BEYOND BORDERS: RETHINKING INDIA'S INSOLVENCY FRAMEWORK FOR THE REAL ESTATE INDUSTRY

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ABSTRACT

The increasing globalization of real estate investment and financing has amplified the need for an effective cross-border insolvency regime in India. The Insolvency and Bankruptcy Code, 2016 (IBC), though transformative in restructuring domestic insolvencies, remains inadequate in addressing cross-border dimensions particularly within the real estate sector, which involves multiple jurisdictions, foreign investors, and offshore funding structures. This paper examines the legislative lacunae under Sections 234 and 235 of the IBC, contrasting them with the framework provided by the UNCITRAL Model Law on Cross-Border Insolvency, 1997. Through an analysis of key judicial precedents including Amrapali Group v. Union of India, Jaypee Infratech Ltd. v. Axis Bank Ltd., and Jet Airways (India) Ltd. v. State Bank of India the study highlights the challenges faced by courts and insolvency professionals in reconciling competing domestic and foreign creditor claims. It also undertakes a comparative evaluation of cross-border insolvency practices in the United States, the United Kingdom, and Australia, emphasizing the advantages of adopting a modified universalist approach in India. The paper argues that incorporating the UNCITRAL Model Law with sector-specific safeguards can enhance predictability, transparency, and investor confidence in India's real estate market. Finally, it proposes legislative and institutional reforms to strengthen judicial cooperation, regulatory oversight, and asset protection mechanisms in transnational insolvency proceedings. By doing so, it underscores the urgent need for India to modernize its insolvency framework in line with global standards.

Keywords: Real Estate, Cross Border, Insolvency, UNCITRAL, Part- Z

Statement of Problem

The real estate insolvency discourse in India emerged after the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, which granted homebuyers the status of financial creditors under § 5(8)(f) of the IBC. This legislative shift followed large-scale developer defaults, including *Jaypee Infratech Ltd.* and *Amrapali Group*, that left thousands of buyers without possession or refunds. The Supreme Court's validation of the amendment in *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* (2019) cemented this recognition, transforming homebuyers from passive consumers to active participants in insolvency proceedings. The Insolvency and Bankruptcy Code, 2016 (IBC), revolutionized India's domestic insolvency framework but remains ill-equipped to handle cross-border insolvency issues, especially within the real estate sector a domain heavily dependent on foreign investment, offshore funding, and multinational stakeholders. Sections 234 and 235 of the IBC provide only limited mechanisms for cooperation with foreign courts and insolvency authorities, and India has yet to adopt the UNCITRAL Model Law on Cross-Border Insolvency, 1997. Consequently, there is a pressing need to examine the inadequacies of the existing legal regime and to propose reforms that align India's insolvency framework with global best practices, ensuring legal certainty and investor confidence in the real estate sector.

Objectives of the Study

1. To examine the existing legal framework governing cross-border insolvency in India under the IBC, 2016.
2. To analyze judicial precedents that has shaped cross-border insolvency jurisprudence, particularly in the real estate sector.
3. To compare India's framework with global best practices, especially those of the United States, the United Kingdom, and Australia.
4. To assess the challenges faced by foreign investors, creditors, and homebuyers in cross-border insolvency scenarios.
5. To propose legislative and policy reforms for integrating the UNCITRAL Model Law into the IBC with sector-specific adaptations.

Hypothesis

The paper hypothesizes that the absence of a comprehensive cross-border insolvency framework under the Indian IBC significantly undermines the resolution of real estate insolvencies involving foreign stakeholders, leading to prolonged litigation, reduced asset

recovery, and diminished investor confidence. Adoption of the UNCITRAL Model Law customized for India's real estate context would improve procedural efficiency, enhance creditor protection, and align India's insolvency regime with international standards.

Research Questions

1. What are the primary deficiencies in the current Indian insolvency framework concerning cross-border insolvency in the real estate sector?
2. How have Indian courts addressed cases involving transnational assets or creditors under the IBC?
3. How do the insolvency frameworks of the United States, the United Kingdom, and Australia handle cross-border proceedings, and what lessons can India draw from them?
4. What legislative and institutional mechanisms are necessary for India to effectively implement the UNCITRAL Model Law within its domestic context?
5. How can the integration of a cross-border framework enhance foreign investor confidence in India's real estate sector?

Methodology

The paper is descriptive in nature. Secondary Sources have been utilized to collect data for the proposed research. Researcher/s has utilized secondary sources such Journals, Newspapers, Reports and other research sources to gather information and data for the research purpose.

In addition to the secondary sources, the researcher/s has also relied on various national statutes such as Insolvency and Bankruptcy code, 2016, Companies act 2013, Real Estate (regulation and development) act, 2016 and various websites. The researcher/s has also used international statutes wherever necessary to draw a parallel between the laws in India and the world. The researcher/s has taken inspiration from these International statutes and perspectives to suggest recommendations.

The researcher/s has also mentioned multiple judgements of Supreme court of India and other countries in the world, to draw a parallel between the regulatory nuances of cross border insolvency in India and the world. The researcher/s has taken inspiration from these International case laws and perspectives to suggest recommendations

Literature review

Ravi S. Prakash, *Insolvency Resolution and Homebuyer Protection under India's IBC*, 12 NALSAR L. Rev. 89 (2020)

Prakash explores the unique challenges of resolving insolvency in India's real estate sector post-IBC implementation. He argues that while the inclusion of homebuyers as financial creditors enhanced consumer protection, it also led to procedural complexities due to the sheer number of claimants. The paper identifies key bottlenecks, including valuation of incomplete projects, inter-creditor disputes, and lack of coordination between insolvency professionals and real estate regulators. Prakash calls for a sector-specific insolvency framework under the IBC, one that can accommodate foreign investments and ensure smoother resolution of multinational real estate ventures involving offshore funding and property holdings.

Sandeep K. Kaushik, *The Cross-Border Dimension of Insolvency in India: A Critical Appraisal*, 61 J. Indian L. Inst. 213 (2019)

Kaushik critically examines India's limited preparedness for handling cross-border insolvency cases under the IBC. He argues that Sections 234–235 are merely enabling provisions without procedural depth or bilateral reciprocity mechanisms. The paper highlights the practical difficulties Indian courts face in recognizing foreign insolvency judgments, resulting in fragmented enforcement and uncertainty for international creditors. Kaushik calls for the adoption of the Model Law with context-specific safeguards, particularly for asset-heavy sectors like real estate, where both domestic homebuyers and foreign investors have competing interests. His work provides a grounded legal critique that bridges statutory analysis with judicial realities.

S. Krishnan, *Judicial Cooperation in Cross-Border Insolvency: Lessons from the Jet Airways Case*, 64 J. Nat'l L.U. Delhi 332 (2022)

Krishnan's study of *Jet Airways (India) Ltd. v. State Bank of India* (NCLAT, 2019) reveals the judiciary's pragmatic but limited role in facilitating cross-border insolvency cooperation. He notes how the National Company Law Appellate Tribunal informally collaborated with the Dutch bankruptcy administrator to ensure coordinated asset management without any statutory framework under the IBC. Krishnan argues that such "judicial diplomacy" cannot

substitute for legislative clarity and risks inconsistent outcomes across cases. His analysis underscores the urgent need for institutionalized cross-border cooperation to handle multi-jurisdictional real estate insolvencies involving complex financing structures and foreign creditors.

Ministry of Corporate Affairs, *Report of the Insolvency Law Committee on Cross-Border Insolvency* (2018)

The Insolvency Law Committee's 2018 report marked India's first serious step toward integrating cross-border insolvency mechanisms into the IBC. It recommended the adoption of the UNCITRAL Model Law on Cross-Border Insolvency, 1997, emphasizing principles of access, recognition, cooperation, and coordination between domestic and foreign courts. The Committee identified Sections 234 and 235 of the IBC as insufficient for managing transnational insolvencies and proposed a framework to ensure reciprocity with foreign jurisdictions.[1] However, despite the clarity of these recommendations, legislative adoption has stalled, leaving India dependent on ad hoc judicial interventions in cases involving multinational debtors.

[1] Insolvency and Bankruptcy Code, No. 31 of 2016, § 234 (India).

I. Introduction

Insolvency is no longer an exclusively local matter. With a world of cross-border capital flows, corporate groupings own assets, owe debt, or have subsidiaries in several jurisdictions. India's real estate market is a case in point. Large developers of real estate muster funds sourced by foreign investors, act through offshore special purpose vehicles (SPVs), own foreign assets/guarantees, etc. On their collapse into insolvency, proceedings in India often overlap with claims/cross-border litigation elsewhere, posing issues of jurisdiction, recognition, and cross-border cooperation. Nevertheless, while having transformative effects on local restructuring, it is still not well positioned to deal with such cross-border aspects. Even Sections 234 and 235 of the IBC, intended to bring cross-border co-operation to life, are quiet for a major part of their existence. Lack of bilateral formal agreements and absence of a adopted Model Law regime places insolvency professionals, courts, and creditors amidst a vacuum of law.

The real estate industry amplifies these difficulties. It encompasses immovable properties stuck to fixed jurisdictions, thousands of private homebuyers whose rights cadre between consumer and creditor, and a complex regulatory framework as per the Real Estate (Regulation and Development) Act, 2016 ("RERA"). These aspects render cross-border coordination of insolvency proceedings and enforcement of foreign judgments in India problematic.

II. The International System: The UNCITRAL Model Law

Cross-border insolvency is a case of proceedings where a debtor, creditors, or assets are located in more than one jurisdiction.[2] The effort to harmonize cross-border proceedings internationally reached its climax when UNCITRAL arrived at a model law of cross-border insolvency (1997), and it prescribes procedural norms of recognition, co-operation, and relief between jurisdictions of various states.[3] The Model Law, by its nature, embracing the principle of modified universalism, it accepts a type of a single principal proceeding (in the "centre of main interests," or COMI, of the debtor) and also accepts ancillary proceedings elsewhere for local protective purposes.[4] The COMI, unless indicated otherwise by evidence, is deemed to be the registered office of the debtor. It envisages two types of recognition,

[2] *Id.* § 235.
[3] United Nations Commission on International Trade Law (UNCITRAL), *Model Law on Cross-Border Insolvency*, U.N. Doc. A/52/17 (1997), annex I.
[4] *Id.* art. 16(3).

"foreign main" and "foreign non-main" proceedings. Recognition releases relief measures like automatic stay of proceedings, protection of assets, and empowerment of foreign representatives to act before domestic courts.[5]

Key here is the fact that the Model Law does not set common substantive insolvency rules, but instead, creates procedural frameworks for efficiency and coordination. Commentators frequently amend provisions when implementing it at the state level to incorporate domestic public policy concerns. The United States, by Chapter 15 of its Bankruptcy Code, adopted the Model Law in 2005, allowing for automatic recognition and coordination of foreign insolvency proceedings.[6] The United Kingdom, through its Cross-Border Insolvency Regulations 2006, similarly adopted the Model Law, opening for itself and its courts communication between courts and recognition.[7]

As compared, India is exempted from this global paradigm, instead depending on latent statutory law and ad hoc judicial invention. This difference highlights the importance of legislative intervention, even more so against the background of India's growing integration into global real estate and financial marketplaces.

III. The Indian Paradigm: IBC, CPC, and Judicial Discretion

A. Statutory Provisions of the IBC

The Insolvency and Bankruptcy Code, 2016, houses two major provisions aimed at cross-border insolvency relief, namely, Section 234 and Section 235. Section 234 gives the Central Government permission to sign reciprocal agreements with other nations for enforcement of provisions of the Code.[8] Section 235 gives permission to Adjudicating Authority (National Company Law Tribunal, or "NCLT") to issue letters of request for foreign courts for judicial co-operation for retrieval of assets abroad.

But both sections have yet to be duly functionalized. Up until 2025, there are no contractual entries by the Government of India under Section 234.[9] It thereby renders Section 235

[5] *Id.* arts. 17–21.
[6] Bankruptcy Abuse Prevention and Consumer Protection Act, Pub. L. No. 109-8, § 801(a), 119 Stat. 23 (2005) (codified at 11 U.S.C. §§ 1501–1532).
[7] Cross-Border Insolvency Regulations 2006, SI 2006/1030 (UK).
[8] Insolvency and Bankruptcy Code, No. 31 of 2016, § 234 (India).
[9] Ministry of Corporate Affairs, Government of India, *Report of the Insolvency Law Committee on Cross-Border Insolvency* 8 (Oct. 2018).

ineffective as it assumes those contractual entries. The end-product is a statutory void with cross-border cooperation relying heavily on judicial discretion and unofficial coordination.

B. Common Law and Civil Procedure Instruments

Without a formal statutory regime, Indian courts have, from time to time, resorted to comities of nations and provisions of Code of Civil Procedure, 1908. Section 13 of CPC permits recognition of foreign judgments, yet it is confined to monetary decrees and not to proceedings for insolvency, involving collective settlement and not individual enforcement.[10] Even here, courts have been ready to attempt cross-border coordination, as and when required, to uphold creditor interests, as in Jet Airways (India) Ltd. (also below). Such mechanisms, though realistic, are of a doubtful nature themselves. They are based on judicial willingness and case-specific circumstances instead of a foreseeable statutory process. Such uncertainty undermines trust among foreign investors and creditors who are dealing with Indian parties.

C. The Dormant "Part Z" Proposal

Seeing these shortcomings, the Insolvency Law Committee (ILC) of its Report for 2018 urged insertion of a new "Part Z" into the IBC, inspired by the UNCITRAL model but moulded to India's requirements.[11] The envisaged draft contemplated a process of recognition of foreign proceedings, Indian courts access for foreign representatives, cross-cooperation between local and foreign authority, and parallel proceedings.[12] It also contemplated a public policy exception, entitling Indian courts to refuse to recognize proceedings incompatible with domestic law or public interest.

Even as it accepted these proposals on merits, legislative enactment has been slow in coming.[13] Despite its absence, cross-border insolvency in India remains subject to piecemeal solutions, giving rise to unpredictability for multinational developers and creditors alike.

IV. The Real Estate Space: Legal and Structure Complicatedness

The real estate market poses strange challenges for insolvency law due to its fixed asset mobility, multi-party constitution, and regulatory superstructure. Real estate is fixed,

[10] Code of Civil Procedure, No. 5 of 1908, § 13 (India).
[11] Insolvency Law Committee, *Report on Cross-Border Insolvency* 9–12 (2018).
[12] *Id.* at 10.
[13] Ministry of Corporate Affairs, *Public Consultation on Draft Framework for Cross-Border Insolvency under the Insolvency and Bankruptcy Code* (Jan. 2020).

localized, and heavily regulated, and cross-border enforcement is correspondingly complex. Insolvency of a real estate firm usually encompasses several projects maintained under SPVs, each controlling distinct pieces of land and funded by different groups of lenders.

Corporate guarantees are common, or there is mortgage of one project's land to funds for other projects. Such structures obscure demarcations of asset ownership, rendering it hard for asset tracing and creditor claims, particularly where some of the SPVs or investors are set up offshore.[14]

Additionally, the Real Estate (Regulation and Development) Act, 2016 ("RERA") places surviving obligations upon insolvency. RERA penalties and orders have been held by courts to potentially continue to bind developers even after the moratorium provisions of the IBC.[15] This places stress between consumer protection requirements and insolvency goals. Arguably, Indian real estate bankruptcy's most characteristic element is the homebuyer class. Since its 2018 amendment, homebuyers are considered financial creditors, having a seat on the Committee of Creditors (CoC).[16]

Yet, by practice, their fragmented and consumer interest characteristically clashes with institutional lenders' commercial goals. Even more complicated, by extension, is cross-border, where foreign bondholders or investors are also creditors, and giving primacy to homebuyer protection becomes a complicated issue. Lastly, valuation and sale of real estate assets under CIRP are a mess of challenge. Transferable titles of lands can be contested, encumbrances can be pending, and statutory approvals can expire during insolvency. Such realities set back the measures of resolution professionals to sell off assets or collaborate with external courts concerning extraterritorial holdings of premises.

V. Case law Analysis of amrapali, jaypee, and jet airways

Jurisprudence of insolvency of real estate market highlights both promise and constraint of India's contemporary juridical order. Following cases of either the Amrapali group or Jaypee Infra or the Jet Airways case always helps us to remember the facets of cross border insolvency, this might not be a direct cross border for real estate sector but a complete holistic overview is required.

[14] Deloitte Touche Tohmatsu, *Real Estate Sector: India Outlook 2023*, at 34–36 (2023).
[15] *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416 (India).
[16] Insolvency and Bankruptcy Code (Second Amendment) Act, No. 26 of 2018, § 3 (India) (amending § 5(8)(f)).

A. The Case of Amrapali Group

In Amrapali Group v. Union of India,[17] the Supreme Court faced one of India's greatest real estate terrain caving-ins, encompassing thousands of stuck projects of houses. It ruled that homebuyers' interest should prevail and commanded that stuck projects be completed by National Buildings Construction Corporation (NBCC).[23] It also directed freezing of assets of Amrapali and asked foreign banks located in the United Kingdom and Dubai to collaborate for bringing diverted money for its repatriation.

Although not a traditional cross-border insolvency case, Amrapali exposed the cross-border complicities involved in large real estate collapses. Diplomatic means and foreign assistance were instead utilized instead of statutory procedures under the IBC. The case, therefore, brought into sharp focus the failure of India's cross-border insolvency instruments to shield local stakeholders when assets are widely disbursed across the world.

B. Jaypee Infratech Ltd. v.Axis Bank Ltd.

The Jaypee insolvency involved a complex group structure, where the parent, Jaypee Associates Limited (JAL), mortgaged its subsidiary's project assets held by Jaypee Infratech Limited (JIL).[18] The Supreme Court ruled that neither did those mortgages transfer title, nor should homebuyers' rights in those houses-in-progress be subordinated. Whilst predominantly a local proceedings case, Jaypee also illustrated crossover group insolvency coordination, a characteristic trait in crossborder cases where parent companies and SPVs cross several jurisdictions.

C. Jet Airways (India) Ltd. v. State Bank of India

The Jet Airways case marks India's maiden foray into cross-border insolvency co-operation.[19] The NCLAT permitted the Indian resolution professional to sign a "Cross-Border Insolvency Protocol" with the Dutch administrator, facilitating co-ordination between the Indian and Dutch courts.[20] This Practical solution borrowed straight from the UNCITRAL Model Law's philosophy, even if India did not subscribe to it. The case, therefore, provided a precedent for judicial creativity by way of comity, even if its ad-hoc nature highlights a need for formal legislative adoption.

[17] *Amrapali Group v. Union of India*, (2019) 10 SCC 766 (India).
[18] *Jaypee Infratech Ltd. v. Axis Bank Ltd.*, (2020) 8 SCC 401 (India).
[19] *Jet Airways (India) Ltd. v. State Bank of India*, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT).
[20] *Id.* (Order dated Sept. 26, 2019).

VI. Comparative Perspectives: Foreign Jurisdictions' Lesson

Cross-border insolvency systems of other jurisdictions are useful references for India, even more so for sectors like real estate, where asset localization is a challenge of great heights. Three comparative examples those of Australia, Britain, and America reflect alternative means of balancing creditor coordination, judicial comity, and national interest.

A. United States: Chapter 15 of the Bankruptcy Code

The United States bankruptcy code, by Chapter 15, adopts the UNCITRAL Model Law by large sections verbatim.[21] Chapter 15 provides for recognition of foreign insolvency proceedings by setting out "foreign main" and "foreign non-main" proceedings and procedures for co-operation. Having been recognised, the foreign representative is admitted to U.S. courts and automatic stay provisions of § 1520.[22]

In real estate proceedings, U.S. courts have been accommodative granting relief and maintaining domestic priorities. In In re Elpida Memory, Inc.,[23] for instance, the court acknowledged a Japanese insolcence proceeding, permitting asset coordination and U.S. creditor protection. Likewise, in In re Fairfield Sentry Ltd.,[24] British Virgin Islands liquidation proceedings of intricate real estate-associated investment structures were recognized. Those proceedings reflect how, by domesticating Chapter 15, the Model Law framework actually secures judicial efficiency and predictability, invaluable to cross-border investors.

For India, its U.S. model highlights procedural definiteness. By giving statutory procedures for recognition and co-operation, Chapter 15 reduces judicial ambiguity and promotes foreign investor reassurance a result of specific applicability to India’s FDI-based real estate sector.

B. United Kingdom: Cross-Border Insolvency Regulations 2006

The United Kingdom adopted the Model Law by means of the Cross-Border Insolvency Regulations 2006 (CBIR)[25]. UK courts have thereafter been instrumental to date for developing the meaning of “centre of main interests” (COMI). As held by High Court in Re

[21] 11 U.S.C. §§ 1501–1532 (2023).
[22] *Id.* § 1520.
[23] *In re Elpida Memory, Inc.*, 2012 WL 6090194 (Bankr. D. Del. 2012).
[24] *In re Fairfield Sentry Ltd.*, 714 F.3d 127 (2d Cir. 2013).
[25] Cross-Border Insolvency Regulations 2006, SI 2006/1030 (UK).

Stanford International Bank Ltd.[26], determination of COMI is to be mindful of both objective and third-party factors like management and principal assets sitting

The UK practice also illustrates how public policy exceptions can function judiciously. The courts may deny recognition under Regulation 25 if it is against basic domestic principles, but it hardly occurs. It is a delicate equilibrium between deferring and withholding discretion, which is a teachable example for India, to wit, respecting domestic directives like protection for homebuyers under RERA and yet urging coordination with external courts.

Moreover, UK jurisprudence stresses communication and coordination between judges, frequently through court-to-court procedures. The Cambridge Gas case[27] reaffirmed that insolvency is necessarily cross-border, and courts must endeavor a global solution, not defend local interests.

C. Australia: Cross-Border Insolvency Act of 2008

Australia incorporated the Model Law by Cross-Border Insolvency Act 2008, tailoring it closely to its local insolvency legislation. Australian courts have been active in utilizing the Act in giving effect to foreign main proceedings, for example, in Re Chow Cho Poon (Private) Ltd.,[28] which related to Singaporean liquidation proceedings involving Australian Australian property holdings.

Remarkably, Australian model harmonizes procedural cooperation with stronger creditor protection. It gives local regulators a 'bite' where public interest like consumer protection or integrity of real estate titles is at stake.[29] For India, both efficiency and protection-focused emphasis of it finds a huge echo among real estate's felt sensitivities.

VII. Critical Analysis: India's Global Position

Though it has a strong domestic insolvency mechanism in place, India's cross-border insolvency infrastructure is missing. This deficiency negatively impacts procedural efficiency and creditor confidence, particularly for high-foreign-participation industries like real estate.

[26] *Re Stanford Int'l Bank Ltd.*, [2010] EWCA Civ 137, [2010] 3 WLR 941 (UK).
[27] *Cambridge Gas Transp. Corp. v. Official Comm. of Unsecured Creditors of Navigator Holdings PLC*, [2006] UKPC 26, [2007] 1 AC 508.
[28] *Re Chow Cho Poon (Pte) Ltd.*, [2011] FCA 236 (Austl.).
[29] Australian Securities & Investments Commission (ASIC), *Information Sheet 246: Cross-Border Insolvency* (2021).

A. Fragmentation and Judicial Overreach

India's reliance on judicial improvisation has yielded functional but unequal consequences. In Jet Airways, the NCLAT's issuance of a "cross-border protocol" was an expression of UNCITRAL ideals but lacked statutorily inscribed form. Such judicial inventiveness is commendable but cannot supplant legislatively assured certainty. Over-reliance in judicial fixes also carries the risks of unequal standards, forum shopping, and uncertainty for international creditors.

Moreover, without the formal processes of recognition, Indian insolvency professionals are restricted from access or enforcement of foreign assets. The absence of reciprocity under Section 234 renders Indian insolvency orders irrecoverable abroad, which reduces the recoverability of foreign investments a growing concern considering Indian real estate companies increasingly own foreign subsidiaries or assets in SPVs in Singapore, Dubai, or Mauritius.[30]

B. Sectoral Challenges in Real Estate Insolvency

The real estate sector multiplies these regulatory loopholes. Insolvency in the sector has localized assets but foreign capital structures. Foreign investors, often through private equity or external commercial borrowings, finance Indian projects keeping right in foreign jurisdictions.[31] As Indian proceedings do not have a system to coordinate with foreign courts, Indian proceedings cannot properly address claims or repatriate overseas funds, as in Amrapali.

Another element is consumer-creditor hybridity. Homebuyer rights in the IBC are essentially distinct from those of institutional lenders. The cross-border insolvency norms therefore have to reconcile these competing imperatives. Transposition of the Model Law wholesale would have to be moulded to ensure homebuyer protection, which is an Indian law peculiarity absent in most jurisdictions.[32]

C. The Public Policy Dilemma

A constant source of concern in embarking on cross-border regimes is the exception of public policy. Critics argue that liberal recognition of overseas proceedings can erode domestic

[30] PricewaterhouseCoopers, *Real Estate Funding Report: India 2023*, at 42–43 (2023).
[31] *Id.*
[32] *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416 (India).

policy objectives such as low-cost housing, land use regulation, or RERA compliance.[33] These are, however, concerns that can be met by a narrowly defined exception clause on the lines of Article 6 of the Model Law which permits refusal of recognition only where proceedings are in violation of Indian law or national interest.[34] Thus, the challenge is not one of embracing the Model Law but how to adapt. India's architecture must balance openness towards global cooperation and protection of domestic socio-economic compulsions.

VIII. Policy and Legislative Reform: Towards a "Part Z" Framework

To correct these structural imbalances, India must go ahead with the passing of the draft Part Z of the IBC as recommended by the Insolvency Law Committee. There must be a robust cross-border insolvency framework for the real estate sector with five pillars of support.

A. Adoption of the UNCITRAL Model Law with Indian Modifications

India should formally adopt the Model Law with country-specific amendments, specifically to add homebuyer protection. Foreign main proceedings recognition must be contingent on ensuring that domestic consumer rights are not unfairly prejudiced.[35]

Besides, India needs to define COMI presumptions with clarity. For property companies, COMI may be where most projects or immovable assets are located, rather than the location of registration.[36] With this, local projects would still remain under Indian jurisdiction even when the developer is offshore incorporated.

B. Reciprocal Cooperation Agreements

Sections 234–235 can be enforced through bilateral or multilateral arrangements with significant investment destinations such as Singapore, the UAE, and the United Kingdom. These would enable mutual recognition of insolvency orders and facilitate cross-border enforcement. Since Indian developers are inclined to own assets or raise finance in these jurisdictions, targeted cooperation would increase recovery efficiency significantly.

C. Group Insolvency and SPV Coordination

[33] Ministry of Corporate Affairs, *Report of the Insolvency Law Committee on Cross-Border Insolvency* 22–24 (2018).
[34] Insolvency Law Committee, *Report on Cross-Border Insolvency* 17 (2018).
[35] Insolvency Law Committee, *Report on Cross-Border Insolvency* 17 (2018).
[36] *Id.* at 13.

The IBC currently treats each corporate debtor as a standalone legal entity. Real estate groups, on the other hand, often operate through multiple SPVs handling different projects. Without group insolvency, the consequence is splintered resolution and asset duplication. A cross-border insolvency regime must therefore include group coordination mechanisms so that a lead jurisdiction can direct connected proceedings.

These mechanisms would draw inspiration from the EU Insolvency Regulation (Recast) 2015, which implemented group coordination proceedings. Its analogous enacting would enable Indian tribunals to treat parent-subsidiary groups as a unit where some of them are foreign-incorporated.

D. Institutional and Judicial Capacity Building

Cross-border insolvency requires expertise-based judicial competence. The NCLT and NCLAT require training in international collaboration in insolvency and exposure to court-to-court communication systems.[37] The Insolvency and Bankruptcy Board of India (IBBI) can also establish a special Cross-Border Insolvency Cell that can coordinate with foreign regulators and maintain a database of bilateral agreements.

E. Harmonization with RERA and Consumer Protection Framework

Any reformation should strike a balance between cross-border insolvency and the RERA regime such that homebuyers are not unduly affected by foreign recognition orders. There has to be coordination between RERA regulators and insolvency professionals, which has to be institutionalized.[38] For instance, where a foreign proceeding seeks recognition in India, the NCLT should refer to the respective state RERA before offering relief affecting domestic housing projects.

X. Conclusion

India is at a critical point of development of its insolvency regime. With increasing globalization of its real estate market through offshore involvement, collaborative ventures, and foreign holdings of properties, it requires a harmonious cross-border insolvency framework. As it stands, the statutory void between Sections 234–235 places its constituents at the mercy of judicial discretion, engendering ambiguity and inefficacy.

[37] Insolvency and Bankruptcy Board of India, *Annual Report 2023–24*, at 112–14.
[38] Real Estate (Regulation and Development) Act, No. 16 of 2016, §§ 31–34 (India).

Comparative study finds that cross-sections of UNCITRAL Model Law jurisdictions have experienced prophesied, collaborative, and expeditions outcomes without sacrificing domestic goals. For India, transplantation of its model on a selective scale by drafting a sophisticated Part Z would bring its insolvency regime into conformity with global norms, catering to distinct domestic requirements as well. Such a framework should encompass (i) protection for homebuyers, (ii) group coordination of insolvencies, (iii) bilateral co-operation agreements, and (iv) Judicial capacity building.[39]

Eventually, successful cross-border insolvency regulation is not a technical reform but a strategic necessity for maintaining investor confidence, finishing stuck houses, and securing fairness for all parties. Without it, India faces a risk of breakdown, investor exodus, and enduring project stalemate. Passing Part Z would thereby signify not just judicial Updating but also a renewed Indian commitment to international financial integrity and local consumer protection.

[39] John Armour, *Cross-Border Insolvency and Legal Predictability*, 10 Eur. Bus. Org. L. Rev. 153, 175–78 (2009).