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**GROUP INSOLVENCY IN THE INDIAN INSOLVENCY REGIME**- Sugyaneer Kuanr & Simran Samal<sup>1</sup>**ABSTRACT:**

Group insolvency in the Indian Insolvency Regime refers to the resolution process when multiple companies within a corporate group face financial distress or insolvency simultaneously. It is an intriguing area that holds significant importance in the corporate world.

The Indian Insolvency Regime recognizes the complexities and interdependencies that exist within corporate groups. When a group of companies experiences financial difficulties, it can have a cascading effect on all the entities involved. Therefore, the insolvency framework in India has evolved to address these challenges.

One of the key objectives of the Indian Insolvency Regime is to achieve a comprehensive and efficient resolution process for group insolvencies. It aims to strike a balance between the interests of various stakeholders, including creditors, shareholders, and employees.

Furthermore, the regime emphasizes the importance of cross-border cooperation and coordination in cases where the group has international operations or assets. This facilitates effective communication and collaboration between insolvency authorities in different jurisdictions, promoting a harmonized and streamlined resolution process.

The Indian Insolvency Regime also recognizes the significance of preserving the value of the group as a whole. It provides for mechanisms such as the sale of assets as a going concern, restructuring plans, or even the possibility of a merger or consolidation of the group entities.

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<sup>1</sup> Student at Birla School of Law, Birla Global University (BGU), Odisha

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These measures encourage the revival and rehabilitation of the group, rather than just liquidating the individual companies.

Overall, the Indian Insolvency Regime acknowledges the unique challenges posed by group insolvency and aims to provide a comprehensive and robust framework for its resolution. By promoting coordination, cooperation, and value preservation, it seeks to facilitate the revival and long-term sustainability of distressed corporate groups.

**KEYWORDS:** Group insolvency, corporate groups, Insolvency Regime, cross-border cooperation

## **INTRODUCTION TO GROUP INSOLVENCY**

Group insolvency, also known as corporate group insolvency, refers to a situation where multiple companies within a corporate group are unable to pay their debts. It's a complex and challenging scenario that involves the financial distress of several interconnected entities.

In group insolvency, the insolvency proceedings are carried out collectively for all the companies within the group. This approach allows for a more comprehensive and efficient resolution of the financial difficulties faced by the group.

The main goal of group insolvency is to maximize the value of the group's assets and ensure a fair distribution of funds to the creditors. This may involve reorganizing the group, selling off assets, or even winding up certain companies within the group.

## **IMPORTANCE AND CHALLENGES OF GROUP INSOLVENCY**

Group insolvency refers to a situation where multiple companies within a corporate group experience financial distress or insolvency simultaneously. Understanding the importance of group insolvency is crucial for various stakeholders, such as creditors, shareholders, employees, and even the broader economy. Here are a few reasons why group insolvency is significant:

1. **Efficient resolution:** Group insolvency allows for a coordinated and streamlined approach to resolving the financial difficulties faced by multiple companies within the same group.

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By consolidating the insolvency proceedings, it becomes easier to assess and address the overall financial situation, potentially leading to more efficient and effective outcomes.

2. **Protecting stakeholders:** Group insolvency proceedings aim to protect the interests of various stakeholders involved, including both secured and unsecured creditors, employees, and shareholders. It ensures that the available assets are distributed fairly and maximizes the chances of recovery for those affected.
3. **Preserving jobs:** When companies within a group face insolvency, there's often a risk of job losses for their employees. Group insolvency proceedings aim to minimize such job losses by adopting strategies that preserve business operations and provide opportunities for restructuring or reorganization, ultimately safeguarding employment to the extent possible.
4. **Enhancing asset recovery:** Group insolvency enables a comprehensive analysis of intercompany transactions, potentially uncovering opportunities to recover assets or challenge questionable transactions. This can increase the prospects of recovering debts owed to creditors and improve overall returns.
5. **Ensuring systemic stability:** In cases where a group of companies has a significant impact on the broader economy, group insolvency proceedings become crucial for maintaining systemic stability. By managing the insolvency in a coordinated manner, it reduces the risk of triggering a domino effect that could have adverse ramifications on the financial system.
6. **Promoting investor confidence:** Group insolvency proceedings that are handled efficiently and transparently can enhance investor confidence in the market. When stakeholders perceive that insolvency cases are managed effectively, it fosters trust and encourages investment, which is essential for economic growth.

Here are some of the challenges that can arise in such situations:

1. **Complexity:** Group insolvency is often more intricate than the insolvency of a single entity. It involves managing the financial affairs, debts, and assets of multiple entities

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within the group. Coordinating and overseeing the insolvency proceedings for each entity can be highly complex and time-consuming.

2. Cross-border issues: If the group consists of entities operating in different jurisdictions, navigating the legal and regulatory frameworks of each country can add another layer of complexity. Dealing with varying laws, languages, and procedures can be challenging.
3. Intercompany transactions: Corporate groups often engage in intercompany transactions, such as loans, guarantees, or shared assets. Untangling these transactions during insolvency can be challenging, as determining the legitimacy and priority of these claims can be complex.
4. Multiple jurisdictions: If the group operates in different jurisdictions, navigating the legal systems and regulations of each country can be a significant challenge. Dealing with varying laws, languages, and procedures adds complexity and requires expertise in cross-border insolvency laws.
5. Stakeholder coordination: Group insolvency involves multiple stakeholders, including creditors, employees, suppliers, and shareholders. Coordinating and balancing their interests can be demanding. Ensuring effective communication, negotiation, and consensus-building among these stakeholders is crucial for a successful resolution.
6. Asset distribution: Determining how to fairly distribute the group's assets among its various entities and creditors can be contentious. Disputes over asset ownership, conflicting creditor claims, and valuation challenges can arise, adding complexity to the process.
7. Reputation and market impact: Group insolvencies can have a significant impact on market dynamics and the perception of stakeholders, such as customers, investors, and employees. Maintaining confidence and mitigating reputational damage is a constant challenge throughout the insolvency proceedings.

## LEGAL FRAMEWORK FOR GROUP INSOLVENCY IN INDIA

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In India, the legal framework for group insolvency is primarily governed by the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC provides a comprehensive framework for the resolution and liquidation of corporate entities, including group insolvency situations.

Under the IBC, group insolvency can occur when multiple entities within a corporate group face financial distress. To address this, the IBC allows for the consolidation of insolvency proceedings of related entities. This means that if one entity within a group is undergoing insolvency proceedings, the other entities within the same group can also be brought under the purview of the insolvency process.

The primary objective of group insolvency proceedings is to ensure maximum value realization for all stakeholders involved and promote an efficient and coordinated resolution of the financial distress faced by the group as a whole. The resolution process may involve the restructuring of debts, sale of assets, or even liquidation, depending on the specific circumstances of the group.

To facilitate effective group insolvency proceedings, the IBC provides for the appointment of a resolution professional who takes charge of managing and administering the insolvency process. The resolution professional plays a crucial role in coordinating and overseeing the resolution efforts for all entities within the group.

Additionally, the IBC also emphasizes the importance of cross-border cooperation in group insolvency situations. It recognizes the need for coordination between domestic insolvency proceedings and those undertaken in foreign jurisdictions to ensure a holistic and efficient resolution of the group's financial distress.

It's worth mentioning that the legal framework for group insolvency in India is still evolving, and there may be further developments and refinements in the future to address any emerging challenges or complexities.

### **A BRIEF ON THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

The Insolvency and Bankruptcy Code, 2016 is a comprehensive legislation in India that aims to consolidate and streamline the insolvency resolution process. Its primary objective is to provide a

time-bound and efficient mechanism for dealing with insolvency and bankruptcy issues of individuals, partnership firms, and corporate entities.

The code establishes two key bodies: the Insolvency and Bankruptcy Board of India (IBBI) and the National Company Law Tribunal (NCLT). The IBBI is responsible for regulating insolvency professionals, insolvency professional agencies, and information utilities. On the other hand, the NCLT is the adjudicating authority for corporate insolvency matters, while the Debt Recovery Tribunal (DRT) deals with individual and partnership firm insolvency cases.

Under the code, a corporate debtor or a creditor can initiate the insolvency process by filing an application to the NCLT. Once admitted, a moratorium is imposed, preventing further legal actions against the debtor. A resolution professional is appointed to manage the affairs of the debtor and formulates a resolution plan. If the plan is approved by the creditors and the NCLT, it is implemented to revive the debtor's business or sell its assets to repay the creditors.

If a resolution is not possible, the debtor may be liquidated, and the proceeds are distributed to the creditors in accordance with the priority laid down in the code.

The Insolvency and Bankruptcy Code, 2016 has significantly improved the insolvency resolution process in India, promoting transparency, accountability, and maximizing the value of the assets involved. Its implementation has provided an effective framework for resolving insolvency issues and revitalizing distressed businesses.

### **VITAL ROLE OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)**

The Insolvency and Bankruptcy Board of India (IBBI) plays a crucial role in the Indian economy by ensuring transparency, efficiency, and accountability in the insolvency and bankruptcy process. Established in 2016 under the Insolvency and Bankruptcy Code (IBC), the IBBI has been instrumental in promoting a robust and predictable framework for resolving insolvency and bankruptcy cases. This aims to explore the significant role that the IBBI plays in facilitating economic growth and maintaining the stability of the financial system in India.

1. **Regulatory Framework:** The IBBI acts as the regulatory authority for all matters related to insolvency and bankruptcy in India. It formulates regulations, guidelines, and codes of conduct for insolvency professionals, insolvency professional agencies, and information utilities. By creating a comprehensive regulatory framework, the IBBI ensures that all stakeholders involved in the insolvency process adhere to standardized procedures, promoting fairness and transparency.
2. **Licensing and Regulation of Insolvency Professionals:** One of the key responsibilities of the IBBI is to license and regulate insolvency professionals (IPs) and insolvency professional agencies (IPAs). These professionals are crucial in managing and administering the insolvency process. The IBBI ensures that IPs possess the necessary qualifications, expertise, and integrity to handle complex insolvency cases. By setting high standards for IPs, the IBBI helps maintain the credibility and professionalism of the insolvency profession.
3. **Information Utilities:** The IBBI also regulates information utilities (IUs), which serve as repositories of financial and credit information of borrowers. These IUs play a vital role in providing timely and accurate information to stakeholders involved in the insolvency process. The IBBI mandates that IUs maintain a reliable database and facilitate the sharing of information among creditors, debtors, and other stakeholders. This ensures transparency and enhances the efficiency of the insolvency process.
4. **Adjudicating Mechanism:** The IBBI plays a pivotal role in setting up the infrastructure for the adjudication of insolvency and bankruptcy cases. It establishes the Insolvency and Bankruptcy Board of India (IBBI) and the National Company Law Tribunal (NCLT) as the primary adjudicating authorities. By providing a dedicated forum for resolving insolvency disputes, the IBBI ensures a timely and effective resolution of cases, promoting investor confidence and economic growth.
5. **Continuous Learning and Development:** To promote the professional development of insolvency professionals, the IBBI conducts regular training programs, workshops, and seminars. These initiatives aim to enhance the knowledge and skills of IPs, keeping them

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updated with the latest developments in the field. By fostering a culture of continuous learning, the IBBI ensures that insolvency professionals are equipped to handle complex and evolving insolvency cases.

The Insolvency and Bankruptcy Board of India (IBBI) plays a critical role in the Indian economy by establishing a robust framework for insolvency and bankruptcy resolution. Through its regulatory functions, licensing of professionals, information utilities, and adjudicating mechanisms, the IBBI ensures transparency, efficiency, and accountability in the insolvency process. By promoting a predictable and credible insolvency regime, the IBBI contributes to the overall stability of the financial system and encourages economic growth in India.

### **DETERMINING GROUP INSOLVENCY**

Determining group insolvency refers to the process of assessing the financial viability of a group of companies. When multiple companies are part of a larger group, their financial health can impact each other. Group insolvency analysis involves evaluating the overall financial position of the entire group, rather than just looking at the individual companies within it.

To determine group insolvency, several factors are considered, such as the financial statements of each company, their interdependencies, and any guarantees or cross-guarantees among the group members. It also involves analyzing the group's cash flow, assets, liabilities, and their ability to meet financial obligations.

The goal of determining group insolvency is to assess whether the group as a whole is able to pay off its debts and continue operating, or if it is facing financial difficulties that may lead to insolvency. This analysis helps stakeholders, such as creditors, investors, and management, make informed decisions about the group's financial future.

When it comes to determining group insolvency, there are several factors that are typically considered. Here are some key ones:

1. **Financial Statements:** The financial health of the group is assessed by analyzing their financial statements, including balance sheets, income statements, and cash flow



statements. This helps identify any signs of insolvency, such as declining assets or increasing liabilities.

2. **Debt Levels:** The group's debt levels and the ability to meet their debt obligations are crucial factors. This includes assessing the group's debt-to-equity ratio, debt service coverage ratio, and debt maturity profile.
3. **Cash Flow Analysis:** Evaluating the group's cash flow is essential to determine their ability to generate sufficient cash to cover operational expenses, debt repayments, and other financial obligations. This includes analyzing historical cash flow patterns and projected cash flows.
4. **Market Conditions:** External factors such as market trends, competition, and industry performance can significantly impact a group's financial stability. Assessing the group's position within the market and its ability to adapt to changing conditions is important.
5. **Management and Strategy:** Evaluating the group's management team, their experience, and their strategic plans is crucial. This includes assessing their ability to navigate financial challenges and implement effective turnaround strategies if needed.
6. **Legal and Regulatory Compliance:** Compliance with applicable laws and regulations is another important consideration. Non-compliance can lead to legal actions that may further impact the group's financial stability.

These factors, along with other relevant information, are thoroughly analyzed to determine if a group is insolvent or at risk of becoming insolvent. It's worth noting that the specific criteria and methods may vary depending on the jurisdiction and applicable laws.

### **IMPLICATIONS OF GROUP INSOLVENCY ON RELATED PARTIES:**

When a group becomes insolvent, it means that it is unable to pay off its debts. This can have various implications on related parties, which are individuals or entities closely connected to the insolvent group. Here are a few potential implications:

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1. **Creditors:** Related parties who have extended credit to the insolvent group may suffer significant financial losses. They might not be able to recover the full amount owed to them, impacting their cash flow and financial stability. This can lead to a chain reaction, affecting their ability to pay their suppliers or meet their own financial obligations.
2. **Employees:** Group insolvency often results in job losses for employees connected to the insolvent group. Related parties who are employed by the group may find themselves without a source of income, facing financial hardship, and uncertainty about their future. This can have a profound impact on their livelihoods, causing stress, and potentially requiring them to seek alternative employment opportunities.
3. **Shareholders:** Related parties who hold shares in the insolvent group can face a decline in the value of their investments. As the group's financial health deteriorates, the value of its shares may plummet, leading to financial losses for shareholders. This can erode their wealth and potentially impact their trust in the overall market.
4. **Suppliers and Service Providers:** Suppliers and service providers connected to the insolvent group may experience adverse effects. Non-payment by the insolvent group can disrupt their own cash flow, making it challenging for them to meet their financial obligations. This domino effect can lead to a strained business relationship, reduced profitability, and even the need to downsize or close their own operations.
5. **Business Partners:** Related parties who have entered into partnerships or joint ventures with the insolvent group may face significant challenges. The insolvency can jeopardize ongoing projects or collaborations, causing delays, cancellations, or even legal disputes. This can result in financial losses, damaged reputations, and strained relationships between the parties involved.

The implications of group insolvency on related parties are vast and can have a cascading effect throughout the economy. From creditors and employees to shareholders, suppliers, and business partners, each stakeholder can be significantly impacted by the financial distress of an insolvent group. Recognizing the potential implications allows for better preparedness, proactive decision-making, and seeking appropriate professional advice to mitigate the adverse effects. As we

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navigate the complex world of business, understanding and addressing the implications of group insolvency is essential for fostering a resilient and sustainable economic ecosystem.

## GROUP INSOLVENCY JURISPRUDENCE

Indian courts attempted to bridge the gap by developing a working framework for resolving debt owed by Corporate Debtors that are inextricably intertwined or are part of a group where it is necessary that some or all of the group companies need to go through Corporate Insolvency Resolution Process. There are some important bodies of judge made law.

**The Videocon Case:** In 2018, SBI initiated CIRP against 15 companies of Videocon group which were launched across different NCLTs in India. Still, easily managing the proceedings pan-India was not easy for Videocon. Accordingly, there were various companies got together and approached the Principal Bench of NCLT, in Delhi for consolidation of CIRP of all the companies. In *Venugopal Dhoot v. SBI & Ors*<sup>2</sup> NCLT considered the cross-collateralization, guarantee comforts or inter-company loans by the CDs to other group companies and directed the consolidation through NCLT Mumbai to facilitate hearing of the matters and avoid conflicting orders.

The NCLT Mumbai considered all the CIRPs and passed its judgment in *SBI vs. Videocon Industries Ltd. & Ors.*<sup>3</sup> The bench consolidated 13 CIRPs out of 15 and considering the law developed by UK and US courts with respect to process of consolidation, NCLT developed a single yard stick for opening insolvency of group companies which considered the following are: (a) common control of the Dhoot family, (b) V.N Dhoot as common director, (c) common means amongst the companies. For illustration, one company leased its land to another group company to carry on manufacturing, (d) common arrears; for case, guarantee comforts issued by a CD to a bank on behalf of other companies, (e) interdependence since (in this case) all products vended by differ entities were solded under the common Videocon trademark, (f) interlacing of finance rupee term loans were used for refinancing of existing debt, (g) pooling of resources as companies had common directors, office staff, accountants, (h) intertwined accounts; all

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<sup>2</sup>CA-1022(PB)/2018

<sup>3</sup> 2019 SCC Online NCLT 745

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subsidiaries prepared a common position of their assets and liabilities in their consolidated accounts, (i) interloping of debts where the financial arrangements handed for protection of debt of subsidiaries, (j) oneness of economics of units as the group was called by its brand name "Videocon", (k) common financial creditors; the lenders were members of consortium of banks which were common for all subsidiaries and (l) common group of debtors who were combined together for availing different loans. In substance, the present judgment introduced the conception of group insolvency regime in India.

**In Axis Bank Case:** The yardstick developed by NCLT in Videocon was upheld in Axis Bank Ltd &Ors vs. Lavasa Corp Ltd<sup>4</sup>, in which the holding company's financial creditors filed an application for consolidation of Lavasa Corporation Limited's CIRP and its two wholly owned subsidiaries. In the present case, financial creditors wanted to settle "Lavasa's" entire group debt. The NCLT directed the consolidation of the Lavasa group's Corporate Insolvency Resolution Process. The aforesaid position was further strengthened by NCLAT in RadicoKhaitan Ltd. vs. BT & FC Pvt. Ltd. <sup>5</sup>So, the appellate tribunal considered an appeal filed by the operational creditor RadicoKhaitan, where it challenged NCLT's order rejecting its request for CIRP consolidation. So applying the principles developed for group CIRP consolidation, NCLAT allowed the appeal and directed the consolidation of the relevant entities CIRPs.

**Edelweiss Case:** In this case, Edelweiss Asset Reconstruction Company Limited v. Sachet Infrastructure Pvt. Ltd. &Ors<sup>6</sup>. Here, NCLT admitted group insolvency proceedings against Adel Landmarks Ltd, the principal borrower and holding company of Adel Group. Corporate guarantees were given by other group companies of Adel group i.e. corporate guarantor, for securing loan to Adel. During the pendency of Adel's CIRP, Edelweiss filed separate applications for initiation of CIRP against the corporate guarantors. In its order, NCLT noted that there was no such need for initiating CIRP since a petition had already been admitted for the same debt against Adel. Edelweiss appealed to NCLAT and challenged that it was not possible to launch CIRP against Adel only as it had decided to develop a residential colony in consortium with corporate guarantors, and, for a successful insolvency resolution, the lands of all the

<sup>4</sup> MA 3664 of 2019 in CP 1765-1757&574/2018 on 26.02.2020

<sup>5</sup> [CA(AT) (INS) No. 919/2020 dated March 26, 2021

<sup>6</sup>2019 SCC Online NCLAT 592

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guarantors had to be consolidated for construction of the housing projects. The primary issue before the NCLAT was whether Corporate Insolvency Resolution Process could be initiated against more than one CD for same set of claims. It held that group insolvency proceedings were needed to be initiated against 5 companies that had been working as a joint consortium to develop a residential colony and directed that simultaneous CIRP should remain under the guidance of the same RP. Thus this case is another step in the judicial leaning towards a pragmatic view in group insolvency cases.

**IL&FS Case:** Eventually, in the collapse of the IL&FS Group, which required the resolution of 348 group companies, NCLAT approved the Central Government's resolution framework on October 15, 2018, and set a 90-day deadline for enforcing the plan fostering public interest protection and debt resolution for the group. While the insolvency resolution of IL&FS is outside IBC, in its order of June 22, 2021<sup>7</sup>NCLAT held that "from various matters arising under the provisions of Insolvency and Bankruptcy Code (IBC), Law has developed where Group Insolvency is also permissible."

In India, when different group entities become insolvent, it makes it difficult to determine the assets and liabilities as there is generally an inextricable link amongst them. The foregoing judicial precedents establish where business operations are connected and segregation may lead to an unviable solution, the courts step in to assist group CIRP consolidation and resolution. Considering the absence of a standard framework for insolvency of group companies and the economic benefits arising therefrom propelled the Insolvency Bankruptcy Board of India to consider and develop a framework on the subject. It put up a Working Group who, after consultation with stakeholders, collected its recommendations and submitted its report to the IBBI.

## REFORMS AND FUTURE OUTLOOK

Reforms in group insolvency resolution have been introduced to address the complexities and challenges associated with resolving insolvency issues in a group context. These reforms aim to

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<sup>7</sup>Company Appeal (AT) No. 346 of 2018 dated June 22, 2021

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enhance efficiency, promote cross-border cooperation, and protect the interests of all stakeholders involved. Some key reforms and future trends in group insolvency resolution include:

1. **Enhanced coordination:** Reforms emphasize the need for improved coordination and communication among different stakeholders involved in the insolvency process. This includes collaboration between insolvency practitioners, regulators, courts, and creditors to facilitate a more efficient and streamlined resolution.
2. **Cross-border insolvency:** As many groups operate across multiple jurisdictions, there is a growing focus on cross-border insolvency cooperation. Reforms aim to harmonize and strengthen legal frameworks to enable effective coordination and cooperation between different jurisdictions involved in resolving group insolvencies.
3. **Group-wide insolvency proceedings:** To address the interdependencies within a group, some jurisdictions are introducing mechanisms for initiating group-wide insolvency proceedings. This allows for a consolidated approach to resolving insolvency issues across the entire group, rather than dealing with each company individually.
4. **Rescue and restructuring options:** Reforms promote the use of rescue and restructuring mechanisms to avoid liquidation and preserve the value of the group. This includes encouraging the use of pre-insolvency procedures, such as debt restructuring and corporate reorganization, to facilitate the rehabilitation of financially distressed groups.
5. **Protection of stakeholders:** Reforms emphasize the need to protect the interests of all stakeholders involved in a group insolvency. This includes ensuring transparency, fairness, and equitable treatment of creditors, shareholders, employees, and other affected parties throughout the resolution process.

In terms of future trends, technology is expected to play a significant role in improving the efficiency and effectiveness of group insolvency resolution. This includes the use of artificial intelligence, data analytics, and digital platforms to streamline processes, enhance information sharing, and facilitate cross-border cooperation.

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## CONCLUSION

In the group insolvency framework under IBC, a broad and inclusive meaning of ‘group’ should be provided so as to include a large number of corporate debtors within the ambit of the framework. The meaning of ‘group’ may be based on the criteria of control and significant ownership. This definition should be applicable to all entities that fall within the definition of a ‘corporate debtor’ under the Code that is companies and limited liability partnerships. The group insolvency framework may not apply to financial service providers notified under Section 227 of the Insolvency and Bankruptcy Code, 2016.

The group insolvency framework under the IBC should only apply to corporate debtors in respect of whom a corporate insolvency resolution process or liquidation process is ongoing. Insolvency laws, like general company laws, generally respect the principle of separate legal personality of the entities in a group and deal with each entity’s assets and liabilities independently.

So, insolvency statutes in most jurisdictions treat the insolvency proceedings of each group entity separately. Although, such statutory frameworks may prove to be ignorant of economic realities and practicalities. Where group entities are significantly connected, it may be value-destructive to not recognise suchlike inter-linkages in insolvency law.