Cross-Border Commercial Transactions and India's Insolvency Regime: The Hidden Costs of Territorial Moratorium

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Through the enactment of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, the Government of India has introduced enabling provisions for CIIRP, Cross-Border Insolvency, and Group Insolvency. At the same time, the Act provides scope for further refinement through subordinate legislation. Besides, certain existing provisions in the IBC require alignment with the Amendment Act to further strengthen the legal framework for effective implementation. An analysis of key Cross-Border cases alongside the new amendments, reveals structural inconsistencies and coordination challenges. This article identifies these gaps and proposes targeted recommendations for incorporation into subordinate legislation to ensure coherent implementation of the newly introduced provisions on CIIRP, Group Insolvency and Cross Border Insolvency. ***Read on to know more…***

1. Introduction

In February 2025, the Singapore High Court recognized India's Corporate Insolvency Resolution Process (CIRP) as a "foreign main proceeding" under the UNCITRAL Model Law (Model Law) on Cross-Border Insolvency—marking the first such recognition in Singapore and one of the earliest globally under the Model Law. The decision in In re Compuage Infocom Ltd.[1] is technically uncontroversial - Compuage's Centre of Main Interests (COMI) was clearly in India, the CIRP met the Model Law's definitional criteria and

[1] In re Compuage Infocom Ltd. and Another, [2025] SGHC 49 (Sing.) [hereinafter Compuage].

Singapore's Insolvency, Restructuring and Dissolution Act, 2018 furnished the procedural mechanism. Its significance is structural. Indian insolvency proceedings can now be integrated into the Cross-Border coordination frameworks which is followed by sixty-five jurisdictions worldwide. However, India has not offered reciprocal mechanism for inbound recognition.

This asymmetry has direct commercial weight- India attracted USD 81.04 billion in foreign direct investment in FY 2024-25, a fourteen percent increase year-on-year, with Singapore being the single largest source.[2] Indian companies simultaneously expand internationally through foreign subsidiaries, transnational supply chains, and outbound investment, and when distress strikes across these borders, the Insolvency and Bankruptcy Code, 2016[3] (IBC) operates as if these international dimensions do not exist. Sections 234 and 235, nominally enabling Cross-Border cooperation through bilateral agreements, have produced nothing, not one agreement has been signed since enactment.[4]

The IBC (Amendment) Act, 2026 (Amendment Act), passed in the Lok Sabha on 30 March 2026, the Rajya Sabha on 1 April 2026, and received Presidential assent on 6 April 2026, places India in a transitional position, moving from a purely territorial insolvency regime toward Cross-Border integration. This article advances three related arguments. First, India's territorial moratorium imposes hidden transaction costs that the IBC's own value-maximisation objectives cannot survive. Second, the Amendment Act[5] introduces Cross-Border Insolvency Framework under newly inserted Section 240C.[6] Third, the Amendment Act's new mechanisms, CIIRP and Group Insolvency, are closely interrelated to Cross Border Insolvency hence the subordinated legislations should enable interaction between these three frameworks.

2. The Territorial Moratorium and its Commercial Consequences

The IBC's Section 14 moratorium, triggered automatically upon admission of a CIRP application by Adjudicating Authority (AA), prohibits institution or continuation of suits against the Corporate Debtor (CD), enforcement of security interests, asset transfers, and termination of essential contracts.[7] Within India, courts have read these prohibitions expansively as in *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd.*, the Supreme Court held that arbitral proceedings constitute "legal proceedings" under Section 14(1)(a), rendering post-moratorium arbitration void ab initio.[8] In *Brilliant Alloys Pvt. Ltd. v. S.L. Goel*, the NCLAT held ipso facto clauses, termination provisions triggered by insolvency alone, unenforceable during moratorium.[9] Section 238's non-obstante clause, affirmed in *Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.*, gives these effects overriding force.[10]

> ***"The collective rationale of the moratorium, preserving the debtor's estate for equitable distribution, is undermined from the outset when the estate extends beyond India's borders."***

None of the domestic jurisprudence is applied in overseas cases as Section 1(2) confines the IBC to the Indian territory.[11] The moratorium restrains enforcement against Indian assets but does not reach foreign assets. Therefore, foreign financial creditors remain free to pursue enforcement against overseas assets simultaneously. Unsecured foreign suppliers,

[2] Press Info. Bureau, Dep't for Promotion of Indus. & Internal Trade, India Records USD 81.04 Billion FDI Inflow in FY 2024-25 (May 27, 2025), https://pib.gov.in/PressReleasePage.aspx?PRID=2131716 [hereinafter DPIIT FDI Release].

[3] Insolvency and Bankruptcy Code, No. 31 of 2016 (India) [hereinafter IBC].

[4] IBC §§ 234-235.

[5] Insolvency and Bankruptcy Code (Amendment) Act, 2026 (India) (Lok Sabha: Mar. 30, 2026; Rajya Sabha: Apr. 1, 2026; Presidential assent: Apr. 6, 2026) [hereinafter Amendment Act].

[6] Select Committee of Lok Sabha, Report on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, ¶ 67.6.4 (Dec. 17, 2025) [hereinafter Select Committee Report].

[7] IBC § 14(1).

[8] *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd., (2022) 5 SCC 1 (India).*

[9] *Brilliant Alloys Pvt. Ltd. v. S.L. Goel, Company Appeal (AT) (Insolvency) No. 407 of 2018 (NCLAT India 2018).*

[10] *Bd. of Control for Cricket in India v. Kochi Cricket Pvt. Ltd., (2018) 6 SCC 287 (India); IBC § 238.*

[11] IBC § 1(2).

lacking resources for parallel foreign enforcement, absorb concentrated losses. The collective rationale of the moratorium, preserving the debtor's estate for equitable distribution, is undermined from the outset when the estate extends beyond India's borders.

These territorial limitations produce compounding transaction costs in international commercial relationships of India. Foreign trade creditors are required to account for the risk that moratorium restraints bind them within India, while recovery against foreign assets remains uncertain, and that their negotiated dispute resolution mechanisms may be overridden by Section 238. Trade finance providers must factor these interactions into facility pricing. Research on Model Law adoption shows that harmonised Cross-Border frameworks reduce transaction costs by providing the legal certainty international commerce requires.[12] As per the data of Insolvency and Bankruptcy Board of India (IBBI) till December 2025, 8,833 companies were admitted under the IBC.[13&14] The average resolution time has now exceeded 619 days (after excluding the time excluded by the AA) against the original 180-day statutory ceiling. The IBC Amendment Act, 2026 addresses mandatory fourteen-day NCLT admission and a new three-month NCLAT disposal timeline.[15] These procedural reforms should be complemented by clear enabling provisions across both domestic and Cross-Border Insolvency regimes to ensure effective coordination and enhance predictability.

3. Judicial Developments and the Legislative Response

A. Jet Airways: Protocol as Substitute for Law

When Jet Airways' CIRP commenced before NCLT Mumbai in June 2019, Dutch administrators initiated parallel bankruptcy proceedings. As Sections 234-235 remained inoperative, the AA lacked statutory authority to recognise foreign proceedings.[16] On appeal, the NCLAT directed cooperation rather than resolving the jurisdictional question, leading to a protocol executed in October 2019.[17] The protocol designated India as the COMI, established information-sharing, and coordinated the asset sale. It rested on administrative goodwill; creditors held no statutory claim to its protections. Jet Airways[18] demonstrated that ad hoc coordination is possible through appellate pragmatism. It cannot provide the ex-ante predictability that commercial parties require when negotiating transactions.

B. Compuage: Recognition Abroad and India's Reciprocity Deficit

In Compuage[19] the Singapore High Court examined whether Indian CIRP qualified as a "foreign proceeding" under Article 2 of the UNCITRAL Model Law as adopted in Singapore. Applying the framework from *Ascentra Holdings Inc. v. SPGK Pte. Ltd.*,[20] the court found CIRP qualified as a foreign proceeding and recognised the NCLT as a "foreign court" notwithstanding its quasi-judicial composition,[21] and granted broad relief allowing the Resolution Professional (RP) to access Compuage's Singapore bank accounts and records. The court required notification to Singapore-based creditors before asset repatriation, a safeguard reflecting that Cross-Border creditor protection requires procedural reciprocity, not unilateral claims to recognition. The IBC has secured recognition in Singapore owing to Singapore's enactment of the UNCITRAL Model Law.[22]

[12] U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, 1-4 (2014) [hereinafter UNCITRAL Guide to Enactment].

[13] Finance Minister Nirmala Sitharaman, Address in the Lok Sabha on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, Lok Sabha Debates (Mar. 30, 2026) [hereinafter Sitharaman Address].

[14] IBBI, Insolvency and Bankruptcy News, Oct.-Dec 2025, p. 8-9.

[15] Sitharaman Address, supra note 13 (average resolution time now exceeding 760 days, against the 180-day base statutory ceiling under IBC § 12(1), extendable under § 12(3)).

[16] See CP (IB) No. 2205/MB/C-II/2019 (NCLT Mumbai 2019) (refusing recognition of Dutch proceedings on grounds that IBC §§ 234-235 remained inoperative and the tribunal lacked statutory authority to recognise foreign insolvency proceedings).

[17] Rishi Anand & Richa Roy Chowdhury, India's Journey Towards Cross-Border Insolvency Law Reform, 19 Asian J. Comp. L. 395, 409-13 (2024) (describing the October 2019 cross-border insolvency protocol and its terms) [hereinafter Anand & Chowdhury].

[18] In re Jet Airways (India) Ltd., Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT India 2019) [hereinafter Jet Airways].

[19] Compuage, [2025] SGHC 49, supra note 1.

[20] *Ascentra Holdings, Inc. v. SPGK Pte. Ltd., [2023] 2 SLR 421 (Sing.).*

[21] Compuage, [2025] SGHC 49 (holding that the NCLT constitutes a "foreign court" within Art. 2(e) of the UNCITRAL Model Law as adopted in Singapore's IRDA, notwithstanding its quasi-judicial composition).

[22] UNCITRAL, Status: Model Law on Cross-Border Insolvency (1997), https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status (last visited Mar. 31, 2026) (sixty-two states in sixty-five jurisdictions).

> *The IBC Amendment Act, 2026 inserts Section 240C, empowering the Central Government to prescribe rules under Cross-Border Insolvency for notified classes of debtors and designate NCLT benches.*

C. Section 240C and the Select Committee's Observations

The Insolvency Law Committee in its report in October 2018, proposed "Draft Part Z", a comprehensive Cross-Border insolvency framework covering COMI-based recognition of foreign proceedings, foreign representative access to Indian courts, cooperation mechanisms, and concurrent proceeding coordination.[23] Draft Part Z's reciprocity requirement was its principal weakness, excluding major trading partners like member countries of the European Union (EU).[24] The Cross-Border Insolvency Rules Committee submitted implementing regulations in June 2020.[25]

The Amendment Act inserts Section 240C, empowering the Central Government to prescribe rules under Cross-Border Insolvency for notified classes of debtors and designate NCLT benches.[26] Section 240C leaves several core issues—including recognition criteria, COMI determination, standards for granting or refusing relief, court cooperation, and priority in concurrent proceedings, to be addressed through subordinate legislations. The Lok Sabha's Select Committee in its report dated December 17, 2025, has recommended "codifying the basic tenets of the Cross-Border Insolvency Framework directly within the Code itself" to harmonise UNCITRAL principles with Indian law.[27] The Committee separately recommended clarifying "Corporate Debtor" in Section 240C to explicitly include persons incorporated outside India with assets, creditors, or operations connected to India.[28] The government accepted all eleven Select Committee recommendations and added a twelfth transparency amendment.[29]

4. CIIRP, Group Insolvency, and Cross-Border Dependency

4.1. CIIRP: A New Mechanism with Cross-Border Blind Spots

Chapter IV-A introduces Creditor-Initiated Insolvency Resolution Process (CIIRP), replacing the fast-track process.[30] As per the provision of CIIRP, specified financial institutions may initiate insolvency out of court with fifty-one percent creditor approval while existing boards will remain in possession under the RP oversight. The process must complete within 150 days, which is extendable once by 45 days.[31] The following three key areas need to be addressed to further strengthen the framework:

> *As the moratorium is not automatic in CIIRP, sophisticated institutional lenders may initiate foreign proceedings against overseas assets before its confirmation, thereby extracting value.*

(a) Moratorium: The moratorium in CIIRP is not automatic. Section 58G requires the RP to apply to the NCLT for moratorium after commencement.[32] In the window between CIIRP commencement and moratorium confirmation, lenders can begin foreign proceedings against the corporate debtor's overseas assets thereby extracting value.

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[23] Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Cross-Border Insolvency (Oct. 2018) [hereinafter ILC Report].

[24] See Anand & Chowdhury, supra note 18, at 403-408 (discussing the reciprocity requirement and its exclusion of major non-Model Law jurisdictions).

[25] Cross-Border Insolvency Rules/Regulations Committee, Ministry of Corporate Affairs, Report on Rules and Regulations for Cross-Border Insolvency Resolution (June 2020).

[26] Amendment Act, supra note 5, § 240C(3) (incorporating parliamentary oversight procedure under § 59A(4)-(6)).

[27] Select Committee Report, supra note 6, 67.6.4 (recommending codification of basic tenets of the cross-border framework directly within the Code to provide clear legislative guidance and harmonise UNCITRAL principles with Indian law).

[28] Select Committee Report, supra note 6, 67.6.4 (recommending clarification that "corporate debtor" in § 240C includes persons incorporated with limited liability outside India).

[29] See Sitharaman Address, supra note 12 (confirming acceptance of all eleven Select Committee recommendations and the addition of a twelfth transparency amendment requiring CoC to record reasons for selecting the successful resolution applicant).

[30] Amendment Act, supra note 5, §§ 58A-58K; id. § 39 (omitting Chapter IV, comprising §§ 55-58).

[31] Id. § 58D(1)-(2) (150-day period from the creditor-initiated insolvency commencement date, extendable by 45 days not more than once).

[32] Id. § 58G(1) (requiring RP to apply to the NCLT for moratorium with CoC approval or, before CoC constitution, with approval of not less than fifty-one percent by value of the notified financial creditors).

> ***Section 59A coordinates proceedings among Indian group entities, reducing duplication and preventing creditor arbitrage, but its "group" definition covers only entities under the Companies Act.***

(b) Timeline: The 150-day deadline may be incompatible with the practical requirements of Cross-Border asset protection. Securing recognition in a foreign jurisdiction sometimes takes months. Compuage itself required close to two years from CIRP commencement to Singapore court's recognition. There should be some flexibility in the timeline for completed cases.

(c) Asset Dissipation: CIIRP's debtor-in-possession structure creates dissipation risk, as existing management continues to run the business, including transactions with foreign subsidiaries. The Amendment Act extends avoidance transaction look-back periods to run from the initiation date, which is a genuine improvement.[33] But avoiding transactions with foreign group entities requires Cross-Border enforcement capacity that Section 240C seems to lack.

4.2. Group Insolvency, Territorial Boundaries, and the Three-Tier Delegation Problem

Section 59A empowers the Central Government to prescribe rules for coordinated insolvency proceedings where two or more corporate debtors form part of a "Group."[34] The explanation defines "Group" as entities interconnected by control or twenty-six percent or more ownership, including holding companies and subsidiaries.[35] These rules may provide for a common NCLT bench, joint Committee of Creditors (CoC), and binding coordination agreements.

Section 59A coordinates proceedings among Indian group entities, reducing duplication and preventing creditor arbitrage, but its "group" definition covers only entities under the Companies Act. Corporate groups generating India's most complex insolvency cases, often structured with Cayman or Mauritius holding companies and Singapore or UAE subsidiaries, will frequently include entities beyond its scope. The Dutch operating subsidiary in Jet Airways exemplifies the problem as it fits within the corporate group but outside the Indian coordination mechanism. Coordinating Indian group proceedings with that entity requires the Cross-Border recognition and cooperation mechanisms that Section 240C is supposed to eventually provide.

5. Recommendations and Conclusion

As discussed earlier, recognition of Indian CIRP in the *Compuage* case by Singapore was facilitated by its Insolvency, Restructuring and Dissolution Act, 2018[36] enacted under the UNCITRAL Model Law. Similarly, United States (USA) enacted Chapter 15 of its Bankruptcy Code in 2005,[37] producing over a thousand recognition proceedings and substantial jurisprudence on COMI determination. Both jurisdictions demonstrate that Cross-Border cooperation coexists with robust domestic creditor protection. Singapore and the United States embed their Cross-Border Insolvency Frameworks within the statute. However, India has delegated the entire framework to future subordinate legislation. Until that legislation produces an operational regime, the asymmetry that Compuage illustrates persists i.e., Indian proceedings gain recognition abroad through other jurisdictions' statutory mechanisms, while foreign administrators approaching Indian courts

[33] Id. §§ 43, 46, 50 as amended (shifting the look-back period threshold from insolvency commencement date to initiation date, and including the intervening period in avoidance analysis).

[34] Id. § 59A.

[35] Id. § 59A, Explanation (b) (defining "group") and (d) (defining "significant ownership" as twenty-six percent or more voting rights); Companies Act, No. 18 of 2013, §§ 2(6), 2(46), 2(87) (India).

[36] Insolvency, Restructuring and Dissolution Act, No. 40 of 2018, pt. 11 (Sing.).

[37] 11 U.S.C. §§ 1501-1532 (2018).

find no corresponding pathway in domestic law. In the light of the above discussion, major recommendations are as follows:

(a) Codification of UNCITRAL principles: The subordinate legislations delegated to the Central Government under the IBC Amendment Act 2026 should be in line to the UNCITRAL Model Law and Report of the Insolvency Law Committee.[38] At minimum, the rules should specify- COMI as the primary connecting factor, access for foreign representatives to Indian courts subject to a narrowly construed public policy exception, automatic stay upon recognition of a foreign main proceeding and a cooperation obligation on Indian courts and resolution professionals. These are the UNCITRAL Model Law's core provisions, applied in sixty-five jurisdictions and recommended by the Insolvency Law Committee in 2018.

> ***"The definition of "corporate debtor" in Section 240C should explicitly include persons incorporated with limited liability outside India whose insolvency proceedings have a meaningful connection to India."***

(b) Coordination among Group Insolvency, Cross Border Insolvency and CIIRP: The subordinate legislation under Section 240C should facilitate effective interaction and coordination among

the three new provisions introduced by the IBC (Amendment) Act, 2026. Section 59A rules should address how Group Insolvency coordination agreements interact with recognition orders for foreign group entities.

(c) Section 240C corporate debtor clarification: The definition of "corporate debtor" in Section 240C should, as the Select Committee recommended, explicitly include persons incorporated with limited liability outside India whose insolvency proceedings have a meaningful connection to India.

The IBC (Amendment) Act marks an important step forward by recognising Cross-Border Insolvency as an area requiring dedicated statutory treatment. Section 240C establishes an enabling foundation, while the introduction of CIIRP and Group Insolvency provisions brings into focus the importance of integrated Cross-Border coordination.

[38] ILC Report, supra note 22, at ch.