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THE GHOST IN THE CODE: EVALUATING THE EXTRATERRITORIAL REACH OF THE IBC AND THE JUDICIAL VACUUM IN CROSS-BORDER INSOLVENCY RESOLUTION

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I. ABSTRACT

The Insolvency and Bankruptcy Code, 2016 encodes within its text two provisions for cross-border insolvency cooperation, Sections 234 and 235, yet both remain functionally dormant: no bilateral treaty has been concluded under Section 234 as of 2026, and India has not adopted the UNCITRAL Model Law on Cross-Border Insolvency (1997). This paper critically examines the structural vacuum produced by this legislative inaction and maps the judicial improvisation that has occupied it. Drawing upon the Jet Airways parallel insolvency proceedings (2019–2020), the Videocon overseas asset recovery proceedings, and the Compuage Infocom recognition proceedings before the Singapore High Court (2025), the paper analyses how Indian courts have deployed common law comity as a substitute for absent statutory tools and identifies the irreducible structural limits of that substitution. The concurrent proceedings problem and the Centre of Main Interests doctrine, as engaged by Indian Adjudicating Authorities, are examined as the sharpest expressions of those limits. The methodology is critical-doctrinal.

II. KEYWORDS

Cross-border insolvency; UNCITRAL Model Law; Centre of Main Interests; Section 234 IBC; common law comity.

III. INTRODUCTION

When a corporate debtor's assets are distributed across multiple jurisdictions, the practical efficacy of any insolvency statute is measured not by its domestic architecture

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alone but by its capacity to coordinate with foreign proceedings, secure extraterritorial assets, and bind foreign creditors within a unified resolution framework. The Insolvency and Bankruptcy Code 2016 ("IBC") was enacted as a comprehensive insolvency statute, yet its cross-border provisions, Sections 234 and 235, remain, a decade after enactment, functionally dormant. As of 2026, the Central Government concluded no bilateral treaty under Section 234, rendering the letter-of-request mechanism in Section 235 practically inoperative as a matter of statutory design rather than judicial construction.[3]

India has not adopted the UNCITRAL Model Law on Cross-Border Insolvency (1997),[4] notwithstanding the recommendation to that effect by the Cross Border Insolvency Rules/Regulations Committee ("CBIRC"), chaired by Dr. K.P. Krishnan, in its Report of June 2020.[5] The Ministry of Corporate Affairs' Notice of January 18, 2023 , which invited public comments on introducing a cross-border insolvency framework , has not produced amending legislation.[6]

In the absence of a statutory framework, Indian courts have constructed a jurisprudence of cross-border cooperation from common law materials, deploying the doctrine of comity and the institutional resourcefulness of the National Company Law Tribunal ("NCLT") and the National Company Law Appellate Tribunal ("NCLAT"). The NCLAT's direction of September 26, 2019, approving the Cross-Border Insolvency Protocol between the Indian Resolution Professional and the Dutch Administrator in

[3] The Insolvency and Bankruptcy Code 2016, ss 234-235.
[4] UNCITRAL, 'Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)' https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status accessed 12 March 2026.
[5] Cross Border Insolvency Rules/Regulations Committee, *Report on Cross-Border Insolvency* (June 2020) (hereinafter 'CBIRC Report').
[6] Ministry of Corporate Affairs, 'Notice Inviting Comments on the Introduction of a Cross-Border Insolvency Framework Under the Insolvency and Bankruptcy Code, 2016' (18 January 2023).

the Jet Airways proceedings,[7] stands as the foundational institutional act of this improvisation phase.

The Videocon overseas asset recovery proceedings, involving assets in jurisdictions including the British Virgin Islands and Brazil, have since exposed the acute limits of ad hoc cooperation in the absence of automatic recognition and a statutory asset-distribution waterfall. Most recently, the *Compuage Infocom* proceedings (2025), in which recognition of an Indian Corporate Insolvency Resolution Process was sought before the Singapore High Court, have introduced unresolved questions about concurrent jurisdiction and the application of the Centre of Main Interests ("COMI") doctrine by Indian Adjudicating Authorities.[8]

The paper proceeds in three analytical Parts. Part I examines the legislative architecture of the IBC's cross-border provisions, maps the UNCITRAL Model Law framework that India has declined to adopt, and analyses the CBIRC's unimplemented recommendations against the documented legislative record. Part II analyses the deployment of common law comity as a substitution mechanism, using Jet Airways and Videocon as primary case studies, and identifies the structural gaps that judicial improvisation cannot, by its nature, resolve. Part III examines the concurrent proceedings problem and the current status of the COMI test before Indian Adjudicating Authorities, drawing on Singapore's operationalisation of the Model Law for comparative analytical purchase.

A. Research Objectives

This paper pursues three principal research objectives:

1. It seeks to evaluate the legislative dormancy of Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016, and to analyse the structural

[7] *Ashish Chhawchharia v Jet Airways (India) Ltd*, Company Appeal (AT) (Insolvency) No 707 of 2019 (NCLAT, 26 September 2019).
[8] *In re Compuage Infocom Ltd*, CP (IB) No 329(MB)/2023 (NCLT Mumbai, 2 November 2023); *Re Compuage Infocom Ltd* [2025] SGHC 49 (Singapore High Court, 24 March 2025).

consequences of the absence of any operative cross-border insolvency framework.

2. It aims to map and critically assess the jurisprudential development of cross-border cooperation by Indian courts through the doctrine of common law comity, with particular reference to the Jet Airways and Videocon proceedings.
3. It endeavors to diagnose the structural limitations of this judicial improvisation by engaging in a comparative analysis with jurisdictions that have adopted the UNCITRAL Model Law on Cross-Border Insolvency, with specific focus on the Centre of Main Interests doctrine and the problem of concurrent proceedings.

B. Research Questions

The paper is guided by the following research questions:

1. Whether the doctrine of common law comity can serve as a sustainable substitute for a formal statutory framework governing cross-border insolvency under the IBC?
2. To what extent does the absence of an adopted UNCITRAL Model Law framework impede effective coordination of concurrent insolvency proceedings involving Indian corporate debtors?
3. Whether the adoption of the Centre of Main Interests (COMI) doctrine alone is sufficient to resolve jurisdictional conflicts in cross-border insolvency, particularly in cases involving multi-jurisdictional corporate groups?
4. What structural and doctrinal gaps persist in the current Indian framework, and how may they be addressed through legislative or judicial reform?

C. Research Methodology

This paper adopts a critical-doctrinal methodology. The analysis is grounded primarily in doctrinal examination of statutory provisions, judicial decisions, and institutional

reports relevant to cross-border insolvency under the Insolvency and Bankruptcy Code, 2016. Primary sources include case law such as Jet Airways (India) Ltd. and Videocon Industries Ltd., as well as legislative materials and the Report of the Cross Border Insolvency Rules/Regulations Committee (2020). Secondary sources include comparative statutory frameworks, particularly the UNCITRAL Model Law on Cross-Border Insolvency (1997), and its adoption in jurisdictions such as Singapore. The methodology is "critical" in that it does not merely describe existing law but evaluates its structural adequacy and limitations. It is "doctrinal" in that it relies on authoritative legal texts rather than empirical data. Empirical or socio-legal methods are not employed, as the inquiry is confined to normative and structural analysis of legal frameworks and judicial reasoning.

IV. THE STATUTORY ARCHITECTURE AND ITS UNACTIVATED CORE: SECTIONS 234–235, THE UNCITRAL MODEL LAW, AND THE CROSS-BORDER INSOLVENCY RULES/REGULATIONS COMMITTEE

A. Sections 234 and 235: Enacted but Inoperative

The IBC's cross-border architecture rests, in formal statutory terms, on two provisions: Section 234, which empowers the Central Government to enter into agreements with foreign countries for the reciprocal enforcement of IBC provisions, and Section 235, which provides for letters of request to courts and authorities in those countries for the purposes of any proceedings under the Code.[9] Both provisions are technically enacted and appear on the statute books. Neither produces any operative legal effect. As of 2026, the Central Government has not concluded a single bilateral agreement under Section 234; in consequence, the letter-of-request mechanism in Section 235, which is structurally dependent on the existence of a Section 234 agreement, remains practically inoperative.

[9] The Insolvency and Bankruptcy Code 2016, ss 234-235.

The provisions are not dead letters in the strict interpretive sense: they carry legislative acknowledgment that cross-border cooperation is a necessary dimension of insolvency resolution. But acknowledgment unaccompanied by executive action produces no enforceable right, no procedural mechanism, and no jurisdictional basis upon which a Resolution Professional or creditor may act. The gap between statutory intent and operational reality that Sections 234 and 235 represent is, therefore, not a product of judicial interpretation, it is a product of executive inaction that the legislature has not moved to correct.

B. The UNCITRAL Model Law: The International Baseline

The standard against which India's cross-border framework must be measured is the UNCITRAL Model Law on Cross-Border Insolvency (1997).[10] The Model Law rests on four structural pillars. First, it establishes the Centre of Main Interests as the organising jurisdictional concept: the debtor's COMI determines whether foreign proceedings are classified as "main" or "non-main," with primary relief flowing to the jurisdiction of main proceedings.[11] Second, it provides for the automatic recognition of foreign proceedings upon application by a foreign representative, displacing the need for comity-based discretion in each individual case.[12]

Third, recognition of foreign main proceedings triggers an automatic stay of domestic proceedings against the debtor's assets, replicating domestically the protection that the Model Law accords to the primary insolvency forum.[13] Fourth, its relief mechanisms , both interim and post-recognition , allow a domestic court to entrust the administration of local assets to the foreign representative, enabling a genuinely unified resolution process across borders.[14] As of 2026, sixty-two States across sixty-five jurisdictions have enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency

[10] UNCITRAL Model Law (n 2).
[11] UNCITRAL Model Law (n 2) art 2(b).
[12] ibid arts 15-17.
[13] ibid art 20(1).
[14] ibid arts 19, 21.

(1997), including the United Kingdom,[15] the United States,[16] and Singapore.[17] These adopters do not share a common legal tradition; what they share is the recognition that transnational insolvency cannot be resolved by unilateral domestic frameworks operating in isolation. India's non-adoption is, against this baseline, a structural outlier rather than a principled divergence.

C. The CBIRC Report (2020): Recommendation Without Implementation

The most authoritative domestic analysis of this structural gap is contained in the Report of the Cross Border Insolvency Rules/Regulations Committee ("CBIRC"), chaired by Dr. K.P. Krishnan, submitted in June 2020.[18] The CBIRC recommended the formal incorporation of the UNCITRAL Model Law into the IBC , with limited modifications to account for Indian constitutional and regulatory considerations , on the ground that the Model Law framework would provide the predictability, reciprocity, and creditor confidence that Sections 234 and 235 were incapable of generating in their current form. The Committee's doctrinal reasoning was grounded in a comparative survey of existing Indian cross-border insolvency cases and in the documented inadequacy of comity-based coordination as a long-term substitute for statutory architecture.

The recommendation has not been implemented. No amendment bill incorporating the Model Law has been introduced in Parliament; no draft rules or regulations pursuant to a prospective Model Law-based framework have been circulated for comment. Notably, the CBIRC's recommended framework has been developed in policy and practitioner discourse in the form of a draft 'Part Z' of the IBC, envisaged as the principal legislative vehicle for Model Law adoption. However, this draft framework has not been introduced in Parliament. The documented legislative record thus discloses no formal

[15] Cross-Border Insolvency Regulations 2006 (SI 2006/1030) (UK).
[16] 11 USC ss 1501-1532 (Chapter 15, Bankruptcy Abuse Prevention and Consumer Protection Act 2005) (USA).
[17] Cross-Border Insolvency Regulations 2006 (SI 2006/1030) (UK).
[18] CBIRC Report (n 3).

reason for this inaction, rendering the gap a matter of unexplained omission rather than calibrated policy.

D. The MCA Notice of January 18, 2023: The Current Legislative Horizon

The most recent formal acknowledgment by the executive of the cross-border insolvency deficit is the Ministry of Corporate Affairs' Notice dated January 18, 2023, which invited public comments on proposals for introducing a cross-border insolvency framework under the IBC.[19] The Notice marks the outer boundary of the current legislative cycle's engagement with the CBIRC recommendations: it represents an invitation to comment, not a commitment to amend. As of the date of this writing, no amendment has resulted. The three-year gap between the CBIRC Report and the MCA Notice, and the subsequent absence of legislative action, illustrates the pace at which India's cross-border insolvency reform cycle has operated, a pace that stands in tension with the urgency that the Jet Airways and Videocon proceedings, examined in Part II, have exposed.

V. COMITY, IMPROVISATION, AND THE JURISPRUDENTIAL ANCHORS: JET AIRWAYS AND VIDEOCON

A. Common Law Comity as a Substitution Mechanism

In the absence of operational statutory provisions, Indian courts have drawn upon the doctrine of common law comity to extend recognition to foreign insolvency proceedings and to justify cooperative conduct with foreign insolvency administrators. Comity, in its classical formulation, is neither a rule of law nor a binding obligation: it is a principle of judicial deference grounded in mutual respect between sovereign legal systems, applied at the discretion of the recognising court and revocable where domestic public policy supervenes.[20] Its deployment as a cross-border insolvency coordination tool in the Indian context is therefore structurally contingent in a manner that a statutory

[19] Ministry of Corporate Affairs (n 4).
[20] Satya v Teja Singh (1975) 1 SCC 120; see also Modi Entertainment Network v WSG Cricket Pte Ltd (2003) 4 SCC 341.

framework is not. Three limitations are inherent to the comity-based approach and cannot be resolved by judicial ingenuity alone.

First, comity generates no automatic stay of foreign proceedings against the debtor's assets, each protective measure must be sought separately, in each jurisdiction, before the relevant court. Second, it imposes no obligation of reciprocity: an Indian court's recognition of a foreign proceeding does not guarantee that the foreign court will accord equivalent recognition to the Indian proceeding. Third, and most consequentially for creditor rights, comity provides no statutory waterfall for the distribution of cross-border assets , the priority and sequencing of claims across jurisdictions remains unresolved by any instrument that binds the parties as a matter of law.[21] The judicial innovation phase in Indian cross-border insolvency has operated entirely within these constraints, demonstrating both what courts can accomplish without statutory authority and precisely where that accomplishment ends.

B. Jet Airways (2019–2020): The Foundational Case Study

The Jet Airways insolvency proceedings constitute the most significant early illustration of judicially improvised cross-border cooperation in the Indian insolvency framework. The proceedings bifurcated immediately upon commencement: on June 20, 2019, the NCLT Mumbai admitted the Corporate Insolvency Resolution Process against Jet Airways (India) Limited,[22] while, in parallel, the Noord-Holland District Court in the Netherlands had already declared the airline bankrupt on May 21, 2019, and appointed Rocco Mulder as bankruptcy trustee (curator).[23]

The Dutch proceedings did not arise concurrently; they preceded the Indian CIRP by a full month. The existence of a prior, subsisting foreign insolvency proceeding into which the Indian CIRP was introduced produced an immediate coordination problem

[21] CBIRC Report (n 3) 14-18
[22] *In re Jet Airways (India) Ltd*, CP (IB) No 2205/MB/C-II/2019 (NCLT Mumbai, 20 June 2019).
[23] Rechtbank Noord-Holland (Noord-Holland District Court), Case No C/15/19/188 F (21 May 2019) (Netherlands).

of the kind that the UNCITRAL Model Law is specifically designed to resolve through its main proceeding's priority rule.

The NCLT Mumbai's initial response to the Dutch proceedings was one of active judicial negation rather than mere non-engagement: it declared the Dutch bankruptcy proceedings to be a nullity ab initio on the ground that Sections 234 and 235 of the IBC had not been operationalised, and therefore no foreign insolvency proceeding could have legal effect before the NCLT.[24] The institutional architecture necessary for cross-border cooperation was therefore produced not by the court of first instance but by the NCLAT on appeal. On September 26, 2019, in *Ashish Chhawchharia v. Jet Airways (India) Ltd.*,[25] the NCLAT set aside the NCLT's refusal and directed the Resolution Professional to engage cooperatively with the Dutch Administrator.

The NCLAT's direction was grounded in principles of comity and practical necessity, not in any notified provision of the IBC, a distinction that the NCLAT itself did not obscure. The result of this direction was the negotiation and execution of the Cross-Border Insolvency Protocol between the two insolvency professionals, which established a voluntary framework for information sharing, asset coordination, and procedural cooperation between the Indian and Dutch proceedings. That Protocol was an instrument of private arrangement between officeholders, sanctioned by judicial approval, not a treaty and not a statutory mechanism. Its legal force derived entirely from the willingness of both courts to honour it, a foundation that a change in judicial composition or a creditor challenge could, in principle, have displaced at any stage.

C. Videocon (2019–2025): The Asset-Recovery Case Study

Where Jet Airways illustrated the possibilities of comity-based coordination between parallel proceedings, the Videocon insolvency proceedings have illustrated the limits of the same approach when the challenge is not coordination between two active

[24] State Bank of India v Jet Airways (India) Ltd, CP (IB) No 2205/MB/C-II/2019 (NCLT Mumbai, 20 June 2019).
[25] *Ashish Chhawchharia v Jet Airways (India) Ltd* (n 5).

insolvency processes, but recovery of assets situated in foreign jurisdictions that have no corresponding domestic insolvency proceeding. The Videocon group, admitted to CIRP before the NCLT Mumbai, held substantial overseas assets through Videocon Hydrocarbon Holdings Ltd. ("VHHL"), a British Virgin Islands entity comprising participating interests in Brazilian concessions, including the BM-SEAL-11 offshore basin, and exploration blocks in Indonesia.

The absence of any operative cross-border mechanism under the IBC meant that the Resolution Professional's capacity to administer, preserve, or realise those assets depended entirely on the law of each individual foreign jurisdiction and whatever voluntary cooperation could be obtained from local authorities or courts. No automatic stay extended to those assets by virtue of the Indian moratorium under Section 14. No mechanism under Section 234 or 235 was available to compel foreign cooperation. The resolution plan approved by the NCLT Mumbai on June 8, 2021, in *Twin Star Technologies Ltd. v. Videocon Industries Ltd.*[26] explicitly carved out the VHHL foreign oil and gas assets from the consolidated resolution, leaving their recovery and value realisation unresolved within the primary CIRP.

That carve-out was not a transactional inconvenience, it was the direct structural consequence of applying a domestic insolvency framework to assets that, without a cross-border mechanism, the framework could not reach.

D. The Structural Diagnosis

The Jet Airways and Videocon proceedings, considered together, disclose three structural gaps that comity-based improvisation cannot close, regardless of the institutional sophistication with which it is deployed. The first is the absence of automatic recognition: in every case involving foreign assets or parallel foreign proceedings, the Indian Resolution Professional must initiate separate recognition proceedings in each foreign jurisdiction, the outcome of which depends on that

[26] *Twin Star Technologies Ltd v Videocon Industries Ltd*, IA No 196 of 2021 in CP (IB) No 02/MB/2018 (NCLT Mumbai, 8 June 2021).

jurisdiction's domestic law and judicial discretion rather than on any entitlement flowing from the Indian proceeding itself.

The second gap is the absence of a binding asset-distribution hierarchy: where assets are distributed across multiple jurisdictions, the priority of claims has no statutory resolution, and the risk of inconsistent orders, each valid within its own jurisdiction, is a structural feature of the current framework rather than an aberration. The third gap is the non-reciprocity of the comity-based system: the *Compuage Infocom* proceedings, examined in Part III, demonstrate that an Indian CIRP can seek recognition abroad, but the absence of a formal Indian cross-border framework means that the recognition India requests of foreign courts is recognition that India's own statutory architecture is not designed to reciprocate.[27]

VI. THE CONCURRENT PROCEEDINGS PROBLEM AND THE COMI TEST: DOCTRINAL TENSIONS IN TRANSNATIONAL ADJUDICATION

A. The Concurrent Proceedings Conflict Defined

The structural gap exposed in Part II generates its most acute doctrinal consequences when two courts in different jurisdictions simultaneously assert insolvency jurisdiction over the same debtor or the same pool of assets. The Jet Airways proceedings illustrate this dynamic with particular clarity: the Noord-Holland District Court declared Jet Airways bankrupt on May 21, 2019 and appointed Rocco Mulder as curator,[28] a full month before the NCLT Mumbai admitted the Corporate Insolvency Resolution Process on June 20, 2019.[29] The Dutch proceedings were therefore not a parallel development , they were a prior, subsisting insolvency proceeding into which the Indian CIRP was introduced. Under current Indian law, this sequencing carries no legal significance.

[27] *In re Compuage Infocom Ltd* (n 6); *Re Compuage Infocom Ltd* (n 6).
[28] Rechtbank Noord-Holland (n 22).
[29] *In re Jet Airways (India) Ltd* (n 21).

The IBC provides no rule of priority between a pre-existing foreign insolvency proceeding and a subsequently commenced Indian CIRP; no statutory mechanism determines which forum's orders govern in the event of conflict; and no automatic coordination obligation flows from the mere existence of the foreign proceeding. The three concrete consequences of this architecture, or rather, its absence, are the risk of inconsistent judicial orders over the same asset pool, the risk of a race to attachment in which each jurisdiction's creditors seek priority enforcement before the other forum can act, and the complete absence of any statutory hierarchy to resolve either conflict. Each of these consequences materialised, to varying degrees, in the Jet Airways proceedings, and each was managed only through the voluntary Protocol that the NCLAT's direction in September 2019 made possible.[30]

B. The Singapore Comparative

Singapore's response to precisely this class of problem is instructive not as a model for emulation but as a demonstration of what a statutory solution to the concurrent proceedings conflict produces in practice. Singapore's Insolvency, Restructuring and Dissolution Act 2018 incorporates the UNCITRAL Model Law in its Third Schedule,[31] and the COMI test operates within that framework as the primary instrument for resolving jurisdictional conflicts between concurrent proceedings. Where a debtor's COMI is determined to be located in a foreign jurisdiction, Singapore courts recognise that jurisdiction's proceedings as "foreign main proceedings" and, upon recognition, apply an automatic stay against domestic actions affecting the debtor's assets.[32] The result is a mandatory and predictable jurisdictional hierarchy: the court of the COMI jurisdiction exercises primary insolvency authority, and every other adopting jurisdiction subordinates its domestic proceedings accordingly.

What the Jet Airways Protocol achieved through voluntary negotiation over several months, a working division of jurisdictional responsibility between two insolvency

[30] *Ashish Chhawchharia v Jet Airways (India) Ltd* (n 5).
[31] Singapore IRDA (n 16) Third Schedule.
[32] UNCITRAL Model Law (n 2) art 20(1); Singapore IRDA (n 16) Third Schedule art 20

administrators, Singapore's Model Law framework would have produced as an immediate statutory consequence of a recognition application. The comparison does not establish that Singapore's framework is without limitations; it establishes that the functions it performs are ones that comity-based improvisation can approximate only imperfectly and at considerable institutional cost.

C. The COMI Test in the Indian Context

The *Compuage Infocom* proceedings (2025) represent the most developed engagement, in any Indian-connected insolvency case, with the COMI doctrine, though the engagement occurred before a foreign court rather than before an Indian Adjudicating Authority. The NCLT Mumbai admitted the CIRP against Compuage Infocom Ltd. on November 2, 2023.[33] The Resolution Professional subsequently applied to the Singapore High Court for recognition of the Indian proceeding.

On March 24, 2025, in Re Compuage Infocom Ltd., the Singapore High Court granted recognition of the Indian CIRP as a foreign main proceeding under Singapore's Model Law framework, having determined that Compuage Infocom's COMI was located in India. However, the Court declined to grant additional relief in the nature of repatriation of Singapore-based assets and proceeds under Article 21(1)(e) of the Model Law, on the ground that due process requirements for Singapore-based creditors had not been satisfied, invoking the safeguards embodied in Article 22(1). The analytical significance of this outcome for present purposes is twofold. First, the COMI determination was made by the Singapore court applying its own statutory framework, the Indian NCLT was not required to, and did not, conduct a COMI analysis of its own.

Second, and more consequentially, the recognition that the Singapore High Court extended to the Indian proceeding was made available by Singapore's Model Law adoption, a framework that India has not enacted and therefore cannot offer to foreign proceedings seeking equivalent recognition before Indian Adjudicating Authorities. The COMI doctrine, in the Indian cross-border insolvency context, has so far functioned as a

[33] *In re Compuage Infocom Ltd* (n 6).

concept applied by other courts to Indian proceedings, not as a principle applied by Indian courts to foreign ones. This asymmetry is a direct doctrinal expression of the non-reciprocity identified in Part II.

D. The Limits of the COMI Doctrine

The foregoing analysis should not be read to suggest that formal COMI adoption would resolve the concurrent proceedings problem comprehensively. The doctrine carries inherent limitations that its proponents acknowledge. The most significant is its susceptibility to forum shopping: because COMI is determined by reference to the place where the debtor conducts the administration of its interests on a regular basis,[34] sophisticated debtors with mobile management structures can influence COMI determinations by relocating key decision-making functions in anticipation of insolvency.

The UNCITRAL Model Law addresses this risk only partially, through the rebuttable presumption that COMI corresponds to the debtor's registered office.[35] The Videocon proceedings illustrate a second and distinct limitation: where insolvency involves a corporate group with entities incorporated across multiple jurisdictions , Videocon Hydrocarbon Holdings Ltd., incorporated in the British Virgin Islands and holding participating interests in the BM-SEAL-11 basin in Brazil and exploration blocks in Indonesia, the COMI test, designed for single-entity analysis, provides no coherent answer to the question of which jurisdiction's courts should exercise primary authority over a multi-entity, multi-jurisdiction asset pool.

The carve-out of the VHHL foreign assets from the resolution plan approved by the NCLT Mumbai on June 8, 2021[36] was not merely a transactional inconvenience, it was the structural consequence of applying a domestic insolvency framework to assets that, without a cross-border mechanism, the framework could not reach. COMI adoption

[34] UNCITRAL Model Law (n 2) art 2(b).
[35] ibid art 16(3)
[36] *Twin Star Technologies Ltd v Videocon Industries Ltd* (n 26).

would assist in determining jurisdictional priority between two courts; it would not, by itself, provide the enforcement tools, the asset-distribution waterfall, or the group insolvency coordination mechanisms that the Videocon overseas asset recovery problem required. Notably, the UNCITRAL Model Law[37] on Enterprise Group Insolvency (2019) was developed precisely to address this coordination deficit in multi-entity, multi-jurisdiction insolvencies, by introducing mechanisms for group coordination proceedings and planning. India's non-adoption of this instrument, alongside the 1997 Model Law, compounds the structural deficiency identified in the present analysis.

VII. SUGGESTIONS AND RECOMMENDATIONS

1. It is recommended that India formally adopt a cross-border insolvency framework based on the UNCITRAL Model Law through a dedicated legislative insertion within the IBC, as previously proposed by the CBIRC. Such incorporation, potentially through a new Part (commonly referred to in draft discussions as "Part Z"), would establish a statutory mechanism for recognition of foreign proceedings, automatic relief, and reciprocal cooperation, thereby addressing the current legislative vacuum under Sections 234 and 235.
2. Pending legislative reform, it is recommended that Indian Adjudicating Authorities continue to develop structured cross-border insolvency protocols grounded in comity, as exemplified in the Jet Airways proceedings. However, such judicial innovation should be systematised through formal guidelines to reduce uncertainty and enhance predictability in cross-border coordination.
3. It is recommended that any future statutory framework explicitly addresses the problem of group insolvency, which remains inadequately resolved under both the current IBC framework and the traditional COMI-based approach. The Videocon proceedings demonstrate the necessity of incorporating mechanisms

[37] UNCITRAL, Model Law on Enterprise Group Insolvency (2019), adopted at the 52nd Session of UNCITRAL, 15 July 2019, UN Doc A/74/17.

for coordinated resolution of multi-entity corporate groups with assets dispersed across jurisdictions.

4. It is recommended that Indian courts progressively engage with the COMI doctrine in anticipation of legislative adoption, thereby developing a coherent jurisprudential foundation that can facilitate smoother transition to a Model Law-based regime.

VIII. CONCLUSION

The three analytical Parts of this paper disclose a single, coherent structural condition. The IBC's cross-border provisions, Sections 234 and 235, exist on the statute books as enacted law but produce no operative legal effect: no bilateral agreement has been concluded, no letter-of-request mechanism has been activated, and the UNCITRAL Model Law framework that the CBIRC recommended in June 2020 has not been incorporated. That legislative vacancy did not produce a legal void, it produced a judicial substitution. Indian courts, drawing on common law comity and institutional resourcefulness, constructed a working cross-border insolvency practice from materials that the statute did not supply.

The Jet Airways Protocol, sanctioned by the NCLAT in September 2019, and the Singapore High Court's recognition of the Compuage Infocom CIRP in March 2025 are the most visible products of that construction. The Videocon proceedings, and specifically the explicit carve-out of the VHHL foreign assets from the approved resolution plan, record, with documentary precision, what the substitution cannot achieve: the automatic reach, the binding asset-distribution hierarchy, and the reciprocal enforcement architecture that only a statutory framework can provide. The ghost in the code is not a drafting oversight. It is a structural condition whose costs are now legible in the case record, and whose persistence measures the distance between India's domestic insolvency ambitions and its integration into the international insolvency order.

This structural condition has acquired renewed immediacy following the Supreme Court's November 2024 direction to liquidate Jet Airways in State Bank of India v. Consortium of Murari Lal Jalan and Florian Fritsch, which has brought into sharp judicial focus the procedural consequences of the absence of an operative cross-border insolvency framework.

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