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Lifting the Corporate Veil: Charting the Landscape of Group Insolvency in India's IBC Era

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ABSTRACT

As India's corporate environment increasingly features complex group structures, the challenge of resolving insolvency within such interconnected entities has become a pressing concern. The Insolvency and Bankruptcy Code, 2016 (IBC), though a transformative legal framework, presently offers a fragmented approach—focusing exclusively on single-entity insolvency and failing to address the realities of group insolvency. This paper critically examines the urgent need for a cohesive legal framework that accommodates the consolidation of insolvency proceedings across group companies, particularly in situations where financial and operational interdependencies blur the lines of separate legal identity.

Through doctrinal analysis and case law review, this study highlights how Indian courts have occasionally lifted the corporate veil to recognize the substantive unity of group enterprises, as illustrated by landmark cases such as Videocon Group and Giriraj Enterprises v. Regen Powertech. However, the absence of statutory clarity results in inconsistent outcomes and procedural inefficiencies, often undermining creditor interests and the IBC's fundamental goal of value maximization.

By undertaking a comparative analysis of insolvency regimes in the USA, UK, and Singapore, the paper identifies global best practices—including substantive consolidation, procedural coordination, and the balancing of fairness with corporate separateness. The discussion underscores how these jurisdictions navigate the fine line between respecting the doctrine of separate legal entity and preventing its misuse to the detriment of creditors.

In conclusion, the paper proposes targeted reforms for India, such as the adoption of collaborative insolvency resolution mechanisms, centralized oversight, and enhanced disclosure requirements. Such measures would ensure predictability, transparency, and equitable outcomes, enabling the Indian insolvency framework to better accommodate the realities of group insolvency. This study ultimately argues that legislative innovation is

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critical for realizing the IBC's objectives in a rapidly evolving corporate landscape, ensuring stakeholder interests are protected in group insolvency scenarios.

I. INTRODUCTION

As the Indian economy progresses, the corporate landscape is experiencing a significant transformation, marked by the rapid increase in companies operating within group structures or as subsidiaries. The rise of corporate groups, comprising parent companies and subsidiaries interconnected through financial and operational ties, has reshaped the dynamics of corporate insolvency, especially in evolving jurisdictions like India. In these interconnected corporate structures, creditors often perceive an enhanced level of security when extending loans, under the assumption that the group as a whole can provide financial support during times of distress.[3] This interconnectedness introduces a new dimension to insolvency proceedings, wherein the consolidation of assets within a group is increasingly viewed as a viable strategy to maximize the value of distressed entities' assets, ultimately leading to higher recoveries for creditors. This perspective aligns closely with one of the main objectives of India's Insolvency and Bankruptcy Code (IBC) of 2016: the maximisation of value for all stakeholders involved in the insolvency process.[4]

Group insolvency presents several practical advantages. These include the streamlined enforcement of corporate guarantees, simplified identification of undervalued transactions, and the formulation of a resolution plan that takes into account the interests of all creditors across the group. Such benefits underscore the urgent need for a cohesive legal framework that explicitly addresses group insolvency, offering clear guidelines for practitioners, regulators, and stakeholders. The importance of establishing a group insolvency mechanism has also been recognised by notable figures in the Indian financial landscape, including the Governor of the Reserve Bank of India (RBI), Shaktikanta Das, who recently noted that a group insolvency mechanism could lead to better recovery of dues for creditors, further emphasising the need for legal reforms in this area.[5]

However, the primary obstacle to the implementation of group insolvency in India lies in the

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[3] Anthony J Casey, 'The New Corporate Web: Tailored Entity Partitions and Creditors' Selective Enforcement' (Yalelawjournal.org2014) https://www.yalelawjournal.org/article/the-new-corporate-web accessed 19 December 2024.

[4] Bankruptcy Law Reforms Committee, *The report of the Bankruptcy Law Reforms Committee volume I: rationale and design*, Technical Report, Ministry of Finance, (2015).

[5] Bureau TH, 'RBI's Das Envisages Framework for Group Insolvency Mechanism under IBC' (The Hindu, 12 January 2024) <https://www.thehindu.com/business/rbis-das-envisages-framework-for-group-insolvency-mechanism-under-ibc/article67731392.ece> accessed 27 August 2024.

legal principle that each entity within a corporate group has a separate legal identity, independent of the others. This principle was firmly established in the landmark case of *Salomon v. A. Salomon & Co Ltd.*,[6] which laid down the doctrine of separate legal entity and the associated corporate veil that distinguishes a parent company from its subsidiaries. In the context of group insolvency, this principle presents significant challenges. Courts have increasingly recognised the economic reality that corporate groups often function as a single economic unit, leading to judicial decisions where the corporate veil is lifted to treat the group as a consolidated entity for the purpose of restructuring or liquidation.[7]

The Insolvency and Bankruptcy Code of 2016, while a significant legislative step forward for India's insolvency framework, currently provides for the resolution mechanism of only a single entity and lacks specific provisions for handling the insolvency of corporate groups. This omission has resulted in a fragmented approach, where each entity within a group is addressed independently and separately during insolvency proceedings. This paper aims to critically analyse the existing legal framework and judicial pronouncements surrounding group insolvency in India, with a particular focus on the lifting of the corporate veil to facilitate such proceedings. Furthermore, it will undertake a comparative study of various jurisdictions that have implemented group insolvency mechanisms, drawing insights and lessons that could inform potential reforms in the Indian context.

II. GROUP INSOLVENCY: CONCEPT AND IMPORTANCE

a. Defining a Corporate group

Before delving into the concept of group insolvency, it is crucial to understand what constitutes a "group" in the corporate context. While the Insolvency and Bankruptcy Code, 2016 does not clearly define a "group," the Companies Act, 2013, provides some guidance. Under Section 129(3) of the Companies Act, a group can be identified if it files its financial statements and records collectively. Section 5 of the Competition Act, 2002, further helps define a group, emphasising the degree of control and influence that entities within a corporate group can exert over one another. This control is a key factor in understanding the complexities of group insolvency. The interconnectedness implied by such control underscores the need for a legal framework that recognises the economic realities of these groups, particularly when they face financial distress.

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[6] *Salomon v Salomon & Co Ltd*, 1897 AC 22 (HL).
[7] 'LIC v. Escorts and beyond – Lifting the Corporate Veil' (*India Corporate Law*23 January 2018) https://corporate.cyrilamarchandblogs.com/2018/01/lic-v-escorts-beyond-lifting-corporate-veil/

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b. The Concept of Group Insolvency

The concept of group insolvency is rooted in the idea that corporate groups, although composed of legally independent entities, often operate as a single economic unit. It refers to a framework where, if multiple entities within a single corporate group become insolvent, their resolutions can be consolidated into one court proceeding. This interconnectedness can manifest in shared resources, cross-guarantees, inter-corporate loans, cross-collateralisation, and centralised management, among other factors.[8] The importance of recognising and addressing group insolvency lies in the potential for maximising the overall value of the group's assets and ensuring equitable treatment of creditors. By consolidating the assets and liabilities of the group, insolvency proceedings can be streamlined, leading to more efficient resolutions and potentially higher recoveries for creditors.[9]

This allows for two main objectives to be achieved: first, the group can be restructured as a whole, ensuring that the interdependencies between group entities are addressed in a coordinated manner; and second, the group's combined assets can be managed in a way that maximises their value for creditors. This approach to insolvency is particularly advantageous in scenarios where the entities within a group are so interconnected that separate insolvency proceedings would be inefficient, costly, and potentially detrimental to creditors. A pertinent example is the case of Giriraj Enterprises Vs. Regen Powertech Pvt. Ltd.,[10] where the principal bench of the National Company Law Tribunal (NCLT) allowed the consolidation of Corporate Insolvency Resolution Processes (CIRPs) of Regen Powertech Pvt. Ltd. (RPPL) and Regen Infrastructure and Services Pvt. Ltd. (RISPL). The court observed that the resolution plan for a parent company inevitably involves its assets, including shares in subsidiary companies, and that consolidating the resolution of linked companies could lead to the maximization of asset value and a higher likelihood of revival. The court's recognition underscores the evolving nature of insolvency jurisprudence in India, particularly in cases where the fortunes of one company are inextricably linked to those of another.

The Insolvency and Bankruptcy Code (IBC) 2016, however, primarily addresses the insolvency of individual entities and lacks specific provisions for the consolidated resolution of corporate groups. This gap in the legal framework has led to a fragmented approach, where each entity within a group is treated separately during insolvency proceedings. In some cases, this has prompted intervention by adjudicating authorities, where courts have lifted the

[8] *State Bank of India v. Videocon Industries Ltd.*, 2018 SCC OnLine NCLT 13182.
[9] Cross Border Insolvency Rules/Regulations Committee (CBIRC), *The report of CBIRC-II on Group Insolvency* (2021).
[10] *Giriraj Enterprises v. Regen Powertech (P) Ltd.*, 2023 SCC OnLine NCLAT 2546.

corporate veil to consolidate the insolvency process for the holding company and its interconnected subsidiaries, effectively treating them as a single economic unit.[11] This intervention underscores the need for a cohesive legal framework that explicitly addresses group insolvency, offering clear guidelines for practitioners, regulators, and stakeholders.

c. Challenges Posed by the Absence of a Group Insolvency Framework

In several instances, corporate debtors undergoing insolvency proceedings have business models intricately linked to sister or subsidiary companies[12], yet the objectives of the Insolvency and Bankruptcy Code (IBC) have often not been fully realized due to the absence of a legal framework that allows for the inclusion of these interconnected group companies within a single resolution process. A notable example is the case of KSK Mahanadi Power Company Limited,[13] where insolvency applications were filed separately for the company and its two subsidiaries, which provided water and rail infrastructure exclusively for the parent company. Despite their interdependent business models, the subsidiaries were admitted for resolution a full 15 months after the parent company and the consolidation of these three corporate debtors is still pending, leading to significant delays in the resolution process and undermining the IBC's goal of value maximisation.[14]

Similarly, in the cases of Bhushan Steel and Bhushan Energy, separate insolvency proceedings were conducted despite the strong interconnectedness between the two companies.[15] Another illustrative case is that of Jet Airways, where Jet Lite, a subsidiary with substantial business linkages and common management with Jet Airways, was excluded from the insolvency proceedings, highlighting the challenges posed by the current legal framework in addressing group insolvencies effectively.[16]

d. Substantive and Procedural Coordination

A key feature of group insolvency is the concept of substantive consolidation, which involves the pooling of assets and liabilities of the group entities so that they can be treated as a single economic unit.[17] Substantive consolidation is not explicitly provided for in the IBC, but it has been recognized by courts in certain cases where the economic reality of the group

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[11] *State Bank of India v. Videocon Industries Ltd.*, 2018 SCC OnLine NCLT 13182.
[12] *State Bank of India v. Videocon Industries Ltd.*, 2018 SCC OnLine NCLT 13182.
[13] *Punjab National Bank v. KSK Mahanadi Power Company Limited*, 2021 SCC OnLine NCLT 430.
[14] 'De-Coding Value Maximisation under the Code - Shardul Amarchand Mangaldas & Co' (*Shardul Amarchand Mangaldas & Co*11 October 2024) https://www.amsshardul.com/insight/de-coding-value-maximisation-under-the-code/ accessed 19 December 2024.
[15] *State Bank of India v. Bhushan Steel Limited*, 2017 SCC OnLine NCLT 559.
[16] *State Bank of India v. Jet Airways (India) Limited*, CP 2205(IB)/MB/2019, CP 1968 (IB)/MB/2019, CP 1938(IB)/MB/2019.
[17] J. Stephen Gilbert, 'Substantive Consolidation in Bankruptcy: A Primer' (1990) 43 Vand L Rev 207.

necessitates such an approach. Through substantive consolidation, the court disregards the separate legal personalities of the group entities and instead considers the group's collective financial state. This allows for a more holistic approach to resolving insolvency, where the assets and liabilities of the entire group are used to satisfy the claims of creditors in a manner that reflects the true economic interconnections within the group.

For example, if a holding company and its subsidiaries are all insolvent, substantive consolidation would allow for the assets of the holding company and subsidiaries to be combined into a single pool. Creditors of both the holding company and the subsidiaries would then have their claims addressed from this combined asset pool, rather than being limited to the assets of the individual entities to which they extended credit. This approach can be particularly beneficial in cases where the subsidiaries are heavily dependent on the holding company for their operations, or where the holding company's financial difficulties have directly contributed to the insolvency of the subsidiaries.

In the absence of specific provisions for group insolvency in the IBC, Indian courts have generally adopted the process of procedural coordination when dealing with the insolvency of corporate groups. Procedural coordination involves the simultaneous management of separate insolvency proceedings for each group entity by the same court or tribunal. This approach allows for a degree of coordination between the insolvency proceedings of the different entities, ensuring that the resolution plans for each entity are consistent and that the overall restructuring of the group is coherent.[18] In the case of Adhunik Group of Companies, four separate CIRP processes were pursued for four group companies. There was no application for substantive consolidation due to the absence of a legal framework providing for the same.[19] However, the CIRP of both the companies were carried out under the same Adjudicating Authority and Resolution Professional. There was a 80% commonality amongst the Committee of Creditors members. It is a classic example of procedural coordination and its benefits.[20]

Procedural coordination is less invasive than substantive consolidation, as it does not involve pooling the assets and liabilities of the group entities. Instead, it ensures that the insolvency proceedings for each entity are managed in a way that considers the interdependencies within the group. For instance, the same resolution professional might be appointed for all the

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[18] Mevorach I, *Insolvency within Multinational Enterprise Groups* (Oxford University Press 2009).

[19] *State Bank of India v. Adhunik Alloys & Power Ltd.*, 2018 SCC OnLine NCLT 31011; *State Bank of India v. Adhunik Steels Ltd.*, 2020 SCC OnLine NCLAT 552; *SBI v. Adhunik Metaliks Ltd.*, 2020 SCC OnLine NCLT 20330

[20] 'Corporate Processes' (Insolvency and Bankruptcy Board of India) https://ibbi.gov.in/en/claims/order-process/L28110OR2001PLC017271 accessed 27 August 2024.

entities within the group, or the court might ensure that the resolution plans for each entity are aligned and do not conflict with one another. This approach has been seen in several Indian cases, where courts have recognised the need for a coordinated resolution of group insolvencies, even in the absence of explicit legislative guidance.

III. CORPORATE VEIL AND ITS ROLE IN GROUP INSOLVENCY

a. The Doctrine of Corporate Veil

A company is a legal entity created by law, distinct from the individuals who manage or own it. This "artificial person" can enter contracts, own property, and initiate or face lawsuits. Its existence begins right upon registration, at which point it gains the capacity to hold rights and obligations independently.[21] The "doctrine of the corporate veil" is a cornerstone of corporate law, which recognizes a company as a separate legal entity from its shareholders and directors.[22] This principle was established in the landmark case of *Salomon v. A. Salomon & Co. Ltd.*, where the House of Lords affirmed that a company, once incorporated, possesses its own legal identity, distinct from its members.[23] Under Section 9 of the Indian Companies Act, 2013, this principle is codified, granting companies perpetual succession, the ability to own property, and the capacity to sue or be sued in their own name.

b. Lifting the Corporate Veil in Group Insolvency

However, this separate legal identity can be set aside under certain circumstances, a process known as "lifting" or "piercing" the corporate veil. This occurs when the courts disregard the company's separate existence to hold its shareholders or directors personally liable, typically in cases of fraud, improper conduct, or when the corporate entity is used to circumvent legal obligations or public policy. This veil can be pierced for the purpose of imposing some form of liability on a company's shareholders and/or directors. There are many court cases and exceptions to this. The Companies Act, 2013 itself contains some provisions [Sections 7(7), 251(1) and 339] which lift the corporate veil to reach the real forces of action.

The corporate veil provides limited liability to shareholders, meaning they are generally not liable for the company's debts beyond their investment. The veil also ensures the company's legal independence, allowing it to enter contracts, own property, and continue existing regardless of changes in ownership. Additionally, the corporate veil separates ownership from control, with day-to-day management typically delegated to a board of directors.

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[21] Avtar Singh, *Company Law* (17th edn., Eastern Book Co 2018) 2.
[22] Avtar Singh, *Company Law* (17th edn., Eastern Book Co 2018) 15.
[23] *Salomon v Salomon & Co* Ltd, 1897 AC 22 (HL).

Since the Salomon decision,[24] courts have been cautious in applying this principle. The separate legal personality of a company is a statutory privilege intended for legitimate business purposes. If this privilege is misused for fraudulent or dishonest activities, the courts may lift the corporate veil to hold the individuals behind the company accountable. The veil may also be lifted in situations such as tax evasion, execution proceedings, or when a company acts as a mere façade or alter ego for its controllers.

A subsidiary company may lose its separate legal identity in two primary situations. First, legislative provisions may require companies within a group to present a consolidated financial picture. This is reflected in Section 129 of the Indian Companies Act, which mandates comprehensive disclosures that provide comprehensive information about the financial position of the entire group to creditors, shareholders, and the public. Notably, a decree against one company cannot be executed against another, even if both are managed by the same individuals.[25]

Second, the courts may disregard a subsidiary's independent status based on the specific facts of a case. It is challenging to precisely define when a subsidiary should be treated as a mere branch, agent, or trustee of the holding company. Factors such as the profits of the subsidiary being considered the profits of the parent company, or the complete control and management of the subsidiary's business by the parent company's nominees, may lead to the subsidiary being regarded as an extension of the holding company. This principle was upheld in cases where the parent company was allowed to recover compensation for land owned by its subsidiary, and where changes in majority shareholding between subsidiaries of the same parent company did not alter the legal relationship with statutory tenants.[26]

Courts typically consider four factors in these cases: fraud, failure to adhere to corporate formalities, inadequate capitalisation, and abuse of the corporate entity leading to total shareholder dominance (often referred to as the "alter ego" or "instrumentality" factor). Adherence to corporate formalities includes holding annual meetings, electing directors and officers, maintaining minutes and records, and issuing stock certificates are also taken into consideration.[27]

In the context of group insolvency in India, the principles of piercing the corporate veil, as articulated by Powell, are crucial. The classic test for piercing the corporate veil, as

[24] *Salomon v Salomon & Co Ltd*, 1897 AC 22 (HL).
[25] Avtar Singh, *Company Law* (17th edn., Eastern Book Co 2018) 29.
[26] Avtar Singh, *Company Law* (17th edn., Eastern Book Co 2018) 30.
[27] Prashant Yadav, 'Lifting of Corporate Veil' (Ssrn.com 16 April 2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2951569 accessed 27 August 2024.

established by Frederick J. Powell, outlines the conditions under which courts may disregard the corporate entity and impose personal liability. According to this test, courts should pierce the corporate veil and impose personal liability when: (1) there is a unity of interest between the corporation and its owners; (2) the corporation's actions are wrongful or fraudulent; and (3) the corporation's creditors suffer an unjust loss that justifies disregarding the corporate structure.[28]

When dealing with a corporate group, if there is a unity of interest between the parent and subsidiary companies, wrongful or fraudulent actions by the group, and an unjust cost borne by creditors, courts may pierce the corporate veil. This would treat the corporate group as a single entity, allowing for the aggregation of assets and liabilities in insolvency proceedings. The failure to observe corporate formalities, inadequate capitalisation, or the subsidiary acting as a mere instrumentality of the parent could also lead to such a determination. This approach ensures that the interests of creditors and other stakeholders are protected in cases where the corporate structure is used to shield wrongful conduct or evade liabilities within a corporate group.

Traditional corporate law has generally not distinguished between parent companies and individual investor shareholders regarding limited liability. However, parent companies differ significantly in their role and impact. Unlike independent investors, a parent company engages with its subsidiaries as part of a unified business strategy, with all entities within the corporate group working towards common goals. The parent company typically exerts substantial control over the subsidiaries, influencing their operations and decisions based on the overarching business strategy rather than maintaining a meaningful separation between the legally independent entities.

The subsidiaries are often mere fragments of the larger enterprise, collectively conducting business under the coordination of the parent company. Given this integrated operation, many justifications for limited liability, which apply to independent investors, are less relevant within corporate groups. Consequently, the rules for determining the extent of a parent company's liability should reflect these differences, recognizing the parent's direct involvement and control over its subsidiaries.

In the case of the Videocon Group,[29] the Mumbai Bench of the National Company Law Tribunal (NCLT) allowed for the substantive consolidation of 13 out of the 15 Videocon group companies, marking a significant development in Indian insolvency law. The court

[28] ibid.
[29] *State Bank of India v. Videocon Industries Ltd.*, 2018 SCC OnLine NCLT 13182.

highlighted the necessity of certain key ingredients to justify consolidation, including: (1) common control, (2) common directors, (3) common assets, (4) common liabilities, (5) interdependence, (6) inter-lacing of finance, (7) pooling of resources, (8) co-existence for survival, (9) intricate links between subsidiaries, (10) inter-twined accounts, (11) inter-looping of debts, (12) singleness of economic units, (13) cross-shareholding, (14) interdependence due to consolidated accounts, and (15) common pooling of resources.[30]

In the Videocon case, the NCLT found that the Videocon companies exhibited a high degree of interdependence, with their operations in manufacturing, assembly, distribution, and marketing of consumer electronics being deeply intertwined.[31] These companies were promoted by the Dhoot family, shared common directors, and demonstrated significant interconnectedness in their assets and liabilities. The companies' financial statements, which included a common "Rupee Terms Loan" agreement,[32] revealed that they had pooled resources and were jointly and severally liable for the debt.[33] Moreover, the preparation of consolidated financial statements served as compelling evidence of their interdependent business operations.[34]

The NCLT further noted that there were no resolution applicants interested in acquiring the Videocon companies individually. The court reasoned that consolidation was essential to attract a resolution applicant interested in the group as a whole, thereby increasing the potential value of the assets.[35] Citing multiple precedents from UK and US courts, the NCLT recognized that consolidation is an effective tool for maximising value for creditors when financially distressed group companies are closely intertwined.[36] The tribunal ultimately ruled that the benefits of consolidation for stakeholders outweighed any potential harm, making it a necessary step in the resolution process.

IV. Global perspectives

a. USA: A Context-Dependent Approach

In the USA, the corporate veil is a fundamental principle, but courts may decide to pierce it in the context of group companies facing insolvency. This decision, which is not made lightly, hinges on several key factors. Courts often look for the commingling of assets among entities

[30] ibid, para 78.
[31] Videocon (n 20), para 26.
[32] Videocon (n 20), para 8.
[33] Videocon (n 20), para 17
[34] Videocon (n 20), para 19.
[35] Videocon (n 20), para 70.
[36] Videocon (n 20), para 43.

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within the group, where financial records are indistinct and assets are so intertwined that separation becomes impractical. Cases such as *In re Vecco Construction Industries, Inc.*[37] and *Chemical Bank New York Trust Company v. Kheel*[38] illustrate how courts may consolidate assets and liabilities to protect creditors.

Additionally, when a group of companies presents itself as a single economic entity through consolidated financial statements, shared management, or unified operations, courts may find it challenging to maintain the distinction between the entities. The "Soviero" and "Commercial Envelope" cases demonstrate that such public representations can lead to consolidation in insolvency to ensure fairness for creditors. The presence of intercompany guarantees further signals economic unity, justifying consolidation.

Moreover, a consistent disregard for corporate formalities, such as failing to maintain separate accounts, can prompt courts to lift the corporate veil to prevent injustice, as seen in the "Gulfco Investment Corporation"[39] case. Ultimately, U.S. courts balance the need to uphold corporate separateness with the imperative of fairness to creditors, making the decision to pierce the corporate veil nuanced and context-dependent.[40]

b. **Singapore: Statutory and Common Law Considerations**

In Singapore, the corporate veil typically maintains the legal separation between a company and its shareholders or directors. However, courts may pierce the veil under specific statutory provisions or common law principles. Statutorily, directors can be held personally liable for misleading investors or wrongful trading during insolvency, such as issuing a misleading prospectus or continuing to trade when insolvent. Under common law, the veil may be lifted if the company is used for fraudulent purposes, like defrauding creditors. While Singaporean courts are generally hesitant to treat a group of companies as a single entity, they may do so in exceptional cases where a subsidiary is entirely controlled by its parent and functions as its alter ego, but only with clear evidence of a sham or façade.[41]

Overall, Singaporean courts recognize the importance of maintaining the corporate veil but are vigilant in ensuring that it is not abused to the detriment of justice, particularly in cases involving fraud, wrongful trading, or statutory violations.

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[37] *Re Vecco Const. Industries, Inc.,* 4 B.R. 407 (Bankr. E.D. Va. 1980).
[38] *Chemical Bank New York Trust Company v. Kheel*, 369 F.2d 845 (2d Cir. 1966).
[39] *First State Bank & Trust Co. of Guthrie, Oklahoma v. Sand Springs State Bank of Sand Springs*, Oklahoma 528 F.2d 350 (1976)
[40] Working Group on Group Insolvency, *Report of the Working Group on Group Insolvency* (2019).
[41] Stanley Giffard, *Halsbury's Laws of Singapore*, vol. 6 (Butterworths Asia 1999).

c. UK: A Restrictive and Evolving Doctrine

In the UK, recent landmark cases such as *Prest v. Petrodel Resources Ltd.*[42] and *VTB Capital plc. v. Nutritek International Corpn.*[43] represent a significant shift towards a more restrictive approach to veil-piercing. In Prest, the UK Supreme Court narrowed the scope of veil-piercing by distinguishing between 'evasion' and 'concealment'. Veil-piercing should occur only in cases of evasion, where a company is used to deliberately evade an existing legal obligation. The court emphasized that piercing the corporate veil should be a last resort, used sparingly. In VTB Capital, the court further limited the doctrine by ruling that even if grounds for lifting the veil existed, it could not be used to impose contractual liability on a company's controller. This approach contrasts with the broader perspective seen in Singaporean cases, where the "alter ego" theory and other grounds like sham or façade are recognized.

Judicial approaches to piercing the corporate veil vary significantly. The USA adopts a context-dependent approach, balancing corporate separateness with fairness to creditors, especially in group insolvency cases. Singapore offers broader flexibility, particularly in cases of fraud or wrongful trading, though it still respects the corporate veil. In contrast, the UK follows a more restrictive doctrine, limiting veil-piercing to cases of deliberate legal evasion. Australia is cautious, recognizing group enterprises but generally upholding corporate separateness unless there's clear evidence of control, misuse, or the need to prevent injustice.

In India, though the Code does not provide for specific provisions related to group insolvency, the courts, through its power of judicial interpretation, have come to the rescue and resolved some cases accordingly. However, specific provisions related to this concept needs to be incorporated in the code in order to bring certainty and uniformity in the law.

V. THE WAY FORWARD: IMPLEMENTING GROUP INSOLVENCY IN INDIA

As India's corporate landscape evolves, the challenges of group insolvency have become increasingly apparent. The current Insolvency and Bankruptcy Code (IBC) of 2016 lacks specific provisions for handling the complexities of group insolvency, leading to inefficiencies and inconsistent outcomes. While Indian courts have made progress in addressing these challenges through judicial intervention, there remains a need for clear legislative guidance. To address these issues, the Indian legislature should implement comprehensive reforms that balance legal rigour with practical business considerations, thereby providing a fair and predictable insolvency framework for all stakeholders.

[42] *Prest v. Petrodel Resources Limited* [2013] UKSC 34.
[43] *VTB Capital plc v. Nutritek International Corp* [2013] UKSC 5, [2013] 2 AC 337.

An innovative approach to address group insolvency in India is the implementation of a "collaborative insolvency resolution process." This initiative would encourage the formation of a joint committee of creditors for the group, enabling creditors to coordinate their claims and negotiate collectively. Such a collaborative approach could help avoid conflicting resolutions, reduce administrative costs, and accelerate the insolvency process. For companies, it would simplify negotiations and create a unified strategy for financial recovery, benefiting all parties involved.

Additionally, establishing a "centralized financial oversight body" for corporate groups undergoing insolvency could improve the efficiency of the process. This body would monitor financial transactions and ensure compliance with court-approved plans, preventing fraudulent transfers and mismanagement of group assets. By providing a centralized authority for oversight, this reform would enhance transparency and accountability, reassuring creditors that their interests are being safeguarded.

Implementing a "corporate transparency initiative" would also be beneficial. This initiative would require detailed disclosures of inter-company relationships and transactions, enabling creditors to make more informed decisions. Enhanced transparency would help build trust between businesses and their creditors, ensuring a more predictable and stable insolvency environment.

VI. Conclusion

By adopting these innovative reforms, India can create an insolvency framework that better addresses the complexities of group insolvency while balancing the needs of businesses and creditors. This balanced approach will enhance the predictability and stability of the insolvency process, fostering a more favourable environment for economic growth and investment. As the Indian corporate landscape continues to evolve, these reforms will be essential in ensuring that the objectives of the IBC - particularly the maximisation of value for all stakeholders - are fully realised in the context of group insolvency.

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