



Misra Centre for
Financial Markets
and Economy

INDIAN INSTITUTE OF MANAGEMENT AHMEDABAD

विद्याविनियोगाद्विक्रमः



भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

Annual Research Workshop on Insolvency and Bankruptcy



March 11 - 12, 2024



Indian Institute of Management Ahmedabad





Annual Research Workshop on

Insolvency and Bankruptcy

March 11th & 12th, 2024

Organised by:

Misra Centre for Financial Markets and Economy
Indian Institute of Management Ahmedabad

Supported By:

Insolvency and Bankruptcy Board of India

Concept:

In India, Insolvency and Bankruptcy as an area of academic research, has gained prominence in the last few years. The enactment of Insolvency and Bankruptcy Code in 2016 (IBC) and the subsequent establishment of Insolvency and Bankruptcy Board of India (IBBI) triggered a host of initiatives and objectives. The primary objectives being, revival and resolution of a business as a going concern; maximisation of value of assets of the Corporate Debtor; and promoting entrepreneurship, availability of credit and balancing the interests of stakeholders.

The two-day workshop at IIMA is aimed to academically explore and study the Indian insolvency ecosystem and its interaction with stakeholders, including international comparison. The aim is to fundamentally understand the causes and reasons of business failure, mitigation measures towards revival of business as a going concern and provide research-based suggestion for public policy decision making. The objective of the workshop is to develop good research culture to support these goals.

Interdisciplinary Workshop:

The purpose of the interdisciplinary workshop is to cross pollinate ideas across disciplines covering (not limited to) finance, law, economics, behavioural science, sociology, and management. We expect theoretical, empirical, quantitative, and practice-based papers.

Participants:

Faculty, full time researchers, PhD/ Post-Doctoral scholars, & Practitioners.

Organizing Team:

- **Prof. M.P. Ram Mohan**, Strategy Area, IIMA
- **Prof. Balagopal Gopalakrishnan**, Finance & Accounting Area, IIMA

Workshop Schedule

Day 01 March 11, 2024 (Monday)		
08:30 to 09:30 am	Registration	
09:30 to 09:40 am	Opening Remarks	Prof. M P Ram Mohan, Faculty Chair, Insolvency Workshop Prof. Sanket Mohapatra, Chairperson, MCFME, IIM Ahmedabad
09:40 to 9:50 am	Lamp Lighting & Welcome Address	Prof. Bharat Bhasker, Director, IIM Ahmedabad
10:00 to 10:20 am	Inaugural Address	Dr V. Anantha Nageswaran, Chief Economic Advisor, Gol
10:20 to 10:40 am	Special Address	Shri Ravi Mital, Chairperson, IBBI
10:40 to 11:00 am	Special Address	Shri Sidharth Sharma, Group General Counsel, Tata Sons
11:00 to 11:30 am	--- Tea / Coffee Break ---	
11:30 am to 01:30 pm	Paper Presentation Session I Moderator: Mr Debanshu Mukherjee, Vidhi Centre for Legal Policy	
	Kumar Saurabh Singh; Ashwaj Ramaiah; Rohitesh Tak (Khaitan & Co.)	Framework for Insolvency Resolution of Airlines – Need for a Rethink?
	Saloni Thakkar; Urmika Tripathi; Simrann Venkkatesan (AZB & Partners)	Rescuing Lenders: Lifting of the Related Party and Controlling Party Veil
	Prof. Vivek Saurav, NMIMS University; Prof. Richa Kashyap, NMIMS University; Prof. (Dr.) Bhanu Saxena, Amity University	Comprehending Bank Insolvency Resolution vis – a – vis Analysis of Banking Regulations under the umbrella of UNIDRIOT Legislative Guide on Bank Insolvency
	Archana Sharma; Anchita Sood (IBBI)	A Study on the Untapped Potential of Pre-Insolvency Resolution Procedures
01:30 to 02:30 pm	--- Lunch Break (Venue: Forum Tower Lawn, New Campus) ---	
02:30 to 04:30 pm	Paper Presentation Session II Moderator: Prof. Joshy Jacob, IIM Ahmedabad	
	Amol Baxi; V. Raveendra Saradhi (IIFT)	What constitutes Creditor-Friendliness of Bankruptcy Regimes? Analysis and Application to India's Insolvency Law
	Shiv Anant Shanker; Ajanta Gupta (IBBI); Ansh Gupta (ISBF)	Litigation Funding: Maximising Value
	Aishwarya Krishna, Prof. M Jayadev (IIM Bangalore)	Creditor rights: Behaviour of Private firms
04:30 to 04:45 pm	Abhishek Seth, IIT Roorkee	Bankruptcy reforms and firms' access to credit
	--- Tea / Coffee Break ---	
	Paper Presentation Session III Moderator: Prof. Naman Desai, IIM Ahmedabad	
	Shikha Khurana, IIM Ahmedabad	Before the Time Runs Out for Corporate Restructuring: Consensus Building in Multistakeholder Governance
04:45 to 06:15 pm	L Viswanathan; Animesh Bisht; Karan Sangani (Cyril Amarchand Mangaldas)	According Due Credit to Creditors' Interests: Examining Directorial Duties in Near Insolvency and Insolvency Scenarios
	CA IP Sunit Shah, S K Y Z & Co.; Dr. CS. Yashree Dixit, Company Secretary	Exploring the Journey of Operational Creditors from Admittance to Compromise
07:00 to 07:45 pm	Open House / Panel Discussion: Ecosystem for Insolvency Research Moderated by: Pramendra Singh Tank & Sanjay Kumar Jain (PhD Scholars, IIM Ahmedabad)	
	<ul style="list-style-type: none"> – Mr Kumar Saurabh Singh, Khaitan & Co. – Prof. M Jayadev, IIM Bangalore – Mr Shiv Anant Shanker, IBBI – Mr Debanshu Mukherjee, Vidhi Centre for Legal Policy 	
07:45 pm onwards	--- Workshop Dinner (Venue: Forum Tower Lawn, New Campus) ---	

Workshop Schedule

Day 02 March 12, 2024 (Tuesday)		
09:30 to 11:00 am	Paper Presentation Session IV Moderator: Prof. Ellapulli Vasudevan, IIM Ahmedabad	
	Rajesh Kumar Acha ; Sumit Sarkar; Apratim Guha (XLRI)	An experimental study of bidder and creditor behaviour in Bankruptcy Auctions
	Pooja Singla ; Romit Nandan Sahai (IBBI)	From Moratorium to Security Interest: Decoding the Intricacies of Government Dues in IBC Proceedings
	Sai Muralidhar K ; Prof. M P Ram Mohan (IIMA)	Conceptualizing 'Systemically Important Technological Institutions' as Too Big to Fail Entities: Moving the Insolvency Goal Post
11:00 to 11:30 am	--- Tea / Coffee Break ---	
11:30 am to 01:00 pm	Paper Presentation Session V Moderator: Prof. Balagopal Gopalakrishnan, IIM Ahmedabad	
	Soumyabrata Basu ; Praveen Bhagawan; Jyoti Prasad Mukhopadhyay (KREA University)	Insolvency and Bankruptcy Code and Firm's Cost of Debt: Empirical Evidence from Indian Firms
	Natasha Agnes D'cruze; Shree Harini V; Dwijaraj Bhattacharya ; Indradeep Ghosh (Dvara Research)	Assessing the Borrower-Level Impact of the Insolvency and Bankruptcy Code: A Study of the Fresh Start Process
	Anchal Raj ; Diksha Sarma (IBBI)	Exploring The Synergy Between ESG Principles and Corporate Restructuring: Lessons from Global Jurisdictions and a Roadmap for India
01:00 to 2:00 pm	--- Lunch break (Venue: IMDC Dining Hall) ---	
02:00 to 03:30 pm	Paper Presentation Session VI Moderator: CA IP Sunit Shah	
	Avinash Subramanian , Reuben Mascreeen, Aashirwa Baburaj (AZB & Partners)	Evaluating the Archaic Nature of the 'Gibbs Rule' in Cross Border Insolvency: A Case for Embracing Modified Universalism
	Dr. Trupti Rathi , Symbiosis Law School; M.G. Bapat, Advocate; Prof. Dr. Bindu Ronald, Symbiosis Law School	Haircut: Coup de grace the intentions of the Insolvency & Bankruptcy regime in India!
	Merin Johnson ; Dr Remya Ramachandran (Cochin University of Science and Technology)	Proclaiming the Stark Realities: An Enquiry into the Multifaceted Challenges Encountered by the Insolvency Professionals in Corporate Restructuring and Asset Recovery - A Thematic Analysis
03:45 to 04:00 pm	Awards & Closing Remarks	Prof. M. P. Ram Mohan & Prof. Balagopal Gopalakrishnan



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Insolvency and Bankruptcy Board of India

Annual Research Workshop on Insolvency and Bankruptcy

SPEAKERS



Dr V. Anantha Nageswaran

Chief Economic Advisor, Government of India

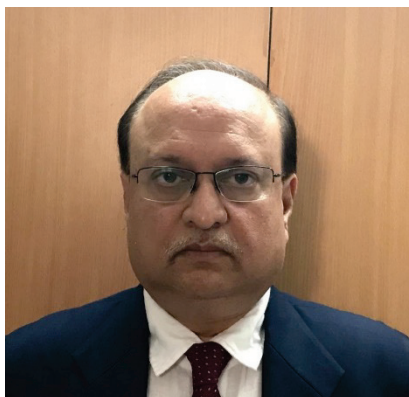


Dr Nageswaran is the Chief Economic Advisor to the Government of India. He is also a writer, author, and a teacher. He has written a weekly Mint column for fifteen years and co-authored four books. He has taught at several business schools and institutes of management in India and in

Singapore. He was the Dean of the IFMR Graduate School of Business and a distinguished Visiting Professor of Economics at Krea University. He was one of the founders of Aavishkaar Venture Capital Fund and the Takshashila Institution. He served as a Currency Economist at the Union Bank of Switzerland; Head of Research and Investment Consulting in Credit Suisse Private Banking in Asia; and Head of Asia Research and Global Chief Investment Officer at Bank Julius Baer. He was an independent Director on the Boards of TVS Supply Chain Solutions, Sundaram Fasteners, TVS Sri Chakra Tyres, Delphi TVS and Aparajitha Corporate Services. He received a Post-Graduate Diploma in Management from the Indian Institute of Management, Ahmedabad. He earned his doctoral degree from the University of Massachusetts in Amherst.

Shri Ravi Mital

Chairperson, Insolvency and Bankruptcy Board of India



Shri Ravi Mital is a 1986 batch Indian Administrative Service (IAS) officer of Bihar cadre. Shri Ravi Mital holds degrees of B.E. in Mechanical Engineering and M.Phil. in Environmental Science. Prior to joining the IBBI as Chairperson, he superannuated from the position of Secretary, Department of Sports, Ministry of Youth Affairs and Sports. He has also served as Secretary, Ministry of Information & Broadcasting and Special Secretary, Department of Financial Services, Ministry of Finance. He has also served on Boards of various organisations including State Bank of India, Punjab National Bank, GIC Re etc. During his service, he has served in varied capacities in various Ministries and Departments of the Government.

Shri Sidharth Sharma

Group General Counsel, Tata Sons

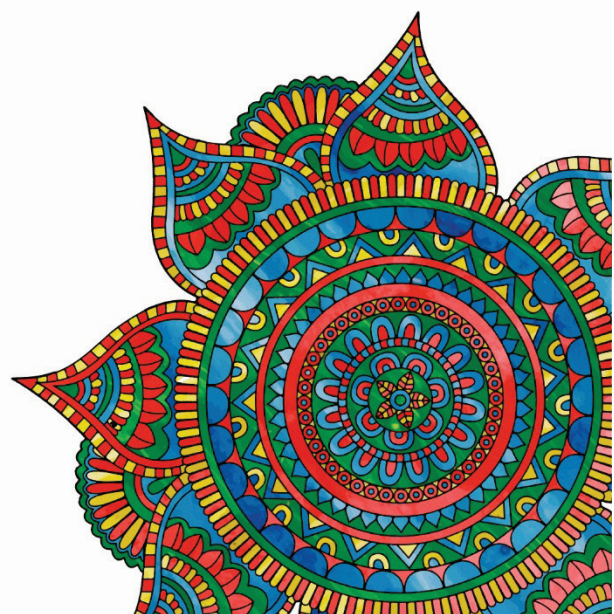


Sidharth Sharma serves as the General Counsel of Tata Sons and reports to Group Chairman, Mr N. Chandrasekaran. Sidharth obtained his LLB (Honors) degree in 2005 from The National University of Juridical Sciences ('NUJS'), Kolkata. After graduation, Sidharth joined Tata Group as a Legal Trainee. He worked as a corporate lawyer for a few years, and then shifted to litigation (court) practice in New Delhi. He is admitted to practice as an Advocate-on-Record at the Supreme Court of India.

Prior to his current role, Sidharth was a retained counsel for the Tata Group and acted as their Resident Counsel in Delhi. He has also been an adviser to the Tata Trusts. In September 2021, Tata Sons appointed him as the General Counsel – the youngest to be appointed in this role. He heads the Group Legal department and advises Tata group companies and Tatas' leadership and senior management team on a variety of legal issues. Sidharth writes occasionally on topical issues of law - he has published Op-eds and commentaries, and several articles in national and international peer-reviewed law journals.

Annual Research Workshop on **Insolvency and Bankruptcy**

PAPER
PRESENTATIONS



Paper Presentation Session I

Moderator: Mr Debanshu Mukherjee, Vidhi Centre for Legal Policy

Day 01

11:30 am to 01:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: Framework for Insolvency Resolution of Airlines – Need for a Rethink?

Authors: Kumar Saurabh Singh; Ashwiji Ramaiah; Rohitesh Tak (Khaitan & Co.)

Abstract:

At a global level, States (including India) have signed and accessed to the Convention on International Interests in Mobile Equipment (“Cape Town Convention”) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (“Protocol”). The Cape Town Convention and the Protocol require the States to incorporate provisions in their municipal law for allowing repossession of the aircraft by lessors during insolvency resolution of the distressed airline.

Incorporating the provisions of Cape Town Convention and Protocol in the municipal law can be tricky and challenging for the State as it needs to create a balance between the right of lessor to repossess the aircraft vis-à-vis allowing the airline to revive in the interest of the consumers and domestic economy. Vesting an unrestricted right with the lessor to repossess the aircraft during insolvency of an airline could be counterproductive for the economy. This is because, in the absence of operating aircraft, the airline has negligible prospects of revival/turnaround which can have detrimental impact on its various stakeholders. Therefore, from a legislative perspective, it is ideal to adopt an approach that allows a distressed airline a second chance to renegotiate with the aircraft lessor and probably then allow such lessor to repossess the aircraft if the renegotiation fails.

However, the insolvency regime in India vests an unrestricted right with the aircraft lessors for repossessing the aircraft from the distressed airline. This is on account of a recent notification no. S.O. 4321(E) dated 3rd October 2023 (“Notification”) issued by the Ministry of Corporate Affairs which has clarified that moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (“IBC”)¹ is not applicable to transactions/arrangement/agreements related to aircraft, aircraft engines, airframes and helicopters to which Cape Town Convention and the Protocol, apply.

The Notification has the potential to create a disbalance because it prioritizes the interest of aircraft lessors over other stakeholders of the distressed airline such as banks and financial institutions, employees and workmen, passengers and other vendors whose interests are also inter-linked to successful resolution of the airline. Therefore, the aim of the research paper is to suggest a more balanced approach between the right of aircraft lessor to take repossession vis-à-vis creating space for distressed airline to revive and run its business as a going concern.

¹ Note: Section 14 of the IBC, inter-alia, prohibits lessors/owners to repossess the property in possession/occupation of the corporate debtor.

Towards this end, the research paper will delve into: (a) stakes involved in an airline insolvency and measures required for a successful turnaround, (b) impact of the Notification and its adverse effects on the airline sector from an entrepreneurship perspective, (c) the manner in which other jurisdictions have incorporated provisions of the Cape Town Convention and Protocol in their municipal law, (d) assessment of cases where globally airlines have been successfully revived and (e) suggesting options which could be considered to balance the interest of lessors while giving the airline a realistic chance of revival.

Paper Presentation Session I

Moderator: Mr Debanshu Mukherjee, Vidhi Centre for Legal Policy

Day 01

11:30 am to 01:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Rescuing Lenders: Lifting of the Related Party and Controlling Party Veil**

Authors: Saloni Thakkar; **Urmika Tripathi**; Simrann Venkkatesan (AZB & Partners)

Abstract: The introduction of the Insolvency and Bankruptcy Code, 2016 (“IBC” / “Code”) overhauled India’s insolvency regime and introduced a comprehensive reorganisation procedure i.e., the ‘corporate insolvency resolution process’ (“CIRP”). One of the key characteristics of a CIRP is that it is based on a ‘creditor-in-control’ model. A committee of creditors (“CoC”) (comprising of the financial creditors of the corporate debtor) is constituted and is tasked with important decision-making powers such as approval of a resolution plan for the debtor, raising interim finance. Critically, Section 21(2) of the IBC provides that a financial creditor who is a ‘related party’ of the corporate debtor does not have any right of representation, participation or voting in a meeting of the committee of creditors. This restriction does not apply to financial creditors (regulated by a financial sector regulator) who are related to the debtor solely on account of conversion of debt into equity or instruments convertible into equity, which is a common lender right in financing transactions. However, other typical lender protection rights such as the right to appoint a nominee director, rights following invocation of shareholder pledge/s, lender protection veto rights on critical matters, have not been carved out and could arguably fall within the definition of a ‘related party’ under the IBC.

In addition to losing their seat on the committee of creditors, a financial creditor who is classified as a ‘related party’ may also receive differential treatment (in terms of recoveries) as comprising of the financial creditors. In India it is common practice for lenders to negotiate lender protection rights such as right to appoint a nominee director or an observer on the board of directors of the borrower; veto rights on certain critical matters to protect the investment of the lender. Recent case laws have delved into the question of whether such lender protection rights would classify the subject lender as a ‘related party’ of the corporate debtor.

This article analyses the IBC provisions and case laws on classification of financial creditors as ‘related parties’ under the IBC. It specifically discusses how the broad definition of ‘related party’, which is arguably aimed at covering promoters/direct and indirect shareholders/controlling entities, may also end up covering pure play creditors based on common lender rights and underscores the need to create a predictable insolvency regime for lenders. It argues that applicability of the ‘related party’ provisions under the IBC and their implications (i.e., restriction from being a member of the committee of creditors or differential treatment under resolution plans) should be restricted to shareholders/promoter loans and not third-party creditors.

Paper Presentation Session I

Moderator: Mr Debanshu Mukherjee, Vidhi Centre for Legal Policy

Day 01

11:30 am to 01:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Comprehending Bank Insolvency Resolution vis – a – vis Analysis of Banking Regulations under the umbrella of UNIDROIT Legislative Guide on Bank Insolvency**

Authors: **Prof. Vivek Saurav**, NMIMS University; Prof. Richa Kashyap, NMIMS University; Prof. (Dr) Bhanu Saxena, Amity University

Abstract: In recent times, concerns regarding the vulnerability of banks have re-emerged at the vanguard of the international financial arena. This growing importance is exemplified by the recent failures of three major institutions in the United States. This occurrence raises concerns regarding the sustainability and effectiveness of existing financial stability frameworks amidst an ever-evolving financial landscape. To no one's surprise, these changes occur concurrently with significant international discussions regarding bank insolvency. The UNIDROIT Working Group on Bank Insolvency (WG), responsible for drafting the Legislative Guide, an international soft law document, is at the forefront of these discussions. The primary objective of This Guide is to provide comprehensive instructions on the worldwide intricacies of bank liquidation processes. The Guide, slated for ratification in 2024, aims to address significant deficiencies in the worldwide legal framework concerning bank insolvency, particularly, pertaining to smaller and medium-sized banks. Although the ongoing discussions within the WG offer valuable perspectives on the developing structure of the Guide, it is critical to bear in mind that both its structure and its content remain fluid and subject to potential modifications and enhancements. In this context, India's assumption of the chair of the UNIDROIT General Assembly in 2022-23 is notable. This pivotal leadership role aligns with the ongoing discourse regarding bank insolvency and provides India with a unique opportunity to contribute its specialized knowledge to the Guide's development. The manner in which India attempts to resolve the complex issues associated with bank resolution contributes to our knowledge of the nation. The oversight of financial organization resolutions was proposed to the Financial Resolution and Deposit Insurance Corporation (FRDIC) by the Committee to Draught the Code on the Resolution of Financial Organisations, established in 2016. A subsequent effort was made to consolidate the fragmented regulatory framework pertaining to bank resolution in India through the formulation of the Financial Resolution and Deposit Insurance Bill of 2017 (FRDI Bill). The bill's objective was to establish a centralized system for monitoring financial institutions, assisting with bankruptcy proceedings, and proactively mitigating dangers to their stability. Its primary objective was to ensure the fulfilment of obligations, including the repayment of depositors. The paper aims to analyse the exemplification and future prospects of the establishment of the FRDIC and the introduction of the FRDI Bill in India's commitment to enhancing financial stability and protecting the interests of depositors. The entire international banking community is striving for a secure and resilient global banking system, with India's leadership, the developing Guide, and the ongoing UNIDROIT discussions and related implementations.

Paper Presentation Session I

Moderator: Mr Debanshu Mukherjee, Vidhi Centre for Legal Policy

Day 01

11:30 am to 01:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **A Study on the Untapped Potential of Pre-Insolvency Resolution Procedures**

Authors: **Archana Sharma**; Anchita Sood (IBBI)

Abstract: The Insolvency and Bankruptcy Code, 2016 (IBC) has transformed the approach to business failures in India. Over its seven-year existence, dynamic policy interventions have kept pace with evolving stakeholder needs. The IBC has induced behavioral changes among debtors, acting as a deterrent to defaults. Pre-Insolvency Resolution Procedure (PIRP) has been introduced through Pre-Pack Insolvency Resolution Process (PPIRP) to resolve financial stress before formal insolvency procedures. The PPIRP framework aims to keep a balance between the debtor-in-possession and creditor-in-control model. Despite the potential benefits, PPIRP face challenges including limited adoption and creditor apprehensions. The comprehensive study explores the framework, usage, and outcomes of PPIRP within India's insolvency landscape. The framework in a few international jurisdictions has also been studied. The study emphasizes the need to leverage PPIRP to expedite resolutions, reduce costs, and safeguard stakeholder interests. However, it also examines whether PPIRP should be explored in all eligible scenarios. In conclusion, the study provides policy recommendations for government, regulators, and other stakeholders to maximize the potential of PPIRP.

Paper Presentation Session II

Moderator: Prof. Joshy Jacob, IIM Ahmedabad

Day 01

02:30 to 04:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **What Constitutes Creditor-Friendliness of Bankruptcy Regimes? Analysis and Application to India's Insolvency Law**

Authors: **Amol Baxi**; V. Raveendra Saradhi (IIFT)

Abstract: We examine the creditor-friendliness of bankruptcy regimes. The analysis of the orientation of bankruptcy regimes is integral to bankruptcy research (especially the law and finance stream). However, diversity exists in ascertaining creditor orientation across formal measures and in narratives in research (often built around singular or limited dimensions). This qualitative study has three parts. First, we examine the constituents of creditor-orientation across formal measures in law & finance research and identify key dimensions of assessment. Next, we code and analyse India's insolvency law (the Insolvency & Bankruptcy Code, 2016 [IBC]) across dimensions and debate IBC's creditor-friendliness (while integrating perspectives from narratives). Finally, we integrate findings and suggest a framework (WOODDI) for assessing creditor orientation. This study calls for a more structured evaluation of the creditor orientation of bankruptcy laws and will be helpful to policy and research examining the impact of bankruptcy laws/IBC on credit markets and related outcome variables. An accurate assessment of creditor orientation is vital for the validity and interpretation of research in this domain.

Paper Presentation Session II

Moderator: Prof. Joshy Jacob, IIM Ahmedabad

Day 01

02:30 to 04:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Litigation Funding: Maximising Value**

Authors: **Shiv Anant Shanker**; Ajanta Gupta (IBBI); Ansh Gupta (ISBF)

Abstract: Insolvency and Bankruptcy Code, 2016 (IBC/Code) provides a time bound resolution and liquidation process to avoid any depletion in value of resources and serve the creditors with maximised value. Noteworthy, considerable value of the insolvent entities locked in sundry debts, disputed claims, and assets underlying avoidance transactions remains unattended. The creditors are reluctant to invest their good money in doubtful assets. An insolvent entity barely has any appetite to fund to pursue or initiate legal proceedings. Although the possibility of success and recovery is also very unknown, avoidance trades do have potential to release enormous value. The creditors have now acknowledged that avoidance applications cannot be expected to be completed prior to adoption of a resolution plan due to the complexity, time-consuming, and in-depth fact-finding nature of avoidance transactions. To maximise the return to the creditors, it has been observed that developed jurisdictions allow third-party litigation funding (TP-LF) in insolvency. Since litigation funding is relatively new in India, the present paper attempts to study the litigation funding in the context of insolvency in India, as a tool to maximise the returns of the creditors with respect to avoidance transactions and disputed claims.

Paper Presentation Session II

Moderator: Prof. Joshy Jacob, IIM Ahmedabad

Day 01

02:30 to 04:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Creditor rights: Behaviour of Private Firms**

Authors: **Aishwarya Krishna**; Prof. M Jayadev (IIM Bangalore)

Abstract: Using a sample of 2 million firm-years, we show the differential impact of common bankruptcy predictors for public and private firms using Ministry of Corporate Affairs filings from India from 2011 to 2020. We estimate the default probabilities of private firms using financial and governance variables for private firms. We find that average default probability is lesser in public firms compared to private firms by 1.5%. We notice that an increase in leverage from the first to the last quartile gives rise to an increase in the default probability of private firms by 15.55%. This increase is almost half the increase observed in public firms (36%). Additionally, we observe that interest-bearing debt to total assets is higher in the fourth quartile by 24% than the probability in the first quartile for private firms. These private firms produce the largest decrease in return on assets or measure of profitability by 18.77% from the first to the fourth quartile. Interest-bearing debt, net income, and current liabilities show the highest statistically significant difference between the first and fourth quartiles. Higher interest-bearing debt, current assets, and firm age lead to higher default risk. We present that short-term financing leads to a high number of defaults in private firms when compared to public firms. As cash in hand increases the default probability decreases by 13.28% which is 5% more than that of public firms. Interestingly, having more cash in hand helps Private firms more than public firms. We next introduce an externality that improved the Creditor rights in India and study how it affected the private firms. Post IBC, the risk of distress has increased by 25% for public firms and 21% decrease in risk of distress for Private firms. We can conclude that for private firms that are in distress, IBC has played a role in decreasing their long-term leverage and secured debt. Our margin plots show that private firms have to work even more to converge to the probability of default of public firms. Post-IBC, private firms have a higher default probability than public firms for a given size of the firm.

Paper Presentation Session II

Moderator: Prof. Joshy Jacob, IIM Ahmedabad

Day 01

02:30 to 04:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Bankruptcy reforms and firms' access to credit**

Author: **Abhishek Seth**, IIT Roorkee

Abstract: Access to credit is a major barrier to investment and economic growth in developing countries. Either limiting access or financial frictions hinder the efficient allocation of capital by increasing the cost of credit, thus aggravating the adverse selection problem. One way to deal with this problem is bankruptcy reforms that try to lower financial frictions by rebalancing debtors-creditors' rights for efficient recovery of claims in distressed firms in a timely manner. In 2016, India introduced the Indian Insolvency and Bankruptcy Code (IBC) 2016 as a unified bankruptcy law to increase the recovery rate of insolvent firms in a time-bound manner. This study evaluates the impact of IBC on the credit dynamics of Indian firms. The paper examines how IBC affects firms' access to credit, cost of credit, and borrowing choices using data on non-financial firms from 2012 through 2022. The findings from panel fixed effect models suggest that the IBC has reduced the cost of credit by 1.4% points while increasing total (especially long-term) credit access for non-financial firms by 2.4% points (2.2%). Moreover, the study establishes the role of asset, credit, and liquidity channels via which the IBC impacts the cost and supply of credit.

Paper Presentation Session III

Moderator: Prof. Naman Desai, IIM Ahmedabad

Day 01

04:45 to 06:15 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Before the Time Runs Out for Corporate Restructuring: Consensus Building in Multistakeholder Governance**

Author: **Shikha Khurana**, IIM Ahmedabad

Abstract: The paper examines multi-stakeholder governance in a loss sharing environment. Drawing on consensus and governance literature, I undertake a qualitative study to bring out the difficulty in achieving consensus in a multi-stakeholder domain especially when the stakeholders differ in their perspectives on the valuation of a firm. Identifying the positions occupied by various stakeholders in the negotiation towards consensus building, I identify which of the actors in the multi-stakeholder governance process will have the greatest incentives to break down the barriers and the process adopted to bring about the resolution. The context is the Insolvency and Bankruptcy Code (IBC) in India that shifts the management control in financially distressed firms to its financial creditors for a defined period with a mandate to revive, restructure, and sell the firm as a “going concern”. If the sale does not occur, the firm is sent for liquidation leading to losses for all stakeholders. Despite the criticality of time, consensus remains elusive in many cases as stakeholders try to optimise their respective organization positions to reduce the loss. The paper offers a nuanced perspective on the consensus formation process and the role of governance in the multistakeholder environment.

Paper Presentation Session III

Moderator: Prof. Naman Desai, IIM Ahmedabad

Day 01

04:45 to 06:15 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **According Due Credit to Creditors' Interests: Examining Directorial Duties in Near Insolvency and Insolvency Scenarios**

Authors: L Viswanathan; **Animesh Bisht**; Karan Sangani (Cyril Amarchand Mangaldas)

Abstract: The traditional beneficiaries of the fiduciary duties of the directors of a company are its shareholders. However, the scope of the directors' fiduciary duties becomes a vexatious legal issue during the phase of financial distress. In such scenarios, from the creditors' perspective, the assets of the company require preservation for debt resolution, which object can often be at loggerheads with the shareholders' preference for riskier profit-making objectives. The debate pertaining to the scope of the directors' fiduciary duties has been reignited pursuant to two recent developments. In October 2022, the Supreme Court of the United Kingdom affirmed the existence of a common law duty for the directors of the company to consider the creditors' interests when the company is insolvent or is likely to become insolvent. Further, in July 2022, Ireland codified the directors' duty towards creditors when the company is or likely to be unable to pay its debts. In the context of these developments, this paper discusses the reorientation of the directors' fiduciary duties from shareholder interest primacy to safeguarding the creditors' interests that is necessary in near insolvency and insolvency scenarios. This paper further examines how the directors' fiduciary duties towards creditors can be formalised under the Indian regime.

Paper Presentation Session III

Moderator: Prof. Naman Desai, IIM Ahmedabad

Day 01

04:45 to 06:15 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: Exploring the Journey of Operational Creditors from Admittance to Compromise

Authors: CA IP Sunit Shah, S K Y Z & Co.; Dr CS. Yashree Dixit, Company Secretary

Abstract: The introduction of the Insolvency & Bankruptcy Code, 2016 has been a landmark reform in the history of Indian economy. The main objective of the code is to save the life of the companies by imparting fair and equitable treatment to all the stakeholders. However, the practical scenario reveals the different story wherein no powers or rights in actual have been vested in code for the operational creditors. The aim of the code is the resolution of the viable distressed companies and not the recovery of dues various creditors. Though resolution has been the goal and the legislature providing various rights and powers to the financial creditors but the operational creditors should not have been left unattended with no say in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD). The realization to the Operational creditors from the proceeds of resolution plan has been very minimal. Operational creditors have kept knocking on the doors of the defaulting company since a long time. Operational creditors have no rights to participate or vote in the meetings. There are very few studies that have explored the area of operational creditors under the Insolvency & Bankruptcy Code, 2016. The present paper highlights the comparative study on realisation of the amount from the resolution plan to operational and the financial creditors. We have selected ten companies which have undergone CIRP between the years 2019-2023. The study also reveals how operational creditors are disregarded in so far as the distribution from the proceeds of the resolution plan is concerned and have received a large amount of haircuts at the time of the distribution of funds.

Paper Presentation Session IV

Moderator: Prof. Ellapulli Vasudevan, IIM Ahmedabad

Day 02

09:30 to 11:00 am

(Venue: PP Gupta Auditorium, New Campus)

Title: **An experimental study of bidder and creditor behaviour in Bankruptcy Auctions**

Authors: **Rajesh Kumar Acha**; Sumit Sarkar; Apratim Guha (XLRI)

Abstract: We examine the efficiency and fairness of an insolvency resolution mechanism through a laboratory experiment. As the baseline scenario, we deploy the procedure used under the current Indian bankruptcy law. The law adopts a unique mandatory auction mechanism, which combines the claim distribution mechanism with the asset deployment process of the bankrupt firm. Our experiment studied the behaviour of the bidders and creditors, and the impacts of their behaviour on the outcome. Results reveal that, under the existing mechanism, there exists a fairness-efficiency trade-off. If the outcome is efficient, i.e., if the value of the firm is maximised, then it is often distributionally unfair, i.e., the operational creditors do not get their fair share of claim recovery. In contrast, if the outcome is distributionally fair, then it may be inefficient. We introduced a mechanism that separates the deployment and distribution processes. Efficiency and fairness simultaneously improve under the modified mechanism.

Paper Presentation Session IV

Moderator: Prof. Ellapulli Vasudevan, IIM Ahmedabad

Day 02

09:30 to 11:00 am

(Venue: PP Gupta Auditorium, New Campus)

Title: **From Moratorium to Security Interest: Decoding the Intricacies of Government Dues in IBC Proceedings**

Authors: **Pooja Singla**; Romit Nandan Sahai (IBBI)

Abstract: The Insolvency and Bankruptcy Code, 2016 (IBC/Code) revolutionized India's insolvency landscape, offering a streamlined process for resolving financially distressed entities. However, uncertainties surrounding tax dues, assessments, and security interests of tax authorities under the Code have sparked significant debate. Once insolvency proceedings commence, a moratorium halts all actions against the corporate debtor, including those by tax authorities. However, it's unclear whether tax reassessment proceedings can proceed during this period, leading to divergent judicial interpretations. Additionally, the prioritization of tax dues remains contentious, with tax authorities typically treated as operational creditors, receiving lower repayments in liquidation. To protect their interests, tax authorities have sought security interests in debtor assets, though the legality during the moratorium and distribution processes is uncertain. This paper addresses these issues, emphasizing the need for legislative clarity. It examines the impact of uncertainties on the resolution process and government revenue, proposes a uniform approach to tax assessments during the moratorium, and evaluates the treatment of tax authority security interests in asset distribution, drawing comparisons with international practices. The methodology employed is doctrinal, given the research's nature and scope.

Paper Presentation Session IV

Moderator: Prof. Ellapulli Vasudevan, IIM Ahmedabad

Day 02

09:30 to 11:00 am

(Venue: PP Gupta Auditorium, New Campus)

Title: **Conceptualizing ‘Systemically Important Technological Institutions’ as Too Big to Fail Entities: Moving the Insolvency Goal Post**

Authors: **Sai Muralidhar K**; Prof. M P Ram Mohan (IIM Ahmedabad)

Abstract: The concept of Too Big To Fail (TBTF) has, for the longest time, been associated with systemically important banks, insurance companies and other financial institutions. The emergence of Big Tech companies, which permeates global markets, challenges the traditional notions of TBTF. Big Tech companies growing size and interconnectedness to the global economy have led to concerns emerging in the domains of antitrust law, data privacy laws, and financial stability. A key facet of financial stability regulation is the development of robust insolvency resolution frameworks to deal with potential failures of TBTF companies. The paper analyses whether Big Tech companies pose systemic risks to the financial system and the broader economy and, consequently, if they are TBTF, should there be special insolvency resolution frameworks akin to other systemically important institutions. The systemic risks Big Techs pose today may be substantially higher than traditional TBTF firms due to their deep interconnectedness with financial institutions. The paper explores the concept of Systemically Important Technological Institutions and the challenges in designating them as TBTF.

Paper Presentation Session V

Moderator: Prof. Balagopal Gopalakrishnan, IIM Ahmedabad

Day 02

11:30 am to 01:00 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Insolvency and Bankruptcy Code and Firm's Cost of Debt: Empirical Evidence from Indian Firms**

Authors: **Soumyabrata Basu**; Praveen Bhagawan; Jyoti Prasad Mukhopadhyay (Krea University)

Abstract: India has introduced Insolvency and Bankruptcy Code (IBC) in 2016, which is applicable to all listed firms. This law aims to empower debtholders, including secured, unsecured, operational, and financial, to recover their debts unlike SARFAESI Act of 2002 that allowed secured financial debtholders to recover the loans from distressed firms. We use IBC as an exogenous shock to examine the impact of IBC on firm's cost of debt. By employing difference-in-differences (DiD) combined with matching technique on firm-level data for the period 2010-2023, we find that financially distressed firms (treatment group) tend to have lower cost of debt post-IBC reforms as compared to non-financially distressed firms (control group). We also find firm's performance and increase in debt as two potential channels through which IBC impacts firm's cost of debt. Our findings are robust across alternative econometric specifications and alternative definitions.

Paper Presentation Session V

Moderator: Prof. Balagopal Gopalakrishnan, IIM Ahmedabad

Day 02

11:30 am to 01:00 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Assessing the Borrower-Level Impact of the Insolvency and Bankruptcy Code: A Study of the Fresh Start Process**

Authors: Natasha Agnes D'cruze; Shree Harini V; **Dwijaraj Bhattacharya**; Indradeep Ghosh (Dvara Research)

Abstract: The 2016 Insolvency and Bankruptcy Code (IBC) is a landmark legislation with the potential to impact every borrower. This paper focuses on Part III of the IBC, which deals with natural persons, proprietorships, and personal guarantors for corporate debt. Through the paper, we attempt to estimate the potential consequences of the Fresh Start Process (FSP) defined under this Part. The IBC lays out economic criteria that can qualify (or disqualify) an applicant for FSP. Under FSP, a borrower must be asset-lite, have a low income, and hold minimal outstanding debt to qualify. These thresholds determine the applicability of the process once the IBC is fully notified. Thus, empirical estimates regarding the effects of the provisions on the Indian credit market are crucial to deciphering the impact of the IBC, more specifically, the FSP.

We start by comparing the contemplated processes and outcomes of IBC with other similar legislations, like the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (2002), Provincial Insolvency Act (1920), and Presidency Town's Insolvency Acts (1909). We then proceed to estimate how many borrowers are likely to qualify under the FSP. We use the Centre for Monitoring Indian Economy's (CMIE) Consumer Pyramids Household Survey (CPHS) conjoined (using a nearest neighbour model and the Hungarian Algorithm) with the All-India Debts and Investments Survey (AIDIS) for 2019 to estimate how many households qualify under FSP. We restrict the analysis only to Bihar, and at a sample level, to demonstrate the efficacy of using such merged datasets. Through the aforementioned estimations, we also gain insight into the socio-demographic characteristics of those who qualify for the processes. We examine the types of loans they owe and how they are likely to be impacted. Thus, our research is intended as a methodological contribution through which the impact of the IBC across borrower groups can be measured.

Paper Presentation Session V

Moderator: Prof. Balagopal Gopalakrishnan, IIM Ahmedabad

Day 02

11:30 am to 01:00 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Exploring The Synergy Between ESG Principles and Corporate Restructuring: Lessons from Global Jurisdictions and a Roadmap for India**

Authors: **Anchal Raj**; Diksha Sarma (IBBI)

Abstract: In recent years, Environmental, Social, and Governance (ESG) considerations have gained significant prominence in the corporate landscape worldwide. This paper embarks on a journey of doctrinal research to investigate the intersection of ESG principles and corporate restructuring. It seeks to provide a comprehensive understanding of how ESG factors can be integrated into the restructuring processes of corporations, further offering suggestions for the Indian context. It examines the experiences and best practices of leading global economies, and the authors have offered suggestions that can be adapted and applied in the Indian context. It encompasses legal, regulatory, and market-based strategies for aligning ESG principles with corporate restructuring process in India.

Paper Presentation Session VI

Moderator: CA IP Sunit Shah

Day 02

02:00 to 03:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: Evaluating the Archaic Nature of the ‘Gibbs Rule’ in Cross Border Insolvency: A Case for Embracing Modified Universalism

Authors: Avinash Subramanian; Reuben Mascree; Aashirwa Baburaj (AZB & Partners)

Abstract: The international landscape of insolvency law has witnessed significant changes and developments in recent years. In the ever-evolving landscape of international business and globalization, traditional approaches to handling such cases, exemplified by the Gibbs Rule employed by English courts, have come under scrutiny from the legal and investor community alike. This paper aims to present a comprehensive critique of why the Gibbs Rule is considered archaic and out of sync with the contemporary approach of modified universalism in cross-border insolvency proceedings.

The Gibbs Rule, named after the 19th century decision of the Court of Appeals of England and Wales in *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux*, has long served as a reference point for English courts in addressing cross-border insolvency issues. However, their origin in a bygone era and their rigid application in today’s interconnected and globalized society often lead to inequities and inefficiencies in the modern insolvency landscape. In a world where financial transactions span multiple jurisdictions and involve intricate web-like structures, the strictly territorial approach fails to address the practical realities of complex international insolvency cases. As a result, stakeholders encounter cumbersome legal battles, often with competing interests that lead to delays, forum shopping, creditor hold outs, increased costs, and an overall decreased returns to creditors.

Contrastingly, the modified universalism approach recognizes the need for cooperation and coordination in cross-border insolvency proceedings. This approach, championed by several jurisdictions and international organizations, advocates for a more holistic perspective. Under the modified universalism framework, the main objective is to maximize asset recovery for creditors, encourage a transparent and predictable process, and promote international cooperation among courts. The authors also seek to analyze the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC), which governs insolvency proceedings in India, along with the draft framework that was introduced by the Government of India based on the UNCITRAL Model Law on Cross Border Insolvency, 1997 and explore the extent to which the IBC incorporates within it the principles of modified universalism.

The research paper will draw on a review of legal literature and academic writing on cross border insolvency, Gibbs Rule and modified universalism, analysis of relevant case laws from various foreign jurisdictions, examination of international instruments and agreements relating to cross border insolvency, review of the proposed draft framework to regulate cross border insolvency in India to illustrate the practical challenges and outcomes associated with these approaches.

Paper Presentation Session VI

Moderator: CA IP Sunit Shah

Day 02

02:00 to 03:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Haircut: Coup de grace the intentions of the Insolvency & Bankruptcy regime in India!**

Authors: **Dr Trupti Rathi**, Symbiosis Law School; M.G. Bapat, Advocate; Prof. (Dr) Bindu Ronald, Symbiosis Law School

Abstract: Insolvency and Bankruptcy Code, 2016 is one of the major economic reforms in India. Discharging debt through bankruptcy is the bedrock principle of insolvency systems across the globe. The discharge of honest insolvent has come to be regarded as the all-important feature of bankruptcy statute. Methodical and probable Insolvency & Debt resolution mechanism leads to financial inclusion, credit availability, job upholding and new job opportunities in the market. This mechanism ensures the survival of the distressed companies.

According to the new record of Insolvency and Bankruptcy Board of India till date 987 resolution plans have been invited. Further, as per the Economic Times news NCLT has approved 180 resolution plans in the FY 2023 of total Rs. 51,424 crores. Though the resolution plans of various corporate debtor are approved by the NCLT, in many cases it is approved with the huge haircuts and the average haircut until now has been 65% under Corporate Insolvency Resolution Process.

This paper analyses the issue of 'haircut' under the IBC ecosystem. It also evaluates the Videocon Industries Ltd. case where NCLT had approved a resolution plan with 95% haircut.

Due to very large haircuts in the resolution process the banking companies are losing about four fifths of the money lent to companies involved in the process of IBC. Due to this the depositors of banking companies are unable to retain faith in the banking system. Once bankruptcy proceedings have been filed, a creditor no longer bargains bilaterally with the bankrupt but the real contest is between the contracted counter party and bankers and other creditors. When the companies are in the midst of insolvency proceedings, the COC's decisions destroys the economic and social value of the companies, thereby making restructuring more complicated and inefficient. Further, the insolvency proceedings necessarily disrupt or alter the bargains struck by the affected parties and remove the autonomy to behave as they would under a contract.

In COC's decisions, the non-consenting creditors rights are altered without their consent and restructuring plans can be imposed upon an entire class of non-consenting creditors, provided certain conditions are met. The authors will employ the doctrinal and non-doctrinal research methodology to ascertain the findings and conclusion.

The study will evaluate if the haircuts lead to the deterioration of the objectives with which IBC was framed. Further, this paper evaluates the commercial wisdom of Committee of Creditors and judicial wisdom of NCLT as the NCLT has limited powers in the approval of resolution plan. The study will also examine the Sec.12A of the Insolvency and Bankruptcy

Code, 2016 which authorizes the adjudicating authority to allow the withdrawal of application by 90% majority of the Committee of Creditors and the need to revisit to the Sec. 12A, the competence of resolution professionals in deciding the value of the assets of the corporate debtors and the residual powers of NCLT. Based on the finding of the research recommendations and suggestions will be made by the authors.

Paper Presentation Session VI

Moderator: CA IP Sunit Shah

Day 02

02:00 to 03:30 pm

(Venue: PP Gupta Auditorium, New Campus)

Title: **Proclaiming the Stark Realities: An Enquiry into the Multifaceted Challenges Encountered by the Insolvency Professionals in Corporate Restructuring and Asset Recovery - A Thematic Analysis**

Authors: **Merin Johnson**; Dr Remya Ramachandran (Cochin University of Science and Technology)

Abstract: Insolvency Professional, a coveted role that materializes the 'Theory of Creative Destruction', occupies a pivotal grade in the economy serving as the expeditor for the effortless exit of sick firms and reallocation of the resources. The Theory of Creative Destruction, proposed by Joseph Schumpeter, added glitter to insolvency laws that exist in various countries that set the motion for new firms to come to the scene to replace the old ones and disturbed the inertia of worn-out unyielding ones to exit from the market. To embrace the position of being an Insolvency Professional, there lies the demand to be a polymath in doing heterogeneous roles ranging from liquidator to compliance officer as the laws prescribe. The process of corporate restructuring and asset recovery are the foremost functions executed by insolvency professionals gratifying the twin goals of the IBC along with maximizing the value and fair assuagement to the stakeholders. Insolvency Professionals can thus be regarded as the 'agents of economic change' that operate in a cyclical mode in the economy incessantly erasing the old ones that fell incompatible and incessantly creating the new ones of high potential. Thence, the profession of being an insolvency professional is a glamorous yet challenging role that needs to be upheld and handled with sheer prudence. Literature addressing the crucial role of insolvency professionals in the economy is sparse in the Indian context as only a few years have passed by where there happens the transition from the position of Official Liquidator to the all-encompassing and professional role of the Insolvency Professional. Studies are even more scanty in the realm of the challenges faced by insolvency professionals while executing premier motos of asset recovery and corporate restructuring standing in the grueling state in line with the interplay of various roles as the law embodies and pronounces. So there exists a gap to delve into and unveil the realities associated with the challenges faced by insolvency professionals while performing their obligations, especially in the context of restructuring and recovery. Therefore, the paper articulates a thematic study from the perception of insolvency professionals with years of expertise in the field to throw light on the challenges under study. In-depth interviews were conducted to collect the responses and the coding was conducted using the NVivo, thus organizing the takeaways and results from the real experiences. Regulatory Complexities, Lack of Cooperation, Incomplete and inaccurate financial information, Complexities in the determination of the true value of assets, Identification of hidden assets, Resource constraints, Creditor negotiations, structural vagueness, Reputation risks, etc. evolved as the most prominent challenges in the study that stood as professional hurdles in the insolvency profession in India.

NOTES

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