

Report Summary

Working Group on Group Insolvency

- The Working Group on Group Insolvency (Chair: Mr. U.K. Sinha) submitted its report to the Insolvency and Bankruptcy Board of India (IBBI) on September 23, 2019. The Insolvency and Banking Code, 2016 creates a unified framework to resolve insolvencies in a time-bound manner. This is done through a Corporate Insolvency Resolution Process (CIRP), which is initiated by the National Company Law Tribunal. The Working Group was constituted to examine issues arising in CIRPs where a distressed company is linked to other group companies. Key observations and recommendations of the Working Group include:
 - **Need for a common framework:** The Working Group noted that the Code has provisions for resolving corporate insolvencies for a single company. However, it does not have a common framework for resolving situations in which interlinked companies are going through CIRPs. Several issues may arise in such scenarios. For instance, the Committee noted that group companies may have financial linkages (say, inter-corporate guarantees for loans taken by one group company) or operational linkages (say, dependence on a group company for supply of raw materials). In these cases, treating the insolvency of each group company in an isolated manner might be expensive, and might result in creditors realising lesser value.
 - **Proposed framework:** The Working Group recommended that the definition of ‘corporate group’ include holding, subsidiary, and associate companies. The adjudicating authority may include other groups not covered in the definition. The Working Group suggested a comprehensive framework for group insolvency, that would start with a procedural coordination mechanism in the first phase. These mechanisms may apply only to those group companies which have defaulted, and are covered by the Code for insolvency resolution or liquidation. Such procedural coordination may be allowed at any stage of the insolvency resolution, or liquidation process.

The framework may set certain rules against perverse behaviour (such as cases where the parent company has behaved unfairly in the management of a group member). In such exceptional cases of fraud, the adjudicating authority may be allowed to subordinate the claims of other companies in a group.
 - **Elements of the proposed framework:** 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. Of these, the cooperation, communication and information sharing among insolvency professionals, creditors’ committee, and adjudicating authorities must be mandatory. The remaining elements may be voluntary.
 - **Exceptions to the framework:** 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.
 - **Phased implementation:** The Working Group recommended that the framework for group insolvency may be introduced in a phased manner. In the first phase only domestic companies may be covered, and only procedural consolidation mechanisms may be implemented. To implement the first phase of the framework, extensive capacity building of insolvency professionals, creditors, and other stakeholders should be undertaken by IBBI and the central government.
 - **Collaboration between creditors:** The group creditors’ committee would support the individual Committee of Creditors and not replace them. They may be governed by a framework agreement (approved by each of the Committee of Creditors) that lays out the cost of proceedings and their distribution, and various other mechanisms. The group creditors’ committee may appoint a group coordinator to propose the actions of the committee. The Working Group recommended that only insolvency professionals be appointed as group coordinators.
 - **Extension of timeframe:** The Working group noted that the existing timeframe of 180 days (extendable by 90 days) may not be sufficient for group insolvency proceedings. This would depend upon the degree and complexity of inter-company linkages. Therefore, it recommended that the timeframe for cases in which group coordination proceedings have been opened may be extended by an additional 90 days. However, the overall timeframe should not exceed 420 days (including time taken in litigation).

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