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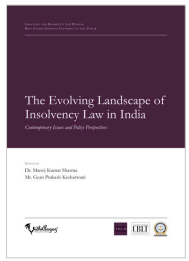
CHAPTER 8



Buried Together, Tried Separately: The Irony of India's Group Insolvency Practice

Yash Sharan and Anenya

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CHAPTER 8

Buried Together, Tried Separately: The Irony of India's Group Insolvency Practice

YASH SHARAN[*] AND ANENYA[**]

The world is a place of business, partnerships, and insolvency. It has witnessed myriad cases of insolvency necessitating discourse on how to address insolvency, especially in large corporate groups. Various instances have cropped up not only in India but also in other prominent jurisdictions, further underscoring the urgency of the necessary discourse. Group insolvency is the process of resolving the financial distress of several interdependent companies in a corporate group, with awareness of their financial or operational interdependence, to treat their creditors fairly and efficiently allocate assets among the legally separate companies. With the collapse of the IL&FS Group, India's insolvency regime for addressing group defaults came into question. Other notable instances, such as the Vedanta Resources case, have not only brought forth novel issues and opportunities but have also thrown up roadblocks to swift business resolution. Despite the systemic significance of the Insolvency and Bankruptcy Code, 2016, there exists a lacuna of legal and practical complications in resolving group insolvencies within its individualistic framework. The IBC has no framework to address group insolvency and follows to the letter the principle of corporate separateness in Section 3(7). This omission leads to a failure in coordinated proceedings, weakens the repayment to creditors, and does not reflect the commercial realities of interdependent conglomerate structures such as IL&FS. The insolvency regime in India is quite different from that of jurisdictions such as the US, where Chapter 11 enshrines the substantive consolidation doctrine, as well as the EU, which allows coordinated group proceedings. Substantive consolidation enables the merging of the assets and liabilities of members of a corporate group and, de facto, the treatment of all members as a single debtor. It is not recognised in Indian law, however, some tribunals have implicitly applied its reasoning, most famously in the IL&FS resolution, without any apparent normative or doctrinal basis. The paper critically evaluates the adoption of the doctrine of substantive consolidation in the Indian insolvency regime. The authors, through the study of best practices from other jurisdictions, and the legal status quo in India, present the roadblocks and challenges posed by group insolvency in India and put forth plausible solutions and reforms for overcoming these roadblocks, aimed at adopting a 'qualified' substantive consolidation tailored for Indian conditions. All in all, the article does not promote blind application of the doctrine, but calls for a sophisticated, situation-specific approach to group insolvency. Since there is a high concentration of conglomerate enterprises in India with opaque intercompany transactions, there is a risk that a failure to consider substantive consolidation would erode the

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efficiency and fairness of large-scale insolvency solutions. A calibrated model, based on due process and creditor consent, may be a revolutionary change in the insolvency regime in India.

Keywords: Group Insolvency, Substantive Consolidation, Insolvency and Bankruptcy Code, Creditor Consent, 'Qualified' Substantive Consolidation.

1 INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 ("IBC") is based on the classical principle of corporate separateness, treating each legal person as a distinct juridical entity.[1] This fundamental premise, doctrinally speaking, is consistent with Section 3(7) of the IBC[2] and Sections 2(68)[3] and 2(87)[4] of the Companies Act, 2013, and collapses in Indian commercial reality, particularly in the case of large, vertically and horizontally integrated corporate groups. Under the Companies Act and IBC, a corporate person is a company that is either private or a subsidiary, except a financial service provider.[5] These conglomerates are not a loose association of independent firms but highly interlocked economic entities. They are interlinked by intra-group borrowings, cross-guarantees, cross-management, and cross-business strategies. When this is the case, separate resolution proceedings conducted in legal silos are not only economically inefficient, but also artificially and procedurally unfair in a judicial sense. The systematic collapse of *IL&FS* and the default of *Videocon Group* bring to the fore this crisis of doctrine, and require a formalised, qualified solution to group insolvency that reconciles the functional interdependence of entities with the sanctity of creditor rights.[6]

Indian jurisprudence indicates that there is already a judicial inclination to pierce the corporate veil of separateness in situations where the economic interdependence supersedes the form of law. However, without an organised, principled doctrine, such efforts can easily result in arbitrariness and unfairness being injected into what is otherwise a rule-based insolvency ecosystem. What is required to be planned is the formulation of a regime which will recognise the commercial reality of enterprise groups without undermining the legal protection that has been provided to safeguard creditors.

Through this article, the authors contend that a practical solution may be to have a *'qualified'* Doctrine of Substantive Consolidation, institutionalised legislatively by amending the IBC. It may demand an application form, detailed affidavits by the resolution

[1] The Insolvency and Bankruptcy Code, 2016.
[2] *Id.* § 3(7).
[3] The Companies Act, 2013, § 2(68).
[4] *Id.* § 2(87).
[5] *Id.*
[6] Shashank Pandey, *Explainer: The IL&FS Insolvency Case*, BAR & BENCH, https://www.barandbench.com/columns/litigation-columns/ilfs-insolvency-the-journey-so-far (last visited July 21, 2019, 6:15 PM).

professional or by the creditors, and a decision by the court through an adversarial process. All affected stakeholders who have standing to object may be given notice, and no consolidation order may deny priority rights existing at the time of the order, especially those of secured lenders. Significantly, consolidation may not confound different categories of creditors. Recovery pools may be kept separate, even where a joint resolution plan is agreed upon. This will help to ensure that, although the economic content of group-wide resolution is not ignored, the procedural and distributive rights of individual stakeholders are not overridden in the interests of efficiency. A statutorily defined, judicially supervised, and procedurally limited model of qualified substantive consolidation is therefore not just desirable, but a necessity to maintain the integrity and the efficacy of the IBC in an economy where group structures are the rule rather than the exception. Furthermore, a distinction has to be made between procedural consolidation and substantive consolidation. There already exists an implicit provision in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in terms of procedural consolidation: joint hearings, designation of a shared RP, synchronised schedules.[7] India needs a legal instrument of substantive consolidation that will allow the pooling of assets and liabilities by subjecting them to strict requirements that are aimed at discouraging abuse. This kind of structure should not be the rule. It has to be subject to appellate review under Section 61 of the IBC, and thus, ensure accountability and clarity in its invoking.[8]

2 When Corporate Groups Collapse: The Global Struggle of Group Insolvency

Across the world, countries have taken different approaches to solving the problems that arise when a group of companies becomes insolvent together. Two of the most well-known models are provided by the United States and the European Union ("EU"), but neither of them completely addresses the problem. In the United States ("US"), under Chapter 11 of the Bankruptcy Code,[9] courts use the concept of substantive consolidation. This holds that, in exceptional circumstances, where companies within a group are viewed to be closely entwined, that is, by various means such as crossing up their finances or making it difficult to distinguish between them in the eyes of creditors, a court may treat them as a single company to settle insolvency. This can be observed in cases such as in re Augie/Restivo[10] and in re *Owens Corning*.[11] However, the courts are generally cautious and give this option only

[7] The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
[8] The Insolvency and Bankruptcy Code, 2016, § 61.
[9] 11 U.S.C. §§ 1101–1195 (2018).
[10] *In re* Augie/Restivo Baking Co., 860 F.2d 515, 518 (2d Cir. 1988).
[11] *In re* Owens Corning, 419 F.3d 195 (3d Cir. 2005).

in extreme cases, since this may bring harm to the creditors who expect to do business with a specific firm, rather than with the whole group. Notably, an order of consolidation was overturned in *Owens Corning* due to the lack of sufficient evidence that the creditors had been misinformed, and that the companies were acting as a single entity. This indicates that the courts understand that the conflation of various companies in insolvency may contravene the principles of limited liability and produce unjust results.

The EU follows a different approach. Instead of merging companies, it allows them to retain their legal identities and rather encourages them to coordinate their insolvency processes. According to the 2015 recast of the EU Insolvency Regulation, one such system is the *"group coordination procedure"*,[12] according to which a neutral group coordinator is appointed to assist various companies of the same corporate group in synchronising their insolvency procedures. Nonetheless, this system is only effective in case the companies are willing to participate voluntarily, and the advice of the coordinator is not binding. Consequently, the system may lack actual power, as it encourages cooperation in situations where some of the companies decide not to cooperate, or when the structure of the group is complicated or veiled. However, both models are lacking in their respective applications. The primary concern in the US regarding substantive consolidation is that it can create unfairness for creditors.[13] Creditors who have been led to believe that they are dealing with a single company may unexpectedly find themselves jointly sharing money with creditors of other group companies. This will erode their contractual expectations. The absence of clear legal tests or rules as to when consolidation should occur and its application as an equitable remedy by the courts without sufficient procedural protections have been criticised by scholars. For instance, giving a prior notice to the creditors or assessing the fairness of the balancing of the assets and liabilities across the group is often not necessary. On the other hand, the biggest weakness of the EU system is that it depends entirely on consent and does not create any binding results. So, in difficult or high-stakes cases, it may be too weak to enable effective coordination. These international practices manifest a more fundamental issue, of how to balance, on the one hand, the recognition of the distinct legal personalities of companies, while recognising that many corporate groups operate in reality as a single economic unit. Ignoring these links risks turning the insolvency proceedings into a chaotic process and devaluing the amount collected in the process. However, merging companies too easily can destroy creditor confidence and violate the principle of each company being responsible only for its debts. The US and the EU have not found the ideal solution. Some

[12] Ilya Kokorin & Bob Wessels, *European Insolvency Regulation (Recast) and Group Insolvencies*, *in* CROSS-BORDER PROTOCOLS IN INSOLVENCIES OF MULTINATIONAL ENTERPRISE GROUPS 71–83 (2021).

[13] Ilya Kokorin, *Intra-Group Financing and Enterprise Group Insolvency: Problems, Principles and Solutions*, CORPORATE FINANCE LAB (Oct. 26, 2023).

scholars argue that what is required is a middle path, that is, a legal system permitting coordination or even consolidation where it is necessary, with the presence of rules and safeguards. These may involve clear rules of when a group is treated as acting collectively, a clear rule for testing economic unity, notice to creditors, and a reasonable method of valuing claims before pooling assets and liabilities.

In India, the position is even less clear. There is no legal mechanism under the IBC to deal with group insolvencies. There is a lack of development in law on substantive consolidation, and the courts have not yet come up with any consistent approach. Indian firms tend to be part of large, opaque business groups with complex internal financial interrelationships, and the absence of legal mechanisms to deal with a group insolvency leads to fragmented insolvency proceedings and value destruction. Different cases involving different companies within the same group are treated as distinct, and this is the practice even in case of one company being financially interconnected with the other. This creates delays, conflicting results, and confusion amongst creditors.

Following the example of the US and EU, India must not go to extremes by either allowing the judiciary to go to any extent as in the US, or by relying solely on resorting to voluntary cooperation as in the EU. Rather, India should have a transparent legal framework to identify when it is necessary to resolve insolvency in a group and incorporate adequate protections such as creditor notice, control and transparent decision making. This will enable the law to take into account the economic reality of group enterprises without compromising on fairness or predictability.

3 India's Ad Hoc Approach to Group Insolvency and the Urgent Case for Reform

The Indian experience on group insolvency has been mainly shaped by *ad hoc judicial intervention,* thus leading to a *de facto* drift towards substantive consolidation without a statutory or doctrinal basis.[14] There are no specific clauses in the IBC or the Companies Act; rather, the tribunals have taken a pragmatic approach, with resolutions occurring across a group in the case of highly complex corporate insolvencies. Nonetheless, such judicial improvisation is expedient but raises more basic questions of legality, fairness, and foreseeability within the Indian insolvency system.

The case of *IL&FS* is one of the most notable examples of such a phenomenon, where the NCLAT sanctioned the establishment of a 'central group resolution' committee to

[14] Rajshree Tiwari, *The Changing Face of Group Insolvency: Is India Ready for Substantive Consolidation?*, IBCLAW.IN (2025), https://ibclaw.in/the-changing-face-of-group-insolvency-is-india-ready-for-substantive-consolidation-by-rajshree-tiwari/ (last visited Aug. 3, 2025).

facilitate the resolution of more than 300 entities within the group. Although the committee was set up as a coordination mechanism, it had concentrated power over several proceedings, thereby diluting the boundaries of corporate separateness.[15] The absence of statutory support for this step meant that important principles such as independent valuation, arms-length transfer of assets, and inter-creditor equity were undermined. This was an effective judicial sanction of group-level resolution, without any legislative authority or protection of creditors that true consolidation must have.

Similarly, in the *Videocon group insolvency*, the NCLT directed that a joint resolution be passed on thirteen group companies on the ground of operational interdependence and the overlapping of creditor claims.[16] A single resolution professional was appointed, and asset valuation, distribution, and creditor voting were done as though the group were a single entity. Although the rationale was based on efficiency and maximisation of values, there was no clear framework on the threshold at which such aggregation would be achieved. The judgment did not test whether creditors were confused, their assets commingled, or the financial statements could not be disaggregated, factors emphasised in international jurisprudence, such as *Owens Corning* and *Augie/Restivo* under US law.[17] These examples show that even in jurisdictions that have been characterised by a flexible approach to consolidation, substantive consolidation is approached as a remedy of last resort, where entanglement can be demonstrated, and where there is strict procedural control over the process, something that Indian tribunals have not yet explicitly articulated.

The *Jet Airways* case brings additional complexity to the cross-border nature of such a process. Similar proceedings were commenced in India and the Netherlands, which resulted in a jurisdictional standoff.[18] The NCLT declined to acknowledge the Dutch administrator in the first instance, however, the NCLAT subsequently changed this stance and allowed the Dutch administrator to attend the CoC meetings in India, thereby facilitating cross-border collaboration. This was acclaimed as a step towards cross-border judicial comity, while also highlighting the doctrinal vacuum in Indian law. Sections 234 and 235 of the IBC, which are meant to facilitate bilateral arrangements and communication with foreign courts, prove to be ineffective.[19] The absence of a formal cross-border insolvency regime forced courts to rely on equitable discretion, creating uncertainty where legal clarity was most

[15] Pandey, *supra* note 6.

[16] State Bank of India v. Videocon Indus. Ltd., MA 1306 of 2018 in C.P. No. 02 of 2018 (NCLT Mumbai Aug. 8, 2019).

[17] Rajat Sethi, *The Videocon Insolvency Resolution Process — Is Reading Between the Lines Warranted?*, S&R LAW (2022), https://www.snrlaw.in/the-videocon-insolvency-resolution-process-is-reading-between-the-lines-warranted/ (last visited Aug. 3, 2025).

[18] Jet Airways (India) Limited v. State Bank of India, Company Appeal (AT) (Insolvency) No. 707 (NCLAT 2019).

[19] Rana Navneet Roy & Satyansh Gupta, *Cross Border Insolvency Under the Indian Insolvency and Bankruptcy Code, 2016*, 26 J. LEGAL, ETHICAL & REG. ISSUES 1 (2023).

needed. The case also provides a compelling reason as to why India needs to adhere to a formal structure such as the UNCITRAL Model Law on Cross-Border Insolvency ("UNMLCBI").[20] The UNMLCBI offers systematic access, recognition, as well as cooperation between courts of other countries and that of the home country. In *Jet Airways*, a clearer procedure would have been enabled under the UNMLCBI, particularly on issues of group coordination and 'centre of main interest', and the Dutch administrator's recognition and participation would have followed a defined process, rather than judicial improvisation. A modified version of the UNMLCBI has been proposed by India in the 2018 Report of the Insolvency Law Committee to be included as Part Z of the IBC, with provisions on reciprocity and public policy safeguards, however, it is pending enactment as binding law.[21] The absence of such legislation leaves India vulnerable in the event of international group failure, which is the cause of creditor uncertainty. This further creates the risk of problems in enforcement. Most importantly, these judicial strategies of courts are not supported by definite statutory language. Section 60(5), which is frequently used as a justification for such interventions, confers wide powers on the NCLT, but is not meant to be used as a replacement for a comprehensive legislation on group insolvency.[22] The repetitive use of this residuary provision opens up the possibility of arbitrary results and post hoc rationalisation, and there is no workable test of when and how consolidation is to be achieved. Indian law does not formally draw the line between procedural consolidation and substantive consolidation, despite the two having different implications.

It is in this background that the authors advocate in favour of a *'qualified consolidation'*, which is context-sensitive, legal in its definition, and stringent in its procedures. This solution acknowledges the utility of enterprise treatment in true financial entanglement situations, and requires changes in the statute that would establish threshold conditions, court policy to judge proportionality, and protocols within the institutions, such as independent valuation committees or separate classes of creditors to maintain fairness. A legislative framework along these lines may draw inspiration from the group coordination proceedings of the European Union under the EIR Recast, which enable non-binding coordination amongst group members without destroying the separateness of entities, a system that balances efficiency and legal integrity. It is imperative now to shift from reactive adjudication to proactive legislation, and to fill the normative gap with a legally based and practically viable model of group insolvency resolution.

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[20] UNCITRAL Model Law on Cross-Border Insolvency, U.N. Comm'n on Int'l Trade Law (May 30, 1997).

[21] Aditi Avashia, *Cross-Border Insolvency in India*, IBCLAW.IN (2023), https://ibclaw.in/cross-border-insolvency-in-india-by-aditi-avashia/ (last visited Aug. 3, 2025).

[22] Nidhi Kamath, *Decoding Section 60(5) of the Insolvency and Bankruptcy Code, 2016*, GBLRSCCLP.IN (Mar. 30, 2024), https://gblrscclp.in/2024/03/30/decoding-section-605-of-the-insolvency-and-bankruptcy-code-2016/.

4 WHEN THE LAW FALLS SILENT: THE LEGAL GAPS IN THE INDIAN GROUP INSOLVENCY REGIME

The IBC is a complete and time-bound law to settle corporate distress. Nevertheless, its structure remains anchored in the myth of the isolated debtor, which is an assumption that is increasingly at odds with complex corporate group structures that behave economically coherent, but legally fragmented.[23] As the Indian economy grows further interconnected, and the existence of enterprise groups in the industrial landscape becomes the rule rather than the exception, the absence of an effective legal system for dealing with group insolvency is no longer a procedural oversight, but has now developed into a systemic liability. Though the IBC has given the discretion to individual entities to be resolved either under Sections 7, 9, and 10, it does not provide a statutory framework in the event of joint resolution, settlement of claims amongst the group companies, pooling of assets and liabilities of group companies.[24] This gap has been bridged by innovative judicial activism of courts and tribunals, as in *IL&FS and Videocon*, in particular, by referring to Section 60(5), which does not expressly confer legislative authority.[25] Discretionary innovation of this nature, however, where it is not influenced by doctrinal or legislative trend, is perilous to the aim of attaining uniformity, creditor rights, and commercial predictability. As the cross-hold and inter-linked conglomerates in India increase, the current section is a sharp and long-due critical analysis of the inadequacies of IBC on group insolvency by examining them through the prism of the law, practice, and comparative jurisprudence.

Firstly, a fundamental weakness of the Indian insolvency regime is that the IBC lacks any statutory basis to allow joint resolution or substantive consolidation of the insolvency proceedings of the group entities. Although Sections 7, 9, and 10 permit only a single company debtor in a corporate group to file CIRP, no statutory provision exists to admit a group of companies into a collective proceeding. Regulation 11 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 permits only procedural coordination, including common resolution professionals or joint meetings, but does not permit any legal or economic consolidation.[26] The *IDBI Bank* case before the NCLAT explained the following and warned that such consolidation should be used sparingly; it cannot be handled as a rule of thumb.[27] This illustrates the weakness of the judicial creativity approach. India

[23] Ayush Chandra, *The Legal Framework for Corporate Bankruptcy in India: An Analysis of IBC Amendments*, LEGALONUS (July 28, 2025, 7:29 PM), https://legalonus.com/the-legal-framework-for-corporate-bankruptcy-in-india-an-analysis-of-ibc-amendments/.

[24] The Insolvency and Bankruptcy Code, 2016, §§ 7, 9, 10.

[25] *Id.* § 60(5).

[26] The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reg. 11.

[27] State Bank of India v. IDBI Bank Ltd., Company Appeal (AT) (Insolvency) No. 321 of 2024 (NCLAT Jan. 28, 2025).

does not have any such statutory scaffolding as is the case in Singapore, where the Insolvency, Restructuring and Dissolution Act, 2018 permits the administration of insolvency in a group.[28]

Secondly, substantive consolidation changes and modifies the economic rights of the creditors in a fundamental way, yet the IBC does not offer any express protection to the creditors to alleviate them in the course of the consolidation. The voting rights in the Committee of Creditors ("CoC") are according to financial debt under Section 21.[29] This proportionality is skewed in consolidated proceedings, which is usually less advantageous to creditors of fiscally sound organisations. Creditors are exposed since the recalibration of votes or rationalisation of claims is not guided. In *Jet Airways (India) Ltd.*, the plea of the Dutch administrator that the Dutch and Indian subsidiaries of Jet be jointly considered to be put under CIRP was questioned by several anomalies in terms of valuation and voting.[30] Though the court permitted the co-operation, it stressed the absence of a legal structure of cross-border or group consolidation in India. In *Reliance Communications Ltd. v. Ericsson India Pvt. Ltd.*, the Court permitted the proceeding of individual insolvency against each of the group entities with a clear indication of collective resolution following separate proceedings without consolidation mechanisms under the law.[31] Similarly, the ad hoc group-level resolution in IL&FS resulted in an opaque resolution in which creditors were unclear about valuation, the rank of claims, and the voting power. In the absence of legislative changes, consolidation still threatens to result in double-counting, voting dilution, and creditor disenfranchisement.

Thirdly, the lack of any statutory or judicial clarity as to how Section 53 of the IBC, which governs the distribution waterfall, is to be exercised in consolidated group insolvencies provides a basic challenge. Section 53 is formulated on the idea of creditor hierarchy.[32] Nevertheless, in a group setting, this does not work in two important respects: (i) an excessive transfer of assets of solvent group members to the distressed; and (ii) inability to address intra-group claims. An incontrovertible example is the case of the insolvency of the *Amtek Auto group,* wherein several companies in the same group, such as Amtek Auto Ltd., Metalyst Forgings Ltd., and others, were put under CIRP. These firms were involved in intricate inter-corporate loans and cross guarantees. However, CIRP was not accompanied by consolidation provisions, and thus every CIRP was conducted independently, which resulted in ineffective asset realisation, with arguments among creditors on the ranking of their claims.

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[28] The Insolvency, Restructuring, and Dissolution Act, 2018 (Sing.).

[29] The Insolvency and Bankruptcy Code, 2016, § 21.

[30] *Jet Airways*, Company Appeal (AT) (Insolvency) No. 707.

[31] Reliance Commc'ns Limited v. Ericsson India Private Limited, Comm. Arb. P. (L) No. 253 (2018).

[32] The Insolvency and Bankruptcy Code, 2016, § 53.

Creditors in *Metalyst Forgings Ltd.* had objected to the resolution plan, citing that they had not given adequate consideration to inter-company receivables, but the NCLT declined to interfere with the resolution plan due to the absence of clarity of the law regarding inter-group prioritisation.[33]

Similarly, in the *Lanco Infratech group,* a number of companies within the conglomerate of infrastructure had been in insolvency proceedings at the same time, including Lanco Infratech Ltd., Lanco Thermal Power, and others.[34] There was no standardised procedure followed, which resulted in a misunderstanding of the valuation or extinguishment of intra-group loans and guarantees. In others, the creditors accused inflated intra-group debt of being used strategically to vote in related CIRPs without judicial oversight, or codified rules. The absence of law on the consideration of inter-corporate obligations and the waterfall usage after consolidation, therefore, creates haphazard extinguishment or manipulation of claims. This introduces perverse incentives and undermines the predictability of insolvency outcomes, thus calling for a statutory framework that covers inter-group creditor hierarchy and distribution rules extensively.

The insolvency regime applicable in India is not well suited to deal with group failures, and it is a result of judicial improvisation rather than legislative clarity that finds application. No statutory reform has been undertaken in this regard despite the recommendations of the Working Group of 2019. The regime risks defeating corporate rescue by decisively favouring ad hoc solutions over a codified, creditor-sensitive, and judicially monitored model, at the expense of the substantive goals of the IBC.

5 REDESIGNING THE CODE FOR REALITY: PLAUSIBLE SOLUTIONS FOR INDIA'S GROUP INSOLVENCY GAPS

The prevailing rule under the IBC is adherence to the fiction of corporate separateness, even when it is faced with enterprise groups that are integrated as single economic entities. Nevertheless, consolidation is not possible and should not be general. Instead, what is required is a legally designed, fact-based 'qualified' doctrine of substantive consolidation, where consolidations will only be possible in cases of high entanglement and with the consent of the creditors and with stricter judicial supervision. It is a regime that must pass the doctrinal and operational test.

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[33] The 420, *The Amtek Auto Scandal: Inside the Rs 27,000 Crore Banking Fraud That Shook India*, THE 420 (Mar. 29, 2025), https://the420.in/the-amtek-auto-scandal-inside-the-rs-27000-crore-banking-fraud-that-shook-india/.

[34] Financial Express, *Lanco Infratech Liquidation: Bankrupt EPC Firms Under IBC Feel Heat*, FIN. EXPRESS (Jan. 16, 2019), https://www.financialexpress.com/business/industry-lanco-infratech-liquidation-bankrupt-epc-firms-under-ibc-feel-heat-1444931/.

Firstly, the IBC may be subjected to specific amendments that are based on legal accuracy and commercial realism. To begin with, CoC voting percentages after consolidation need to be re-adjusted relative to the consolidated net exposure of every financial creditor, not the standalone claim size. This avoids domination of smaller, strategically insolvent members of a group by their creditors. The treatment by Dutch courts in the *Imtech N.V. group insolvency* serves as a precedent here, where the relative exposure of the entities was used to weigh the voting rights to provide a fair representation. Section 21(2) of the IBC refers to voting shares on admitted debt, but in group insolvency,[35] unless the proportions are computed after the consolidation, this will misrepresent creditor agency. Additionally, the netting-off of inter-company claims may be introduced by a statutory protocol under Regulation 14A of the CIRP Regulations to avoid an artificial increase of liabilities. The *IL&FS* case demonstrated how intra-group debt between 348 entities of the group concealed true exposure and stretched the resolution. Even though it later settled out of the IBC, it serves as a warning on how automatic netting is necessary to eliminate intra-group claim recycling. Regulation 14A may therefore be adjusted to accommodate the principles of consolidation and inter-company elimination in International Financial Reporting Standards, making it more transparent, and doing away with accounting manipulations.[36]

As a last resort, a specialised valuation committee under Regulation 35(2) may be required on group cases to determine enterprise and liquidation value to be consolidated by considering synergy premiums and joint liabilities. This is evidenced by the lack of valuation integrity in the *Dewan Housing Finance Corporation Ltd.* insolvency, where inter-branch asset transfers clouded valuations.[37] This committee would be made up of insolvency professionals, sectoral experts, and independent valuers. Such a committee would give arms-length valuation, procedural fairness, and judicial deference as reaffirmed by the Supreme Court in *Ebix Singapore v. CoC of Educomp Solutions Ltd.*[38] This framework would elevate group insolvency from a fragmented litigation battleground to a structured, efficient resolution mechanism.

Secondly, although administratively efficient, substantive consolidation interferes with the fixed commercial expectations and legal rights of creditors to have the assets and liabilities of separate institutions pooled together. However, the IBC does not speak of the protection of a creditor in such cases. Section 21 makes voting rights in the CoC proportional to the quantum of financial debt owed, which is skewed when the assets and liabilities are

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[35] The Insolvency and Bankruptcy Code, 2016, § 21(2).

[36] National Financial Reporting Authority, *About Authority*, https://nfra.gov.in/ (last visited July 28, 2025).

[37] Insolvency Tracker, *Supreme Court Upholds Piramal's Resolution Plan for DHFL; Overrules NCLAT Decision*, INSOLVENCY TRACKER (Apr. 2, 2025), https://insolvencytracker.in/2025/04/02/supreme-court-upholds-piramals-resolution-plan-for-dhfl-overrules-nclat-decision/.

[38] Ebix Singapore Pte Ltd. v. Comm. of Creditors of Educomp Solutions Ltd., (2022) 2 SCC 401.

combined.[39] The recoveries of the solvent group company creditors are frequently diluted and the voting powers truncated, which was reflected in the IL&FS Group case, in which a so-called group resolution framework was introduced without any statutory basis. Lack of codified recalibration mechanisms resulted in ad hoc valuation, voting anomalies, and disempowerment of creditors.

Furthermore, in *Edelweiss Asset Reconstruction Co. v. GTL Infrastructure Ltd.*, the court had confirmed the separate CIRPs notwithstanding the economic interdependence since there was no legal requirement of consolidation.[40] To avoid the potential for vote dilution and to treat creditors fairly, any statutory regime should require a creditor impact assessment, pro-rata rebalancing of voting shares on the basis of adjusted net claims following consolidation, and opt-out in circumstances where consolidation gives rise to a prejudice to recovery of a creditor. To address this, the same should be enshrined in statute under a new Chapter in the IBC to ensure due process and financial justice.

Lastly, one of the main issues is the structural gaps in the group insolvency regime in India, which is the lack of clarity in the statutory or judicial interpretation of the use of Section 53 of the IBC in unified proceedings. Section 53 codifies a priority of creditors that will operate in individual CIRPs, but when multiple group companies are commonly connected by inter-company loans, guarantees, and common properties, the operation of the priority causes confusion. In *Edelweiss Asset Reconstruction v. Peter Beck & Anr.*, the tribunal denied the opportunity to decide on the validity of inter-company receivables when there was no specific statutory provision, although Metalyst belonged to the Amtek Auto group in which several entities were subject to parallel CIRPs.[41] Such a lack of consolidation led to inefficient realisation and fragmented claims since the flow of assets between parties was not harmonised, and intra-group liabilities were not adjudicated properly.

Also, in the group insolvency of *Lanco Infratech*, unstandardised treatment of intra-group guarantees gave rise to creditor contention, including the allegation of bloated related-party claims to tilt the voting results under Section 30(4).[42] The lack of judicial enforcement of consolidation mechanisms allowed for the extinguishment of intra-group claims to be done in an opaque manner and enabled the waterfall mechanism in Section 53 to be gamed. A legally sound solution may be to add a proviso to Section 53 acknowledging the court-approved intra-group priorities, post-consolidation under a new Section 29CA (in the form of Legislative Guide, Part 3, UNCITRAL). This is also supported by the 2021 Report on

[39] The Insolvency and Bankruptcy Code, 2016, § 21.
[40] Edelweiss Asset Reconstruction Co. v. GTL Infrastructure Ltd., Arb. A. (Comm.) 13 of 2020 & I.A. 4322 (2020).
[41] Edelweiss Asset Reconstruction Co. v. Peter Beck, Company Appeal (AT) (Ins) No. 161 of 2021 (NCLAT Jan. 5, 2022).
[42] The Insolvency and Bankruptcy Code, 2016, § 30(4).

Cross-Border and Group Insolvencies by the Insolvency Committee, which recommends statutory provisions to be made in respect of substantive consolidation, adjudication of inter-company receivables, and harmonised valuation.[43] Such precision is currently lacking, and without it, the insolvency scheme will become biased toward silos of procedures rather than fairness.

6 Concluding Remarks

The paper has examined the Indian paradoxes of group insolvency, as corporate groups are frequently buried together in economic hardship and tried apart, under a legal regime that is based on individual debtors. By extensively reviewing statutory definitions, court pronouncements, and actual case studies, the article has highlighted the fact that the existing insolvency regime in India lacks a coherent framework to resolve an interconnected entity in a corporate group, as it is currently focused on the debtor-in-possession model of the IBC. The ad hoc and case-by-case approach followed by the NCLT has resulted in an ad hoc and inconsistent jurisprudence that is not based on any written legislation, regulation, or law.

In this article, the authors have shown how the fundamental issues of dealing with group insolvency are based on the lack of a codified system that enables substantive consolidation, coordinated resolution proceedings, and maximisation of cross-collateral value. To some degree, this gap has been filled by existing jurisprudence, but this is based on judicial discretion, which leads to inconsistency and unpredictability. The case studies of *Videocon, IL&FS, and Lavasa* reflect the process of procedural fragmentation, and the absence of a coherent approach to interdependent entities tends to lead to long delays, asset-value destruction, and biased treatment of stakeholders.

Notably, the paper has not only diagnosed the structural and functional inadequacies of group insolvency in India but has also presented a tiered roadmap towards reform of the same, with the short-term priority being the standardisation of judicial insolvency practice, followed by the agenda of regulatory scaffolding, and the long-term goal of codification of law. One of the major pillars of this reform blueprint is the promotion of the incorporation of tested international frameworks, including the UNCITRAL Model Law on Enterprise Group Insolvency, adapted to Indian realities of commerce.

In the future, the insolvency regime of India requires change in its current debtor-based silos to those that are enterprise-group based, so that they reflect the economic reality of

[43] Cross Border Insolvency Rules/Regulations Comm., Ministry of Corp. Aff., Report on the Rules and Regulations for Cross-Border Insolvency Resolution (June 2020), https://ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83dd0138211640994127c27.pdf (last visited July 28, 2025).

business practice. Law-making paralysis should be replaced by positive law-making, in which corporate groups are not regarded as legal fictions, but as economic entities that expand and contract as one. A principled, predictable, and process-efficient group insolvency regime, which is codified in law and not merely a result of judicial improvisation, is not only desirable but the key to maintaining economic value and investor confidence in the Indian insolvency ecosystem.

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