



## **IBC KNOWLEDGE CAPSULE 14**

### **Framework for Group Insolvency under IBC, 2016**

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#### **Introduction:**

Group Insolvency is a framework where if multiple entities of a single corporate group go insolvent, their resolutions can be consolidated in one court so that firstly, the group can be restructured as a whole and secondly, its combined assets can be utilised in the best interest of both the group corporate and the debtor. This structure allows substantive consolidation which enables clubbing of assets and liabilities of the group members in a way that they can be treated as a single economic organism.

The Insolvency and Bankruptcy Code ('Code') provides detailed provisions to deal with the insolvency of a corporate debtor on standalone basis, it does not envisage a framework to either synchronize insolvency proceedings of different corporate debtors in a group or resolve their insolvencies together. Consequently, the insolvency of different corporate debtors belonging to the same group is dealt with through separate insolvency proceedings for each corporate debtor. However, in the insolvency resolution of some corporate debtors special issues arose from their interconnections with other group companies. While the Code is silent about group insolvency, the courts are trying to fill in this lacuna through judicial pronouncements. Group Insolvency can be tackled by either Procedural Co-ordination or Substantive Consolidation. The process of procedural co-ordination is what the Indian courts have adopted in most group insolvency cases that have been tackled.

The Insolvency and Bankruptcy Board of India ('IBBI') constituted a Working Group on Group Insolvency on January 17, 2019 which submitted its recommendations for the framework of procedure of group companies as 'Report of the Working Group on Group Insolvency' on September 23, 2019.

The following table shows the provisions (Code/Regulations/Notifications/Circulars) under the IBC framework and the case laws that deal with the Group Insolvency under IBC.

The table has been color coded as follows:

Provisions of the Code	
Regulations/Rules	
Case laws	
Circulars/Notifications and Others	

**TABLE: Group Insolvency under IBC**

<b>Source</b>	<b>Details</b>	<b>Explanation</b>
Section 60(2) and 60(3) of the Code	<p>(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal.</p> <p>(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.</p>	These provisions provide that the insolvency proceedings of a debtor company and its guarantor would be dealt with by the same Adjudicating Authority. This may also enable linking of proceedings in those cases where the debtor and guarantor are part of the same group of companies.
Section 18(f) of	(f) take control and custody of any asset over which the	This section along with Section 36

the Code	<p>corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –</p> <ul style="list-style-type: none"> <li>(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;</li> <li>(ii) assets that may or may not be in possession of the corporate debtor;</li> <li>(iii) tangible assets, whether movable or immovable;</li> <li>(iv) intangible assets including intellectual property;</li> <li>(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;</li> <li>(vi) assets subject to the determination of ownership by a court or authority;</li> </ul>	<p>(Liquidation Estate) give control of the shares of the subsidiary to the resolution professional and liquidator of the parent company. Further, a resolution plan of a parent company would deal with the assets of the company, which could include its shares in subsidiary companies. A successful resolution applicant could also receive the control of these securities.</p>
Section 5(24) of the Code	<p>(24) “related party”, in relation to a corporate debtor, means-</p> <ul style="list-style-type: none"> <li>(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;</li> <li>(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;</li> <li>(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;</li> <li>(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;</li> <li>(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid- up share capital;</li> <li>(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;</li> </ul>	<p>The Code defines related party in relation to corporate debtors to inter alia include holding-subsidiary companies, companies in which directors or managers have shareholding, companies controlling each other by virtue of contracts, companies with whom there may be de facto association in the form of participation in policy making process, interchange of employees, etc.</p>

	<p>(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;</p> <p>(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;</p> <p>(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;</p> <p>(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;</p> <p>(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;</p> <p>(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;</p> <p>(m) any person who is associated with the corporate debtor on account of-</p> <p>(i) participation in policy making processes of the corporate debtor; or</p> <p>(ii) having more than two directors in common between the corporate debtor and such person; or (iii) interchange of managerial personnel between the corporate debtor and such person; or</p> <p>(iv) provision of essential technical information to, or from, the corporate debtor.</p>	
<p>Proviso to Section 21(2) of the Code</p>	<p>(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:                  Provided that a financial creditor or the authorised</p>	<p>To avoid perverse behavior, longer time-limits are prescribed for the application of avoidance provisions in case of transactions</p>

	<p>representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:</p> <p>Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.</p>	<p>with related persons, and prohibitions in section 21 target the ability of related parties to vote as part of the CoC. Even transactions with related parties during the insolvency resolution period require approval of the CoC by virtue of section 28.</p>
Section 29A (j) of the Code	<p>(j) has a connected person not eligible under clauses (a) to (i). Explanation [I]. — For the purposes of this clause, the expression "connected person" means—</p> <ul style="list-style-type: none"> <li>(i) any person who is the promoter or in the management or control of the resolution applicant; or</li> <li>(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or</li> <li>(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):</li> </ul> <p>Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:</p> <p>Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or</p>	<p>To avoid perverse behavior, longer time-limits are prescribed for the application of avoidance provisions in case of transactions with related persons, and prohibitions in sections 29A target the ability of related parties to submit a plan for the resolution of the company.</p>

	completion of such transactions as may be prescribed, prior to the insolvency commencement date;	
Edelweiss Asset Reconstruction Company Limited v. Sachet Infrastructure Pvt. Ltd. & Ors Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019- decision dated 20.09.2019	<p>The plea taken in the case was of “<i>simultaneous ‘Corporate Insolvency Resolution Processes’ should continue against them under the guidance of same ‘Resolution Professional’.</i>”</p> <p>It was submitted that the land of all corporate debtors should be taken over by the same Resolution Professional and consolidated Resolution Plans should be invited to keep the company as a going concern.</p> <p>NCLAT held that, “<i>The Adjudicating Authority will admit the applications under Section 7 filed by ‘Edelweiss Asset Reconstruction Company Limited’ against ‘Sachet Infrastructure Pvt. Ltd.’; ‘Magad Realtors Pvt. Ltd.’; ‘Mehak Realtech Pvt. Ltd.’; ‘Sameeksha Estate Pvt. Ltd.’ and ‘Jamvant Estates Pvt. Ltd.’ and appoint the ‘Resolution Professional’ of ‘Adel Landmarks Limited’- (Developer) (‘Principal Borrower’) as common ‘Resolution Professional’ to ensure that the ‘Corporate Insolvency Resolution Process’ against ‘Adel Landmarks Limited’- (‘Corporate Debtor’) proceed jointly and ‘Information Memorandum’ is prepared in a manner that the ‘Residential Plotted Colony’ at village Palwal at Sectors 8 &amp; 9 in terms of the License No. 46 of 2009 and License No. 53 of 2009, is completed in one go by initiating a consolidated ‘Resolution Plan(s)’ for total development.</i>”</p>	<p>Link for full order:  <a href="https://ibbi.gov.in/uploads/order/e43157f60f13a1679d4efb03b8d3a908.pdf">https://ibbi.gov.in/uploads/order/e43157f60f13a1679d4efb03b8d3a908.pdf</a></p>
Venugopal Dhoot v. State Bank of India & Ors. CA-1022(PB)/2018- decision dated	<p>When the Videocon Group went insolvent, fifteen different resolution applications were filed against its fifteen different group companies. In this case, parties sought that all matters pertaining to the insolvency resolution of different Videocon companies be dealt with by the same Adjudicating Authority and that there be consolidation of separate proceedings of</p>	<p>Link for full order (24.10.2018):  <a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/Venugopal%20N.%20Dhoot%20Vs.%20State%20Bank%20of%20India%20&amp;%200rs.02019-01-19%2015:40:54.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/Venugopal%20N.%20Dhoot%20Vs.%20State%20Bank%20of%20India%20&amp;%200rs.02019-01-19%2015:40:54.pdf</a></p>

<p>24.10.2018. And State Bank of India &amp; Anr. v. Videocon Industries Ltd. &amp; Ors CP No. 02/2018 &amp; Ors- decision dated 08.08.2019</p>	<p>multiple Videocon companies to treat “the corporate insolvency resolution process as one in respect of all of these companies”. The Principal Bench of the National Company Law Tribunal (“NCLT”) ordered that all the matters regarding the insolvency resolution processes of these different companies be dealt with by the same bench of the NCLT for the purpose of “<i>avoiding conflicting orders and facilitating the hearing</i>” of these matters.</p> <p>The Adjudicating Authority ordered on 08.08.2019 that the assets and liabilities of 13 Videocon companies should be substantively consolidated due to common control, common directors, common assets, common liabilities, interdependence, interlacing of finance, co-existence for survival, pooling of resources, intertwined accounts, interloping of debts, singleness of economics of units, common financial creditors and common group of corporate debtors.</p> <p>The 13 Corporate Debtors were looked at as one economic unit on account of various inter-linkages, and consolidated CIRP was undertaken. The Corporate Debtor Group combined and thus, one committee of creditors for all 13 Corporate Debtors was constituted. Videocon case is a classic example of group insolvency carried by the courts in India.</p>	<p>Link for full order (08.08.2019): <a href="https://ibbi.gov.in/uploads/order/48cb50915c29188847ad3b13f7f6f3d6.pdf">https://ibbi.gov.in/uploads/order/48cb50915c29188847ad3b13f7f6f3d6.pdf</a></p>
<p>In the matter of Lanco Infratech Limited IA No. 192-2018 in CP(IB) No. 111-7- HDB-2017</p>	<p>In case of the Lanco Group, wherein while the parent company (i.e. Lanco Infratech Limited) was undergoing CIRP, the subsidiaries including the operational companies were not part of the CIRP initially, which resulted in liquidation of Lanco Infratech Limited due to lack of response by the bidders in the CIRP of Lanco Infratech Limited.</p>	<p>Link for full order (27.08.2018): <a href="https://ibbi.gov.in/uploads/order/8b3f38883fde88c8a122a19fae40a0f8.pdf">https://ibbi.gov.in/uploads/order/8b3f38883fde88c8a122a19fae40a0f8.pdf</a></p>
<p>Report of Working Group on Group Insolvency, 2019</p>	<p>The Insolvency and Bankruptcy Board of India (‘IBBI’) constituted a Working Group on Group Insolvency on January 17, 2019 which submitted its recommendations for the</p>	<p>Key observations and recommendations of the Working Group include-</p> <ul style="list-style-type: none"> <li>• Recommended the definition of ‘corporate</li> </ul>



	<p>framework of procedure of group companies as 'Report of the Working Group on Group Insolvency' on September 23, 2019. The recommendations cover the framework for companies at the insolvency resolution as well as liquidation stage.</p>	<p>group' which include holding, subsidiary, and associate companies.</p> <ul style="list-style-type: none"> <li>• Elements of the proposed framework may include: (i) a joint application against all corporate debtors who have defaulted and are part of a group, (ii) a single insolvency professional and a single adjudicating authority (to reduce to litigation and other costs, and save time), (iii) creation of a group creditors' committee, (iv) communication, cooperation and information sharing among all these various members, and (v) group coordination proceedings.</li> <li>• Multiple adjudicating authorities or insolvency professionals may be allowed in cases where there are issues such as: (i) conflict of interest, (ii) lack of sufficient resources, or (iii) where stakeholders would get adversely affected.</li> </ul> <p>Available at :  <a href="https://ibbi.gov.in/uploads/resources/d2b41342411e65d9558a8c0d8bb6c666.pdf">https://ibbi.gov.in/uploads/resources/d2b41342411e65d9558a8c0d8bb6c666.pdf</a></p>
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### Conclusion:

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.



**Notes:**

**Abbreviations used:**

IBBI: Insolvency and Bankruptcy Board of India  
IPA: Insolvency Professional Agency  
ICSI IIP: ICSI Institute of Insolvency Professionals  
IP: Insolvency Professional  
CIRP: Corporate insolvency resolution process  
IRP: Interim Resolution Professional  
AR: Authorised Representative  
COC: Committee of Creditors  
CD: Corporate Debtor  
FC: Financial Creditor  
OC: Operational Creditor  
Code: Insolvency and Bankruptcy Code, 2016

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