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Guest of Honour at the Inaugural Session of the 5th Batch of Executive Development Program on Cross Border Insolvency (For IPs) (Online), held from 10th February to 11th February 2026.



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Shri Shukla served as a member of the Indian Economic Service (IES) for over 34 years in various capacities across Ministries and Departments of the Government of India. His last assignment was as Chief Economic Adviser in the Ministry of Rural Development. Earlier, he served as Adviser in African Development Bank. He has wide experience in dealing with various regulations.

*On 10 February 2026, Shri Sudhaker Shukla delivered the Inaugural Address at the 5th Batch of the Executive Development Program on Cross-Border Insolvency (For IPs), conducted online from 10th February to 11th February 2026. In his address, he elaborated on various facets of Cross-Border Insolvency and underscored its growing relevance within the IBC regime. **Read on to know more...***

Interacting with Insolvency Professionals has always been an enriching experience as a two-way learning process. IIPCI and the Center for Insolvency & Bankruptcy, Indian Institute of Corporate Affairs (IICA), have recently signed an MoU. I'm confident that this partnership is well-timed and has a lot to offer, going forward in transforming the journey of the Post Graduate Insolvency Programme trainees and in creating a conducive environment for smooth transition of PGIP trainees into the insolvency eco-system.

You're all aware that path breaking reforms in continuum is the basic feature of the IBC Code. For keeping the regime aligned with emerging economic and business imperatives, six amendments to the IBC have already been effectuated, and the seventh round of amendments is on anvil and soon be operative after due process of legislative approval. The IBC (Amendment) Bill 2025 which is under consideration before Parliament would address several areas such as cross-border insolvency, group insolvency, intermingling of assets, CIIRP, digital platforms, and related aspects. It would be pertinent to note what we are expected to witness sweeping changes in the insolvency framework in India, which can aptly be referred to as IBC 2.0. Nevertheless, the reform juggernaut will surely not stop here, as many new reform initiatives are already under discussion in the context of emerging international insolvency order and sooner or later its adoption in the Indian insolvency regime will also commence.

International Trends Unfolding in India

Therefore, today I would like to share some thoughts so that you may follow the debate in the international insolvency order and appreciate how they unfold in the context of the Indian insolvency regime. Moreover, as the next frontiers we need to include areas such as retail insolvency and individual insolvency, which have been

only partially implemented. Individuals are still outside ambit of IBC and continue to be governed by the pre-Independence or provincial laws of yesteryears, which are not very conducive for resolving the individual insolvency in India. So, discussion on ways and means to implement retail insolvency as detailed in the Code, will surely gain momentum in near future.

The second issue, which is debated in a big way world over, is alternate ways of restructuring like ‘out of court settlement’ or ‘mediation’. That has now become part of all advanced regimes. It is not that insolvency is unfit for such a regime, as some critiques have always argued; but if you see the working of mediation in UK and USA, it has done wonders by way of addressing issues in a very cost-effective and time-effective manner.

The provisions of the Mediation Act do not exclude IBC from its ambit. Without undermining the importance in insolvency resolution, it is important to point out that timeline of 6 months does not augur well with timelines prescribed under the Code. Furthermore, the items included in the excludable schedule refer to ‘in-rem’ proceedings and ‘third party rights.’ Now as line item, if these two are excludable then how IBC could be possibly in is an intriguing question. On timelines, even the Hon’ble Supreme Court has said that the procedural timelines are central to the procedural law while timelines for Courts are directory in nature. The proposed amendments do provide any deviation from the prescribed timelines need to follow a statement of reasons for such a deviation. The Economic Survey 2025-26 presented recently in Parliament states that even government departments must provide a timeline for disposal of work at hand. The timeline for disposal is to be strictly adhered to and entry in one’s ACR should be based on timelines adhered to and deliverable which one has been assigned. So, if this is coming for the Government servants, then you can imagine that any dispensation under law, especially the IBC, will have to adhere to its timelines.

The *third* aspect which is being debated is climate change issue. You may all know that the Ease of Doing Business (EODB) report which was being issued by

the World Bank has been discontinued since 2020. After five years, the new mechanism of such report is being introduced, and new parameters have been announced. Climate change is one of those parameters as a prominent feature. We will lose some points there if we do not have clear-cut guidelines or charter to dovetail environmental concerns within the insolvency regime. The climate change issues and its reflection in resolution mechanism will surely occupy lot of debating space in times to come.

Fourth issue being debated is valuation of digital assets. I think cryptocurrency was debated a lot in the G20 meeting in Delhi and a Group of Ministers (GoM) was constituted to formulate a way out, because not many countries have a framework to deal with cryptocurrency and digital assets. So, that would also be coming as you might have seen what happened to one of the providers of crypto currency which went under bankruptcy proceedings. In absence of regime for adjudication and the arbitration of such bankruptcy, cases like these go to international arbitration. So, we must ensure that the arbitration hub in India is as powerful as that of Singapore which would also be quite necessary for cross-border framework as well. If we implement cross-border without having an arbitration hub, then disputes would be landing in Singapore rather than in India. That was one of the reasons why our acceptance of cross-border has been delayed so far.

Lastly, as futuristic development, I can think of municipal insolvency. You might be reading these days that municipal bodies have been permitted to raise finance through issuing bonds. Though raising finance may not be a big concern, repayment would be an issue. From where shall the revenue come and how sustainable would that be? Since the market would be involved in raising money to meet the municipal expenditure, these insolvencies would be a matter of great concern if the finance raised as such is not returned to the investors in time. If one follows the literature of this subject, many articles are now coming up on municipal insolvency from the UK and from Australia.

Cross-Border Insolvency: Early Signs

The market power of the brand, technological innovation, risk-taking, and entrepreneurship are all factored into making any multinational flourish. However, if you've followed the collapse of Lehman Brothers, it had 650 legal entities outside the United States. In the case of Lehman Brothers' insolvency, one can say it was a USA problem but considering that there were 650 legal entities established and incorporated outside USA, then it had repercussions for many developed countries, though India somehow was insulated. But this kind of collapse can trigger a pronounced demand for a Cross-Border regime as well. After the collapse of Lehman Brothers, as many as 67 countries adopted Cross-Border Insolvency—Malaysia being the last one—signed the Cross-Border regime based on the UNCITRAL model only recently.

You can imagine that the crisis created so much awareness about Cross-Border Insolvency in 2008 that the period from 2008 to 2010 became the window when most countries adopted the modern law on Cross-Border Insolvency. Though the crisis triggered the adoption, but a few major countries like China have not joined, and in India final views have emerged in the Parliament debate.

Besides, disruptive technologies are making business and financial transactions accessible and easy across the globe with remarkable pace. These are to be watched for risks, and interests must be protected by one regime or the other. In this context as well, Cross-Border regime is very important. The BLRC, while discussing Cross-Border framework, was not very committed to its earlier adoption and Sections 234 and 235 were inserted by the select committee and not as such recommended by the BLRC report. The BLRC report stated that the next frontier lies in addressing cross-border issues; accordingly, the matter was deferred for future consideration, with the Committee proposing to take it up in the next stage of deliberation depending on the maturity of the economy. Thus, the issue was left open-ended; however, later the Select Committee incorporated Sections 234 and 235.

The limited efficacy of Sections 234 and 235 in

addressing the cross-border regime is reflected in the fact that its operation is contingent upon two prerequisites - first, the existence of a bilateral agreement with the country concerned on a case-to-case basis; and second, a clear mutual understanding between the two governments. In the absence of either of these conditions, the Cross-Border Mechanism under Sections 234 and 235 becomes inoperative. The Jet Airways case may be an exception; however, in Videocon case, gas projects in Latin America were at stake and needed adequate redressal. The fact that China has not yet adopted the Cross-Border Insolvency framework, might have contributed to India's hesitation to adopt it. However, these issues are now largely of academic importance. The Select Committee has submitted its report to the Lok Sabha, and it is expected that the matter will achieve finality

Gearing up for Future

Speaking of expectations in a professional regime, every professional must be agile towards international law. Looking at advanced countries where cross-border is applicable, we should familiarize ourselves with the legal position in the USA, UK, Singapore, and Australia. I would also request IIIPI to take more steps in advance for training professionals through programs on cross-country comparison of laws.

You may refer to case studies across major jurisdictions and prepare professionals to handle insolvency regime cases as soon as the framework is notified. This is one area where support is needed from IIIPI and the IBBI, the Regulator. The Regulator should also come out with a strategy to develop learning capsules on international jurisdictions—covering the legal position, approach, and filing of affidavits in other jurisdictions. These aspects are important because without knowledge of the law there would be hesitation among IPs, as they would not have clarity on what is to be done in jurisdictions like the USA and UK.

A second issue to watch for is that each regime has a different efficiency or disposal rate. The practitioners must factor in this carefully. If a case in India proceeds in 500–600 days and in Singapore it is completed in 200 days, the question arises how the Resolution Plan

will be implemented and whose plan will prevail, since two courts are deciding simultaneously in different jurisdictions. If one jurisdiction lags, many of the expected gains may not materialize. Therefore, wherever there is a Cross-Border element, you would need to alert the NCLT bench about ongoing proceedings in other jurisdictions such as Singapore or Australia, highlight its current status, and seek appropriate directions.

Speaking of adjudication hub, there is an alternative coming up by way of GIFT City adjudication hub. We know from the experience of Singapore that initially the hub was in London, but due to cost efficiency and time efficiency it shifted from London to Singapore. If we can deliver the same efficiency and time management at a competitive cost, our GIFT City adjudication hub may take over in the coming years.

The other issue is basically about gaining access to different jurisdictions, which again is part of training—how much access you allow foreign representatives to plead in India and how much you get in reciprocal arrangement in other jurisdictions, so that cases proceed smoothly. This would involve foreign practitioners coming in to argue in India and would need some regulatory oversight, which will perhaps come from the IBBI. We have to see the final details, but this must be taken care of.

Further, public policy exception in a cross-border framework is critical which, to my mind, is a domain of the legislature. Though debatable, this is something which ideally cannot be delegated to lower

functionaries to decide on a case-to-case basis. But reading of the proposed amendment suggests that the public policy exception is being delegated through rule making exercise. This would create some problems because public policy exception follows a different pattern in different countries. The USA is very liberal; they have opened everything with nothing prohibited in the name of public policy exception. But if you see Japan, everything is prohibited in the name of public policy exception.

So, we have a wide range of prescriptions across different jurisdictions, and each jurisdiction must be responded to in a different manner. That is why I believe, certain ‘no-go areas’ where one cannot enter for discussion or negotiation —should preferably be included in the IBC itself by the Parliament.

Deploying specialized courts will help only if we ensure specialized training of judges simultaneously. If judges are not trained to deal with international jurisdiction, then there would be a problem, for instance, when the determination of Centre of Main Interests (COMI) comes up, many advanced jurisdictions would be quick to declare COMI on the basis of either the registered office or the concentration of assets, but in India there may be a delayed response without trained judiciary on these lines.

These are some thoughts I would like to leave with you all today. I thank IIIPI once again for giving me this opportunity to share my perspective on the subject. Thank you.

