Draft Framework for Cross Border Insolvency

Why in News

Recently, the Ministry of Corporate Affairs (MCA) has published a draft framework for **cross border insolvency** proceedings based on the **UNCITRAL (United Nations Commission on International Trade Law)** model under the **Insolvency and Bankruptcy Code (IBC).**

- It is proposed **to be made applicable for both corporate debtors as well as personal guarantors** to such debtors.
- A personal guarantor is a person or an entity that promises the payment of another person's debt, in case the latter fails to pay it off.

Key Points

- **About:**
  - **Cross Border Insolvency Proceedings:**
    - It is relevant for the resolution of distressed companies with assets and liabilities across **multiple jurisdictions.**
    - Broadly, the cross-border insolvency process **pertains to those debtors having assets and creditors overseas.**
    - A framework for cross border insolvency proceedings allows for the **location of such a company's foreign assets**, the **identification of creditors** and **their claims** and **establishing payment towards claims** as well as a process for coordination between courts in different countries.
    - The need for having robust institutional arrangements to **deal with cross-border insolvency issues has gained momentum in various jurisdictions,** particularly under the aegis of UNCITRAL Model Law, during the last few decades.
  - **Current Status in IBC:**
    - While foreign creditors can make claims against a domestic company, the IBC currently **does not allow for automatic recognition of any insolvency proceedings in other countries.**
- **Significance:**
  - The inclusion of a cross-border insolvency chapter in the IBC **would be a major step forward and would bring the law on par with that of matured jurisdictions.**
  - It would **enable Indian firms to claim their dues from foreign companies,** while allowing foreign creditors to recover loans from Indian companies.
  - It will **help foreign branches of Indian banks to recover their dues in India.**
  - It will **also bring overseas assets of a domestic corporate debtor into consideration of insolvency resolution in India** and will avoid delays in resolution of stressed assets.
- **UNCITRAL Model Law:**
  - The UNCITRAL model is the **most widely accepted legal framework** to deal with cross-

border insolvency issues.

        - It has been **adopted by 49 countries**, including the UK, the US, South Africa, South Korea and Singapore.
    - The model law deals with **four major principles of cross-border insolvency:**
        - **Direct access to foreign insolvency professionals and foreign creditors** to participate in or commence domestic insolvency proceedings against a defaulting debtor.
        - **Recognition of foreign proceedings** & provision of remedies.
        - **Cooperation between domestic and foreign courts** & domestic and foreign insolvency practitioners.
        - **Coordination between two or more concurrent insolvency proceedings** in different countries. The main proceeding is determined by the concept of **Centre of Main Interest (COMI).**
            - The COMI for a company is determined based on where the company conducts its business on a regular basis and the location of its registered office.
    - It is **designed to assist States in reforming and modernizing their laws on arbitral procedure** so as to take into account the particular features and needs of international commercial arbitration.
- **Difference between Indian framework's and Model Law:**
    - Many countries that adopt the UNCITRAL model law do make certain changes to suit their domestic requirements.
    - Indian cross border insolvency framework **excludes financial service providers from being subjected to cross border insolvency proceedings,** noting that many countries " exempt businesses providing critical financial services, such as banks and insurance companies, from the provisions of cross- border insolvency frameworks."
    - The companies undergoing the **Pre-packaged Insolvency Resolution Process (PRIP)** be exempted from cross border insolvency proceedings as the provisions for PIRP have been introduced recently, and the "jurisprudence and practice under the pre-pack mechanism are at a nascent stage".
        - The PIRP was introduced earlier this year under the IBC to permit speedy resolution of **Micro, Small and Medium Enterprises**.

UNCITRAL

- It is the **core legal body of the United Nations system** in the **field of international trade law.**
- UNCITRAL was **established in 1966** with a recognition that international trade cooperation among States is an important factor in the promotion of friendly relations and, consequently, in the maintenance of peace and security.
- Through its several model laws, conventions, legislative guides and robust debates in working groups, UNCITRAL **has provided a valuable platform for countries to compare, examine, debate and adopt principles of international commercial and trade law** appropriate to their circumstances.
- Since its inception, **India is only one of eight countries** that has been a member of UNCITRAL.

Insolvency and Bankruptcy Code

- It is a **reform enacted in 2016**. It amalgamates various laws relating to the insolvency resolution of business firms.
    - **Insolvency**: It is a situation where individuals or companies are unable to repay their outstanding debt.
    - **Bankruptcy**: It is a situation whereby a court of competent jurisdiction has declared a

person or other entity insolvent, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one’s inability to pay off debts.

- It **lays down clear-cut and faster insolvency proceedings to help creditors,** such as banks, recover dues and prevent bad loans, a key drag on the economy.

Source: IE