Group Insolvency under the Insolvency and Bankruptcy Code: Challenges, Judicial Trends and the Road Ahead

Shivam Pandey, Teaching & Research Associate, Gujarat National Law University.

Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) has revolutionised India's insolvency landscape by consolidating fragmented laws and expediting the corporate resolution process. However, while the Code effectively addresses single-entity insolvencies, it lacks a coherent framework for resolving insolvencies involving interconnected group enterprises. This article explores the conceptual and legal challenges surrounding "group insolvency" within the Indian context. It analyses how the existing statutory framework under the IBC, Companies Act, and accounting standards defines ownership and control within group structures, yet fails to accommodate the complex interdependence of group entities. Drawing from key judicial pronouncements such as *State Bank of India v. Videocon Industries Ltd., Edelweiss ARC v. Sachet Infrastructure Pvt. Ltd*., and *ArcelorMittal India v. Satish Kumar Gupta*, the paper examines the evolving judicial trend toward procedural coordination and substantive consolidation. The study also discusses the dilemmas of piercing the corporate veil, cross-border insolvency complications, and the need to balance creditor protection with corporate autonomy. While international models like the UNCITRAL Model Law on Enterprise Group Insolvency provide a guiding framework, India's implementation requires contextual adaptation. The article concludes that the adoption of a statutory group insolvency mechanism is crucial for ensuring value maximisation, transparency, and consistency in multi-entity resolutions. Strengthening legal definitions, procedural clarity, and institutional coordination will be key to developing an efficient and equitable group insolvency regime in India.

Keywords: *Group Insolvency, Insolvency and Bankruptcy Code (IBC), Corporate Veil, Substantive Consolidation, UNCITRAL Model Law.*

I. Introduction

The Insolvency and Bankruptcy Code, 2016 ("IBC") is based on a strong body of legal principles. It aims to bring together and streamline many legislations and policies related to the revival and bankruptcy of individuals who are unable to pay their debts.[1] The Companies Act, 2013, along with the Sick Industries Companies Act (SICA) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), among others, laid the groundwork for handling corporate, individual, and business bankruptcy and restructuring cases before the implementation of the IBC.

The system was too intricate and laborious and therefore, the asset appraisal process was greatly delayed and made unnecessary. The aim of the IBC was to simplify the procedure and offer corporations a more distinct choice when deciding between revival and dissolution. According to the provisions of the IBC, a corporate delinquent is considered insolvent if it is unable to pay its operational and financial creditors. Part II, Chapter II of the IBC contains regulations on the Corporate Insolvency Resolution Process (CIRP).

A complete structure is built for the business insolvency procedure within its scope. A corporate creditor or debtor must first file an insolvency application. The adjudicating body will later designate an expert in interim resolution to form a Committee of Creditors (CoC). Afterwards, the Committees of Creditors will discuss whether to elevate the temporary resolution professional to the role of resolution professional or select a new candidate. The primary responsibility of the resolution professional is to oversee the entire resolution process and develop a strategy for either the revival or liquidation of the organisation.

Following the priority list, the adjudicating authority designates a Company Liquidator to oversee the liquidation process, transfer the company's assets, and distribute payments to creditors after deciding to proceed with liquidation. Often, an insolvency action is carried out in this manner according to the IBC.[2] The financial crisis of the bankrupt firms has been successfully handled using this resolution approach, which has proven to be highly effective and efficient.

[1] S. M. A. Shibli, *Group Insolvency in India: Need for a Consolidated Approach*, 61(4) J. INDIAN L. INST. 523 (2019).
[2] A. Mitra & A. Sen, *Cross-Border Insolvency and Enterprise Groups: Lessons for India*, 12 NUJS L. REV. 155 (2020).

The approach is specifically applicable to corporate borrowers and does not apply to individual debtors. While the IBC includes rules related to specific debtors, the government has neither given authorization nor put them into effect. Although corporate organisations are subject to the IBC, the insolvency process described in the IBC specifically applies to individual corporations and does not include the complexities of several enterprises associated with a single holding company or group.

Considering that one of the main goals of the Act was to simplify the overall resolution process, it is important to acknowledge the insolvency resolution of all group enterprises. A "Group" is an economic entity consisting of many firms that operate in different markets and are overseen by a common administrative or financial authority.[3] Group structures are gaining quick popularity as a form of organisational arrangement. A consortium of companies operates in multiple markets, and the bankruptcy of one company does not necessarily indicate the bankruptcy of the entire consortium. Having a creditor that comprehends the organization's asset position would be beneficial, as it would enable them to make a more thorough evaluation of the company's financial state.

Group insolvency is a process that involves combining several legal actions against multiple firms that belong to the same group. This consolidation can impact both the corporate debtor and creditors, thereby effectively exposing the true nature of the corporate structure.[4] The absence of defined provisions in the Indian Bankruptcy Code (IBC) makes the situation in India difficult. Insolvency refers to the state in which a debtor is unable to fulfil their financial obligations to their creditors.

II. Group Structure under Indian Laws

The regulatory framework governing corporate debt restructuring in India is principally composed of the Companies Act of 2013 and the Insolvency & Bankruptcy Code, 2013 (IBC). In relation to matters of insolvency, certain provisions of the Companies Act have been replaced by the IBC, and there is now a stronger focus on the entire revival of the company. However, neither of these statutes provide a definition for the term "group".

[3] Vivek Saurav & Bhanu Saxena, *Navigating Group Insolvency in India: Analysing Implementation Challenges and Enterprise Dynamics for Modern-Day Business Structure*, SSRN. (2024).
[4] Neeti Goyal, *Group Insolvency in India: – Analyzing the Definition of 'Group' and Need of Redefining*, 14 Eur. Econ. Lett. 2208 (2024).

It is crucial to emphasise that tax planning is just one of several reasons for creating a group structure. Therefore, tax authorities have developed a wide range of legislative measures to tackle the problem of inadequate inter-company transfer pricing. The Income Tax Act of 1961, often known as ITA or the Income Tax Act, includes and provides a definition for the term "group" in its transfer pricing laws.[5] However, the Companies Act and the IBC do not integrate this phrase.

Defining Group Structures

According to Section 286(9)(e) of the Income Tax Act, a group consists of the parent entity and all other entities that are required to prepare a consolidated financial statement for financial reporting purposes.[6] This step may be necessary to adhere to restrictions regarding ownership or control, stock market policies, accounting standards, or law.

The term "consolidated financial statement" encompasses both the parent firm and its component entities as a single, integrated economic organisation. The main objective of the Income Tax Act is to deal with transfer pricing in multinational groups. It highlights ownership, control, and operation as the three essential characteristics of a group firm, considering them as a unified economic entity.

Elements of Control and Ownership under the Companies Act and the Accounting Standards

All corporations, subsidiaries, and linked entities are required by the Companies Act to prepare consolidated financial statements in a standardised format. Usually, the parent firm creates consolidated financial statements that provide financial information about the economic activity of the combined subsidiaries. Accounting Standard 21 (AS 21) and Indian Accounting Standard 110 (Ind AS 110) establish the guidelines for creating consolidated financial statements for a group of enterprises that are under the authority of a parent company.[7]

Thus, "control" is a crucial characteristic that delineates a group of businesses. Control can be obtained in compliance with AS 21 by owning more than 50% of the voting power of the company, either directly or indirectly through one or more subsidiary companies.[8] Control can also be acquired by regulating the composition of the enterprise's governing body, including

[5] Nagananthan Iyer, *Demystifying Group Insolvency in India*, JUS CORPUS L.J. (2024).
[6] Income Tax Act, No. 43 of 1961,
[7] Accounting Standard 21 (AS 21), *Consolidated Financial Statements* (Institute of Chartered Accountants of India 2001).
[8] Indian Accounting Standard (Ind AS) 110, *Consolidated Financial Statements* (Ministry of Corporate Affairs 2016).

the board of directors (BOD). In the current context, a corporate entity that has control over one or more subsidiary enterprises is commonly known as a parent company or holding company. In contrast, a group consists of the main organisation and all its subsidiaries.

III. Framework for Group Companies under IBC

Single Entity v. Group Entity

The Working Group Report concludes that the definitions provided under the Companies Act are the most appropriate for distinguishing between horizontally or vertically integrated organisations.[9] Moreover, the definitions offer a rationale for the adoption of a group insolvency framework within the realm of a "corporate group," which includes holding, subsidiary, and associate entities. The WG Report emphasises that the definitions established by the Companies Act are essential for creating a comprehensive framework to handle bankruptcy situations involving business conglomerates.

The IBC, a comprehensive framework highly praised for addressing corporate insolvency issues in India, incorporates three possible initiators of the Corporate Insolvency Resolution Process (CIRP): the corporate debtor, its operational or financial creditors, or the corporate debtor itself. The term "corporate debtor" is defined in the Insolvency and Bankruptcy Code (IBC) as a corporate entity that owes a debt to another individual or entity.[10] This term includes not only businesses registered under the Businesses Act, but also limited liability partnerships and other entities created with limited liability. As per Indian laws, a group entity includes all parent firms, together with their affiliated and subsidiary companies.

Therefore, it may be inferred that a business group consists of several separate companies, each of which must have its own registration according to the Companies Act. As per the Code's criteria for categorising corporate debtors, each entity within the corporate group would be recognised as a separate and eligible entity for classification, as indicated by the use of the word "a" in the definition of a corporate debtor. Therefore, according to the terms of the agreement, if any of these entities fail to meet their obligations, they would all be categorised as corporate debtors.

[9] Insolvency and Bankruptcy Board of India, *Discussion Paper on Group Insolvency* (Jan. 2021).
[10] Insolvency and Bankruptcy Board of India (IBBI), *Annual Report 2022–23*.

Elements of Interconnectedness: Recognition of Group Structures

In a situation where various entities within the same corporate group are classified as independent entities qualified to be considered as corporate debtors, it is possible for multiple Corporate Insolvency and Resolution Processes (CIRPs) to be commenced by different entities within the group. This has the potential to result in disagreements and ambiguity during the process of reaching a settlement. Therefore, after doing a brief analysis of the definitions provided in the IBC, the main purpose of the Code was to deal with the insolvency of individuals, rather than that of conglomerates or groups.

Although the focus seems to be on handling the bankruptcy of individual companies, the IBC sets out principles that recognise the interconnectedness within a corporate group. For example, the cited provision of the Code states that the same Adjudicating Authority must oversee both the bankruptcy procedures under Chapter VI and the guarantee of a debtor corporation.[11] This provision facilitates the streamlining of legal procedures in cases where the guarantor and debtor have a close relationship or when cross-guarantees result in interconnected financial liabilities. In addition, the resolution plan of a parent company may encompass the incorporation of the assets of its subsidiary firms, including their shares.

As a result, the terms of the resolution plan may make it easier for a resolution applicant to acquire these securities, which emphasises the unexpected consequences of the Code. Similarly, the resolution plan of a parent business would include all assets of the organisation, including any ownership interests it may have in its subsidiaries. Therefore, a resolution applicant who successfully executes the resolution plan can get ownership of these securities, highlighting the unexpected consequences of the Code. Moreover, it is crucial to recognise that the IBC respects the unique relationships and influences that individuals within a corporate group may have on one another. This is exemplified by the inclusion of provisions in the Code that address any issues arising from group dynamics.

The Code provides a comprehensive definition of "related party" for corporate debtors, which encompasses not only holding and subsidiary firms and associate corporations, but also includes additional subsidiaries of the holding company to which the debtor belongs. Under the Code, companies that are considered related parties include those that exert control over each other through contractual agreements, have directors or managers with financial stakes in

[11] S. M. A. Shibli, *Group Insolvency in India: Need for a Consolidated Approach*, 61(4) J. INDIAN L. INST. 523 (2019).

them, or have a relationship that involves the exchange of workers or participation in the formulation of policies.[12] The Code imposes limitations on related parties, including their capacity to propose a resolution plan or take part in the voting process of the Committee of Creditors ("CoC") for the Corporate Insolvency Resolution Process (CIRP).

Non-Recognition of Interconnected Assets

The Code recognises the intricate interrelationships between the entities that make up a group and their tendency to mutually affect each other, as demonstrated by its comprehensive description of related parties and its ban. Corporate debtors are completely responsible for fulfilling their obligations under the IBC, regardless of their association with bigger economic entities. The Code prohibits the distribution of assets to corporate debtors, but does not apply to guarantors.

One primary objective of bankruptcy laws is to accelerate the process of converting assets into cash through settlement. Except for personal guarantors, the Insolvency and Bankruptcy Code (IBC) treats corporate debtors as distinct legal entities and maintains the power to distribute their assets in case of insolvency.[13] The Code's moratorium restrictions offer legal protection to the assets of a corporate debtor by differentiating them from the assets of its subsidiaries. Furthermore, any efforts to seize, recover, or enforce liens on the property owned by the corporate debtor are prohibited, and the debtor is prohibited from transferring, burdening, or getting rid of its assets.

Section 18 of the Code allows the Resolution Professional to have authority and possession over any asset that the corporate debtor owns. However, this provision does not apply to subsidiaries based in India or any other nation. According to Section 36 of the Code, these assets are not included in the "liquidation estate." Parent firms occasionally establish subsidiaries to oversee resources or carry out certain tasks.

The existing IBC methodology does not consider the intricate relationships between the assets of holding and subsidiary businesses. Therefore, despite the IBC's goal of maximising value, its limiting approach and distinction between assets held by the parent company and those held by its subsidiaries could impede the resolution process and lead to an inefficient allocation of

[12] A. Mitra & A. Sen, *Cross-Border Insolvency and Enterprise Groups: Lessons for India*, 12 NUJS L. REV. 155 (2020).

[13] Poorna Poovamma K. M. & Abhishek Wadhawan, *Introduction of Group Insolvency Regime in India: Identifying the Challenges and Proposing the Solutions*, 10 NLIU L. REV. (Issue I) (2021).

resources. Considering the insufficiency of the IBC in enabling comprehensive procedures for resolving the insolvency of interconnected businesses and their assets, the final question is to how group insolvencies have been handled.

Dilemma of lifting Corporate Veil in case of Group Insolvency

The legal principle of independent corporate existence is widely recognised in the realm of corporate law. This statement confirms that subsidiary and associate corporations have separate legal identities that are different from their parent or other linked companies. When a firm within a corporate group becomes insolvent, the necessary step is to ascertain the method of handling the assets of the other companies in the group.

It is unclear whether these assets should be considered as essential parts of the main economic unit of the group or as separate entities. The concept of "piercing the corporate veil" is a basic idea in corporate law. It allows judges to closely examine the underlying workings of an organisation, regardless of its external appearance. There are situations in which this regulation might be ignored if the company's framework is used to escape tax responsibilities.

When examining group bankruptcy, it is important to determine if the assets of one company in the group can be treated as the assets of another company by disregarding the legal separation between them, which is known as lifting the corporate veil. An in-depth analysis of the legal cases that have significantly impacted the connection between the corporate personality principle and the lifting of the corporate veil is essential due to the complex and diverse nature of the subject being examined. The Supreme Court, in a significant ruling, highlighted the significance of considering the underlying economic reality that is concealed by formal legality. For example, let's examine how the piercing of the corporate veil theory can be used to cases involving income tax evasion.

The decision was made in the matter of *Commissioner of Income Tax v. Meenakshi Mills*. Later rulings, such as the case of *Workmen v. Associated Rubber Ltd.*,[14] demonstrated the importance of evaluating the substance of a transaction rather than its outward form. This approach helps to better understand the underlying notion. The Supreme Court ruled that under certain circumstances, such as when closely related enterprises function as a unified body, the corporate veil can be ignored. This illustrates the difficulties that come when trying to construct a group hierarchy within an organisation. It is crucial to recognise that the process of lifting the

[14] Commissioner of Income Tax v. Meenakshi Mills Ltd., AIR 1967 SC 819 (India).

corporate veil requires careful examination of relevant legal or other duties, the disputed behaviour, the presence of public interest, the potential consequences for impacted parties, and other relevant elements.

Many court decisions have acknowledged the need of considering the economy when deciding on the organisational framework of a company. In the case of *State of UP v. Renusagar Power Co.,*[15] the Supreme Court observed that from an accounting standpoint, there is a possibility of mistakenly categorising a collection of entities as a single organisation. This recognition includes a range of financial elements, including profit and loss statements, balance sheets, and general ledgers. This statement underscores the economic advantage that comes with recognising a group as a cohesive entity.

The conclusion suggests that there is a tendency to prefer the economic entity of the group over the distinct legal entities of individual companies within the group, particularly when the holding and subsidiary companies have a substantial level of power in common. The Supreme Court, in the case of *Arcelormittal India v. Satish Kumar Gupta*,[16] reiterated that the concept of piercing the corporate veil may be relevant in the context of group activity.

These legal precedents clearly show that, depending on the precise conditions and facts of a particular case, the assets of many enterprises in a group may be recognised as the assets of a single economic organisation. To ascertain whether the individuals in separate groups have mutual influence or a shared economic interest, it is essential to evaluate the specific details of each situation. After carefully analysing all pertinent legal and factual factors, a final decision will be made to lift the corporate veil.

IV. Approach of Judiciary on Group Insolvency

Although it does not expressly focus on group insolvency procedures, the IBC provides offer protection for corporate debtors by means of its provisions. Given the early stage of the Insolvency and Bankruptcy Code (IBC) in India, experts have speculated that introducing group insolvency provisions could be a premature decision that upsets the fragile balance between creditors and debtors.

Nevertheless, the existing inequality has been the subject of disagreement and legal proceedings in multiple tribunals and courts. The question of whether the assets and liabilities

[15] *Workmen Employed in Associated Rubber Industries Ltd. v. Associated Rubber Industries Ltd.*, (1986) 4 SCC 36 (India).

[16] *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1 (India).

of a holding company or other businesses can be held responsible for the Insolvency and Resolution Process (IRP) of a single subsidiary firm has been a persistent worry in the development of Indian legal principles. The legislature's hesitance to incorporate this clause stems from the narrow understanding of corporate veil piercing by the Indian legal system.

In the above case the Supreme Court made a clear and definitive ruling that the operation of companies is based on the concept of being a distinct and separate entity. However, in situations required by law, when protecting the public interest is extremely important, or where an organisation has deliberately tried to avoid legal responsibilities, the courts have the authority to disregard the legal protection of a corporation. In addition, the Court determined that conglomerates may be excluded from this requirement if it is necessary to understand the entire financial condition of the organisation and consider the financial condition of the group.

In the case of *State Bank of India v. Videocon Industries Ltd*.,[17] the NCLT consolidated bankruptcy proceedings for group corporations. Thirteen out of the fifteen entities supporting the consortium's claim were merged into a single company, which became the common debtor. Typically, different legal systems follow two main types of group insolvency procedures: procedural coordination and substantive consolidation.

Segregating the bankruptcy procedure would have negative repercussions for maximising value and protecting the interests of creditors. For businesses to undergo significant consolidation, they must have close connections in terms of personnel, management, manufacturing process, funding, and other essential factors.

Procedural coordination, on the other hand, enables the streamlining of debt and bankruptcy procedures for several companies within a group, while also guaranteeing the confidentiality of each company's assets. The key components of this mechanism, which can have different variations, consist of selecting and appointing one or more insolvency representatives, creating a unified Court of Common Pleas, fostering collaboration among the courts and legal proceedings (including the hearing of the case), facilitating communication among the representatives, conducting negotiation processes, and handling the submission and verification of claims and documents, among other related activities.

The use of the procedural coordination strategy in India is supported by its judicial rulings. The main advantage of executing this technique is the seamless integration of the companies'

[17] *State Bank of India v. Videocon Industries Ltd.*, CP (IB) No. 02/MB/C-II/2018, order dated Aug. 8, 2019 (NCLT Mumbai Bench).

information, encompassing details about their liabilities and assets, creditors, and overall financial position. This method also offers a transparent view for making decisions about selling or restructuring the debtor's enterprises and promotes transparency during the negotiation process.

These factors help to maximise the value of the companies. To ensure accurate and effective collection of data and information, the Indian method necessitates a higher degree of collaboration among corporations, insolvency specialists, tribunals, and creditors. However, the absence of a well-defined method under Indian legislation presents a major barrier to achieving such partnership.

Due to the absence of specific regulations regarding group insolvency, the NCLT has been forced to interpret several portions of the IBC in a way that makes it easier to start proceedings against the group and streamline the process. An in-depth analysis of segments of the IBC clarifies the approaches that might be employed to aid financially troubled organisations. Sections 60(2) and 60(3) of the IBC specify that the Insolvency Resolution Professional (IRP) for a financially troubled company and any individuals who have provided guarantees should be managed by the same Adjudicating Authority (AA).

These rules create a rule that allows the Tribunal or Court to transmit any application for combining the two procedures to the AA handling the case if there is an IRP pending before any bench of the NCLT or another court. The provision allows for the merging of legal procedures between the guarantor and debtor companies if they operate in the same industry.

To include more group entities in a single insolvency proceeding, it might be feasible to expand the concept of "related party" as outlined in Sections 5(24) and 5(24A) of the IBC.

According to the definition, related parties of the corporate debtor are corporate entities where a member of the entity, such as a partner, director, key managerial personnel, or a relative, has significant control over the activities of another corporate entity, like a company or partnership. The Court deems it more convenient to establish linkages between enterprises within the group because the definition allows for interconnection between two organisations.

Sections 18(f) and 36 of the IBC mandate the transfer of the subsidiary company's shares to the liquidator and resolution professional of the controlling business. This requirement plays a crucial role in ensuring a smooth transition and consolidation of the proceedings. This is done to expedite the insolvency practitioner's assessment of the aggregate debts by consolidating the shares of all relevant group entities.

The NCLT tried to disregard the separation between a company and its owners, known as the corporate veil, using an approach that had been previously outlined. In addition to the assumption that the corporate debtors would be jointly and severally liable for the lending, the intricate connection between the assets and liabilities of each firm was the main reason for the Tribunal's decision to consolidate the proceedings.

The NCLT laid down a two-fold test in order to determine whether consolidation of the IRP can be carried:

A. A prima facie existence of elementary governing factors; and
B. Categorisation based on the governing factors.[18]

The NCLT also listed additional requirements that must be met before merging the companies' proceedings: shared control among them, multiple layers of subsidiaries, essential shared assets and liabilities, shared directors, pooling of resources, shared financial creditors, interconnected accounts, unity of economic units, and pooling of resources. Following the amalgamation of these procedures, a singular Corporate Insolvency Resolution Process (CIRP) was implemented, revealing interrelated activities and functions. Although there were differences in the resolution procedures, a single Code of Conduct (CoC) was implemented for all thirteen firms.

The NCLT classified the corporations into two separate groups: the first category consisted of firms with larger asset values and a higher probability of liquidation. The firms that were able to continue existing independently notwithstanding the implementation of the resolution process formed the second group. Therefore, only the entities that made up the initial group were consolidated.

The NCLT acknowledged the increasing tendency of corporate promoters and directors to diversify by creating separate corporations with shared directors and cross-shareholding. To ascertain the necessity of consolidation, the court assessed whether all of the Videocon Group's businesses could be classified as a unified economic entity by utilising the doctrine of lifting the corporate veil and a thirteen-factor test. These factors include: "(i) common control; (ii)

[18] Amit Aggarwal & S. K., *Evolving Concept of 'Group Insolvency' under the Insolvency & Bankruptcy Code, 2016*, Innovatus Law (2024) (India).

common directors; (iii) common assets; (iv) common liabilities; (v) inter-dependence of the companies; (vi) interlacing of finance; (vii) pooling of resources; (viii) co-existence for survival; (ix) intricate links between companies; (x) intertwined accounts; (xi) inter-looping of debts; (xii) singleness of economic units; and (xiii) common financial creditors."

Furthermore, in the case of *Edelweiss Asset Reconstruction Company Ltd v. Sachet Infrastructure Pvt Ltd*,[19] the National Company Law Appellate Tribunal (NCLAT) was assigned the responsibility of deciding whether loans acquired under the guarantee of a shared "Corporate Guarantor" could be combined for the purpose of ensuring a just procedure. The NCLAT concluded that the corporate guarantors and debtors were jointly responsible for the loan in question, acting as co-borrowers or common borrowers.

Consequently, any resolution plan that Resolution Professionals endorsed on their own would lack both equality and fairness. Moreover, it was concluded that involving a resolution specialist with expertise in resolving disputes would result in the implementation of uniform procedures and tactics aimed at addressing the financial difficulties of the company. This would ultimately benefit all parties involved in the business, particularly the creditors.

Furthermore, the NCLAT has set a standard for deciding whether to commence a collective insolvency procedure. According to this criterion, the information provided in support of the petition for grouping must illustrate the interrelated and interdependent nature of transactions, which cannot be evaluated independently. Therefore, out of the nine corporations that were requested to be consolidated in the stated case, only five were ultimately consolidated. The Supreme Court commenced insolvency proceedings against the whole Amrapali Group in the *Bikram Chatterji v. Union of India*[20] case. As a component of this procedure, the court confiscated the assets of the forty associated companies and imposed limitations on the bank accounts of all the directors.

In its latest ruling, the NCLT analysed various matters of control and observed that the case of *Axis Bank Limited v. Lavasa Corporation Limited*[21] had a common element of control. The insolvency procedures were aimed at the wholly-owned subsidiaries of Lavasa Corporation Ltd. that had a common directorship, assets, and liabilities. Consequently, the NCLT noted that

[19] *Edelweiss Asset Reconstruction Co. Ltd. v. Sachet Infrastructure Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 87 of 2019 (NCLAT Feb. 8, 2019).
[20] *Bikram Chatterji v. Union of India*, (2019) 19 SCC 161 (India).
[21] *Axis Bank Ltd. v. Lavasa Corporation Ltd.*, CP (IB) No. 123/2018, order dated Aug. 26, 2020 (NCLT Mumbai Bench).

significant financial interconnection and a strong level of reliance on the activities of the groups, especially when the enterprises act as guarantors for each other's loans, are necessary conditions for group proceedings to be started. In addition, the companies' combined their resources, worked together, had a uniform attitude, and shared the "Lavasa" brand, making it extremely challenging for creditors to distinguish between the multiple organisations. The NCLT determined that the insolvency proceedings of the parent business had an impact on those of the subsidiary due to the financial interdependence between the two firms, as evidenced by the observed parallels and associated transactions. In this specific case, the Tribunal merged the insolvencies of the Lavasa group for the benefit of all creditors and stakeholders.

V. Challenges in establishing a sound framework for the Group Insolvency

Concerns arising from the definition of 'Corporate Group' recommended by the WG

One major challenge that may arise while implementing the group insolvency framework is defining the exact definition of the term "corporate group."[22] The Working Group (WG) analysed the meaning of 'group' as it appeared in various statutes and legislations of India. It was noted that each definition was dependent on ownership and control, offering a definition that is peculiar to the circumstances and may not be ideal for the insolvency of group corporations. To substantiate this finding, the Working Group (WG) formulated a precise definition of a "corporate group" that is specifically relevant to insolvency proceedings concerning enterprises within the group.

This definition includes holding, subsidiary, and affiliate firms. The definition of "corporate group" provided by the Working Group (WG) is problematic since it lacks precision, making it non-inclusive. An ambiguity arises from the provision that mandates the Adjudicating Authority to ascertain whether interconnected enterprises should be considered a "group" even when the definition does not apply to a specific company.[23] As a result, the Adjudicating Authority may face a significant influx of cases requesting the inclusion of enterprises in the concept of "corporate group."

[22] Insolvency and Bankruptcy Board of India, *Discussion Paper on Group Insolvency* (Jan. 2021).
[23] Rajshree Tiwari, *The Changing Face of Group Insolvency: Is India Ready for Substantive Consolidation?*, ibclaw.in (Mar. 22, 2025)

Therefore, to prevent both the authority responsible for making judgements and the bankrupt company from being involved in unnecessary legal disputes, it is crucial to develop a thorough and exact description. By utilising a thorough definition, the process of insolvency can be streamlined and expedited. Another crucial concern brought up by the proposed definition of the WG is the interpretation of "commercial understanding.

The lack of a specific meaning for this phrase can pose difficulties for the certifying organisation in its effort to interpret it. The adjudicating authority will have the role of not only evaluating the inclusion of a company that does not meet the current definition inside a group, but also proposing an interpretation of the word "commercial understanding."[24] The lack of clarity in the word could potentially lead to unnecessary legal actions, therefore hindering the insolvency process. Given this information, it is recommended that the phrase "commercial understanding" be clearly defined.[25]

Cross Border Insolvency and Group Proceeding

India has witnessed a significant increase in the presence of multinational firms and foreign direct investment in recent years, largely due to the rapid advancement of globalisation. The bankruptcy processes of huge multinational firms, which are spread out over multiple jurisdictions, provide a significant problem, highlighting the importance of a strong cross-border insolvency framework.[26] A considerable number of these multinational corporations operate through a system of subsidiary organisations. As a result, they are frequently classified as cross-border group firms.

Consequently, legislation regarding insolvency across borders are closely linked to processes involving multiple entities within a group. It is worth noting that Indian jurisprudence is still unsettled when it comes to these two areas of insolvency law. As per Indian legal principles regarding cross-border bankruptcy, the first situation mentioned is appropriately resolved because the definition of 'person' under the IBC, 2016 includes individuals who live in countries other than India.[27] Foreign creditors can commence the insolvency process by addressing the Indian Adjudicating Authorities.

[24] Id.
[25] Id.
[26] Ms. Pooja Nakul Maniar & Dr. Roksana Hassanshahi Varashti, Unveiling Key Challenges in the IBC: A Critical Study of Loopholes and Structural Issues in India's Insolvency Framework, Int'l J. Env'tl Sciences 11(10s) (June 2025)
[27] Id.

The Indian Code treats foreign and resident creditors equally, without any differentiation. Regarding the two remaining situations, Section 234 of the Insolvency and Bankruptcy Code (IBC), 2016 confers the Central Government with the power to establish agreements with other nations to enforce the provisions of the IBC. Moreover, according to Section 235 of the IBC, 2016, the adjudicatory authority has the power to send a formal request to foreign authorities if Section 234 of the IBC, 2016 allows for the establishment of mutual agreements with the relevant foreign governments.

Identifying the Centre of Main Interest (CoMI) is a major challenge in cross-border insolvency cases. Insolvency procedures can be initiated against a corporate debtor in any jurisdiction, regardless of the debtor's Centre of Main Interests (CoMI), as specified by the UNICTRAL Model Law.[28] On the other hand, primary insolvency procedures can only be initiated in the jurisdiction where the debtor has its Centre of Main Interests (CoMI). The absence of a clear and specific definition and understanding of CoMI (Centre of Main Interests) in the Model Law has led to discussions on how to begin cross-border insolvency proceedings in other countries.[29]

The relevance of CoMI is elucidated by the stated objective of the Model Law, which emphasises that the management of an insolvency, independent of its occurrence in other jurisdictions, gives utmost priority to the proceedings taking place in the debtor's CoMI. When dealing with group insolvencies that involve numerous firms, each with their own centre of main interests (CoMI) in different jurisdictions, it is crucial to determine the most appropriate CoMI and jurisdiction for the enterprises. The "registered office test" for determining the centre of main interests (CoMI) in group insolvency cases involves three important factors.

Initially, it is not feasible to expect that all subsidiary companies would have their registration offices located in the same country, as this would hinder the growth goals of the individual companies within the group. Moreover, the uncertainty of the CoMI presents a major challenge for creditors trying to determine the CoMI of specific enterprises within a corporate group. Arguments over jurisdiction in favour of group businesses and their centre of main interests (CoMI) may finally lead to the issue of forum shopping.

Extension of Liability and Group Insolvency

[28] Supra at note 13.

[29] Debaranjan Goswami & Andrew Godwin, India's Journey towards Cross-Border Insolvency Law Reform, 24 Asian J. Comp. L. (2024) (online Sept. 26, 2024).

The question of whether the notion of extension of obligation is applicable in Indian group insolvency law has not been settled. The Report of the Working Group determined that there was no need to include extra provisions in the IBC, 2016 to enhance the responsibility of directors and parent companies. The Working Group observed that according to Section 2(60) of the Companies Act, 2013, an officer in default is defined as "any individual who is involved in the regular decision-making process of the company's Board of Directors, excluding those who offer professional advice to the Board."[30]

The Working Group concluded that this specific definition of an officer in default offers enough adaptability to ensure that de facto or shadow directors of parent corporations are held accountable for fraudulent conduct associated with the insolvency of a subsidiary firm. However, the Working Group (WG) has failed to provide the adjudicating authority with enough information to handle cases related to shadow or de facto director default in the context of subsidiary company group insolvency proceedings. The Working Group failed to include several important observations in their recommendation, which make certain provisions of the International Building Code obligatory for the implementation of the principle of liability extension.[31] It observed that the stakeholders aimed to increase the responsibility of shadow directors in certain situations where both the parent company and the shadow directors had clearly engaged in fraudulent activities.

In addition, the UNICTRAL Guide suggests considering various factors when dealing with cases involving specific transactions between companies within a group. These factors encompass the nature of the parties' relationship, the level of integration between the two parties involved in the transaction, the objective of the transaction, and additional considerations.

Corporations should not be alarmed by a clause that imposes personal punishment on a de facto or shadow director for their misconduct through a subsidiary company. It is crucial that this principle be applied wisely and with appropriate caution.[32] When expanding liability, only the responsibilities that the parent company and its directors owe to the subsidiary company should be considered as the basis. The statute governing the insolvency process among affiliated companies outlines the specific factors that must be considered when applying the principle.

[30] Id.
[31] Neha Malu, Vinod Kothari & Co., Group Insolvency: Relevance of Substantive Consolidation in Indian Context, (Jan. 2024).
[32] Supra at note 2.

The absence of clear provisions in the IBC, 2016, regarding the identification and recognition of factors that could potentially expose adjudicating authorities to liability or make them act as shadow or de facto directors, may result in a dilemma, and cause inconsistent judgements in numerous cases. The IBC, 2016 should promptly include specific provisions regarding the extension of liability in group insolvency proceedings to avoid any negative consequences in Indian law. This contrasts with the recommendation made by the Working Group in its report, which suggested that such provisions are not necessary.[33]

VI. Conclusion

Group insolvency, a notable corporate constraint, has sparked discussion at both the national and international levels. Although there are only a few laws that endorse and enable group insolvency proceedings, the framework regulating such proceedings is also far from optimal. The UNCITRAL Model Law on Group Insolvency exhibits various shortcomings that can be identified. The main issues with the Indian framework for group insolvency are the lack of clarity in implementing group insolvency principles and the concerning possibility that strict insolvency regulations for group companies may not be subject to legal examination.

Despite the reports submitted by both the IBBI and the Insolvency Committee in favour of incorporating group insolvency proceedings into the IBC, the lack of specific legislation on this matter indicates otherwise. Identifying the main field of focus of the group company, the jurisdiction of the adjudicating authority, the complexity of the proceedings, and the attributes of the response pose significant challenges. The absence of a well-defined legal structure for group insolvency poses a substantial obstacle, leading to uncertainty and inconsistencies in the application of the Insolvency and Bankruptcy Code to group insolvency cases.

The complex organisational structures of group companies introduce an extra level of intricacy to the task of identifying and distributing the assets and liabilities of each individual entity. Furthermore, India's existing insolvency framework may not be sufficient to handle the distinct challenges that arise in cases of group insolvency, as it was primarily designed for individual insolvency. Effective management of cases involving group insolvency requires specialised expertise and equipment.

[33] Supra at note 4.

There is a notable absence of clarity concerning the entitlements of various credit groups and other parties involved in the group insolvency process. To effectively include a substantial number of companies with outstanding debts, the group insolvency framework under the IBC should adopt an expansive definition of ‘group’.