Page 27 - 35

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 7 | Issue 5

2025

Factors to be Considered for Determination of Centre of Main Interest (COMI)

PRATYUSH ANAND[1]

ABSTRACT

The idea of the Centre of Main Interest (COMI) is essential when a company has money problems in more than one country. It helps decide which country's court should handle the main case. It also allows other countries to accept and follow what that court decides. This paper aims to study the elements that are considered when establishing COMI in a multi-jurisdictional insolvency scenario. This paper describes the essential elements that influence the unification of insolvency laws among various nations. It also incorporates information from scholarly papers, case studies, and other significant texts to clarify these essential aspects.

***Keywords**: Centre of Main Interest, Cross – Border Insolvency, COMI Determination Factors, UNCITRAL Model Law on Cross – Border Insolvency, EU Insolvency Regulation, COMI in India*

I. INTRODUCTION

The increasing globalization of business operations has necessitated the development of a harmonized approach to insolvency. The Centre of Main Interest (COMI) concept has significantly emerged as a fundamental determinant in cross-border insolvency. The term "COMI" is codified in international legal instruments such as the European Insolvency Regulation (EIR) and the United Nations Commission on International Model Trade Law (UNCITRAL) on Cross-Border Insolvency. The determination of COMI serves as a basis for identifying the proper jurisdiction to initiate insolvency proceedings. This paper will examine the factors influencing COMI determination and provide an overview of key case law that has shaped its interpretation. More and more companies are expanding and operating in several countries. Therefore, a common and easy approach for handling businesses in financial difficulties is urgently needed. When a company cannot pay its obligations, a legal process known as insolvency must be observed. However, it becomes difficult to establish which one needs to handle the insolvency process if the company runs across many countries. Countries have different laws, which might result in uncertainty, slowed development, and unjust results. The Centre of Main Interest (COMI) is the solution legal professionals and governments

[1] Author is a Student at NALSAR University of Law, Hyderabad, Telangana, India.

worldwide have devised for this difficulty.

COMI is a valuable instrument for determining which nation's court is to manage the primary insolvency case. It searches to locate the company's primary market. This entails considering where the organization is run from, its headquarters, its major office, where most of its employees are located, and where it interacts with most of its customers or clients. The theory is that the nation where the firm has the most significant operations ought to handle the situation everyone engaged including the business, its employees, its creditors, and other companies it interacts with will find this making everything easier and faster.

Centre of Main Interest is a concept that is not restricted to a few countries. It's stated in important international statutes and treaties. The European Insolvency Regulation (EIR), for instance, uses COMI to determine which European nation should manage a cross-border insolvency case. The United Nations developed the UNCITRAL Model Law on cross-border insolvency to assist nations in cooperating on issues of worldwide insolvency. Many countries, including India, have used this model law when drafting or changing their insolvency legislation. COMI lets courts sidestep conflicts among nations over which one should lead in the insolvency matter. It also assists foreign countries in seeing the main court's judgements, lowering downtime and increasing trust across legal systems.

This paper will investigate COMI more closely in terms of how it is determined. When courts seek to choose a company's primary place of operations, we will review what facts and signals they consider. We will also examine several significant judicial decisions from the past that have helped define the meaning of COMI and its actual application. Such instances help us see what works, what does not, and how complex scenarios are addressed by courts when a company's operations span several nations.

In general, addressing cross-border bankruptcy issues depends significantly on COMI. It lets businesses worldwide fairly address financial issues, helps countries collaborate, and makes things more obvious.

II. Legal framework for COMI

The rules for deciding COMI come from international and regional laws. These include the UNCITRAL Model Law and the European Insolvency Regulation. Many countries have accepted these rules to help them work together in cross-border insolvency cases.

1. **UNCITRAL Model Law on Cross-Border Insolvency**: Article 16(3)[2] of the Model

[2] ***U.N. Comm'n on Int'l Trade Law***, *UNCITRAL Model Law on Cross-Border Insolvency with Guide to*

Law says that unless there is strong evidence showing something different, the debtor's principal place of business is usually where its registered office is. If the debtor is a person (not a company), it is usually where that person lives.

2. **European Insolvency Regulation (EIR)[3]:** The idea of Centre of Main Interest (COMI) in Recital 13 and Article 3(1) is given in the European Insolvency Regulation (EIR). These rules state that the debtor usually runs its most significant commercial activities in COMI. Furthermore, this is the most evident and easy spot for outsider including creditors, clients, and suppliers. COMI is where the company runs daily activities and makes critical decisions. This location should be easily found and evident for people who interact with the company from the outside.

III. Factors for determining COMI[4]

Courts examine several things to decide the Centre of Main Interest (COMI). These are simple facts based on what the debtor does. If the debtor is a person, COMI is usually where they live and manage their matters. If the debtor is a business, COMI is generally where the main office is and where most business activities happen. In each case, courts consider different factors to determine where the debtor mainly runs their business or personal life.

1. Location of the Registered Office

The beginning point for establishing COMI is usually a corporation's registered office. The European Insolvency Regulation (EIR) and the UNCITRAL Model Law create a rebuttable presumption that the registered office is the COMI. This idea is valid unless there are signs that the business is actually run somewhere else. Although not definitive in the COMI determination, the registered office offers a formal, readily discoverable reference point for third parties and creditors.

2. Place of Principal Business Activities

A key factor in establishing COMI is where the debtor does most of its core corporate transactions. Courts frequently check beyond the official registered office to see where the actual and significant activities occur. The position of primary business operations depends on

Enactment and Interpretation, U.N. Doc. A/CN.9/WG.V/WP.63/Add.1 (2013), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf.

[3] *Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings, 2015 O.J. (L 141) 19, https://eur-lex.europa.eu/eli/reg/2015/848/oj.*

[4] *Archit Bhadani, Cross-Border Insolvency with Reference to the Centre of Main Interest, IBC Laws (Aug. 11, 2021), https://ibclaw.in/cross-border-insolvency-with-reference-to-the-centre-of-main-interest-by-archit-bhadani/.*

 [ISSN 2581-9453]

factors like where production facilities, corporate headquarters, management activities, and customer contacts are all found. This factor is sometimes essential for multinational businesses with registered offices in one jurisdiction but primarily operating in another.

- **Case Reference**: *In re* ***Euro food IFSC Ltd*** **(2006)**[5] – The European Court of Justice (ECJ) emphasized that the actual place where the debtor's interests are managed and where the majority of business operations are conducted may determine the COMI, rather than the location of the registered office.

3. Location of Management and Control

Another critical point in deciding the Centre of Main Interest (COMI) is where the debtor manages and controls their activities. Courts look at where the top leaders or managers make critical business decisions, where major deals or contracts are made, and where the company handles its daily work, like office tasks and paperwork. This helps show where the company or person is running things from. This factor often correlates with the debtor's headquarters or the principal place of business and may be more indicative of the COMI than the formal registered office.

- **Case Reference**: ***Interedil Srl v Fallimento Interedil Srl*** **(2011)**[6] – The ECJ held that the location of central administration and management and the decision-making process could override the presumption in favour of the registered office in COMI determinations.

4. Ascertainability by Third Parties

One of the basic ideas in the COMI determination is that third parties, especially creditors, should be able to establish the COMI. To guarantee openness and predictability in insolvency cases, the European Insolvency Regulation underlines that creditors must be able to identify COMI. Courts look at whether third parties know the place where the debtor runs its primary business operations and if it is visible. This guarantees the registered office does not deceive lenders when the business activity seat differs.

- **Case Reference**: *In re* ***Stanford International Bank*** **(2010)**[7] – The UK High Court ruled that the COMI should be identifiable to creditors based on where the debtor

---

[5] *See infra note 4, at 7*
[6] *See infra note 5, at 7*
[7] *JCOERE Consortium, Case Study 20: Re Stanford International Bank Ltd (In Receivership), Univ. Coll. Cork, https://www.ucc.ie/en/jcoere/casestudies/casestudy20restanfordinternationalbankltdinreceivership/ (last visited Mar. 29, 2025).*

conducts its business and where creditors reasonably expect insolvency proceedings to occur.

5. Location of Assets and Creditors

One of the most important parts of deciding COMI is looking at where the debtor's principal assets and creditors are located. Courts often consider the location of valuable things like factories, machines, property, and bank accounts. They also look at where the creditors are, especially the biggest or most important group of creditors. This matters because insolvency cases should happen in a place where most of the creditors can easily take part. This helps make sure the process is fair and that any problems or disagreements can be solved more effectively.

- **Case Reference**: *In re* ***Daisytek-ISA Ltd*** **(2003)**[8] – The UK court held that COMI can be determined by considering the location of the debtor's creditors and the most significant assets in cross-border insolvency cases.

6. The Debtor's Nationality and Domicile

For natural persons, determining COMI involves considering their domicile, habitual residence, or the place where they conduct their professional activities. Courts may consider the debtor's nationality or place of habitual residence as part of their inquiry into where the debtor primarily engages with creditors and conducts daily activities.

- **Case Reference**: In re **Shierson v. Vlieland-Boddy (2005)**[9] – In this case, the UK Court of Appeal gave necessary guidance on how to decide the Centre of Main Interest (COMI) for individuals. The court said that a person's habitual residence meaning the place where they usually live is a decisive factor in deciding COMI. The court also pointed out that creditors should be able to quickly identify where they can expect to deal with the debtor in case of insolvency. In other words, COMI should be clear to people from the outside, especially those who are owed money. This case helped show that for individuals, where they live and manage their personal affairs, along with what creditors reasonably expect, plays a key role in deciding COMI.

7. The Nature of the Business[10]

The debtor's type of business and operating system are also required to establish COMI. Multinational companies could have distributed management systems, which makes it

---

[8] *See infra note 7, at 8*

[9] *Shierson v. Vlieland-Boddy, [2005] EWCA (Civ) 974, https://vlex.co.uk/vid/shierson-v-vlieland-boddy-793771345 (last visited Mar. 29, 2025).*

[10] *CMS Law, CMS Expert Guide to Finding COMI, https://cms.law/en/int/expert-guides/cms-expert-guide-to-finding-comi(last visited Mar. 29, 2025).*

more difficult to find one jurisdiction. In these cases, the court will look at the extent of the company's global activity, including cross—border contracts, international sales, and the number of jurisdictions where operations take place.

IV. CASE LAW AND JUDICIAL INTERPRETATION

Courts have helped improve and clarify the rules for deciding the Centre of Main Interest (COMI) through their judgments. These court decisions have set important examples and helped create a better understanding of how to choose the right country or place to handle insolvency cases. Below are some key cases that show how courts in different parts of the world have explained and applied the idea of COMI:

1. Euro food IFSC Ltd (2006)[11]

The *Euro food* case remains a landmark decision by the European Court of Justice (ECJ). In this case, the court clarified that the COMI must be determined objectively and ascertainably, focusing on where the debtor regularly administers its interests. The case emphasized the importance of third-party visibility and the need for creditors to identify COMI. The Bank of America filed a petition to dissolve Euro food in Ireland. It was brought before the High Court on 27 January 2004 and provisionally named a liquidator with authority to seize control of the company's assets and run its operations [para 20] [para 19]. With an official liquidator named on 23 March, Euro food was issued a winding-up order. Meanwhile, the Italian Minister for Production Activities began insolvency proceedings (forum) on 9 February 2004. The issue hinged on which proceedings would prevail for Euro food IFSC according to which step defined the 'commencement of proceedings' under the conditions of the EIR (at that time, the original Regulation 1346/2000).

The Italian government challenged this by defining a provisional liquidator as a "temporary administrator" with "restricted powers" and, as such, not a "liquidator" under the EIR. Appealing to the Supreme Court, the Italian special administrator presented in the High Court hearings had the issue sent to the CJEU. By a simple analysis of art, the CJEU found Euro food’s COMI to match its place of registration. The CJEU ruled that art's assumption in Evidence of some parental contact where the parent company was situated in another member state would not just contradict. Furthermore, once jurisdiction had been determined in this manner, the obligations to recognize the judgements of the court of a member state were triggered.

[11] JCOERE Consortium, *Case Study 01: Eurofood IFSC Ltd*, Univ. Coll. Cork, https://www.ucc.ie/en/jcoere/casestudies/casestudy01eurofoodifscltd/ (last visited Mar. 29, 2025).

2. Interedil Srl v Fallimento Interedil Srl (2011)[12]

Interedil was an Italian incorporated and registered company. In July 2001, Interedil was registered as a foreign company in England and removed from the Italian company registry. It is apparent from the ECJ's judgment that the registration as a foreign company (with a UK establishment) and removal from the Italian companies registry was viewed as amounting to a transfer of Interedil's registered office from Italy to the UK although as a matter of English law, this is not correct. Around the same time, Interedil was registered as a foreign company in England, and a British group of companies acquired its business. The title of Interedil's assets was subsequently transferred to an English-registered company. Interedil was removed from the UK foreign companies' registry in July 2002 (meaning that Interedil was not registered at all in any companies registry). In October 2003, an application for the opening of bankruptcy proceedings in respect of Interedil was made to the Italian court. Interedil argued that the Italian court had no jurisdiction to commence insolvency proceedings as, pursuant to the ECIR, only the UK courts had jurisdiction to commence such proceedings following the transfer of its registered office to the UK. As a result, questions concerning, inter alia, the meaning of COMI (in particular, the strength of the registered office presumption) and establishment were referred to the ECJ by the Italian Supreme Court, albeit with the reference made on the erroneous assumption that the company's most recent registered office was in England.

3. In re Daisytek-ISA Ltd (2003)[13]

Daisytek was a group of 16 European companies that sold electronic office supplies. In 2003, the company couldn't repay its loans to Bank of America, causing serious money problems. Insolvency cases were filed in the United States, England, France, and Germany. The leading company in the European branches was based in Bradford, UK. It handled big decisions for the group, such as signing deals with suppliers and giving financial guarantees for the French and German branches. Even though some branches had offices in France and Germany, the UK company managed the whole group. The company filed for administration under UK law in England to get the best value out of its assets. All 16 companies in the Daisytek group filed reorganization cases in the UK. But for these to move forward, courts had to decide where each company's Centre of Main Interest (COMI) was. This would determine the country's right to handle the insolvency under EU law (EIR 2000). Courts in France and Germany initially said

[12] Case C-396/09, Interedil Srl (in liquidation) v. Fallimento Interedil Srl, ECLI:EU:C:2011:671, [2011] E.C.R. I-9915, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62009CJ0396 (last visited Mar. 29, 2025).

[13] JCOERE Consortium, Case Study 02: Daisytek, Univ. Coll. Cork, https://www.ucc.ie/en/media/projectsandcentres/jcoereproject/CaseStudy02Daisytek.pdf (last visited Mar. 29, 2025)

the UK courts could not handle cases for companies based in their countries. The manager filed under German law in Germany without telling the court that cases had already been filed in England. Once this was discovered, the German court said the UK decision didn't count. But the English administrator challenged this. Later, a higher German court agreed that the UK court did have the right to handle the case under Article 3(1) of the EU insolvency law. In France, a higher court also changed the first decision and agreed with the UK insolvency proceedings. The court in France waited for a related decision from the European Court of Justice (ECJ) in the Euro food case and then supported the UK's role. Also, in the US, Daisytek filed for Chapter 11 bankruptcy in May 2003 for eight companies and the leading holding company. However, these US filings did not include the 16 European companies.

V. Applicability of COMI in India

Under Indian law, clause 14 of the draft part Z of the IBC includes the idea of COMI. From clauses 14(2) and 14(3), it is evident that the insolvency law committee has followed the EU's definition of COMI. The assumption established in clause 14(2) regarding the location of the debtor's registered office as the COMI jurisdiction applies only if the office has not moved within three months of the insolvency proceedings starting. Furthermore, under clause 14 (3), the Indian adjudicating authority has been charged with determining a debtor's COMI based on the criteria set by the Central Government. These clauses match Article 3 of the 2017 European Insolvency Regulation (EIR).

Indian Courts first effectively used the principle of COMI in the case of Jet Airways (India) Ltd.[14] against the State Bank of India and other partners. While simultaneous insolvency cases were already underway in India, the insolvency process started against Jet Airways in a Dutch court in this instance. Thereafter, the National Company Law Tribunal, also known as NCLT, heard from a Dutch proceedings representative seeking acknowledgement of the events in the Netherlands. However, the National Company Law Tribunal refused, citing that no provision exists in the Indian insolvency regime to afford recognition to a foreign proceeding. The acquired appellate influent, The National Company Law Appellate Tribunal, hereinafter known as NCLAT though, approached this issue differently. Regarding the model law, the NCLAT found that although Jet Airways had assets in the Netherlands, its COMI was in India. Given that the company's registered office was in India and its management was run from there, the National Company Law Tribunal (NCLAT) set Jet Airways COMI according on the registered

[14] *Jet Airways (India) Ltd. v. State Bank of India & Anr., Company Appeal (AT) (Insolvency) No. 707 of 2019, National Company Law Appellate Tribunal (NCLAT), decided on Sept. 26, 2019.*[Insolvency and Bankruptcy Board of India]

office presumption. The NCLAT, on the other hand, acknowledged the Dutch proceedings as nonmain foreign proceedings and ordered the resolution professional to organize and collaborate with the Dutch Resolution Professional and for the terms and conditions of the cooperation to be stipulated in a pact between the two parties.

VI. Conclusion

Identifying the Centre of Main Interest (COMI) in cross-border insolvency is critical since it helps in finding the proper jurisdiction to start main insolvency proceedings. Legal presumptions (e.g., registered office) and practical realities (e.g. place of management and control, business activities, creditor expectations) define the elements considered in this procedure. The European Court of Justice's case law and rulings from UK courts and other jurisdictions have produced a body of jurisprudence stressing openness, creditor visibility, and flexibility in deciding COMI. In the end, the conclusion of the COMI investigation is a case-specific investigation calling for a sophisticated analysis of several elements to guarantee equity and efficiency in cross-border insolvency cases.

VII. Recommendation

To enhance the assessment of the Centre of Main Interest (COMI), various actions can be implemented. First, it is essential to establish clear and consistent standards among different nations to promote a uniform method of determining COMI. Judicial authority should consider not just the location of the registered office but also where the enterprise operates, where its workforce is based and where significant decisions occur. This approach will deter companies from relocating their registered office to exploit advantageous insolvency regulations. Moreover, transparency plays a vital role, as it is essential for creditors and stakeholders to recognize and comprehend a company's COMI easily.

Furthermore, international bodies such as UNCITRAL should develop uniform guidelines so that countries adopt a comparable method, thereby minimizing confusion in international cases. To avoid complexity, more rigorous rules should be in place to stop companies from altering their COMI right before insolvency processes commence. In addition, courts must make prompt decisions regarding COMI to prevent unnecessary holdups that could negatively impact creditors and firms. Finally enhanced collaboration among nations is crucial, ensuring that courts acknowledge and honour COMI rulings from other jurisdictions. These actions aim to foster a more equitable, effective and predictable framework for addressing cross-border insolvency matters.

*****