Cross Border Insolvency Resolution

A panel led by Ministry of Corporate Affairs had suggested adopting the **United Nations Commission on International Trade Laws on cross-border insolvency**.

- **UNCITRAL** Model Law on Cross-Border Insolvency, 1997 (Model Law) provides legal framework to deal with cross-border insolvency issues while ensuring the least intrusion into the country's domestic insolvency law.
- The Insolvency and Bankruptcy Code, at present, does not effectively deal with cases involving cross-border insolvency.
- The government is expected to amend **Section 234 and Section 235** of the IBC and introduce provisions for:
    - **Individual insolvency:** new framework divides individuals into three categories: **personal guarantors, proprietors** and **common individuals**.
    - **Cross border insolvency:** provisions will apply to **corporate debtors** and not in personal cases.

UNCITRAL Model Law- 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)**.

Significance

- The changes will enable initiation of resolution process in case of personal guarantors to corporate debtors, proprietorship and partnerships.
- **Provisions for cross border insolvency** would enable Indian firms to claim their dues from foreign companies, while allowing foreign creditors to recover loans from Indian companies.
    - Will also help foreign branches of Indian banks to recover their dues in India.
- Cross border insolvency provision will bring overseas asset of a domestic corporate debtor into consideration of insolvency resolution in India and will avoid delays in **resolution of stressed assets**.

UNCITRAl

- The United Nations Commission on International Trade Law 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.