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India's Emerging Framework for Cross-Border Insolvency vis-à-vis the Potential Impact of Artificial Intelligence: A Comprehensive Analysis

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Abstract
India's economic landscape has witnessed a significant transformation in recent years, marked by increased globalization and cross-border transactions. With the growing integration of Indian businesses into the global economy, the need for an effective framework to address cross-border insolvency issues has become paramount. This paper provides a comprehensive analysis of India's emerging framework for cross-border insolvency, exploring its evolution, key components, challenges, and potential implications.
The first part of the study looks at the background of cross-border insolvency in India and how pertinent laws and court rulings have changed over time. The article then explores recent legislative initiatives that aim to improve the efficiency of cross-border bankruptcy procedures in India, such as the adoption of the UNCITRAL Model Law on Cross-Border bankruptcy and the modifications made to the Insolvency and Bankruptcy Code (IBC).
The paper clarifies the procedural and substantive aspects of cross-border insolvency resolution in India by carefully examining the major elements of the country's emerging framework for cross-border insolvency, such as the recognition of foreign insolvency proceedings, cooperation and coordination between domestic and foreign courts, and the treatment of foreign creditors.
Furthermore, the paper critically evaluates the challenges and limitations inherent in the implementation of India's cross-border insolvency framework, such as jurisdictional conflicts, cultural and legal differences, and procedural complexities. It also discusses potential strategies and best practices for addressing these challenges and maximizing the efficiency and effectiveness of cross-border insolvency proceedings in India. Then it will delve into analysing the usage of AI in legal systems particularly in cross border insolvency related matters followed by the benefits and challenges of the AI driven tools in the legal system. It also discusses some case studies or real-world examples as to the usage of AI in the legal scenario.
By providing a comprehensive analysis of India's emerging framework for cross-border insolvency, this paper contributes to the existing literature on international insolvency law and offers valuable insights for policymakers, practitioners, and stakeholders involved in cross-border insolvency proceedings in India and beyond.
Key Words: Cross-Border Insolvency, IBC, UNICITRAL Model Law, AI.

Introduction:
Due to the dynamics of globalization companies are expanding their business overseas and they may have various creditors located at different locations all around the globe. Consequently, if the company becomes insolvent the legislations of various jurisdictions will become applicable on them and the subsequent proceedings might result in complexity and impossibility as laws differ from jurisdiction to jurisdiction. This highlights the interdependence between a company's insolvency and the foreign creditors. Hence, arose the need for there to be a system which will protect the stakes of the parties getting involved.

A Cross-Border Insolvency (CBI) arises when a debtor has become insolvent and has acquired credit and/or debtors in different countries (Hannan, 2017). According to Professor Ian Fletcher "this refers to instances where the provisions of domestic as well as the foreign laws would be applicable in case of insolvency as the insolvency crosses the legal system of the domestic country."

A CBI may arise in three situations in India:

1. When the creditors attempt to assert their rights on the overseas assets belonging to a debtor belonging to India.
2. When creditors seek to impose their rights over assets in India belonging to a foreign debtor.
3. When Indian creditors attempt to assert their entitlements over the overseas assets of foreign debtors.

Insolvency and Bankruptcy Code (IBC) was enforced in India in 2016 and it has evolved significantly via amendments or judicial precedents. In order to evaluate and analyse the efficiency and execution of the IBC, an Insolvency Law Committee (ILC) was formulated by the Ministry of Corporate Affairs (Report of Insolvency Law Committee on Cross Border Insolvency, October, 2018). The ILC in its reports stated that the current structure of insolvency was not up to the global standards and there arose a need to incorporate the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency to settle disputes related to CBI.

Prior to NCLT handling national level insolvency, the IBC remained mute on CBI cases. Nevertheless, based on the suggestions made by the Joint Parliamentary Committee (JPC), which examined the Bankruptcy Law Reforms Committee's draft bill ('BLRC'), and added two provisions to the bill: Section 234 and Section 235, which will be discussed in detail in this paper. The Union Budget 2022-2023 proclaimed that "amendments will be carried out to ensure the efficacy of the resolution in order to provide seamless cross-border insolvency procedures."

However, these provisions also fail to tackle the issue of CBI as they do not propose a comprehensive framework to address these issues.

Necessity For Cross Border Insolvency In India

The CBI has developed in India in various stages. The UNCITRAL was introduced in the year 1997 and has been adopted by more than 50 countries as of now. India has made a draft law derived from the UNCITRAL model law but is yet to implement it.

India's first CBI case arose in the year 1908 in the MacFadyen & co. case, [1908] 1 K.B. 67, the London and madras trustees of the company entered into an agreement in conformity with the courts of both jurisdictions. Later, it was opposed, and the English court asserted that the agreement was for the advantageous for both parties and it was initiated while considering all the business aspects involved in it.

In May 2000 the Eradi Committee (2000), dissertated on the issue of CBI due to the increasing involvement of foreign companies in India as a result of globalisation. The committee took into consideration the UNCITRAL model law while forming a decision on the issue of CBI. It also stated that the Companies act, 1956 should be altered to include provisions related to the model law to solve the problems arising due to rapid globalisation.

After this in 2015 the BLRC, was formed by the Department of Economic Affairs and the Ministry of Finance. They were charged with drafting of the IBC, and they only dealt with the domestic aspects of insolvency and stated that the CBI shall be done at a subsequent phase after analysing the effectiveness of the domestic laws on insolvency. The report dealt with issues such as overseas investors in corporate bonds issued in India or borrowing funds internationally by an Indian company while the other aspects such as Indian firms having foreign nationals as their debtors, were supposed to be dealt with later.

A Joint Parliamentary Committee ('JPC') reviewed the matters decided by the BLRC before the enactment of the draft bill. The JPC reformed several recommendations of the BLRC. This was done after JPC declared that CBI cannot be neglected for too long and there should be several legislations in place to help India in forming an insolvency law globalisation is on the rise and several MNC's have set up their business in India and vice versa and with it the lending has crossed the territorial borders of the company , since this is a cross-border element involving several legislations of countries involved hence there should be some laws in place to ensure that CBI issues will be addressed accordingly.

The JPC thereafter added two provisions, Section 234 and 235, to the Draft Bill aimed at addressing matters related to CBI.

Section 234 authorizes the Central Government to establish bilateral agreements with other countries to uphold the provisions of this code. The code can also be modified by a notification of the Central Government regarding assets or property of the corporate debtor located situated outside the borders of India with which reciprocal agreements have been established.

Section 235 authorizes the adjudicating authority to send a letter of request ,to an authority competent to entertain such request, on the application of the resolution professional, liquidator or bankruptcy trustee during the process of the insolvency resolution process ,if the resolution professional, liquidator or bankruptcy trustee is of the view that the assets of the corporate debtor are situated in a country outside India with which reciprocal arrangements have been made, as mentioned under section 234, and if the adjudicating authority determines that evidence these assets is necessary for the insolvency resolution process upon receiving an application for such evidence.

The JPC did note, however, that "But cross border insolvency has a wider issue”. There is a possibility that a multinational corporation with branches in other countries will go bankrupt. That could lead to consequences. Several additional problems exist. These matters may be addressed later.

These provisions are just a simplistic solution to CBI but it doesn’t consider the complexities that might be associated with CBI. in cases where several countries are involved then it might turn out to be arduous, exorbitant and might involve multiple negotiations to be entered into and if several countries are involved then balancing the conflicting clauses within such treaties could pose a challenging situation.

An ILC Report (2018), a committee formed under the Ministry of Corporate Affairs (“MCA”), was also formed in 2017 to oversee the implementation of the code, and also taking note on the various issues associated with CBI. Their first report was released in March 2018, and they pointed out that the existing provisions (S.234 and S. 234) refrain from furnishing an exhaustive framework for CBI matters. Implementation of the model law will also assist in securing additional overseas investments as it would then provide means to ensure the recognition of insolvency proceedings and would make their facilitation easier. It also talked about forming a Draft Part Z in conformity with the Model Law. The Draft however neglected in answering certain gaps and later on a second report was released wherein it provided suggestions regarding a legislative structure for CBI.

The MCA then established a cross-border insolvency rules/ regulations committee (“CBIRC”) which in its report suggested a few modifications in Draft Part Z. This report also suggested some recommendations for improvement of CBI. Executing a CBI legislation within the IBC, aligned with global standards and befitting to the Indian environment, could prove advantageous for all involved parties. The applicability of this draft is restricted to cross-border regulations concerning individual insolvency and not for multiple corporate entities within a group.

Draft Part Z is a set of guidelines encompassing a specific chapter with the endeavour to tackle the shortcomings of the existing CBI system, or its absence thereof.

Draft Part Z was proposed to be enacted to solve CBI issues and its main features are:

1. The applicability of this chapter is only limited to Corporate Debtors (CD), which also includes foreign companies, and it excludes personal insolvencies and individual debtors.
2. It follows the principle or reciprocity, i.e., it only applies only to jurisdictions that have implemented the UNCITRAL Model Law.
3. There must be a Centre of Main Interest (COMI, 2018) established of the company and if the registered office of the CD has not relocated to another territory outside India in the preceding 3 months, then the COMI will be the registered office of the CD. Another factor which will help determine the COI of the Corporate debtor is that an assessment may be conducted by the Adjudicating authority as and when required (Section 14, Draft Part Z).
4. There will be two kinds of proceedings as mentioned under the Draft part Z they are:
    - Foreign main proceeding-It will be held in the jurisdiction where the CD has its COMI.
    - Foreign non-main proceeding- It will take place in a jurisdiction other than where the COMI is located and where the CD has an establishment.
5. Upon acknowledgement of foreign main proceeding, legal proceedings can be initiated under this Code if it is observed that the CD possesses assets within the territory of India which will be confined to the assets situated in India and it may extend if required for facilitating cooperation and coordination related to other assets that according to Indian law should be managed in that proceeding.
6. Appeals to be made in opposition to the judgement of the Adjudicating authority to the NCLAT within 30 days, given that NCLAT might permit the extension for up to 15 days if the NCLAT

is satisfied that the conditions were sufficient for not being able to file the appeal within the stipulated time.

ROLE OF AI IN MODERN LEGAL SYSTEMS

Artificial Intelligence (AI) has achieved ubiquity in various fields including the legal arena. It enables the human or natural intelligence specific tasks to be performed by a machine in a more effective and improvised manner, as via AI technologies a complex and time consuming work can also be done in a blink of an eye. This eases out the work of humans and in some way reduces the repetitiveness of some tasks by getting them done automatically via a computer-based algorithm. This AI based system simulates the human thinking, learning, analytical and problem-solving abilities into solving various complex issues. If we talk about legal professionals, they uses these new technologies like predictive analytics, machine learning, natural language processing, etc. in order to perform tasks like risk assessment, research, case synchronisation, drafting and document review.

Most commonly used AI technologies in the field of law are:-

- **Machine Learning (ML)**: It is that field of AI which elucidate the existing data and information in order to enable the automation of the similar repetitive tasks. This kind of AI identify the saved data, images, patterns or graphs and then by elucidating and interpreting the given data provides an improvised output. Thus in the legal field, this algorithm tries to elucidate the previous cases or judicial precedents and then on the basis of the decision pronounced earlier with regards to the given facts and circumstances, it predicts the decision of other issues that arose in future.
- **Natural Language Processing (NLP)**: This kind of algorithm gives the human cognitive or language processing abilities to a machine and thus enables it to understand different languages written or spoken. Unlike humans it helps to process a bulk of data instantaneously and showcase effective results in a pinch of second (Sharma, 2024). By way of using this technology, legal professionals are relieved as now this algorithm in a machine does complex analysis of lengthy legal data and also elucidate various legal agreements or contracts.
- **Robotics**: It is that part of AI that has not yet been used in India, which enables the working of some human activities by a man made robot. This kind of technology is however being planned by the country like China, in which the work of the legal professionals will be reduced and thus such administrative tasks will be performed by an AI based robot.

These different kinds of AI are being used nowadays for addressing various intricate legal tasks like by providing a relevant database it enables the legal professionals to do a complex legal research more conveniently; writing or drafting various legal agreements, contracts or any other document in a more effective manner; analysing plenty of legal documents, issues, rules and regulations, judicial precedents and legislations efficiently; providing database or electronic platforms which eases and improvises the process of learning; etc. By way of using the above machine learning and natural language processing technologies, the work of legal experts has been reduced and in addition to this, it makes analysis or review of complex documents instantaneously with due diligence. Moreover, various chatbots like ChatGPT and Gemini has been set up which enables the users to get response to their queries and get initial legal assistance from these advanced AIs, thus various law firms are coming up with their own AI monitored platforms which ease out the work of the clients as well as the lawyers by reducing the burden of the professionals for trivial matters and also providing quicker assistance to the clients. However the use of these advanced technologies are subjected to various backlogs and challenges as every development comes up with a backlog like technological disabilities, lack of AI powered learning, lack of human supervision, absence of ethical considerations, etc.

Probably there is hardly any area, left untouched from carving out the benefit of these advanced technologies. It has eased out the complexities arising in the matters dealing with particularly cross border insolvency, where the creditors are residing across different countries. The use of the AI in insolvency matters is constructive in many ways like every insolvency related matter will involve proper analysis of the financial statement or finance related data of the aggrieved entity which is a time consuming and an intricate task requiring high professional skills, thus AI based machine learning or natural language processing tools can cut off the time and cost involved in assessing financial statements and also predict any financial hardship if likely to arise in near future at an early stage. These AI based tools will aid the process of cross border insolvency by spotting and mapping the debtor's assets or liabilities effectively and also help in recovering assets when required. In addition to this, it also eases out the procedure involved in these insolvency proceedings by automating the process of drafting. The use of AI based system not only helps in easing out the process of insolvency but also helps in synchronising cases electronically unlike documenting them naturally.

UNCITRAL Model Law On Cross-Border Insolvency, 1997

The UNCITRAL drafted a model law for the facilitation of CBI proceedings and safeguarding the interests of the CD as well as the creditors of different countries involved therein. This model law is mainly based on four principles for the proper facilitation and management of the CBI proceedings which are majorly providing access for the foreign courts and professionals to the domestic court’s proceedings, recognizing the foreign proceedings, maintaining cooperation and coordination among the courts of various jurisdictions (Howell, 2008). The focus of the framework is on the cooperation and coordination of different laws and related procedures rather than unifying them as one cross border insolvency procedure, as this will ensure the interests of the creditors who are not residing where the insolvency proceeding is actually being carried out and also protect those assets of the CD which are located outside the purview of the debtor’s COMI (Sunrendran, 2023). These CBI provisions allow the stakeholders to protect their interests and help in recognizing and assisting the proceedings being conducted in different jurisdictions.

The UNCITRAL Model Law primarily deals with access to the domestic courts of the foreign insolvency proceedings and foreign representatives along with the creditors interested thereof, recognition of the foreign court’s insolvency procedure and order passed in pursuance to it, maintain cooperation and coordination among the courts of various jurisdictions in which the CD has establishments and where there is any related proceeding going on, and in addition to this assistance to be given for the continuation of an effective foreign insolvency proceeding. Chapter II of this model law deals with the admission of foreign representatives and creditors to the adjudicating authority of the domestic country, which includes direct access of the representatives from other countries to the domestic court and granting same rights pertaining to insolvency proceedings as the creditors of the domestic state (UNCITRAL). Then Chapter III accords with the acknowledgement of a foreign proceeding and relief, which entails validation of foreign proceedings going on in the jurisdiction where the CD has a COMI and relief granting protection of the debtor’s assets are situated beyond such jurisdiction. The matter pertaining to the acknowledgement of a foreign proceeding in a domestic court and the enforcement of a decision passed by the foreign court where the debtor does not belong was raised in Rubin vs. Euro finance case [2012] UKSC 46 and the court adjudicated that there exists no legitimate reason as to avoid the enforceability of foreign judgment relating to insolvency proceedings. In addition to this, Chapter IV deals with the collaboration and direct communication between the adjudicating author of the domestic state and the foreign courts or foreign representatives and Chapter V which deals with the coordination between the proceedings taking place in different jurisdictions. In the Maxwell Communication Corp. case 93 F.3d 1036 (2d Cir. 1996)., the issue related to cooperation and coordination between the laws of the US and UK courts was put forth before the adjudicating authority and the court has observed that these proceedings have a significant degree of global collaboration and reconciliation between the laws of these two countries.

Therefore, in a nutshell, the UNCITRAL Model Law on CBI enumerates a resilient outline for the facilitation and management of the ongoing insolvency resolution proceedings being carried out in different jurisdictions. The purpose of this framework was to encourage cooperation, coordination, fairness and effectiveness in the resolution of international insolvency disputes and maintain and safeguard the rights and interests of the CD and creditors residing at different locations. However, there exist challenges too with regards to the implementation of this model law as having diverse legal systems, interpretation of laws, regional and cultural barriers, and political considerations.

Potential Applications of AI in Cross-Border Insolvency

These different kinds of AI are being used nowadays for addressing various intricate legal tasks like:-

- **Legal Research and Document Review**: These different kinds of AI tools are being used nowadays for addressing various intricate legal tasks like by providing a relevant database it enables the legal professionals to do a complex legal research for cross border insolvency more conveniently and drafting various legal agreements, contracts or any other document required for that procedure in a more effective manner. AI based tools like machine learning and natural language processing helps in finding out relevant case laws, legislations, rules, regulations, treaties, conventions, etc. required to address a particular issue on any cross border insolvency dispute. This aids in reducing the time for the legal research and giving a comprehensive result. Additionally it eliminates the repetitiveness of work by elucidating the saved data by getting it done automatically. Thus by way of drafting documents automatically, the burden of the professionals has been reduced and also by using its algorithm, it carves out the required material and delivers the result more stabilised (Pietropaoli, 2024).

- **Predictive Analysis**: These AI based advanced technology is being used by various individuals or entities for predicting the future risks and administer issues proactively. For doing predictive analysis, machine learning and natural language processing like AI tools are being used, with the help of which the legal professionals or entities predict a case outcome based on the due analysis of the landmark judgements that has already been stored in its software. It helps the professionals to predict any future risk that may arise by proactively analyzing the entity's financial records and aids in the process of risk management.
- **Case management and Workflow Automation**: These AI tools have to some extent shifted the manual work to automatic (electronic) work and thus manage the workload of the legal professionals. In cross border insolvency proceedings, as there always exists a jurisdictional complexity so it enables the virtual hearings to be held and also via its MLP tool administer the problem of communication between the relevant parties. The case scheduling or filling which earlier used to be manually done is now being done with the help of these AI driven technologies.
- **Communication and Collaboration:** This enables the streamlining of the judicial proceedings and making it available to the relevant parties more conveniently. Like in the matters of cross border insolvency, with the help of establishing virtual platforms for conducting all the proceedings required the parties involved in the matter across the border of the country are relieved. It strikes out the language barrier, if any, between the parties and bridges the communication between the relevant parties.

Benefits of Using AI in Cross-Border Insolvency

- **Increased Effectiveness and Efficiency**: These AI powered technologies help in faster disposal of the cases specifically pertaining to cross border insolvency. As it provides various databases and platforms to get the task done instantaneously by reducing the manual work or by automation of repetitive tasks or by giving relevant information more conveniently and fastly, thus aids in building the overall effectiveness and efficiency.
- **Saving cost**: The use of these tools help in cutting the labour work to some extent which anyways reduces the cost involved in a matter. By getting things done virtually and more easily by using machine intelligence, the variable cost that includes the labour or service cost has been eradicated to some extent as most of the work has now been done electronically rather than manually.
- **Deliver accuracy**: The use of these AI driven tools has eradicated the human errors that used to be done when all the work has to be done by a human unlike the present case where these advanced technologies are being used which by applying the set algorithms performs the task without any bias or factual error.
- **Better Decision-Making**: The use of these technologies have improvised the decision making process of the individuals or entities. As now if we take the case of cross border insolvency, the professionals by making use of the AI predicts any future risks in advance by proper analysis of the financial records.

Challenges and Risks of Implementing AI

- **Data Privacy and Security**: With the presence of bulk data involving sensitive data too, breaches the fundamental right of privacy under article 21 of the individuals. As in the absence of human involvement in any matter where humans apply its cognitive abilities in deciding and dealing with the sensitive information, AI fails in complying with the privacy rules and regulations involved and thus leads to data privacy..
- **Ethical Considerations**: Unlike humans, AI does not carry any kind of biasness and in some way follows the rule of 'as it is'. It does not take human oversight in order to maintain ethical considerations while making decisions for any matter across the boundaries.
- **Technological Barriers**: This sudden shift from human driven work to AI driven work in the legal system, comes up with a lot of technological backlogs as the professionals are not well equipped to adapt to such changes. This gap can be built by conducting training of the professionals involved in the matter and thus building the legal infrastructure.

- **Resistance to Change**: This change or shift in the legal system requires the acceptance of the professionals as well as the clients which will be achieved by building trust and confidence of the individuals towards these AI driven tools.

Case Studies and Real-World Examples

The cross border insolvency is a broader field of law which requires the dealing with the persons residing in different countries and thus involves some backlogs to be dealt accordingly. The use of AI driven tools has to some extent reduced the complexities involved in addressing matters pertaining to cross border insolvency from streamlining the process involved to bridging the communication gap between the concerned parties. The emergency of digital assets like cryptocurrencies and decentralization has been one of the reason for the sudden increase in the use of AI technologies.

In recent years, we have seen various initiatives taken by the countries so as to implement the use of AI in legal systems like if we see internationally, California Bar's Committee on Professional Responsibility and Conduct (COPRAC) made recommendations pertaining to the usage of AI in the legal practice. It has permitted the professionals to generate relevant data using AI based tools but subject to the Rules of Professional Conduct. Also nowadays many educational institutions allow the law students to makes the use of AI tools like Gemini or ChatGPT for carving out relevant data conveniently. Moreover, LexMachina-like AI powered tool is being used by the corporate law firms particularly in the UK in order to predict the outcome of a case (including insolvency matter) by elucidating the landmark judgements and existing information and thus reduces repetitive documentation by the humans. In addition to this AustLII company has developed its own AI called DataLex which helps the professionals in conducting complex research.

India has taken the initiative to integrate the use of AI technologies with the legal system firstly during COVID 19 pandemic by virtualising different tasks. This has come up with AI powered Supreme Court Portal for Assistance in Court's Efficiency (SUPACE) and Supreme Court Vidhik Anuvaad Software (SUVAS) tools. These tools help in giving access to the relevant information with ease and bridging the communication gap by way of translation. The use of AI first has been seen in the famous Maharashtra Political Controversy Case, where Hon'ble CJI DY Chandrachud has highlighted the need for integrating Ai in the legal system. Then if we see law firms in India adopting implementation of AI based schemes, one of such legal firm which has became first Indian law firm to neutralise the use of AI, is Cyril Amarchand and Mangaldas firm. The firm has adopted the AI powered system called 'KIRA', developed in Canada, in its firm and taken the benefit of the technology. However the use of these technologies cannot be understood as eliminating humans from the due process of law and replacing them with AI then it is just to ease out the technical or mechanical aspect of work by taking the aid of the AI. Moreover, some of the AIs that are being used in the legal system are ChatGPT, Kira, Juro, IronClad, Genie AI, Spellbook, Grammerly, LexMachina etc., which also ease out the process of cross border insolvency by predicting and assessing the financial data of the entities (BIICL, 2017).

Evolution through Legal precedents

Regarding the case of Jet Airways pvt limited insolvency case (Company Appeal (AT)(Insolvency) No. 707 of 2019) there was a parallel proceeding going on in a Dutch court, which had begun a month earlier, the Dutch had appointed a Bankruptcy Trustee in Netherlands and the Dutch court filed an application to the NCLT to recognize the Dutch proceedings. However, the application was rejected by NCLT stating that no provision in the IBC that recognizes the judgement of a foreign court even if the judgement is found to be true still since there is no such provision in the IBC hence it cannot be upheld. The Dutch administrator then approached NCLAT, and the NCLAT recognised the legal process in Netherlands. The Dutch administrator and the Resolution Professional entered into a CBI protocol with certain terms and conditions.

This protocol is seen as a sign in the direction of progression as the coordinated proceedings were conducted and this case will become a precedent for further cases.

In State Bank of India Videocon Industries Limited (MANU/NC/7959/2020), a case before the NCLT although there was no question of parallel proceedings, the question arose as to whether assets in foreign jurisdiction may be involved in the Indian insolvency proceedings and whether section 14 of the code will be applicable in regards to foreign assets. This question was deliberated and it was decided that it will be applicable. It was also decided that India to a certain degree may request for insolvency proceedings in foreign territory but only in select nations. However, a request for such issues requires a formal agreement to be entered into which is laborious and complex. The sections 234 and 235 of the code have created uncertainty regarding involvement of foreign creditors in insolvency proceedings as can be seen in Macquarie Bank Ltd vs Shilpi (Civil Appeal No.15135 OF 2017) cable technologies ltd, where the Supreme Court clarified that the term person will also include persons residing outside India. Therefore, foreign creditors as well as financial institutions can be a part of insolvency proceedings in India. However, the extent to which they can participate has not been mentioned.

In the case of Usha Holding (Company Appeal (AT) (Insolvency) No. 44 of 2018), the NCLAT held that the insolvency adjudicating authorities in our country do not have jurisdiction to decide matters concerning the validity of foreign judgements or orders. To facilitate knowledge regarding reasons for CBI regulations in India, we can classify them in three aspects: to safeguard the interests of overseas creditors who have extended loans to insolvent companies, assisting companies who wish to facilitate insolvency proceedings, but their business operations are in multiple locations, and for assisting debtors whose assets are situated in different jurisdictions during the time of insolvency.

Regulation on Insolvency Proceedings of foreign countries

United Kingdom

The European Commission ("EC") has developed laws concerning CBI, establishing a structure applicable to the countries within the European Union (EU). The EC passed council regulations which came into effect on May 31,2002.It will apply to all countries of EU excluding Denmark.

The EC laws do not aim to establish a standardized framework for domestic insolvency procedures. Instead, it assists member states in defining jurisdiction and determining the appropriate laws for CBI proceedings. It facilitates the acknowledgment of insolvency proceedings across all EU member states.

According to the EC Regulation there could be three kinds of insolvency proceedings (Council Regulation 2015/848):

Main proceeding: When the COMI of the debtor is under the territorial jurisdiction of EU.

Secondary proceeding: When the debtor has an establishment, which means a place where business operations has been established, in the member state and the secondary proceeding may be conducted in the member state in which the establishment has been set up.

Territorial proceeding: Where the debtor has an establishment but main proceedings have not begun in any other territory.

The UK instituted the CBI Regulations in conformity with the UNCITRAL Model Law and left its domestic law as it was for CBI matters as well. In the UK, foreign representatives are granted authority to initiate insolvency proceedings with permission from the relevant court, especially in cases where concurrent cross-border insolvency proceedings involve the same corporate debtor within British jurisdiction. Subsequent to the acknowledgement of foreign "main" proceedings in the UK, these representatives have the freedom to handle the assets of the insolvent company, extending beyond the local jurisdiction of Great Britain (Williams, 2016).

Singapore

Singapore has adopted the UNCITRAL model law after a committee has been established known as 'Insolvency Law Review Committee' whose task was to evaluate the current laws linked to CBI matters in the territory. The committee then suggested to implement the UNCITRAL Model Law after which it was implemented after amendments were made to the Companies Act. The amendment has allowed acknowledgement of foreign insolvency procedures and insolvency representatives within Singapore. The ease of acknowledgement of overseas insolvency proceedings by the Foreign Representatives has become effortless except for completing certain small formalities.

The comprehensive framework of CBI laws has also made provisions for conducting joint Insolvency Proceedings which would include a stipulated number of debtors overseen by an assigned liquidator.

United State of America

The UNCITRAL Model Law has been developed with the influence of the US Bankruptcy Code. After implementation of the model law the courts began to recognise foreign courts and foreign representatives during insolvency procedures (Westbrook, 2013). Although if any inconsistencies between laws of two nations arise the US laws will become applicable on such matters. However, the US laws also have some setbacks such as the US courts have established a requirement seeking acknowledgement of a foreign proceeding must initially meet the criteria as a debtor stipulated under the domestic code which is different from the model law. Once a domestic representative is designated to oversee insolvency proceedings, then they are not permitted to engage in foreign proceedings or manage the assets of the insolvent company beyond the borders of USA (Leong, 2010).

Challenges pertaining to the current Insolvency framework in India

While Sections 234 and 235 were added to the code with the intention of easing the settlement of CBI, it has been noted that no significant efforts have been done in order to make to execute the intergovernmental agreements effectively. Presently, an NCLT order in a CBI case would not be receive direct acknowledgement or implementation in any foreign jurisdiction. Moreover, even if recognized, they prove to be inadequate to tackle the intricate challenges arising from CBI cases. These provisions fail to tackle the actual issues within the process and show numerous drawbacks.

- There are no provisions for a situation to deal with CBI problems when the debtor's assets or creditors are located in such a country where there is no bilateral treaty in effect.
- To bring implement the provisions of Draft Z certain modifications will need to be done
- The timelines for resolution of cases in the code are rigid and have been determined as inviolable.
- For smooth facilitation of CBI, the ability to establish bilateral agreements with international jurisdictions is one of the perquisites. However, the task of entering into such agreements is cumbersome and laborious hence it is not a preferable way.
- There have been instances wherein a company has multiple branches across various jurisdictions, in these cases separate bilateral agreements will be made to further resolve the insolvency dispute which will turn out to be cumbersome. The current mechanism does not offer a comprehensive mechanism to deal with this issue effectively.

Conclusion

Since transnational transactions are on the rise and so are the problems associated with them it has become imperative for the insolvency structure in India to be synced with not just the model law but also the laws of insolvency of other countries which would help resolve conflicts easily. There is not much of a legal framework related to CBI in India and the existing provisions also have some shortcomings and they would not be able to provide a comprehensive framework for resolving CBI related issues. With the inclusion of the draft provisions facilitation of these laws will become easier but much needs to be done before the insolvency proceedings provide benefit to all those involved.

Although the Model law still has some defects as the countries that have incorporated it have faced issues but it is still the only model that gives some relief to matters related to CBI. India will also need to consider provisions outside the Model law and in this regard the Financial Stability Board (FSB), which works in collaboration with the G20 has issued certain principles aimed at facilitating cross-border resolution of banks and other financial institutions effective and feasible. Hence India should check all the possibilities and begin their incorporation to the code.

Earlier the laws relating to CBI were not as vast as they are now, this shows that laws related to CBI are being developed although the pace is slow but after incorporation of the Draft in the Indian legal system India would move several steps forward in this regard.

Moreover, as Artificial Intelligence (AI) has achieved ubiquity in various fields including the legal arena, it has advanced the work of the professionals. The AI based tools like machine learning or natural language processing helps the professionals to perform the legal tasks particularly pertaining to cross border insolvency more effectively, efficiently and accurately (Pietropaoli, 2024). The use of AI has streamlined the insolvency proceedings, improved the risk assessment, decision making process, and also cut off the time, cost and efforts of the professionals. Recently there have been a couple of initiatives being taken across the world to implement and integrate the AI based tools with the legal systems and thus it also ease out the work of the experts being involved like in insolvency proceedings the analysis of the financial data which is usually done by the financial expert has been eased out. Thus relevant changes and development has to be launched in this emerging field so as to carve out its benefits in a more robust manner and conduct the complex cross border insolvency proceedings more effectively and efficiently by quickly spotting the assets and liabilities contested severed in different countries.

Recommendations

After conducting research and analysing all the pros and cons of the established legal provisions and policies on CBI, it can be recommended to the policymakers that there is a prompt need to harmonize the CBI laws of different jurisdictions to promote cooperation, coordination, and effectiveness of the international insolvency proceedings. This will help in eliminating the challenge of diverse legal systems and diverse legal perspectives on CBI and

protect and preserve the rights of the creditors residing at different locations along with corporate debtors. Moreover, there is a need to work upon eliminating the impact of regional and cultural differences by framing regional legal frameworks in the form of any regional agreement or convention on CBI.
By putting into action these proposed recommendations, the lawmakers and other appropriate authorities can aid the adjudicating authority dealing with cross-border insolvency disputes to cope with some of the challenges they face, to have a harmonious, fair, effective and efficient insolvency process. This will result in the overall growth and advancement of the CBI related legal frameworks, thereby promoting economic stability.
The draft provisions should be implemented in India as it will help bring a comprehensive framework into picture and will provide relief that is not available in case of insolvency proceedings right now and this draft provision which is based while incorporating the provisions of the model law which is the most acknowledged models in the world as it provides a comprehensive and complete structure for insolvency proceedings.
If this is done, then some amendments should also be made to section 234 and section 235 of the code to ease the procedure of recovery of assets of debtors from an insolvent company situated outside Indian territory which will also help in facilitating the process of bilateral treaties between other countries and India.
This could help in increasing the foreign direct investment in India as investors would feel more secure about their investment which could be a boon for India. This would not only help increase the financial stability but also provide means for better market integration.
NCLTs in India should be empowered in cases related to insolvency, after incorporation of insolvency laws, as they are the only adjudicating authority with respect to insolvency proceedings.
In order to carve out maximum benefit out of the usage of AI in the legal system, it is required to first train and educate the professionals with the pros and cons of the AI and how it can be used to carve out maximum benefit. This can also be achieved by including AI based learning in the curriculum of the students so that they get a proper learning on the subject matter from the initial phase of their carrier only.
Moreover, to eliminate the abuse of these kind of AI tools, it is required to draft a comprehensive rules and regulations pertaining to the usage of AI in the legal system. It will somewhat help in dealing with the problem of replacement of humans with the AI based technologies and protect the interests of the parties concerned. Thereafter consistent research and development must be done to change the AI as per the emerging conditions and achieve adaptability in the legal system.

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