Group Insolvency

What is the issue?

- Insolvency and Bankruptcy Board of India (IBBI) constituted a Working Group to recommend facilitation of group insolvency and liquidation process.
- The group released its report in September 2019 recommending implementation of a framework in a phased manner.

What is the story behind?

- Group companies are a set of entities related by shared control or economic dependencies.
- At present, the Insolvency & Bankruptcy Code does not envisage a framework to harmonise corporate insolvency resolution process and liquidation proceedings of group companies.
- However, in Corporate Insolvency Resolution Process (CIRP) of various corporate debtors, the need of group insolvency arose due to interconnections within associated companies.
- This led to IBBI constituting a Working Group (WG).

What is a Corporate Group?

- The WG recommended an amendment to the Code to add a definition of "Corporate Group".
- It also recommended that this definition should be based on the criteria of 'control and ownership'.
- It recommended that the definition of Corporate Group should include associate, holding and subsidiary companies.
- If a company is not covered within the said definition and yet is intrinsically linked to a part of a group in a commercial understanding, the Adjudicating Authority may include such company in the group.

What mechanisms did the WG recommend?

- It is a well-settled legal principle that subsidiaries are a separate legal entity and holding company does not own assets of its subsidiary.
- In this regard, the WG has recommended the mechanisms like Information Sharing, Group Coordination Proceedings, and Single Professional, Group CoC and Joint Applications.

What does it say about information sharing?

- The WG has recommended that IPs, committee of creditors and adjudicating authorities should communicate insolvency proceedings information to reduce duplicating efforts.
- However, it has failed to device a mechanism for information sharing.
- One way is to upload the necessary information on information utilities to assess whether there is a need for initiating group insolvency proceedings for a particular company.

What does it say about group coordination proceedings?

- The WG has suggested for appointment of a group coordinator to supervise valuation of total assets, common information memorandum, expression of interest, group CoC and resolution plan.
- However, the CoC of a group company, by a majority vote, may opt out of the insolvency proceeding, after assailing a reason for the same.
- The legislature should put a condition that no company shall be allowed to opt out after a certain stage, otherwise, it would derail the insolvency proceedings.
- Given that group company insolvency involves various complexities, the WG has suggested extending the time limit of CIRP to 420 days from 330 days by amending section 12 of the Code.

What are the other recommended mechanisms?

- The WG has recommended a **joint application** to commence CIRP for group companies provided all companies have committed a default as per the code.
- It has also recommended **administering insolvency proceedings** of group companies by a single adjudicating authority.
- It recommends vesting jurisdiction to the first adjudicating authority, where CIRP application has been filed by amending Section 60(1) of the Code.
- [At present, the jurisdiction is vested upon the adjudicating authority where the corporate debtor has its registered office.]
- The WG has recommended appointment of a **single Insolvency Professional** for group companies, unless, adjudicating authority is of the view that it may lead to conflict of interest.
- It recommends the constitution of group a **CoC**, the composition of which is to be decided by the CoC of each group company.

What are the challenges in implementing group insolvency framework?

- **Definition** - The term “commercial understanding” in the definition of Group Company, as recommended by the report, is vague.

- It may lead to an incongruous interpretation leading to flood gates of frivolous applications before the adjudicating authority, thereby delaying proceedings and clogging of judicial infrastructure.
- **Derogation** - Before initiating group insolvency proceedings, the adjudicating authority will have to satisfy itself of the inter-linkage between associate companies.
- Otherwise, if each company's CIRP can be dealt in segregation, it would result in reduction in the value of assets.
- This is in derogation of the principles of maximisation of assets envisaged in the preamble of the code.

What could be done?

- To avoid any hurdle, IBBI should frame a holistic definition of Group Company, to include all companies that are linked intrinsically either by horizontal or by vertical integration.
- Nonetheless, the time seems right to further fortify the code by adding provisions to aid group insolvency of companies.

Source: The Indian Express

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