# FROM JUDICIAL IMPROVISATION TO STATUTORY ARCHITECTURE: CROSS-BORDER AND ENTERPRISE-GROUP INSOLVENCY UNDER THE IBC AT TEN

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## I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 ("IBC" or the Code)[1] is going to turn ten this year and it has completely rewritten the narrative of corporate debt recovery in India. But, for that decade, the Code had two structural silences. So it was no working regime for a debtor whose assets, creditors and corporate family were all located in more than one jurisdiction, and it did not recognize any "group", so every corporate debtor in the Code was a single legal person, even if it was part of a larger promoter-controlled firm. Both silences forced adjudicating authorities to improvise. The National Company Law Appellate Tribunal (NCLAT) approved and deployed the same cross-border cooperation protocol in the Jet Airways insolvency[2] and the National Company Law Tribunal (NCLT) awarded the "substantive consolidation" of thirteen Videocon group companies without any statutory basis for doing so.[3] Two thousand and twenty-six is the point at which this decade of improvisation converges. The Insolvency and Bankruptcy Code (Amendment) Act, 2026,[4] the most ambitious amendment to the Code since its enactment, adds a new Chapter VA on group insolvency and a new Section 240C to allow the Central Government to make UNCITRAL-aligned cross-border insolvency rules. And almost simultaneously the NCLAT in a forty-page order dated 14 May 2026, reversed a lower-tribunal direction to club the insolvency proceedings of Videocon Industries Ltd. (VIL) and Videocon Oil Ventures Ltd.

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[1] *Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).*

[2] *Jet Airways (India) Ltd. v. State Bank of India, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT Sept. 26, 2019) (India).*

[3] *State Bank of India v. Videocon Indus. Ltd., MA 1306/2018 & connected M.A.s in C.P. (IB)-02(MB)/2018 (NCLT Mumbai Bench Aug. 8, 2019) (India) (order directing consolidation of the CIRPs of thirteen Videocon group companies).*

[4] *Insolvency and Bankruptcy Code (Amendment) Act, 2026, No. 6, Acts of Parliament, 2026 (India).*

(VOVL) and ruled that the Committee of Creditors (CoC) commercial choice to run separate resolution processes was not open to judicial override.[5] The two instruments that form part of the UNCITRAL cross-border insolvency architecture, the 1997 Model Law on Cross-Border Insolvency ("MLCBI") and the 2019 Model Law on Enterprise Group Insolvency ("MLEGI")[6] provide a vocabulary to organise legal processes between separate legal entities, and substantive consolidation is an exceptional, tightly conditioned remedy rather than a default outcome. India's decade of judicial improvisation, read closely, shows what happens when tribunals reach for consolidation without that disciplining vocabulary. As Parliament now hands the architecture over to delegated rule-making under Chapter VA and Section 240C, the central claim of this article is that those rules must be built self-consciously around UNCITRAL's coordination-first, consolidation-as-exception logic if India is to avoid re-litigating, in statutory form, the very instability the Videocon saga exposed over seven years and multiple reversals.

## II. THE FIRST DECADE OF SILENCE

If the IBC was enacted, it had two provisions related to cross-border insolvency. Section 234 gave the Central Government the power to enter into bilateral agreements with other countries for implementation of the Code, and Section 235 gave the NCLT the power to send a letter to a foreign court where a corporate debtor's assets were located abroad.[7] Both provisions were seemingly inserted as an afterthought on the advice of the Joint Parliamentary Committee and neither of these provisions was actually implemented: India signed no insolvency-specific bilateral treaty in the first 10 years of the Code; Section 234 was an empty enabling power and Section 235 an instrument with no mechanism to act on it. This is why in a report in October 2018, the Insolvency Law Committee identified this gap and proposed a "Part Z" based on UNCITRAL Model Law on Cross-Border Insolvency,[8] but that draft was just a draft, albeit a draft and a draft was only made public by the Cross-Border Insolvency Rules/Regulations

[5] *State Bank of India v. Venugopal Dhoot, NCLAT, Order dated May 14, 2026 (India) (reversing the NCLT direction to consolidate the CIRPs of Videocon Industries Ltd. and Videocon Oil Ventures Ltd.).*

[6] *UNCITRAL Model Law on Cross-Border Insolvency (1997); UNCITRAL Model Law on Enterprise Group Insolvency (2019).*

[7] *Insolvency and Bankruptcy Code, 2016, §§ 234–235, No. 31, Acts of Parliament, 2016 (India).*

[8] *Insolvency Law Committee, Report of the Insolvency Law Committee on Cross Border Insolvency (Ministry of Corporate Affairs, Oct. 16, 2018) (India).*

Committee's 2020 report[9] and the Ministry of Corporate Affairs' 2021-22 public consultation.[10] The silence on group insolvency is structural. The Code's basic operative provisions, the definition of financial debt in Section 5(8) and admission procedures in Sections 7, 9 and 10 are all based on a single corporate debtor.[11] In contrast, Indian corporate practice is very much group-based: promoter families finance, guarantee and run clusters of companies as a single integrated enterprise, often with cross-holdings, common directors and inter-company guarantees that make the fiction of atomised insolvency proceedings for each entity commercially plausible. Tribunals having to act in the face of this reality had only residuary jurisdiction in Section 60(5), the right to consider "any other matter of insolvency and bankruptcy" concerning a corporate debtor to work on.[12] In other words, the law was not in force or a test for Indian tribunals, and the design has been left to case law.

## III. JUDICIAL IMPROVISATION I: CROSS-BORDER COOPERATION IN JET AIRWAYS

Jet Airways (India) Ltd. had the first real test. As the airline's corporate insolvency resolution process was pending before the NCLT's Mumbai Bench, a separate bankruptcy case was taking place in the Netherlands involving the airline's own Dutch undertaking, supervised by a court-appointed Dutch trustee. With no statutory recognition in place, the Indian resolution officer and the Dutch trustee established a cross-border insolvency cooperation protocol which the NCLAT approved in 2019.[13] It was not legally established but an ad hoc and consent-based relationship based on the validity and authority of the tribunal and not in the spirit of law, but is consciously adapted to the cooperation structure that Articles 25 to 27 of the MLCBI call for;[14] for courts to communicate directly with insolvency personnel, to exchange information and to coordinate claims administration even though India has never adopted the Model Law. In essence, it was

[9] *Cross Border Insolvency Rules/Regulations Committee, Report on Cross Border Insolvency (Ministry of Corporate Affairs, June 2020) (India).*

[10] *Ministry of Corporate Affairs, Government of India, Public Consultation on Draft Part Z (Cross-Border Insolvency) (Nov. 2021–Jan. 2022).*

[11] *Insolvency and Bankruptcy Code, 2016, §§ 5(8), 7, 9, 10, No. 31, Acts of Parliament, 2016 (India).*

[12] *Insolvency and Bankruptcy Code, 2016, § 60(5), No. 31, Acts of Parliament, 2016 (India).*

[13] *Supra note 2.*

[14] *UNCITRAL Model Law on Cross-Border Insolvency arts. 25–27 (1997).*

very much like cross-border insolvency agreements that bankruptcy courts in the United States do as a part of Chapter 15 for Nortel and Lehman Brothers.[15] The Jet Airways protocol was hailed at the time as a measure of judicial pragmatism. But it also revealed the fundamental limits of protocol-by-consent. It did not provide any mechanism for deciding a debtor's centre of main interests ("COMI"); it offered no automatic relief that would be comparable to a moratorium in favor of a recognised foreign representative; and it relied entirely on the goodwill and cooperation of the foreign office-holder involved and no precedential machinery to bind future cases. The gap the protocol could not fill emerged almost immediately: in the Go First insolvency, foreign aircraft lessors' efforts to repossess aircraft ran headlong into the absence of a statutory recognition mechanism for their ownership claims, a conflict between the Cape Town Convention and domestic moratorium law.[16] It reappeared again when GLAS Trust Company, a United States-based collateral agent, was pursuing a U.S. $1.2 billion claim in parallel before a Delaware court and Indian courts; the Supreme Court had to come to the conclusion that without a comprehensive insolvency framework in place to govern cross-border proceedings, Indian courts could not recognise or continue proceedings in cooperation with a foreign moratorium order.[17] Ad hoc protocols, in short, could handle individual cases of goodwill but could not substitute for a recognition statute.

## IV. JUDICIAL IMPROVISATION II: THE VIDEOCON GROUP INSOLVENCY SAGA

If Jet Airways tested cross-border cooperation, the Videocon insolvency tested group consolidation, and did so over seven years and many reversals that make it, in retrospect, the single richest case study of judge-made group insolvency doctrine in India. Videocon Industries Ltd. was admitted into insolvency in June 2018 by NCLT, over ₹21,000 crore of admitted debt.[18]

*[15] 11 U.S.C. § 1525 (2018); In re Nortel Networks Inc., No. 09-10138 (Bankr. D. Del. filed Jan. 14, 2009); In re Lehman Bros. Holdings Inc., No. 08-13555 (Bankr. S.D.N.Y. filed Sept. 15, 2008).*

*[16] Convention on International Interests in Mobile Equipment art. XI, Nov. 16, 2001, 2307 U.N.T.S. 285, and the Protocol to the Convention on Matters Specific to Aircraft Equipment (together, the "Cape Town Convention").*

*[17] GLAS Trust Co. LLC v. Byju Raveendran, 2024 INSC 811 (India); see also Glas Trust Co. v. Riju Ravindran, C.A. No. 2023-0488 (Del. Ch. filed May 8, 2023).*

*[18] State Bank of India v. Videocon Indus. Ltd., C.P. (IB)-02(MB)/2018 (NCLT Mumbai Bench order of admission, June 6, 2018) (India).*

In August 2019, on an application by the State Bank of India, the NCLT's Mumbai Bench ordered the "substantive consolidation" of the CIRPs of thirteen of the fifteen Videocon group entities, via a multi-factor test based on common control, pooled financials, interlocking directorates, common financial creditors and a web of inter-company guarantees.[19] It was the first Indian tribunal order to recognise group insolvency as a doctrine at all, and it was made entirely without statutory basis under Section 60(5). The order was unstable almost immediately. In February 2020, following an application by the promoter Venugopal Dhoot, the NCLT went a step further and directed the resolution professional to consider Videocon Oil Ventures Ltd. (VOVL) and related offshore oil-and-gas special purpose vehicles as assets of Videocon Industries Ltd. itself. This was a bid to bring foreign assets into the consolidated estate by tribunal order and the NCLAT immediately stayed it, signalling early judicial discomfort with extending improvised consolidation into offshore assets.[20] The consolidated estate eventually drew a resolution plan from Twin Star Technologies, part of the Vedanta group, approved by the CoC in December 2020 and NCLT in June 2021.[21] However, the approval was challenged on several grounds, on the basis that valuable foreign oil and gas assets were not included in the consolidated estate, and the NCLAT held onto it for a short while before the dispute was resolved. The most significant chapter in a ten-year retrospective of the case was the NCLAT decision on May 14, 2026, in a forty-page order, to revoke a direction from the NCLT that the CIRPs of VIL and VOVL would have been united, on the condition that VIL's consumer electronics business and VOVL oil-and-gas business would need a different set of solutions which are sector specific and that the way the CoC is trying to get those buyers (in spite of its own desire to bring each business back together by process) is the business wisdom of the CoC and not the court.[22] That is based on a doctrine that is now well established in Indian insolvency jurisprudence: that the commercial wisdom of the CoC on viability, valuation and distribution is

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[19] *Supra note 3.*
[20] *Venugopal Dhoot v. State Bank of India, MA 2385/2019 in C.P. (IB)-02/MB/2018 (NCLT Mumbai Bench Feb. 12, 2020) (India); Union of India v. Videocon Indus. Ltd., CA (AT) (Insolvency) No. 408 of 2019 (NCLAT stay order, Feb. 19, 2020) (India).*
[21] *State Bank of India v. Videocon Indus. Ltd., C.P. (IB)-02(MB)/2018 (NCLT Mumbai Bench order approving resolution plan, June 8, 2021) (India).*
[22] *Supra note 5.*

not subject to substantive judicial review.[23] From start to finish, the Videocon group of companies was consolidated over seven years, then partially pulled apart and then put back together (as of May 2026) not because the commercial reality had changed substantially, but because no statutory test was conducted to determine whether consolidation was appropriate, who could take it, and how it was intermingled with the CoC's own commercial autonomy. This doctrinal instability is the strongest empirical justification of the group insolvency framework Parliament has established now.

## V. THE UNCITRAL ARCHITECTURE: COORDINATION BEFORE CONSOLIDATION

Two UNCITRAL instruments directly relate to the sub-theme of this article. The MLCBI, adopted in 1997 and used in some form by sixty-two states,[24] relates cross-border recognition to the COMI of the debtor. A foreign proceeding is regarded as "main" if it is pending where the debtor has its centre of main interests, and the same for a non-main when it is pending where the debtor has only an establishment. Recognition of a main proceeding triggers automatic relief, analogous to a moratorium; but recognition of a non-main proceeding only leads to discretionary relief. The MLEGI (finalised in 2019) provides what the MLCBI does not: a framework for enterprise groups. It introduces a ‘planning proceeding’ through which one coordinating jurisdiction can sanction a group-wide insolvency solution without collapsing the individual legal personality of each group member and it introduces the concept of a ‘group representative’ to act on behalf of multiple group members for the purpose of that solution.[25] The MLEGI default mode is procedural coordination, not substantive merger. Its Explanatory Note clearly distinguishes between coordination, which is to maintain each entity's own assets and liabilities and creditor body, and substantive consolidation, which aggregates them and treats the latter as a very special case where the conditions (for instance, assets and liabilities are too mixed up for each individual to decide that he is in possession or that the benefit for creditors as a whole is

[23] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India); K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 (India).*
[24] *UNCITRAL, Status: Model Law on Cross-Border Insolvency (1997), https://uncitral.un.org (last visited Aug. 25, 2026).*
[25] *UNCITRAL Model Law on Enterprise Group Insolvency arts. 2(j), 22–25 (2019).*

higher than for any single objecting creditor) are met.[26] Taken in the context of this, the 2019 Videocon consolidation order does not feel good. It was reached in residuary jurisdiction, without a codified presumption against consolidation, without a defined objection process for individual creditors of individual group entities, and without the enumerated, exceptional-remedy conditions set forth in the MLEGI. In practice, it was closer to full substantive consolidation than the coordination-first model UNCITRAL recommends as the default, and that's why that same set of facts resulted in a decade of oscillating tribunal orders, leading to the NCLAT's 2026 correction that brought the pendulum back to entity separateness and creditor autonomy.

## VI. INDIA'S 2026 ANSWER, MAPPED ONTO UNCITRAL

The Insolvency and Bankruptcy Code (Amendment) Act, 2026, Act No. 6 of 2026, received Presidential assent on 6 April 2026 and most of its seventy-two sections were brought into force from 26 May 2026 by notification of the Ministry of Corporate Affairs.[27] There are two provisions that are relevant to this article. Clause 42 of the Act adds a new Chapter VA (Group Insolvency) to the Code to allow the Central Government to regulate the process and conditions for insolvency proceedings to be carried out and consolidated where two or more corporate debtors are a group.[28] In addition to all existing Code provisions, the Act contains Section 240C, which allows the Central Government to establish rules for the recognition of foreign insolvency proceedings and cooperate and coordinate with foreign courts and insolvency representatives in these processes.[29] The proposed cross-border framework, as it is mentioned in the amendment, will differentiate between the "main" and "non-main" foreign proceedings that are governed by the debtor's COMI and is consistent with the UNCITRAL classification. But both provisions are in fact framework or enabling provisions in the most literal sense: Section 240C has not been notified yet and the rules of the real recognition test, actual consolidation pre-conditions, actual creditor-objection process still to be enacted are not settled. That is where the adaptation that this sub-theme calls for is working. Chapter VA gives Indian tribunals, for the first time, a statutory power to consolidate group proceedings. It is not clear from the text though what part of this will

[26] *UNCITRAL, Explanatory Note to the Model Law on Enterprise Group Insolvency ¶¶ 12–18 (2019).*
[27] *Supra note 4.*
[28] *Id. § 42 (inserting a new Chapter VA on group insolvency).*
[29] *Id. § 71 (inserting a new Section 240C on cross-border insolvency).*

be done in a coordination-first consolidation-as-exception logic that the MLEGI prescribes or will be used to just codify the broader, less discretion-heavy approach taken by the NCLT in 2019 in Videocon. Which of these two paths the delegated rules will take will define whether Chapter VA solves the instability that this article has traced or simply provides it a statutory home.

## VII. UNRESOLVED FAULT LINES

There are four fault lines that need to be taken into account as the Section 240C and Chapter VA rules are put in place. First is the tension between tribunal power of consolidating and CoC commercial wisdom. The Supreme Court's Essar Steel and Sashidhar line of authority insulates CoC decisions about viability and distribution from judicial second guessing[30] but Chapter VA provides the NCLT with the power to order consolidation, precisely the kind of structural intervention a CoC will resist, as VIL's and VOVL's creditors did in the 2026 NCLAT order.[31] Unless the rules are clear that a consolidation order only governs the procedural structures of a group proceeding, a joint or coordinated CoC, timelines, shared information and not the different resolution plans that creditors still decide to be more value-maximising, Chapter VA could create the same disputes that the NCLAT has just spent seven years over Videocon on. Second, dissenting or minority creditors are given protection. UNCITRAL's enumerated-conditions approach to substantive consolidation is to prevent the creditors of a comparatively solvent subsidiary from being pooled with, and diluted by, the creditors of a hopelessly insolvent parent.[32] Indian promoter-controlled group structures, common directors, common financiers, cross-guarantees, make a bare "common control" test easy to satisfy and a Chapter VA framework that stops at common control without the kind of asset-commingling or clear net-benefit finding needed for MLEGI to work, risks systematically gaming out reluctant creditors in consolidated proceedings not of their own choosing. The third is the COMI determination for Indian-promoted offshore entities. Videocon's dispute over VOVL and its Brazilian and Indonesian affiliates is a case in point for why COMI can be contested by group members

[30] *Supra note 23.*
[31] *Supra note 5.*
[32] *Supra note 25.*

holding assets abroad and funded from India under Section 240C rules,[33] if not by making clear that they are not to make a general claim to be able to contest the entire situation, rather than simply asking questions on the basis of the facts of the case. And finally, and most immediately, the transitional problem: until the rules of Section 240C are made public, the tribunals have no statutory basis to rely on Jet Airways-like ad hoc protocols under Section 60(5), and the rules must explicitly save protocols done in that window and not leave them ambiguous once the statutory regime is put in place.

## VIII. RECOMMENDATIONS

Four concrete recommendations follow from the analysis above. First, the Section 240C rules should adopt the MLCBI's COMI-based recognition test in full,[34] including the registered-office presumption, and should codify the public policy exception expressly rather than leaving it to be implied. Second, the Chapter VA rules should statutorily import the MLEGI's coordination-first, consolidation-as-exception structure,[35] replacing the open-textured Videocon multi-factor test with enumerated pre-conditions for substantive consolidation, asset and liability commingling that cannot practicably be disentangled, or a clear, demonstrable net benefit to creditors as a whole, paired with mandatory notice to, and a right to object for, the creditors of every affected group entity before any consolidation order is made.

Third, India should introduce a statutory "group representative" analogous to the MLEGI's Article 2(j) concept,[36] capable of coordinating a cross-border group proceeding without displacing the separate resolution professional appointed for each individual entity. Fourth, the rules should explicitly reconcile a Chapter VA consolidation order with CoC commercial wisdom by confining consolidation to procedural coordination, shared information, aligned timelines, a joint or coordinated CoC structure, while leaving open the possibility, exactly as the NCLAT held in the 2026 VIL-VOVL order,[37] that a CoC may still choose separate resolution plans for separate entities where that better serves value maximisation. A savings clause

[33] *Supra note 20.*
[34] *Supra note 6.*
[35] *Supra note 25.*
[36] *Supra note 25, art. 2(j).*
[37] *Supra note 5.*

validating ad hoc protocols concluded before the Section 240C rules take effect would close the remaining transitional gap.

# IX. CONCLUSION

The first decade of the IBC proved the Code's central design idea, creditor-based, time-bound domestic resolution, while leaving two structural gaps for tribunals to fill with improvisation. The Jet Airways protocol and Videocon consolidation saga are not just historical footnotes to that decade so much as they are actual history of what happens when adjudicators borrow UNCITRAL's vocabulary without its discipline. The 2026 amendment finally provides India with statutory scaffolding, Chapter VA and Section 240C, to formally do what tribunals had been doing informally. Whether that scaffolding actually solves the instability this article has traced, or simply relocates it into delegated rules, will depend on whether India's rule-makers read the UNCITRAL Model Laws not as a checklist of recognition machinery to copy but as an argument about default separateness and exceptional consolidation, an argument the Videocon litigation took seven years and multiple reversals to teach Indian tribunals the hard way, just months before Parliament finally caught up.