

1. The draft on cross-border insolvency, recently released by the government will ensure an effective resolution mechanism in place for cross-border insolvency. Discuss.

(250 words)

Answer:

Background:-

India is looking to introduce a globally accepted and well recognised cross-border insolvency framework, fine tuned to suit the needs of aspirational Indian economy. It has taken initiative for Cross-Border Insolvency within the Insolvency & Bankruptcy Code, 2016 (IBC) to provide a comprehensive legal framework.

Why India needs cross border insolvency:-

- The existing IBC provides for two Sections –234 and 235 relating to cross border insolvency but these are not adequate to effectively deal with default cases of domestic corporate debtor having assets and operations outside India.
- In many of ongoing cases under IBC, several companies have assets and operations outside India, for which legal framework is required to deal assets overseas.
- Existing provisions only allow Central government to enter into agreement with foreign country for enforcing provisions of Code. Second, the government can issue a letter of request to country outside India seeking information.
- The draft norms have now been issued to plug these loopholes and have any effective resolution mechanism in place for cross-border insolvency.
- Although the Insolvency bankruptcy code has resulted in significant improvement in India's insolvency regime, there is a need to include cross-border insolvency in the Code to provide a comprehensive insolvency framework.

How it will ensure an effective resolution mechanism:-

- It would help banks access overseas assets of a company undergoing resolution.

FDI :-

- Once approved, the proposed cross border insolvency framework will lead to more cross-border deals and help in making India an attractive FDI target by reducing the risks associated with insolvency.
- Furthermore, it will make India an attractive investment destination for foreign creditors given the increased predictability and certainty of the insolvency framework.
- It would provide greater efficiency and certainty on cross-border insolvency issues.
- The levelling of the playing field is a significant move which would be viewed positively by the global investor community and by multinational corporations.

- Would certainly help in making India an attractive FDI target by reducing the risks associated with insolvency and hence lead to many cross border deals.
- It is in line with UNICTRAL Model Law on Cross-Border Insolvency and thus cooperation can be sought from other countries who have adopted the model law etc.
- Cross border insolvency framework is a positive step and meets one of the main lacunae in the bankruptcy code which is modern business is transnational and the law should proceed on that basis.
- Inclusion of cross-border insolvency framework is expected to further enhance ease of doing business, provide a mechanism of cooperation between India and other countries in the area of insolvency resolution, and protect creditors in the global scenario.
- Foreign creditors and Indian creditors will be at par if the framework on cross-border insolvency gets introduced in India.
- Model law will make it very easy for Indian MNCs and global MNCs to resolve insolvencies seamlessly across borders.
- It is also a big positive for lenders including equity investors as it sets the right tone to their investment committee that due processes would be followed that are globally acceptable.
- Cross-border deals, both inbound and outbound, would greatly benefit from the reduced risk perception of India as a destination where strong Insolvency law exists. This would encourage lot many lenders to consider backing M&A transactions involving India.

PRACTICE QUESTIONS

Answer the following Questions

1. Discuss critically the role played by Archeological Survey of India (ASI) in preserving India's art and architecture. Examine whether Apni Dharohar scheme should be extended to all World Heritage sites in India? (250 words)
2. A close analysis of art and culture of medieval India points to the cultural syncretism, which has been a distinguishing feature of Indian society and polity. Examine. (250 words)