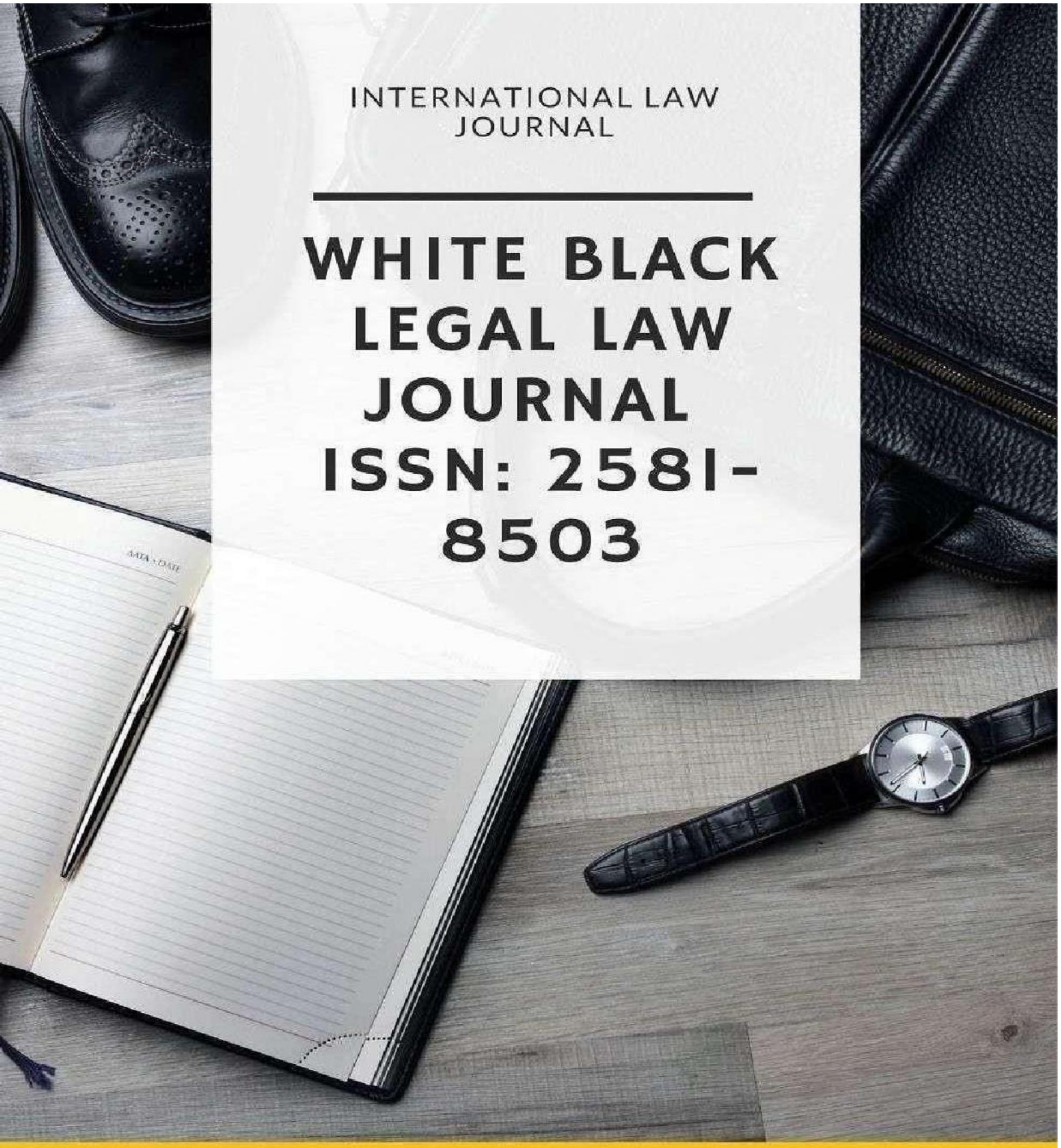

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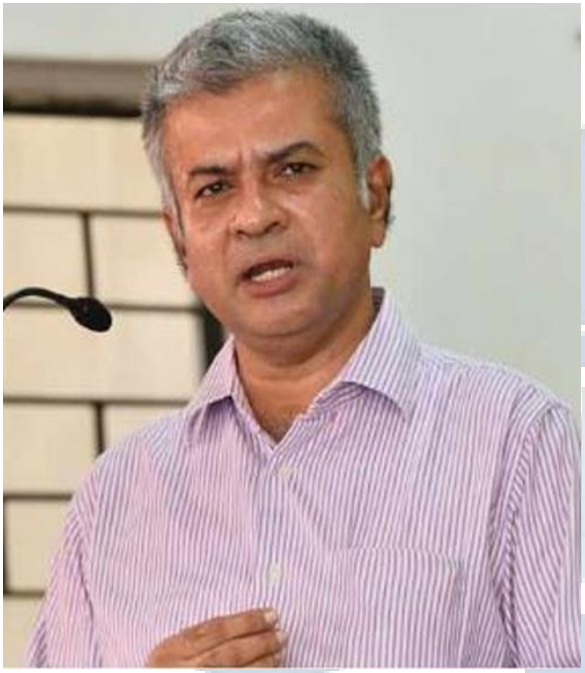

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

TOWARDS A UNIFIED FRAMEWORK: ADDRESSING GROUP INSOLVENCY CHALLENGES IN INDIA

AUTHORED BY: ADV. ATUL RAJ,
LEGAL RESEARCH ASSOCIATE, NCLT

I. INTRODUCTION: -

In recent months, there has been a growing chorus for introduction of a group insolvency framework under the Insolvency and Bankruptcy Code, 2016 (IBC) to facilitate joint resolution of stressed entities of a single corporate group[1]. The Insolvency and Bankruptcy Board of India ("IBBI") has also recognized the need to introduce group insolvency regime in India[2].

The IBC has been enacted to provide a comprehensive framework for initiating and resolving insolvency and liquidation processes for corporate entities as well as individuals. Initially, the IBC was limited to single corporate entities, as the Indian legal system was deemed to lack the necessary infrastructure to handle group insolvencies effectively. The legal framework dealing with corporate law in India, including the IBC, typically respects the principle of separate legal identity of corporate bodies. Therefore, even though the IBC has achieved noteworthy success in resolving numerous insolvency cases, the issue of managing insolvency proceedings for corporate groups has posed challenges for the judicial forums. In today's highly competitive corporate environment, businesses are increasingly adopting modern strategies, such as expanding operations through subsidiaries and engaging in related-party transactions. Notably, India was ranked 20th out of 190 countries in the Related Party Transaction Index published under the World Bank's Doing Business Report[3].

The IBC is based on the doctrine of separate legal entity as laid down in *Salomon v. Salomon & Co. Ltd*[4]. The ruling by House of Lords in *Salomon* is foundational in company law, establishing that upon incorporation, a company stands as a separate legal person, distinguished

[1] https://economictimes.indiatimes.com/news/india/ibc-may-get-a-voluntary-group-insolvency-mechanism-soon/articleshow/114326783.cms?from=mdr
[2] https://www.thehindubusinessline.com/economy/india-needs-a-tailored-group-insolvency-framework-says-ibbi-chief/article68962151.ece
[3] World Bank, Doing Business 2018: Reforming to Create Jobs (Online), http://www.doingbusiness.org/reports/global-reports/doing-business-2018
[4] [1897] AC 22

from its owners and key managerial personnel. Further, this principle underpins modern corporate structures, promoting investment by limiting personal liability but also allowing for accountability in cases of misuse. The above principle was affirmed by the Hon'ble Supreme Court in *Life Insurance Corporation of India vs. Escorts Ltd. & Ors*[5] wherein it was held that an incorporated company has a distinct legal entity with its own assets, liabilities, and powers, separate from its members. The principle of separate legal identity, thus, emphasizes that each company, once incorporated, is treated as an independent legal entity, distinct not only from its shareholders and directors but also from other companies within the same corporate group. This principle, as discussed in the later part of this paper, has significant implications, especially in cases where group companies operate as a single economic entity but remain legally distinct.

It is often argued that group insolvency cannot be initiated against group companies due to the separate legal existence of the parent company and its subsidiaries. However, this argument is flawed, as courts have frequently set aside the principle established in the *Salomon* case to lift the corporate veil between group companies, treating them as part of a single economic entity. Notably, in *DHN Food Distributors Ltd. v. Tower Hamlets*[6], the Court of Appeal recognized a group of three companies as a single economic unit if their operations are interwoven. Similarly, the Supreme Court of India, in *Life Insurance Corporation of India* (supra), held that the corporate veil could be lifted when associated companies are so interconnected that they function as a unified entity, subject to legal provisions and the objectives to be achieved.

The corporate veil, a metaphorical barrier that separates a company as a distinct legal entity from its shareholders, directors, and associated entities, has historically been sacrosanct under the principle of separate legal personality. However, modern corporate jurisprudence reflects a growing trend toward making this veil increasingly transparent, ensuring accountability and fairness without dismantling the doctrine entirely. In *Gilford Motor Co. vs. Horne*[7], the court lifted the veil when a company was formed to circumvent a restrictive covenant. In *Jones vs. Lipman*[8], the separate legal identity of the company was ignored to prevent the use of the company to avoid contractual obligations. In context of the group company liability, the

[5] (1986) 1 SCC 264
[6] [1976] EWCA Civ J0304-4
[7] [1933] Ch 935
[8] [1962] 1 WLR 832

Hon'ble Supreme Court in *State of Uttar Pradesh vs. Renusagar Power Co. & Ors*[9], treated the holding company as well as its subsidiary as a single concern after analysing the affairs of the companies as well as their shareholding structure. Further, the Hon'ble Supreme Court observed that the *"ghost of Salomen's case still visits frequently the hounds of Company Law but the veil has been pierced in many cases"*.

The UNCITRAL Legislative Guide on Insolvency Law on the Treatment of Enterprise Groups in Insolvency ("UNCITRAL Guide") has loosely defined an 'enterprise group' as '*two or more enterprises that are interconnected by control or significant ownership*'. Further, it highlights that such enterprise groups can create significant challenges during insolvency proceedings, particularly when there is an interdependence of group companies which are incorporated in different jurisdictions. The Guide emphasis that when one or more entities within the group face insolvency, it is crucial to ensure that the proceedings are handled in a way that respects the interconnections and financial obligations among the entities while also promoting fairness and efficiency The key elements of the Guide can be summarized as follows:

- Coordinated Insolvency Proceedings: The guide emphasizes the importance of coordinating insolvency proceedings across multiple entities within an enterprise group. This could involve creating a framework that allows for the simultaneous or parallel handling of insolvency cases in different jurisdictions or courts.
- Group-Wide Relief: In certain circumstances, it may be appropriate to provide relief to the entire group of companies under a unified procedure. This includes considering group-wide actions like the suspension of legal actions or a stay on creditor claims, to ensure that the insolvency process does not disproportionately affect individual entities within the group.
- Cross-Border Issues: Many enterprise groups operate in multiple jurisdictions, leading to cross-border insolvency issues. The guide suggests adopting mechanisms like the Model Law on Cross-Border Insolvency to address these challenges and promote international cooperation among insolvency practitioners, courts, and creditors.
- Priority of Claims: The guide outlines how claims should be treated when insolvency affects several entities in an enterprise group. This includes prioritizing claims within the individual entity while also considering the overall financial structure of the group.

[9] AIR 1988 SC 1737

- Governance and Control: The guide advises on governance structures for managing the insolvency of enterprise groups, including whether a central body (such as a group coordinator) should be appointed to oversee the proceedings.
- Creditors' Rights: Special attention is given to the rights of creditors in an enterprise group insolvency situation. The guide recommends that creditors should be treated fairly, and their claims should be assessed in a transparent and consistent manner.
- Risk Mitigation and Preventive Measures: The guide also discusses the importance of preventive measures that may reduce the risk of insolvency within a group. This includes improved governance, financial transparency, and strategic planning to ensure that insolvency is less likely to occur across the group.

Given the growing prevalence of conglomerates and group companies in India's corporate landscape, the need for a group insolvency regime has become increasingly apparent. In furtherance of the same, the Insolvency and Bankruptcy Board of India ("IBBI") established the Working Group on Group Insolvency, chaired by Shri U.K. Sinha, which submitted its report in September 2019. The recommendations made in the report, discussed in detail in the later part of the paper, aims to address the gaps in the current insolvency regime by introducing a comprehensive framework for corporate group insolvency to achieve maximization of the value of the combined assets of the group companies.

In the modern scenario, when the group entities are intertwined, non- recognition of their interconnection in insolvency law may lead to erosion of value of the entire group as well as the individual entities within it[10]. Although the IBC currently lacks provisions for group insolvencies, the Companies Act, 2013 recognizes group companies as a single economic entity, requiring parent companies to prepare consolidated financial statements for their subsidiaries. Additionally, in *Exclusive Motors Pvt. Ltd. v. Automobili Lamborghini S.P.A.*[11], the Competition Commission of India upheld the single economic entity principle, ruling that internal agreements between subsidiaries of the same group cannot be challenged for anti-competitive practices under Section 3 of the Competition Act, 2002. These evolving perspectives under the Companies Act, 2013, and the Competition Act, 2002, reflect a positive judicial and regulatory approach in India toward recognizing the single economic entity principle, particularly in cases where closely linked subsidiaries influence each other's

[10] Daoning Zhang, 'Insolvency Law and Multinational Groups, Theories, Solutions and Recommendations for Business Failure' (Routledge Research in Corporate Law, 2020)
[11] Case No. 52 of 2012 (Competition Commission of India).

economic activities. This further underscores the need to incorporate the single economic entity principle into the IBC by introducing a group insolvency regime in India.

II. CURRENT JURISPRUDENCE IN INDIA: -

Indian courts have generally emphasized that the principle of lifting the corporate veil should be applied cautiously and only in exceptional circumstances. In *Vodafone International Holdings BV v. Union of India*[12], the Supreme Court held that to treat group companies as a single entity, it must be demonstrated that the parent company exercises control over the core activities of its subsidiaries. Only when this essential condition is met should the corporate veil between group companies be lifted. Similarly, the High Court of Andhra Pradesh, in *Walnut Packaging Private Limited v. The Sirpur Paper Mills Ltd. & Anr.*[13], ruled that the principle of piercing the corporate veil does not apply in cases involving the winding up of holding companies due to payment defaults by their subsidiaries. Consequently, the pre-IBC era did not favor the practice of lifting the corporate veil to treat group entities as a single economic unit for restructuring or winding up purposes.

Despite the absence of any provisions in the IBC to deal with group insolvency, several cases before the National Company Law Tribunal (NCLT) have highlighted the need to establish a group insolvency framework in India. A landmark decision by the Principal Bench of the NCLT in *Venugopal Dhoot v. State Bank of India & Ors*[14]. directed that insolvency proceedings for various companies within the Videocon group be heard by the same Adjudicating Authority. This was done to prevent conflicting orders, following a request from the parties involved. In another significant ruling, *State Bank of India v. Videocon Industries Ltd. & Ors.*[15], the NCLT ordered the substantive consolidation of the assets of thirteen Videocon group companies, citing common directors, shared assets, and unified economic operations. These rulings effectively laid the groundwork for introducing a group insolvency regime in India and incorporating the single economic entity principle into the IBC.

The decision in *Videocon Industries* marked an early step toward group insolvency in India. Building on this, the National Company Law Appellate Tribunal (NCLAT) made another

[12] Civil Appeal No. 733 of 2012
[13] O.S.A. No. 21 of 2008
[14] 2018 SCC OnLine NCLT 29551
[15] State Bank of India v. Videocon Industries Limited, 2019 SCC OnLine NCLT 745

significant advancement in *Edelweiss Asset Reconstruction Company Limited v. Sachet Infrastructure Pvt. Ltd. & Ors*[16]. In this case, the Appellate Authority directed the initiation of a simultaneous Corporate Insolvency Resolution Process (CIRP) for a group of five companies, managed by a single Resolution Professional. The need for group insolvency proceedings was explicitly acknowledged, as the companies shared common assets within a town planning scheme. The Appellate Authority consolidated the insolvency proceedings, reasoning that unless all the companies resolved their insolvency issues, the township project would remain incomplete, causing harm to creditors. This order highlights the potential benefits of group insolvency proceedings in cases where companies share common assets, as such consolidation can enhance asset maximization and better satisfy creditors' claims.

In the case of *Sanghvi Movers Limited (Operational Creditor) vs. M/s. Albanna Engineering (India) Pvt. Ltd. & Others*[17], the Kochi Bench of the NCLT relied on the *Videocon* case and ruled that the assets and properties, including any claims or interests of the holding company of the CD, which is not undergoing CIRP, will be considered to be the assets of the wholly owned subsidiary, which is undergoing CIRP, for the purposes of the IBC. The Tribunal observed that the management and shareholding for both the companies were the same and since the subsidiary company did not have any assets of its own, it along with its holding company was to be treated as a single economic unit. The Tribunal further held that the aforesaid principle would not be taken as a straight jacket formula but will be considered on a case-to-case basis.

While these orders show the positive attitude of the NCLTs and the Appellate Authority towards introduction of the group insolvency regime in India, the Supreme Court has also signalled towards the need for such a structure in the Indian insolvency laws. In *Chitra Sharma & Ors. v. Union of India*[18], the Hon'ble Supreme Court in exercise of its power under Article 142 of the Constitution directed the Jaypee Group to deposit a substantial sum in connection with insolvency proceedings against its group companies. In doing so, the Hon'ble Court lifted the corporate veil between the Jaiprakash Associates Limited i.e. the holding company, and Jaypee Infratech Limited i.e. the subsidiary company in order to protect the interests of the homebuyers. Similarly, in *Bikram Chatterji & Ors. v. Union of India*[19], the Court ordered the

[16] Company Appeal (AT) (Insolvency) No. 377 of 2019
[17] (MA/25/KOB/2020) in (IBA/38/KOB/2019)
[18] (2018) 18 SCC 575
[19] WP (Civil) No. 940/ 2017

attachment of the parent company's assets in relation to insolvency proceedings involving various entities within the Amrapali Group.

Thus, according to these court rulings and tribunal orders, the Adjudicating Authority, the Appellate Authority, and even the Supreme Court have taken affirmative steps for introducing the single economic entity principle into Indian insolvency laws and for starting group insolvency in India, despite the fact that the IBC makes no mention of doing so. The Court noted in *Walnut Packaging Private Limited v. The Sirpur Paper Mills Ltd. & Anr.* that the corporate veil can be lifted and all of the companies within the company can be treated as a single entity in circumstances where the statute allows for considering a group entity to be a single economic entity.

It is also apposite to refer an order dated 23.02.2023 passed by the Hon'ble NCLAT in *Mr. Dinesh Kothari vs. Mrs. Rajalakshmi Varadarajan, RP of Pondicherry Extraction Industries Private Limited*[20] whereby the Hon'ble Appellate Tribunal rejected the appeal to consolidate the insolvency proceedings of the three corporate debtors, who were part of a single corporate group, on the ground that the requirements necessary for 'consolidation' of CIRPs was not met. The Hon'ble Appellate Tribunal observed that no assets of the corporate debtor can be sold as standalone units and the sole member of the Committee of Creditors, having 100% of the voting rights, had opposed the request for consolidation of CIRPs.

In the above case, it also appears that the Committees of Creditors (CoCs) remain cautious about adopting Group Insolvency under the IBC due to several factors. These include a limited understanding of business linkages, interdependencies, and related party transactions, coupled with a reluctance to take risks. CoCs often exhibit a lethargic attitude, narrow perspectives, and a self-centered approach, with concerns about the complexities of tracking multiple Corporate Insolvency Resolution Processes (CIRPs). Additionally, there is apprehension about managing the added burden, unknown risks, and challenges in determining appropriate valuations. The process of handling multiple Resolution Professionals (RPs), CoCs, and proceedings also contributes to delays and increased costs, including the need for separate valuers, lawyers, filings, court fees, public announcements, and data rooms, as well as coordinating multiple CoC meetings, progress reports, plan evaluations, approvals, and litigation[21].

[20] Company Appeal (AT)(CH)(Ins) No. 17/2023
[21] Ms. Renuka Devi Rangaswamy- "*Invocation of Group Insolvency*"

Thus, it appears that even before the Working Group was constituted by the IBBI to assess the viability for introduction of group insolvency framework in India, both the NCLT as well as the NCLAT had already been considering the introduction of a group insolvency in the corporate insolvency resolution processes.

III. REPORT OF THE WORKING GROUP: -

A Working Group ("WG") established by the Insolvency and Bankruptcy Board of India ("IBBI") released a report in September 2019 that provided recommendations to address insolvency in group entities under. The Report recognized the challenges posed by group companies with interlinked operations and financial structures and noted that the insolvency of one group entity can affect the operations and viability of others. This section of the paper emphasizes the details of the report and the rationale behind the recommendations made within it.

The WG primarily focused on three key elements that, in their view, govern the complexities of insolvency within corporate groups: '*procedural coordination mechanisms'*, '*substantive consolidation mechanisms*', and '*rules addressing the perverse behaviour of companies within a group*'. However, recognizing that the concept of 'group insolvency' is still in its infancy, the WG has proposed a phased implementation of the framework, starting with reforms to procedural mechanisms as the first phase.

Keeping in view the fact that provisions relating to cross- border insolvency were still evolving, the WG further recommended a cautious approach where the framework will initially be limited to companies within domestic groups. Thereafter, based on its effectiveness, it could then be extended to cases of cross-border group insolvency. The WG highlighted several benefits of adopting the Group Insolvency Framework, including improved information exchange among stakeholders, which could enhance the chances of resolution. However, a notable concern is whether small stakeholders, who have minimal stakes, would find it feasible to invest in promoting information symmetry.

Furthermore, in order to minimise the recurrence of work in various Adjudicating Authorities due to the insolvency of companies that are interlinked, the WG has proposed for assigning a single Adjudicating Authority to oversee the insolvency process for an entire corporate group,

making it more efficient and cost-effective while helping to ease the burden on the judiciary over time. However, this approach may lead to jurisdictional challenges and could potentially impact companies located outside the authority's jurisdiction.

The WG has provided the Framework for dealing with Group Insolvency in three phases as mentioned earlier and only the procedural mechanisms are to be applied at the initial stage. In drafting the Framework, the WG examined the group insolvency frameworks in jurisdictions like the EU, UK and the US and has also taken into consideration the UNCITRAL Guide, with the aim of designing a comprehensive tailormade framework for India.

The key recommendations made in the WG Report are discussed in the following sub- heads:

A. Definition of Corporate Group:

Before initiating the three phases of implementation, the WG focused on defining the term "corporate group." While some stakeholders suggested that the Adjudicating Authority should have the discretion to determine the framework's applicability on a case-by-case basis, the WG dismissed this idea. Instead, it emphasized the importance of defining "corporate group" in a way that allows stakeholders to ascertain the framework's applicability without requiring case-specific analysis by the Adjudicating Authority. Accordingly, the WG recommended defining a "corporate group" to include holding, subsidiary, and associate companies as defined under the Companies Act, 2013.

Additionally, it suggested that companies intrinsically linked to form part of a ‘group’ in a commercial context, even if not covered under the proposed definition of ‘corporate group,’ may be included upon approval by the Adjudicating Authority. This approach aims to maximize the value of the insolvent company without adversely affecting the assets of the additional entities being included.

B. Procedural Coordination Mechanisms:

Procedural coordination mechanisms are rules designed to align the insolvency processes while keeping the assets of group companies separate. These mechanisms include collaboration between courts, appointing a single insolvency representative, facilitating information-sharing, and conducting joint negotiations. The UNCITRAL Guide and the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, 2016 (“WB Principles”), advocate for the adoption of such mechanisms.

Given the wide range of procedural coordination mechanisms and the complexity of mandating all of them, the WG recommended making certain elements—such as cooperation, coordination, and information-sharing—mandatory. However, it suggested allowing flexibility to exclude specific mechanisms if they do not contribute to asset optimization or maximization or if they result in lower costs.

The WG recommended 'voluntary participation' where the group entities should voluntarily opt for procedural coordination which will ensure autonomy while promoting collective resolution strategies. It also recommended appointment of a 'Group Coordinator' to oversee and facilitate coordination with the responsibility of developing a 'group coordination plan' to align insolvency strategies and maintaining a line of communication between insolvency professionals and creditors of different group entities.

The WG emphasized that insolvency professionals, the Committee of Creditors (CoC), and Adjudicating Authorities must be required to cooperate, communicate, and share information to enhance time management, reduce costs, and promote information symmetry. It also encouraged the sharing of relevant financial and operational data among group entities to enable better decision- making and assessment of interdependencies. However, the scope of such cooperation, communication, and information-sharing would remain at the shareholders' discretion.

Additional procedural mechanisms included in the framework are: a joint application process for the insolvency of multiple companies, appointing a single Adjudicating Authority to oversee insolvency proceedings, designating a single insolvency professional for a corporate group, forming a group creditors' committee, enabling group coordination proceedings, and extending the insolvency timeframe.

C. Preventing Perverse Behaviour of Companies in a Corporate Group:

The Report acknowledged the potential for companies to exploit their group structure to circumvent liabilities or obstruct effective resolution. To safeguard the rights and interests of external creditors within a corporate group, the WG emphasized the importance of implementing rules to prevent perverse behavior by group companies, thereby mitigating undue risks. These rules would apply even if only a single company within the group is insolvent, ensuring a comprehensive approach to the challenges faced by companies in a corporate group during insolvency.

The recommended measures to prevent such behaviour include enhanced oversight by

the Adjudicating Authority to scrutinize transactions and decisions that appear intended to manipulate the insolvency process and to enable the AA to direct specific group entities to cooperate in the resolution process. The Report also called for monitoring the intercompany transactions to identify preferential/ fraudulent transfers and taken action under Section 43, 45 and 66 of the Code. Moreover, the WG recommended full disclosure of financial relationships and interdependencies among group entities as well as regular reporting of asset transfers and liabilities during the insolvency process. In formulating these rules, the WG took into account the UNCITRAL Guide as well as practices adopted in various countries.

D. Substantive Consolidation:

Substantive consolidation involves merging the assets and liabilities of different group companies to treat them as a single entity during liquidation. This approach has already been permitted in *Videocon case (supra).* The WG recommended caution and limited use of substantive consolidation. It observed that substantive consolidation should be a remedy of last resort, applied only in cases where it is impossible to segregate the assets and liabilities of group entities or where the consolidation is essential to achieve equitable treatment of stakeholders and maximize value.

The WG Report noted that for substantive consolidation to be implemented, the AA must assess and determine its necessity. It proposed the following criteria to determine the applicability of substantive consolidation:

- *Interconnected Finances:* Significant financial and operational interdependence among group entities.
- *Inability to Segregate Assets and Liabilities:* Practical difficulties in separating insolvency estates due to intertwined transactions.
- *Fraud or Mismanagement:* Evidence of fraudulent activities or deliberate mismanagement across entities to defeat creditor claims.

Moreover, the WG Report observed that substantive consolidation should not be applied where entities can be independently resolved without significant complexity and noted that legal separateness should be respected in the absence of compelling reasons for consolidation. To ensure procedural safeguards, the WG recommended that substantive consolidation should be preceded by a transparent process, including notice to all stakeholders, opportunity for creditors and affected parties to present objections

and detailed justification recorded by the AA for ordering consolidation.

The WG Report also noted the anticipated benefits of introducing group insolvency such as efficient resolution due to reduced delays and costs, preservation of value by preventing piecemeal liquidation of interdependent businesses and improved creditor recovery by aligning stakeholders' interests.

Thus, the WG report provided a roadmap for introducing a group insolvency framework in India, emphasizing coordination over consolidation while respecting the autonomy of group entities. It aimed to balance efficiency, stakeholder interests, and the complexities of domestic corporate structures.

IV. CHALLENGES: -

A. Definition of "Corporate Group":

The concerns arising from the Working Group's recommended definition of "corporate group" in the context of group insolvency are significant, as they touch upon key issues of clarity, inclusivity, and practicality in implementation. The WG's definition appears to lack clarity, as it focuses on holding, subsidiary, and associate companies without providing specific parameters for what constitutes such relationships in the insolvency context. This creates ambiguity for stakeholders, who might struggle to determine whether their companies qualify as part of a "corporate group." This uncertainty also undermines the objective of providing a predictable framework for group insolvency. Moreover, the provision allowing companies to approach the Adjudicating Authority for inclusion in the "corporate group" compounds the vagueness by delegating significant interpretative power to the judiciary. This approach risks overburdening the Adjudicating Authority with numerous applications, leading to delays and increased litigation costs for all parties involved. Such reliance also contradicts the WG's stated goal of minimizing litigation by enabling stakeholders to assess the framework's applicability ex ante. Furthermore, by limiting the scope of the definition to specific ownership structures (holding, subsidiary, and associate relationships), the WG's definition may exclude other types of interconnected companies, such as those linked through significant operational or financial dependencies. Exclusion of these entities could lead to fragmented insolvency proceedings, reducing the likelihood of value maximization for the group as a whole.

Therefore, there is a need for a more inclusive and detailed definition is critical to

addressing the challenges identified. Such a definition should account for various forms of corporate linkages, including ownership, control, operational integration, and financial interdependence, as well as provide clear criteria to help stakeholders determine their eligibility under the group insolvency framework without judicial intervention.

B. Jurisdictional Challenges:

The Working Group recommended that, as part of the procedural mechanisms under the group insolvency framework, a single Adjudicating Authority should be designated to oversee group insolvency proceedings. It proposed that this authority should be the one located where the first insolvency application was admitted. This recommendation aims to reduce litigation costs, conserve judicial resources, expedite the admission process, and minimize the risk of forum shopping. Additionally, the WG suggested a solution for cases where insolvency applications have already been filed for multiple group companies, recommending that these applications be transferred to the Adjudicating Authority first approached.

The proposal to designate a single Adjudicating Authority to oversee group insolvency proceedings faced criticism from stakeholders. While some stakeholders supported the idea, they argued that the Adjudicating Authority should have jurisdiction over the location of the corporate group's Center of Main Interests (CoMI). Others expressed concerns that transferring insolvency applications between Adjudicating Authorities could unfairly impact their interests. Acknowledging these concerns, the Working Group (WG) appeared to permit the involvement of multiple Adjudicating Authorities, provided there was an exchange of information and cooperation between them.

However, this approach raises questions about clarity and consistency. On one hand, the WG emphasizes the necessity of a single Adjudicating Authority, yet on the other hand, it allows stakeholders some flexibility to involve different Adjudicating Authorities. This flexibility is effectively overridden if the Committee of Creditors (CoC) applies for the proceedings to be handled by the initially approached Adjudicating Authority. This creates ambiguity, as the recommendation simultaneously supports the mandatory appointment of a single Adjudicating Authority while also offering limited liberty to stakeholders, which can ultimately be nullified by the CoC's application.

C. Cross Border Insolvency and Group Proceedings:

The growing globalization and inflow of Foreign Direct Investment (FDI) in India have indeed brought attention to the complexities surrounding cross-border insolvency and group insolvency proceedings. While India has made significant strides in insolvency and bankruptcy reforms through the introduction of IBC, 2016 certain gaps remain, particularly in handling cases that transcend national borders. The IBC does not currently have comprehensive provisions for dealing with cross-border insolvency cases, and relies on provisions such as Section 234 (agreements with foreign countries) and Section 235 (letter of request to a foreign court), which are cumbersome and rarely used. The adoption of the UNCITRAL Model Law on Cross-Border Insolvency has been proposed to address these gaps. It emphasizes recognition of foreign insolvency proceedings, cooperation between domestic and foreign courts, principles like "center of main interest" (CoMI) for jurisdictional clarity.

With respect to group insolvency, there are various challenges to be dealt with. Many multinational corporations operate through complex structures involving multiple subsidiaries across jurisdictions while the Indian insolvency regime currently focuses on individual entities rather than treating corporate groups as a single economic unit. This approach leads to inefficiencies, conflicting outcomes, and delays, particularly when dealing with interconnected companies within the same group. Moreover, Indian courts have occasionally addressed cross-border insolvency issues on a case-by-case basis. However, the lack of a uniform framework creates unpredictability. The absence of specific provisions for group insolvency further compounds the problem, leaving creditors and stakeholders with little clarity.

Thus, a robust cross-border insolvency framework modeled on the UNCITRAL guidelines should be integrated into the IBC. Special provisions for consolidated or coordinated insolvency proceedings for group companies can help streamline processes and ensure better outcomes. International Cooperation Agreements with other jurisdictions to facilitate mutual recognition and assistance in insolvency proceedings is also needed.

Addressing these challenges is critical for enhancing investor confidence and ensuring that India remains an attractive destination for multinational corporations. A predictable and efficient insolvency framework will not only benefit businesses but also contribute to the stability and growth of the Indian economy.

V. CONCLUSION: -

The Working Group Report of 2019 emphasized the lack of a statutory framework under the IBC, 2016 for handling group insolvency, resulting in fragmented and inefficient proceedings for corporate groups. Key challenges include the absence of a clear definition of "group companies," complexities in interconnected liabilities, jurisdictional conflicts, and risks of abuse, such as asset shifting. Additionally, Indian stakeholders lack experience and guidelines for managing such cases, and coordination among them is inadequate. The report proposed a phased approach, starting with procedural coordination and moving to substantive consolidation for interconnected entities. It also stressed the need to align India's framework with international best practices, such as the UNCITRAL Model Law, to ensure efficiency and fairness in group insolvency proceedings.

As discussed above, the need for a group insolvency framework in India arises from the increasing complexity of corporate group structures and their interconnected financial and operational dependencies. Under the current insolvency framework in India, each entity is treated as an individual debtor, resulting in fragmented proceedings, inefficiencies, and value erosion for stakeholders. Many group companies share assets, liabilities, and operations, making it challenging to achieve a fair and efficient resolution without a unified approach. The absence of such a framework also creates risks of abuse, such as asset diversion or evasion of liabilities. Moreover, with the rise of cross-border investments and multinational group entities, a robust group insolvency regime aligned with international best practices is crucial to provide clarity, predictability, and fairness in resolving insolvency, thereby enhancing investor confidence and economic stability.