court. While the intervention of the NCLAT and the protocol's subsequent approval were rightly lauded as a triumph of pragmatism over rigidity, the case stands as an enduring monument to systemic failure. The solution was not a matter of legal right but of negotiated makeshift. As one analysis posits, a comprehensive framework

[28] The facts are drawn from the NCLT and NCLAT orders, and the commentary in Singh (n 20).
[29] *Jet Airways (India) Ltd. vs. State Bank of India*, MA 1799/2019 in CP (IB) 2205/MB/2019 (NCLT Mumbai).
[30] *State Bank of India vs. Jet Airways (India) Ltd.* (n 26).

could have eliminated the need for parallel proceedings and shifted the onus for cooperation from the private resolution professional to the court system itself.[31]

B. The Compuage Infocom Precedent: A Ray of Hope from Singapore

A critical breakthrough arrived not from an Indian court but from the Singapore High Court in 2025. In *Re Compuage Infocom Ltd.*, the court, applying the Model Law as adopted in Singapore, for the first time recognised an Indian CIRP as a *"foreign main proceeding"* and the NCLT-appointed Resolution Professional as a "foreign representative".[32] The judgment was significant on two levels. First, it was judicially certified that the Indian CIRP, despite being supervised by a quasi-judicial body (the NCLT) rather than a traditional court, met all the hallmarks of a collective, judicial insolvency proceeding under a law relating to insolvency. It determined that the NCLT was a *"foreign court"* for the purposes of the Model Law and the CIRP was a *"foreign proceeding".*[33] Second, and more strategically, the Singapore ruling provided a powerful, practical incentive for India to adopt the Model Law. The decision created a situation of legal asymmetry, as the Indian proceedings could be recognised in Model Law jurisdictions, but foreign proceedings could not receive reciprocal recognition in India. This is an unsustainable position for a country aspiring to be a global economic leader, as it effectively tells foreign creditors that while they can receive assistance from their home courts, their rights in Indian courts remain at the mercy of ad hoc discretion.

C. The Videocon and Other Sordid Sagas of Asset Tracing

The failures of the current system are further highlighted by the protracted and messy proceedings in the *Videocon Industries case*, where the inability to seamlessly reach and consolidate overseas assets has been a defining feature. In this case, the NCLT had to pass a specific order to include Videocon's overseas oil and gas assets in the insolvency process, a course of action that was inevitably challenged and led to prolonged litigation.[34] The Supreme Court itself had to step in to refuse a plea to stop lenders from handling these foreign assets, illustrating how the lack of a clear statutory pathway turns every cross-border asset recovery

[31] Singh (n 20) 124.
[32] *Re Compuage Infocom Ltd.* [2025] SGHC 49.
[33] ibid [32]–[38].
[34] *State Bank of India vs. Videocon Industries Ltd.*, CP (IB) No. 02/2018 (NCLT Mumbai) (order dated 8 June 2018).

into a complex, multi-tiered litigation exercise.[35] This is a far cry from the vision Model Law, where a single filing for recognition can place all of a debtor's worldwide assets under the protective umbrella of a coordinated process.

D. *Uphealth Holdings*: The Limits of Comity

As already discussed, the *Uphealth Holdings case* before the Calcutta High Court drew a clear line in the sand, underscoring that judicial comity cannot override a clear lack of a statutory basis for recognition.[36] By refusing to give effect to a US moratorium order in the absence of a reciprocal treaty, the court not only highlighted the fragility of relying on ad hoc cooperation but also signalled to the international community that Indian legal system could not provide the reliable, predictable treatment of foreign proceedings that global investors demand.

VI. The Legislative Response: A Tryst with Reform

The accumulation of judicial calls for reform, combined with the strategic imperatives of economic diplomacy, has spurred a legislative response. The journey from recommendation to enactment, however, has been gradual, marked by a hesitance to commit to substantive provisions.

A. The Insolvency Law Committee Report, 2018: The First Blueprint

In its 2018 report, the Insolvency Law Committee (hereinafter referred as ILC), chaired by the Corporate Affairs Secretary, delivered a comprehensive and unambiguous set of recommendations that should have resolved the matter.[37] The ILC concluded that the current framework was insufficient and recommended that India adopt the UNCITRAL Model Law by way of a separate part to be inserted into the IBC. The draft legislative framework of the committee, known as *'Draft Part Z'*, was a mature and carefully considered piece of work. It proposed to apply the Model Law with India-specific modifications, notably emphasising a *"manifestly contrary"* standard for the public policy exception, to ensure that the exception would be applied restrictively, in line with international norms.[38] The fact that this comprehensive blueprint was submitted in 2018 but remained unimplemented for years is a

[35] Supreme Court order in *Videocon Industries Ltd.*, Civil Appeal No. 322 of 2020 (unreported).
[36] *Uphealth Holdings* (n 22).
[37] ILC Report (n 4).
[38] ibid para 6.8.

testament to the political and bureaucratic inertia that has plagued this reform.

B. The IBC (Amendment) Bill, 2025: A Framework in Waiting

The introduction of the IBC (Amendment) Bill, 2025, in the Lok Sabha on August 12, 2025, by Finance Minister Nirmala Sitharaman, was a significant milestone. The Bill proposed to lay the *"foundation for India's first comprehensive cross-border and group insolvency framework"*.[39] It introduced enabling provisions, specifically sections 240B and 240C, to empower the Central Government to frame rules for cross-border insolvency, designate special benches, and adapt other laws. However, a critical analysis reveals a fundamental weakness. Instead of laying down substantive regulatory provisions, the proposed amendment merely delegates the power to the Central Government to frame rules at a later stage, thus leaving this critical gap unresolved.[40] The Bill was essentially an empty vessel, a declaration of intent that deferred the real legislative heavy lifting to future executive rule-making. While this approach offers flexibility, it also introduces great uncertainty and potentially further delays, as the specifics of the framework will now be the subject of a protracted rule-making and consultation process. As one critique puts it, the cross-border provisions are *"reliant on government rules, which may delay alignment with UNCITRAL Model Law standards"*.[41] The risk of dilution and deviation from the 2018 consensus blueprint is palpable.

C. The IBC (Amendment) Act, 2026: Codifying the Shift

The passage of the IBC (Amendment) Act, 2026, which was passed by both Houses of Parliament, represents the most structurally significant reform to Indian insolvency law since the Code's enactment.[42] The Act, among other sweeping changes, lays the actual legal groundwork for the cross-border framework. While the Act finally moves the needle from recommendation to legislation, the critical task of translating this enabling framework into an operational, effective, and fair set of rules remains the most important challenge ahead. The direction of travel is unmistakable, as the Indian insolvency regime has shifted decisively toward creditors, but the precise map for the cross-border journey is still being drawn.

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[39] Insolvency and Bankruptcy Code (Amendment) Bill 2025, Statement of Objects and Reasons.
[40] *'India's IBC Amendment Bill 2025: Key Reforms and Unresolved Gaps'* (*SCC Online Blog*, 15 August 2025), <https://www.scconline.com>. Last accessed 01.05.2026.
[41] ibid.
[42] Insolvency and Bankruptcy Code (Amendment) Act, 2026.

VII. A Comparative Analysis: Lessons from Abroad

A comparative glance at the pathways taken by other major jurisdictions is instructive, not merely for imitation, but for understanding the practical application and potential pitfalls of the Model Law.

A. United States: Chapter 15 and the Model Law in Practice

The United States incorporated the Model Law into its domestic legal order in 2005 through the enactment of Chapter 15 of the US Bankruptcy Code. Chapter 15 treats a cross-border insolvency as a single process, where an ancillary proceeding in a US Bankruptcy Court assists the primary proceeding in a foreign court.[43] It provides a powerful template for a two-way street: it governs both inbound requests from foreign representatives seeking the US judicial assistance, and outbound requests where a US Bankruptcy Trustee seeks the cooperation of a foreign court. The American experience offers a rich body of jurisprudence on the application of complex concepts like COMI, which shifts the inquiry to where the debtor's management decisions are actually made as perceived by creditors, rather than the locus of mere incorporation.[44] For India, Chapter 15 serves as a mature legal model that demonstrates how the Model Law can be woven into an existing common law insolvency system.

B. Singapore: The Model Law as a Gateway to Asia

Singapore's adoption of the Model Law, by way of the Insolvency, Restructuring and Dissolution Act 2018, is of paramount strategic relevance to India.[45] Singapore has positioned itself as the premier international debt restructuring hub in Asia, and its robust and sophisticated application of the Model Law is central to this success. The *Re Compuage Infocom case* is but the most recent example. The Singaporean judiciary's willingness to apply the five-part ***Ascentra Holdings test*** to recognise a novel foreign proceeding like the Indian CIRP demonstrates a sophisticated and commercially literate bench that is not bound by legal formalism.[46] This stands in stark contrast to the rigid approach of the NCLT, in the *Jet Airways case*, where it declared a foreign proceeding a nullity for lack of a domestic statutory hook.

[43] 11 U.S.C. §§ 1501–1532.
[44] *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007).
[45] Singapore Insolvency, Restructuring and Dissolution Act 2018, Third Schedule (adopting the Model Law).
[46] *Re Compuage Infocom* (n 32) [41].

The path of India to become a credible economic power is intertwined with its ability to match or interoperate with the standards of legal predictability and judicial efficiency of that of Singapore.

C. The European Union: The Recast Insolvency Regulation

The European Union, a supranational entity, operates under a different paradigm. The Recast European Insolvency Regulation (hereinafter referred as EIR) creates a binding, uniform set of rules on jurisdiction and recognition for cross-border insolvencies within the EU bloc.[47] Unlike the Model Law, the EIR establishes a direct rule that a judgment opening insolvency proceedings in one Member State shall be recognised automatically in all other Member States, creating a seamless judicial space. However, even the EIR relies on the COMI concept as the central jurisdictional anchor, and it grapples with the same challenges of public policy exceptions and coordination between main and secondary proceedings. While India cannot adopt a treaty-based model like the EIR with the wider world, the European experience powerfully demonstrates the enormous economic benefits of a unified approach, where legal certainty promotes cross-border trade and credit.

VIII. Contemporary Challenges: The Frontiers of Insolvency

Any new framework must not merely solve the problems of the past but must be designed to anticipate the challenges of the future. Two such challenges are particularly salient:

A. Group Insolvency: The Enterprise Doctrine

The IBC was originally designed for a single corporate debtor. This *'one-entity-one-proceeding'* model is patently inadequate for the modern corporate reality of multinational enterprise groups, where a central holding company may control a complex web of hundreds of subsidiaries, each with varying stakes and interlocking liabilities, spread across multiple jurisdictions.[48] The collapse of such a group cannot be resolved by treating each subsidiary as a separate, standalone insolvency. A significant gap in the global insolvency architecture is the lack of a comprehensive framework for group insolvency. The IBC (Amendment) Bill, 2025,

[47] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast).
[48] Kent Anderson, *'Grab Law and the Cross-Border Insolvency of Multinational Enterprise Groups'* (2015) 24(2) International Insolvency Review 95, 98.

recognised this by proposing a group insolvency framework (a new Chapter VA), empowering the government to prescribe rules for the consolidated treatment of group entities.[49] The IBBI and the World Bank have also jointly conducted workshops on this very issue, emphasising the need for alignment with global standards.[50] The critical insight from international experience is that the corporate group, not the individual legal entity, is often the true economic unit. Any new cross-border framework must be harmonised with the group insolvency framework, allowing for the recognition and coordination of a *'main'* proceeding for the group and ensuring efficient cross-border cooperation between insolvency professionals handling different entities within the same global group.

B. Digital Assets and Cryptocurrency: The New Frontier

The explosive growth of cryptocurrencies and other digital assets has introduced a new dimension of complexity to insolvency law. The fundamental legal question, whether a cryptocurrency held by a crypto exchange for its users is the property of the user (held in trust) or merely an unsecured contractual claim against the exchange, can have dramatic consequences in an insolvency.[51] The Indian legal system is only just beginning to grapple with this challenge. The landmark judgment of the Madras High Court, in the *WazirX case*, recognising cryptocurrency as *'property'* under Indian law, is a foundational first step that provides legal clarity on the status of digital assets and insulates them from being treated as an unsecured claim in an exchange's liquidation.[52] However, as academic commentary notes, digital assets are borderless, but insolvency law remains jurisdiction-bound.[53] A comprehensive cross-border insolvency framework cannot afford to remain silent on this. It must incorporate provisions for the tracing, preservation, and treatment of digital assets held by a corporate debtor, which by their very nature exist on decentralised, global blockchain networks that pay no heed to national borders.

IX. A Critical Roadmap for a Comprehensive Indian Framework

In light of the foregoing analysis, this paper puts forward a critical roadmap for India. The

[49] IBC (Amendment) Bill 2025, new Chapter VA.
[50] World Bank and IBBI, *'Workshop on Group Insolvency in India'* (*World Bank*, 2025) <https://www.worldbank.org>. Last accessed 01.05.2026.
[51] Gerard McCormack, *Corporate Rescue Law - An Anglo-American Perspective* (Edward Elgar 2017) 312.
[52] Madras High Court judgment in *WazirX* case (unreported, 2025) cited in *'Digital Assets as Property: A Turning Point for Indian Insolvency Law'* (*SCC Online Blog*, 2025).
[53] ibid.

overarching objective is clear: to transition from a state of legal isolation and ad-hoc judicial expedients to a cohesive, statutory regime that is internationally aligned, predictably enforced, and conducive to investment.

A. The Case for Modified Universalism in India

The foundational decision has already been made by consensus: India must adopt a framework based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997, as recommended by the Insolvency Law Committee in its 2018 report.[54] This is the only viable path to escape the bilateralism trap of sections 234 and 235. The Model Law's philosophy of modified universalism is a perfect fit for India's needs, allowing the country to integrate into the global insolvency cooperation network via a single legislative enactment, while retaining the sovereign right to protect its public policy and the interests of domestic creditors through the public policy exception. A case-by-case, treaty-on-paper approach is a proven failure. The new framework, previously referred to as *'Draft Part Z'* and now to be fleshed out through rules under sections 240B and 240C, should be enacted as a self-contained chapter within the IBC. It must directly grant the NCLT, as the designated Adjudicating Authority, the jurisdiction and specific power to recognise a foreign proceeding, appoint a foreign representative, and grant a comprehensive range of reliefs including a moratorium on local claims and asset protection.

B. Addressing the Public Policy Exception

The most politically sensitive aspect of adopting the Model Law is the *'public policy'* exception, which allows India to deny recognition or assistance to a foreign proceeding if it would be *"manifestly contrary to the public policy of India"*.[55] This is a critical safety valve. However, the history shows that such exceptions can be abused, becoming a backdoor route for domestic protectionism that eviscerates the cooperative intent of the law. The government must therefore ensure that the exception is self-consciously framed with the word *"manifestly",* as recommended by the ILC. This qualifier is not a matter of semantics; it imposes a high bar, signalling to the judiciary and the international community that the exception is to be interpreted narrowly and applied only in rare and fundamental cases where recognition would violate a core tenet of India's legal order, not simply a different approach to a commercial right

[54] ILC Report (n 4) para 5.1.
[55] UNCITRAL Model Law, art 6.

or a mere disadvantage to a local creditor.[56] The ghost of the public policy exception must not be allowed to swallow the framework whole.

C. Fortifying Judicial and Institutional Capacity

A law is only as good as its interpreter. The successful implementation of a sophisticated cross-border insolvency framework places heavy demands on an already overburdened judiciary. The NCLT and NCLAT, which currently handle thousands of pending domestic cases, will need to undergo a significant process of institutional capacity building.[57] The proposal of the government to designate dedicated special benches for cross-border insolvency cases is a conceptually sound but resource-intensive starting point. The Insolvency and Bankruptcy Board of India (hereinafter referred as IBBI) must collaborate with international institutions like the World Bank, UNCITRAL, and the International Association of Restructuring, Insolvency & Bankruptcy Professionals (hereinafter referred as INSOL International) to develop a specialised curriculum and conduct ongoing training for both judicial members and technical members of the NCLT in the nuances of the Model Law, COMI disputes, and inter-jurisdictional cooperation. Furthermore, the law must provide for a digital infrastructure backbone, a secure communication portal that allows Indian courts to communicate directly with their counterparts in other Model Law jurisdictions, as mandated by the cooperation pillar of the Model Law.

D. Harmonising with Group Insolvency and Other Reforms

The cross-border framework cannot be built in a legislative silo. The IBC (Amendment) Act, 2026, has simultaneously set the stage for a group insolvency mechanism.[58] These two systems must be designed in complete harmony. The rules must provide clear guidance on how a foreign main proceeding for a group should be treated, how COMI for a corporate group should be determined, and how insolvency professionals handling different entities of a global group in India and abroad can cooperate under the aegis of the Model Law. Similarly, the framework must pre-emptively address the classification and treatment of virtual digital assets, codifying their status as *'property'*. Without this holistic view, India will replace one fragmented system

[56] ILC Report (n 4) para 6.8.
[57] Data from IBBI Quarterly Newsletter (Jan–Mar 2026) showing over 10,000 cases pending before NCLT.
[58] IBC (Amendment) Act 2026, new s 240D.

with another, creating new silos instead of a truly integrated insolvency ecosystem.

X. Conclusion

The story of cross-border insolvency in India is a compelling narrative of a modern, globalised economy tethered to an archaic and dysfunctional legal framework. The Insolvency and Bankruptcy Code, 2016, was a revolutionary act of domestic legal consolidation, but it left the frontier of international insolvency unguarded. The result has been a costly experiment in ad hoc judicial engineering, where sophisticated protocols between insolvency professionals have masked a deep and chronic legislative failure. The dormant sections 234 and 235, with their misguided reliance on a bilateral treaty model, stand as a legislative white elephant. The transformative potential of a comprehensive, UNCITRAL-based framework is immense and extends far beyond the courtroom. It is a fundamental instrument for recasting India in the global economic order. It is the critical bridge that will enhance confidence for foreign direct investment, assuring global creditors that their claims will be treated equitably in a recognised, predictable process. Simultaneously, it will empower Indian banks and resolution professionals to pursue the foreign assets of Indian corporate debtors. Cases like *Videocon* and *Kingfisher* stand as stark reminders of the high financial and human cost of our current paralysis. The reforms inaugurated by the IBC (Amendment) Act, 2026, represent the first genuine stride towards closing this gap, decisively moving the country from a posture of hesitation to one of commitment. Yet, the true work lies ahead. The success of this monumental reform hinges on the willingness of the executive, to resist the temptation of a shallow, copy-paste adoption. It requires the creation of a framework that is both globally integrated and fiercely mindful of India's unique public interest, a framework that couples a strong enabling law with deep investment in judicial capacity and a careful harmony with other cutting-edge insolvency reforms. The world has moved on from the bilateralism of the 19th century; India must too. The adoption of a robust, comprehensive, and modern cross-border insolvency framework is not a mere legal reform; it is a strategic necessity, a non-negotiable passport for the entry of India, into the top tier of the global economic architecture. The blueprint is ready, the political will appears to be crystallising, and the time for action is now. The nation cannot afford another decade of a phantom code.

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