Page 1926 - 1939 **DOI:** *https://doij.org/10.10000/IJLMH.114246*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

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Group Insolvency Under IBC

DR. ANJALI DIXIT[1]

ABSTRACT

The Insolvency & Bankruptcy Code (IBC) was passed in India in 2016 with the intention of combining and reforming insolvency and bankruptcy legislation. The legislation establishes a time-bound mechanism for resolving insolvency for corporate entities, such as corporations &limited liability partnerships &individuals. The rules for group insolvency are a fundamental aspect of the IBC, since the bankruptcy of one member of a group may initiate the insolvency resolution procedure for the whole group. The goal of this research paper is to look at the IBC's provisions on group insolvency, with an emphasis on the definition of a "group" and the mechanism for resolving group bankruptcy. The article also examines the effects of group bankruptcy on the creditors and shareholders of the group's members. The article begins by defining the idea of a "group" as well as the criteria for deciding whether a collection of corporate individuals is regarded a single economic entity. The article then discusses the IBC laws pertaining to group insolvency, such as initiating the insolvency resolution procedure, the authority of the insolvency resolution professional, and creditors' rights in a group bankruptcy scenario. The report also assesses the effect of group bankruptcy on the group's stakeholders, which include creditors, shareholders, and workers. According to the findings of the research, group bankruptcy may result in considerable financial losses for creditors and owners, as well as job losses for workers. However, the IBC offers a structured framework for addressing group insolvency, which may assist to mitigate these effects and provide a way for impacted firms to recover. Finally, the IBC's rules on group insolvency are crucial in enabling the effective resolution of bankruptcy for corporate people in India. The report emphasizes the need of further research to analyze the efficacy of group insolvency provisions in practice and to suggest possible areas for improvement.

Keywords: *Group, Group Insolvency, Insolvency and Bankruptcy Code (IBC)*

I. INTRODUCTION

India enacted the Insolvency and Bankruptcy Code in 2016. Despite its brief existence, the IBC has established itself as vital aspect of the country's legal system. In order to broaden the scope of the Indian economy, the law is anticipated to develop and conform with foreign bankruptcy

[1] Author is a HoD/Associate Professor at School of Legal Studies & Governance, Career Point University, Kota, Rajasthan, India.

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systems.(Anaya Jain, 2020) The government appointed an 11-member working committee in 2019 to assess the operation of the IBC and suggest required modifications, including the settlement of group insolvency. The Insolvency Law Committee, headed by Injeti Srinivas and formed in March, is now examining the current group insolvency framework and other proposed changes. In March, the Insolvency Law Committee, led by Mr. Injeti Srinivas, was created to examine the group insolvency framework and other proposed revisions. (Shraiyashi Bhatt, 2022)

The working group examined the definitions of "group company" in various Indian and international statutes and discovered that the concepts of control and ownership are prevalent in these statutes, among them the Foreign Direct Investment Policy, the Competition Act, the SEBI Regulations, the Companies Act of 2013, the Legislation on Insolvency Resolution process, and the UNCITRAL Guide on Insolvency. The committee recommended that "Corporate Group" be interpreted to encompass parent, holding, and subsidiary companies. The Adjudicator may include a company in a group even though it does not meet the criterion if it has sufficient business ties to the group.(Mangaldas, 2022)

(A) Gap of the study

In recent years, there has been a surge of interest in the study of group insolvency under IBC. Despite the topic's relevance, there is a large literature deficit in this sector. There has been few research especially on the issue of group insolvency under the IBC, and the current studies have mostly concentrated on the code's legal and procedural features, rather than its influence on stakeholders and the larger economy. This research vacuum is significant because it hinders our knowledge of the IBC's consequences for group insolvency resolution and loss distribution among stakeholders. As a result, further study in this area is required to improve our knowledge of the IBC's strengths and limits in dealing with group insolvency situations, as well as the effect on diverse stakeholders**.**

(B) Literature review

Risham Garg (2019) this study conducted on “Issues in Insolvency of Enterprise Groups”. This article makes an effort to present and summarise significant problems of bankruptcy resolution of business group corporations, discussing a few of them while saving a more in-depth discussion for following articles. The author concludes that WGV has issued proposed legislation rules to ease the international bankruptcy of MNE groupings. Group insolvency procedures (also known as "planning proceedings") are made possible under the rules above, as is the collaboration and coordination of processes in multiple jurisdictions involving the same

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business group. According to the author, these provisions might serve as an addendum to the current Model Legislation on Cross-border Insolvency (MLCBI) or as a stand-alone model law to encourage more consistent implementation of international insolvency legislation. Some, however, worry that the force of these clauses might be watered down by resistance from inside the organisation, or by members who are unwilling or unable to give up power in the country of origin. In addition, the directors' liability for insolvent trade etc. is not addressed in the proposed rules and would be governed by local law in the jurisdiction of incorporation.(Garg, 2019)

Policy motivations and different concepts behind bankruptcy legislation in different jurisdictions complicate the problem of conducting insolvency processes for business groupings. To aid in the bankruptcy resolution & liquidation of corporate debtors in group, IBBI has formed a Working Group (WG) to present a report with recommendations for a regulatory framework. They may use the UNCITRAL WG V draught as a starting point for dealing with insolvency resolutions of group corporations, and they may also take into account the aforementioned difficulties as they create a framework for group insolvency. Model Law on Cross-Border Insolvency (MLCI), 1997 or other sources of international law is still a hotly contested topic in modern India. While drafting/adopting an adequate laws regulating enterprise group insolvencies & moving forward in the directions to adopt a regime on cross-border insolvency, India must keep in mind the requirements of the country today and the global trend towards law reform in order to implement the IBC.

Poorna Poovamma K. M (2021) The study focuses on the implementation of a group insolvency regime in India, identifying challenges and proposing solutions. The purpose of this article is to highlight the most pressing concerns about the implementation of group insolvency in India & to offer suggestions for addressing those concerns. Part One covers the fundamental conceptual groundwork, Part Two examines the existing state of Indian law, and Part Three lays out the many obstacles standing in the way of implementing the system. The problems of cross-border bankruptcy and responsibility extension and the difficulty in defining business groups are only a few examples.

The author draws the conclusion that the IBC has undergone significant change in recent years, with the inclusion of a mechanism on group insolvency being among these changes. The IBBI's tasked Working Group (WG) has proposed a number of ideas and proposals to help move the process of adapting such a framework forward. Mechanisms for coordinating procedures, bringing similar subjects together, and enforcing strict penalties for bad conduct all fall under this category. Furthermore, the WG has defined "corporate group" for use in implementing the

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framework. Concerns about the framework have been raised by the authors owing to ambiguities in the definition, jurisdictional difficulties, cross-border implications, and liability extension.

The solutions include using "head office test" instead of "registered office test," adopting a definition that takes into account the both vertical either horizontal interconnection of companies, and using the location of the "Corporate Group's" Centre of Main Interests (CoMI) to determine the Adjudicating Authority. Protecting corporations against unwanted results necessitates the inclusion of rules relating to the concept of extension of responsibility in group insolvency procedures. The authors agree with the WG's assessment that the proposed framework is extensive and broad, but that it requires modification to serve as a complete adjunct to the IBC as a whole.

Abhirup Dasgupta (2021) in his article provided a summary of India's Group Insolvency Regime. The resolution procedure, cost-effectiveness, and responsibility for group enterprises acting as a single-economic entity are all improved by the new group insolvency legislation. While Insolvency& Bankruptcy Code (IBC) does not address topic of group insolvency, the author argues that this is a missed opportunity, courts are taking positive steps to fill the gap through judicial decisions. The author stresses the importance of recognizing the concept of group insolvency through legislative provisions in IBC, while being mindful of the challenges and issues that may arise. The 2021 amendments to IBC didn't respond the problem of group insolvency, therefore it would be fascinating to observe how the Parliament adopts these recommendations in the future.(K. M. & Wadhawan, 2020)

Shraiyashi Bhatt, (2022)- The emphasis of this study was on group insolvency: a realistic approach. The author emphasises the benefits of the notion of group insolvency, including its potential to speed up insolvency proceedings. However, the practical approach of group insolvency has not been as successful as expected.

The author thinks that it is essential for legislators to properly define and arrange the procedure of group insolvency in order to reduce the amount of misunderstanding and complexity that is involved. They also underline how important it is to overcome any difficulties that are associated with group insolvency before adopting it within the Insolvency framework. The author is of the opinion that this will assist to guarantee that the procedure is effective, fair, & effective for all of the parties who are participating. This demonstrates the need of giving any proposed new legislative measures relating to group insolvency a great deal of thought and preparation before moving forward with them. The author has high expectations that by assuring

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a transparent and well-structured procedure, he would be able to enhance the results for all parties involved, especially in situations such as the partnership of five enterprises that is developing the residential colony.(Shraiyashi Bhatt, n.d.)

II. GROUP INSOLVENCY

Such cases are classified as 'group insolvency,' which refers to the process of pooling separate firms' assets and liabilities and conducting bankruptcy procedures as a single substantive consolidation of the controlling company, its associates, as well as its subsidiaries. (Anandita Bhargava, 2020)

To be successful in their operations, multinational business groupings must address the distinctive demands and requirements of diverse markets. Foreign firms and their laws bring challenges that must be handled. One method for efficiently managing these various markets is to form a subsidiary business in the foreign country under the parent firm's rules. This has resulted in the expansion of business organisations all over the globe. These groupings may be seen financially as a single entity, yet the notion of distinct legal entity established in the case of Salmon v. Salmon still holds. This implies that creditors must launch a separate Corporate Insolvency Resolution Process (CIRP) for each subsidiary, even if they all belong to the same group.(Sahoo & Guru, 2020)

To succeed in international operations, corporate groupings must consider the distinctive requirements and demands of diverse markets. This includes issues raised by international business legislation. One method for addressing these issues is to form a subsidiary in the foreign market under the parent company's legislation. This has resulted in the worldwide growth of corporate organisations. These organisations are perceived as a single entity from an economic standpoint, but legally, each entity is considered a distinct legal entity, as determined by the Salmon v. Salmon decision. As a consequence, even though they all belong to the same group, creditors must launch a separate Corporate Insolvency Resolution Process against each firm.(Kokorin, 2021b)

Corporate groupings employ this distinct legal entity structure to safeguard their assets, with holding corporations controlling several subsidiaries in different countries. The group's founders often employ numerous layers to protect their assets from insolvency proceedings, even across nations. As a result, India's bankruptcy rules do not address separate Business Insolvency Resolution Processes filed in different countries against various companies of a same global corporate group.(Sahoo & Guru, 2020) Group insolvency is a structure in which the resolution of several insolvent entities within a single group may be consolidated in a single

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court, allowing for the rebuilding of the group as a whole and maximising the use of the group's total assets for the benefit of both the group and the debtor. This necessitates the designation of a single jurisdiction, known as the Center of Main Interest, to oversee all of the group's decisions, regardless of location. The selection of the Center of Main Interest is determined by variables such as the laws of the most advantageous country for the settlement process and the acceptance of the conclusion by other governments concerned.(K. M. & Wadhawan, 2020)

There is no idea of general group responsibility since creditors may only exercise their rights against the organisation with which they have engaged into an agreement. Organizations must be granted a legal standing and legislative power in their various countries in order to create collective responsibility.

(A) Group insolvency jurisprudence

Refers to the legal concepts and methods governing the settlement of many bankrupt companies within a single corporate group. This procedure provides for the consolidation of insolvency procedures in a single court, allowing for the restructuring of the whole group and the exploitation of its combined assets in the best interests of both the group and the debtors. While the Bankruptcy and Bankruptcy Code of India has procedures for dealing with insolvency of single corporate debtor, it lacks framework for synchronizing or resolving the insolvencies of numerous borrowers in a group. As a consequence, the bankruptcy of each corporate debtor within a group is normally handled separately.(Anaya Jain, 2020)

(B) Group insolvency in India

The issue of group insolvency has not been expressly addressed in the Indian legal system, but courts have sought to fill this gap via legal interpretations. The High Court of Calcutta examined necessity for consolidation using norms and principles established by courts in the United Kingdom and the United States, concluding that "justice and fairness" might be foundation for removing corporate veil. It also specified twelve components to check for before initiating consolidation, such as common control, common assets, common liabilities, account inter-binding, complicated subsidiary connections, debt looping. The tribunal divided the group entities under two categories. First group is for organizations that, when brought together for the settlement process, show indicators of increased asset worth and would otherwise be liquidated. The second kind of group comprises those that can continue to operate even if their CIRPs are managed independently. The court decided that the preceding case should be consolidated.(Dasgupta, 2021)

This case established a complex law for collective insolvency in India, presenting hopeful

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recommendations for improved group resolution strategies and guaranteeing that each corporate debtor obtains the greatest value possible.

Another view was that consolidation would provide the bidder with a stronger liability framework and open the path for better settlement solutions. Many corporate debtors, such as trading enterprises, may not have as many assets as a manufacturing firm, which may have large assets including as land and facilities.

(C) Group Insolvency Under IBC 2016

Since insolvency legislation is still relatively new idea in India, policymakers here have determined that it may be premature to establish group insolvency resolution at this time.

However, courts have had to address petitions for consolidating cases involving group firms, and they are increasingly considering such insolvency in their decisions on insolvency situations.

The corporate debtor in a CIRP may lack sufficient assets to permit an insolvency resolution on its own, but there may be controlling companies or associated or subsidiary firms within the same group with sufficient assets to make the CIRP possible. However, this is not possible since collective insolvency is neither recognised or addressed under the Insolvency and Bankruptcy Code of 2016. (Kokorin, 2021a)

(D) Framework for Group Insolvency under IBC, 2016:

A scenario in which numerous entities within a single corporate group become bankrupt is referred to as group insolvency. To address this problem, the bankruptcy processes of these firms may be merged in a single court to allow for the reorganization of the group as a whole and the use of its combined assets in the best interests of both the group and the debtor. The existing Indian legal system, the Bankruptcy and Bankruptcy Code, offers mechanisms for dealing with the insolvency of a single corporate debtor but does not provide a framework for the synchronization or joint resolution of numerous borrowers within a group. As a consequence, each corporate debtor faces individual insolvency procedures. However, in rare situations, the links between group firms might cause unique problems throughout the insolvency resolution process. To remedy this, Indian courts have attempted to fill the void by judicial declarations. Procedural Co-ordination or Substantive Consolidation may be used to deal with group insolvency, with procedural co-ordination being the strategy used in the majority of group insolvency cases in India. In January 2019, the Insolvency and Bankruptcy Board of India created a Working Group on Group Insolvency, which published its proposals for group company process in the form of the "Report of the Working Group on Group

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Insolvency" on September 23, 2019.(Kokorin, 2021b)

(E) Case Studies -

1. IL&FS Case: **Company Appeal (AT) No. 346 of 2018**

This lawsuit was connected to the demise of the IL&FS Group involved resolving 348 group companies; the National Company Law Appellate Tribunal (NCLAT) accepted the resolution mechanism of the Central Government on October 15, 2018. This framework aimed to protect public interests and resolve debt for the group and had a 90-day deadline for implementation. Although the resolution of IL&FS is not within the purview of the Insolvency & Bankruptcy Code, the NCLAT stated in its June 22, 2017 order that "law has developed where Group Insolvency is also permissible" from the various matters arising under IBC.

The judicial precedents discussed interlinked business operations and If separation would result in an impractical settlement, the courts steps in to aid with group CIRP merger &settlement. Due to the lack of standardizedstructure for the insolvency of group companies, the Insolvency & Bankruptcy Board of India (IBBI) formed a Working Group, which discussed with stakeholders, confirmed its suggestions, & presented its report to the IBBI in order to develop laws on the subject.

2. Videocon Case –2019 SCC Online NCLT 745

The question of group insolvency which was raised in the case of SBI v. Videocon, wherein the Videocon Group filed fifteen distinct resolution petitions against its 15 distinct group companies. On August 8, 2019, the National Company Law Tribunal in Mumbai approved the consolidation of 13 Videocon Group entities in matter of State Bank of India vs. Videocon Industries Ltd.

The NCLT attempted to address the issue of resolving debt owed by corporate debtors (CDs) that are part of a group or inextricably intertwined. The courts in India tried to solve difficulties are founded on the legislation adopted by UK & US tribunals to establish a system for group insolvency. The court considered factors such as common control, common assets, common liabilities, interdependence, intertwined accounts, and singleness of economics among the group companies to determine that they were inextricably intertwined. In the Videocon case the NCLT consolidated 13 out of 15 CIRPs launched against different companies in the Videocon group. The court's judgment in this instance, the notion of group insolvency procedure was established in India. and provided a basis for future group insolvency cases.According to the legislation adopted by UK & US courts, NCLT Mumbai aggregated 13 of the 15 CIRPs and established one yardstick for the beginning of insolvency of group

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corporations.

The NCLT took into account a number of things, including common control, common directors, common assets and liabilities interdependence, resource pooling, interconnected accounts, interloping of debts, singleness of economics of components, common financial creditors, & a common group of debtors, all of which demonstrated the companies' interconnectedness. The notion of significant consolidation was used in this instance. The verdict established the idea of group bankruptcy in India and established a mechanism for addressing debt owed by enterprises in a group.

3. Axis Bank Case: Order dated February 26, 2020 in MA 3664/2019 in C.P.(IB)-1765, 1757 & 574/MB/2018

The framework in case of SBI Vs Videocon was later maintained in the Axis Bank Ltd. & Ors. Vs. Lavasa Corp Ltd. case, where financial creditors sought to settle the entire group debt of Lavasa Corporation Limited & its 2 subsidiaries through consolidation of their CIRPs. The National Company Law Appellate Tribunal (NCLAT) also reinforced this framework in the Radico Khaitan Ltd. v. BT & FC Pvt. Ltd. case. In this instance, an operating creditor appealed the NCLT's denial of its application for CIRP combination, but the appellate court upheld the petition & directed the consolidation of the relevant businesses' CIRPs in accordance with the rules set for group CIRP consolidation.

4. Edelweiss Case: 2019 SCC OnLine NCLAT 592

In the case of Edelweiss Asset Reconstruction Company Limited v. Sachet Infrastructure Pvt. Ltd. & Ors, Adel Landmarks Limited has been placed in group insolvency by the National Company Law Tribunal (NCLT), which was the Adel Group's primary borrower & holding firm. Other companies in the Adel Group, known as corporate guarantors, provided corporate guarantees to secure the loan for Adel. During the process of Adel's Corporate Insolvency Resolution Process, Edelweiss filed separate petitions to initiate CIRP versus the corporate guarantors.

The main problem for the NCLAT was whether CIRP could be started against various companies was decided to file group insolvency proceedings against a partnership of five enterprises engaged in the building of a housing colony., and that the concurrent CIRP should continue under the supervision of the same resolution professional. This example demonstrates a more practical approach in group insolvency cases by the Indian judicial system.

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III. PROBLEMS REGARDING GROUP INSOLVENCY

The notion of group insolvency has a lot of benefits, but its practical implementation is hindered by a number of hurdles. In some occasions, group firms asked courts or tribunals to merge into a single entity so that they could go through the insolvency procedure together. While the court has authorized such consolidation in numerous instances, it has often had trouble later on in really achieving the aim that was supposed to be the result of the consolidation. One commonality across creditors notwithstanding possible variations in loan profiles, terms, and conditions among various lenders. As a result, this might cause complications when pooling resources for CIRP purposes by combining assets and liabilities across groups.(Mangaldas, n.d.)

Due to the bankruptcy procedures brought against the many Amrapali Group entities, all of their assets were aggregated and attached in matter known as Bikram Chatterji & Ors. v. Union of India & Ors. Lack of lender uniformity contributed to this complexity and uncertainty. It may be difficult to coordinate with overseas representatives and manage foreign assets if you operate on a global scale.(Kokorin, 2021b)

Adjudicating Authority in Bank of India Vs. Videocon Industries Limited & Anr. (Anandita Bhargava, 2021)approved the aggregation of assets & liabilities of a Videocon group entity so that it may begin its corporate bankruptcy resolution procedure. Overseas subsidiaries' creditor claims were allowed, but the foreign subsidiaries' assets could not be combined with the group companies, resulting in a significant mismatch between the group company's assets and obligations.

Expenses incurred by affiliated and subsidiary companies: If a group insolvency is recommended whenever one of group firms companies is going through the insolvency process, then the subsidiaries and associate entities of the group business will also suffer, even if they have done well on their own. As a consequence, these affiliated companies lose assets and properties, which lower their market worth and impedes their ability to function.(Mangaldas, n.d.)

Subsidiary firms may suffer a loss if their valuations are impacted by the liabilities of their parent companies as a result of consolidation of their assets & liabilities in the event of a group bankruptcy of the whole group business.

IV. CONCLUSION

The Insolvency & Bankruptcy Code in India has provided framework for resolution of group insolvency cases, which can facilitate the revival of economically viable businesses and

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promote the interests of creditors. However, the provisions are still in their early stages of implementation and there is a need for further research and analysis to assess their effectiveness and identify areas for improvement. Group insolvency offers many benefits of dealing with the whole group of firm together that may assist to speed up the bankruptcy processes, however if we look at a practical approach it has been suggesting otherwise.

The group insolvency process must meet the evolving concerns of many stakeholders, including administrators. Through India, the Code lacks particular provisions pertaining to the notion; hence, terms and conditions should be included to the code to provide legal clarity and consistency. The Working Group's proposals may aid courts in circumstances like the IL&FS group, in which the NCLAT removed the ban on offshore businesses & 22 other firms in group that could discharge their debt commitments despite lack of a formal system under the IBC. If implemented and codified, the proposals would also benefit NCLT in delivering creditors clarity, consistency, and prompt debt resolution, whereas a statutory framework of IBC will aid in effective resolution of group firms.

- **Recommendations**

According on the study's results, the following suggestions for resolving group insolvency under theIBCmay be made. For starters, clearer and more thorough instructions on the handling of group insolvency proceedings under the IBC are required. This would aid in ensuring a more uniform and consistent response to such circumstances, as well as reducing the chance of ambiguities and inconsistencies in the application of the code. Second, the IBC should be changed to provide a more effective method for distributing losses among stakeholders in group bankruptcy situations. This might involve developing a priority system for asset distribution or developing alternate dispute resolution procedures for resolving disagreements among stakeholders. Finally, further study in this area is required to better understand the effect of the IBC on the settlement of group insolvency cases and to identify possible areas for improvement in the code. This would allow the IBC to be more efficient and effective in dealing with group insolvency situations, while also ensuring a fair and equitable conclusion for all parties.

V. FUTURE SCOPE

The future scope of group insolvency research under the (IBC) is wide and diverse. To begin, there is a need for better understanding the effect of the IBC on the settlement of group insolvency cases, as well as to establish best practices for such resolution. This might entail assessing the effectiveness of the current legal and procedural framework and identifying possible areas for improvement. Second, it is critical to investigate the effect of the IBC on

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stakeholders such as creditors, workers, and shareholders, as well as to comprehend the allocation of losses in group bankruptcy situations. This will aid in ensuring that the IBC achieves a fair and equitable resolution for all parties. Finally, there is room to investigate the interaction between the IBC and other laws and regulations affecting group insolvency, such as competition and corporate laws. This will allow for a more thorough knowledge of India's legislative and regulatory framework for group insolvency, as well as the identification of areas for reform and refinement.

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