



"Procedural & Substantive Aspects of Group Insolvency: Learnings from Practical Experiences"

Synopsis of Study by Indian Institute of Insolvency Professionals of ICAI "IIPI"

Presently, the Insolvency and Bankruptcy Code, 2016 (IBC) does not provide for an arrangement to consolidate (procedurally or substantively) insolvency proceedings of corporate debtors within the same group. However, the Adjudicating Authorities (AA) under the IBC have started actively considering this possibility and passed orders taking into consideration interconnections of the corporate debtors with other group companies. It may be mentioned that procedural consolidation is in fact a procedural coordination whereby resolution or liquidation process of different (but connected) entities are put under a common procedure. Whereas in case of substantive consolidation, the assets, and liabilities of distinct (but connected) entities are pooled together for the purpose of their resolution or liquidation process.

The working group that was constituted for the purpose under convenorship of Dr. Ashok Haldia, Chairman, IIPI, consisted of fifteen members with rich experience in managing CIRPs especially involving group linkages. Given the multi-faceted aspects involved, and to have the focused approach, the group was further divided into three small sub-groups covering different aspects of study. Multiple consultative rounds of discussions across sub-groups and the larger group took place for the well-rounded discussions and recommendations.

Key Recommendations

Having established the desirability of consolidated approach for group insolvencies, the key conclusion and recommendations of the working group are summarized below:

1. Introduction of Group Framework

Given the current regulatory scenario, Group insolvency framework should be approached in a phased manner, first looking at the cases where procedural or substantive consolidation is possible with or without intervention of AA, gain insights and at the second stage, introducing regulatory changes to facilitate consolidation in a fool proof manner.

2. Legislative Changes

Before a comprehensive framework of Group Insolvency under IBC could be introduced to address the substantive aspects, sufficient experience and better insights would be required. Meanwhile however, suitable provisions should be introduced in the Code and associated legislations taking care of procedural aspects of consolidation.

3. Definition of Group

The IBBI WG (in Sept. 2019) had recommended that, a 'corporate group' may include holding, subsidiary, and associate companies, as defined under the Companies Act, 2013. It also recommended that, an application may be made to the Adjudicating Authority to include companies that are so intrinsically linked as to form part of a 'group' in commercial understanding, even if not covered by the definition of corporate group as above. The current working group did not suggest any change in this regard.

4. Joint/Substantive Consolidation: Eligibility

Substantive Consolidation essentially is aimed at effective amalgamation of holding/subsidiaries during CIRP of such inter-connected bodies. This would allow pooling of the assets/liabilities for resolution plan for revival of such company(ies).

5. Comparative Analysis with earlier Report on the Subject

The Insolvency and Bankruptcy Board of India (IBBI), recognizing the growing need for a framework on group insolvency, set up a Working Group on Group Insolvency (WG) in January 2019, under the Chairmanship of Shri UK Sinha, which submitted its report in September 2019. In its report, the WG has highlighted principles which would be likely to govern the corporate group insolvency regulatory framework (CIRP). Few of the key recommendations/observations have been examined by the current WG to provide specific comments there against.

In addition to above, the WG focused on international practices at other Asian economies, to draw early lessons on group insolvency. Moreover, a case study on a real estate company under CIRP, involving multiple subsidiaries, has also been covered in the detail.

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