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REPORT

STAKEHOLDER CONSULTATION REPORT ON INSOLVENCY LEGAL FRAMEWORK IN INDIA

Part I: With Special Focus on MSMEs on 27th February, 2015

Part II: With Special Reference to Corporate Sector on 19th March, 2015

at

Indian Institute of Corporate Affairs (IICA)
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INTRODUCTION

At present, insolvency laws in India is primarily covered under the Companies Act, 1956 (now under Companies Act, 2013) and Sick Industrial Companies Act (Special Provisions) Act, 1985 for corporate insolvency and under the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920 for personal insolvency. With the exception of Companies Act, 2013 ("CA, 2013") neither of the two areas has received any significant major review/amendment in the past 20 to 25 years. While the CA, 2013 has a separate chapter dedicated to the revival and rehabilitation of sick companies, the chapter is yet to be notified.

The present state of insolvency law in India is out of date and does not match global standards and best practices. Additionally, slack insolvency laws are considered a big barrier in ease of doing business in India. The need of the hour, therefore, is an effective insolvency legal framework that enables the country to keep pace with modern challenges both at regional and global levels. It is important that insolvency regime should be reviewed and amended from time to time in order to keep it relevant and useful in terms of the latest economic realities.

In this context, the Hon'ble Finance Minister of India, Shri Arun Jaitley, in his Budget Speech of 2014-15 announced that an entrepreneur-friendly legal bankruptcy framework would be developed for Small, Micro Enterprises ("SMEs") and corporations to enable their easy revival, rehabilitation and exit, as the case may be. Pursuant to the above announcement, the Bankruptcy Law Reform Committee ("BLRC") has been set up under the Chairmanship of *Shri T.K Vishwanathan*, former Secretary General, Lok Sabha and former Union Law Secretary, to study the corporate bankruptcy legal framework in India and suggest reforms. The Committee is also tasked with drafting of a consolidated Insolvency Code for both corporate and personal insolvency. The Committee has been mandated to examine the whole gamut of issues relating to bankruptcy including specific areas such as:

i. Relevance of bankruptcy
ii. Early detection and resolution of financial distress
iii. Protection of interest of stakeholders
iv. Study the rescue mechanism and suggest ways of improving it
v. Examine the role of the institutions engaged in the process of rescue and liquidation
vi. Liquidation procedure for smaller companies
vii. Any other aspect relevant to the subject

BACKGROUND OF THE STAKEHOLDERS CONSULTATION AT IICA

The Indian Institute of Corporate Affairs (IICA) – a principal institution engaging with all aspects of the corporate world in India, is established by and affiliated to the Ministry of Corporate Affairs (MCA), Government of India. The IICA is committed to delivering opportunities for research, education and advocacy while simultaneously creating a repository of data and knowledge for policy makers, regulators as well as all other stakeholders related to the domain of Corporate Affairs.

IICA is a holistic think tank, capacity building and service delivery institution, operating through effective partnerships with corporate, professionals and institutions, and focusing on problem solving through action research. IICA provides an insight into all issues relating to corporate affairs that impact corporate functioning including legislative, policy, structural, governance, regulation, inter disciplinary and coordination issues by keeping in view current developments and likely future scenarios. IICA also endeavors to enable innovative solutions towards inclusive growth and entrepreneurial excellence with a focus on ethical business management practices.

IICA, through its various Schools and Centers coupled with the steering vision of its Board of Governors engages with experts, professionals and public servants from a range of fields involving policy formulation, evaluation and reform.

School of Corporate Law (SCL) one of the five Schools at IICA has established a niche of scholarly research in the field of corporate and related laws by corralling renowned experts in the field, professionals and academicians. SCL provides for policy insights into government legislation on the edifice of current epoch of rapid economic expansion and strategic knowledge dissemination.

With the dynamic nature of corporate laws, there are many new concepts being introduced for the betterment of corporate governance norms. This dynamism have been reflected in the Companies Act, 2013 with the introduction of many new concepts and elaboration of the existing rudimentary provisions necessitating a demand for an apt and sharper understanding of these provisions. The SCL at IICA, equipped with its state-of-the-art technological aids and pool of highly acclaimed academicians and professionals in the field of corporate laws aims at creating a programmed ecosystem for knowledge dissemination, research and advisory consulting, policy drafting and analysis.

The School of Corporate Law began its work on Bankruptcy Laws in the month of January 2014, however, in view of a specific Committee being formed by the Government of India to examine this issue, it was decided that two stakeholders consultations would be held at the IICA and the results of the same may be compiled as a report and submitted to the *T.K. Vishwanathan Committee* for further use.

The first stakeholder consultation was conducted on insolvency legal framework in India with special focus on Micro, Small and Medium Enterprises (MSMEs) on 27th February, 2015. Several entrepreneurs from the MSME sector participated and a day long discussion was held on the proposed amendments to the Micro Small and Medium Enterprises Development Act, 2006 ("MSMED ACT"). The brief Agenda of the consultation along with list of attendees is annexed as **Annexure I.**

Since the *T.K. Vishwanathan Committee* submitted its interim report in February 2015, and it "expected that this Interim Report will serve as a catalyst for a wider and more extensive consultation for stakeholders", it was decided to have stakeholder consultation on some important interim findings made by BLRC. The second stakeholder consultation was held on 19th March, 2015, which focused on the general insolvency legal framework of the corporate sector. Participants were asked for their views on the key recommendations in the Interim Report of the Committee such as enforcement mechanisms, timelines involved, role and powers of the National Company Law Tribunal (NCLT) and Company Administrator, revival schemes, debt restructuring etc. A topic wise discussion was then held. The brief Agenda of the consultation along with list of attendees is annexed as **Annexure II.**

PROCEDURE Written responses were sought from the participants in the physical interactive sessions. Post Consultation, additional feedback was received through email. Recommendations of the Committee were discussed in the following step wise manner:

1. The law, as it stands on date
2. Proposed amendments/ recommendations for amendment
3. The reasons behind the recommendations
4. The possibility of abuse of the proposed amendments, if any and the safeguards for preventing the same

Based on the two consultations, the report is divided into the following two parts:

Part I: With Special Focus on MSMEs on 27th February, 2015

Part II: With Special Reference to Corporate Sector on 19th March, 2015

PART – I

REPORT ON THE FIRST STAKEHOLDERS CONSULTATION ON INSOLVENCY LEGAL FRAMEWORK IN INDIA WITH SPECIAL FOCUS ON MSMES

INTRODUCTION

Micro, Small and Medium Enterprises (MSMEs) basically are non-corporate entities and governed by individual/personal insolvency laws in India. According to the 4th MSME census, "Nearly 97% of MSMEs are either sole proprietorship or partnership entity besides 3% of MSMEs as companies". Though considered as an important tool for economic growth and employment, unlike the corporate sector, the MSME sector did not receive due recognition for reforms. In addition, creation, existence and development of MSMEs are often stalled by issues like funding, personal liability, guarantor's liability, supply chain management, credit crunch besides stringent exit procedure when insolvency occurs. Therefore, it is the need of the hour, in view of the recent developments in India, to address the concerns of MSMEs in the area of insolvency and to strengthen them at par with corporate sector. Also, there is a need to conduct a comprehensive exercise to improve the law on individual/personal insolvency to ensure that our law provides an effective process of insolvency resolution.

SUMMARY OF THE COMMENTS RECEIVED FROM STAKEHOLDERS

The consultation focused on the following aspects of the insolvency law relating MSMEs in India:

ISSUE NO.1: *Proposed exit/revival mechanism for MSMEs in view of the MSMED (Amendment) Bill, 2014*

The amendment to the MSMED Act has been proposed owing to the lack of a legal framework for re-organization /winding up/exit for small units. The main objective of the proposed amendment is to provide for the "revival" i.e., early assistance to MSMEs to tide over difficult financial times and a framework where a viable MSME can seek standard as well as customized relief and concession for revival and "exit" i.e., an easier and expeditious exit procedure for the benefit of promoters and guarantors through liquidation and change in management. The proposed amendment to the MSMED Act also provides for separate adjudicating authorities for dispute resolution.

RESPONSE RECEIVED

All participants agreed with the proposed amendment to the MSME Act with respect to inclusion of a separate chapter for revival and exit for MSMEs as well as separate adjudicating authorities to deal with the disputes in the sector. Other recommendations included enhancing the Tribunal's power to resolve all the disputes relating to revival, exit and winding up of MSMEs without any separate hierarchy.

ISSUE NO. 2: *Sickness of MSMEs – Issues and Challenges*

The third census of small enterprises, conducted by Ministry of MSME in 2001-02, identified the reasons for sickness of MSMEs such as lack of demand, marketing, shortage of working capital, management support, non-availability of raw material, diversion of funds, power shortage, lack of technology, labour problems, delayed bank sanctions, marketing problems, delayed receivables, equipment problems, poor infrastructure and change in Government policy.

RESPONSE RECEIVED

Recommendations have been received with reference to requirement of a separate fund for rehabilitation of sick, Micro, Small and Medium Enterprises.

Other suggestions received were in support of efforts to rehabilitate and revive the enterprise before initiation of any winding up procedure.

<u>ISSUE NO. 3</u>: *Comprehensive Code for Personal Insolvency Laws in India*

Personal insolvency deals with individuals, proprietorships, partnerships and enterprises not covered under the Companies Act, 2013. This is presently governed by two crucial legislations – the Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909. The age old Acts on personal insolvency therefore require an overhaul and it has been proposed to have a Comprehensive Code on Insolvency Laws in India which would also include the personal insolvency.

<u>RESPONSE RECEIVED</u>

All participants were of the view that a comprehensive code for Personal Insolvency Laws in India should be drafted. Other comments received stated that there should be a separate code altogether with reference to non-legal entities in India, for e.g. sole proprietorship.

<u>ISSUE NO. 4</u>: *Review/Amendment of Provincial Insolvency Act, 1920*

The Provincial Insolvency Act, 1920 and the Presidency Town Insolvency Act, 1909 both are outdated legislations and seem incapable of dealing with the issues of cross border insolvency and other issues related to modern day insolvency laws.

RESPONSE RECEIVED

All participants were of the opinion that personal insolvency laws were outdated and should be reviewed, amended / repealed, in view of global developments in the area of insolvency. The revised legislations should be in compliance with the global best practices including the separate procedure for cross-border insolvency with reference to non-legal entities etc.

ISSUE NO. 5: *Exit Policy Framework under National MSME Policy*

The exit policy framework is required in the following possible scenarios:

i. For a successful entrepreneur who would like to exit from the business at a profit, the culture of successful serial entrepreneurship is not present in India. However, contrary to Indian situation it exists in countries like the US.

ii. The second category of entrepreneur who require an exit policy are those who are running a successful business but their next generation is not interested in joining the business. They look for a successful exit.

iii. The third category of entrepreneurs looking for exit policy are those who have not done well in their business but the business is still surviving. They would like to cut losses and exit.

iv. The fourth category of entrepreneurs who require exit policy are those who have failed, having bank loans and land resources as well as a factory which may be running or may be closed.

RESPONSE RECEIVED:

Several suggestions were received with reference to exit of the enterprises from the market. The stakeholders are not in favour of closing of the enterprises while they are running profitably. Other recommendations included that the procedure followed by the USA is not suitable for Indian conditions and also stressed that the focus should be on revival, rehabilitation and exit of the enterprises which are declared as sick.

ISSUE NO. 6: *Joint and Several Liability of Promoters and Guarantors of MSMEs.*

"Unlike registered entities under corporate law, where the liability of the shareholder is limited to the extent of the contribution made or due from him, in proprietorships or partnerships there is no separation of personal and business liability. When a business fails, not only do the assets of the business but the entrepreneur's personal assets also get attached to pay off business dues. Further, all guarantors which are drawn from the critical social safety net of the small entrepreneur, are also personally involved and in the eventuality of failure they also get implicated and the whole safety net crumbles."

RESPONSE RECEIVED:

Stakeholders were not in favor of putting unlimited liability on the guarantors of MSMEs. They were also of the opinion that the liability of the judgment debtor and guarantors of MSMEs should not be joint and several.

ISSUE NO.7: *Early detection of Financial Distress of MSMEs: Issues and solutions.*

"It is of utmost importance to take measures to ensure that sickness is arrested at the initial stage itself. The management shall have to identify the units showing symptoms of sickness by effective monitoring so as to bring back the units to a healthy track. An illustrative list of warning signals of incipient sickness that are thrown up during the scrutiny of borrowed accounts and other related records e.g. periodical financial data, stock statements etc."

RESPONSE RECEIVED:

Recommendations were received with reference to detection of early sickness of the enterprises. Stakeholders were not sure as to whether the early detection of the sickness of the enterprises will rehabilitate the organization until there will be a separate rehabilitation mechanism. Other suggestions included there should be a separate fund for revival and rehabilitation of the enterprises.

ISSUE NO.8: *Definition of MSMEs – Issues and Concerns in India*

"The National MSME Policy must encourage establishment and growth of our units. Let it be understood that big businesses evolve from small business only and go onto become several large companies. The first objective of this policy thus must be not only to encourage establishment and growth, but also, emphasize on growth. For this purpose, at the outset, we need to define our MSMEs in such a fashion that the definition does not become a hindrance to growth (which at present it is). Thus, it must not be the intention of any policy to keep a small entrepreneur, small. We must encourage the entrepreneur to grow and become a global player.”

<u>RESPONSE RECEIVED</u>:

Recommendations have been made with reference to revisions of the definition of MSMEs under the MSMED Act, 2006. The stakeholders believed that the revisions will increase the capacity of the working capital of the enterprises with meager compliances. Other recommendations included that there should be a clear demarcation of MSMEs and other enterprises.

The bottom line of the consultation was that there is a need to reduce the stigma of failure in business. Fear of failure desist an entrepreneur to try new things. Appropriately put in by EC (2002)

> “There is an urgent need of reducing the stigma of failure and renew our efforts which aim… “to promote a better understanding of failure; break the automatic conceptual link of ‘bankruptcy’ with ‘bad behavior’; demonstrate the benefits of starting afresh for economy, employment and growth; and encourage prevention among entrepreneurs in the ‘danger zone’.

PART – II

REPORT ON THE SECOND STAKEHOLDER'S CONSULTATION ON CORPORATE INSOLVENCY LAW REFORMS IN CORPORATE SECTOR

BACKGROUND

While the School of Corporate Law began its work on Bankruptcy Laws in the month of January 2014, in view of a Specific Committee being formed by the Government of India to examine this issue, it was decided that two stakeholders consultations would be held at the IICA and the results of the same may be compiled as a report and submitted to the *T.K. Vishwanathan Committee* for further use.

Since the *T.K. Vishwanathan Committee* submitted its interim report in February 2015 and the fact that the School of Corporate Law had already held one Stakeholder's Consultation focused on MSMEs, and the observation of *T.K. Vishwanathan committee* "*expected that this Interim Report will serve as a catalyst for a wider and more extensive consultation for stakeholders*", it was decided to have stakeholder consultation on some important interim findings made by BLRC. In line with the interim findings/observations of BLRC this stakeholder consultation is proposed to discuss the issues relating to the corporate insolvency.

OBJECTIVES

The objective of this stakeholder's consultation was to provide a platform to the stakeholders to examine and provide their views on the interim observations/suggestions put up by BLRC (refer to the executive summary of the BLRC report) in its report. The following is the outcome of the consultation recommendation-wise:

RECOMMENDATION NO. 1: *Individual Enforcement versus Collective Enforcement*

Under the Companies Act, 2013, ('CA, 2013') a single secured creditor may apply to the NCLT to have the debtor company declared as sick subject to the condition that at least 50% of the value of outstanding debt, on being demanded by secured creditors, is not paid, secured or compounded by the company.

The Committee in its interim report is of the opinion that the debtor company has likely already reached a stage where it may not be able to repay its outstanding debts and the process of rescue would be cumbersome. Therefore it has recommended that the CA, 2013 be amended in order to allow the filing of an application with the NCLT by a single secured creditor to recover his debts exceeding a prescribed value, if the company fails to pay the same within 30 days of the demand. The Committee has also observed that the provision under Section 271(2)(a) of the CA, 2013, by virtue of which a creditor is permitted to file a winding up petition on the company's failure to repay a single undisputed debt exceeding Rs. One Lakh, is in glaring contrast to the position of a single secured creditor under Section 253 (1). The Committee is also of the opinion that the chances of abusive filings for declaration of company's sickness by individual creditors are minimal as such creditors would prefer individual enforcement over a collective rescue process.

RESPONSE RECEIVED:

An overwhelming majority of the participants disagreed with this recommendation. Their opinion was that the law as it stands on date, rightly strikes a balance between safeguarding rights of the creditors and protecting the company from financial difficulties. Drawing a parallel with abuse of winding up proceedings, most participants believed that the chances of abusive filings in this area would also greatly increase if single creditor enforcement is allowed. A Single secured creditor anyways has the option to proceed separately for recovering dues from the company. The statutory threshold of Rupees One Lakh in case of winding up petitions must not be used since it caters to a separate issue. The threshold, if any, must be based on merits and not merely on prima facie facts. It was also suggested that heavy reliance on threshold requirement would not help.

<u>RECOMMENDATION NO. 2</u>: *Enforcement at The Instance Of Debtor Company*

Under Section 253(4) of the CA, 2013, a debtor company may file an application with the NCLT to have itself declared as sick on the same grounds as the secured creditors. The Committee is of the opinion that the said section be amended to allow the filing of the application by the company on the ground of its inability or likely inability to pay any undisputed debt of a prescribed value to any creditor, whether secured or unsecured. <u>The company should therefore be able to initiate rescue proceedings even before it has defaulted on its debt.</u> The Committee further refers to Section 261(2)(c) of the CA, 2013 under which a scheme for revival and rehabilitation may provide for the takeover of a sick company by a solvent company, when the scheme is placed before creditors for approval, they may decide to replace the management of the sick company. The Committee therefore is of the opinion that in such a scenario, the debtor company is not likely to abuse the process by initiating the rescue proceedings too early.

<u>RESPONSE RECEIVED</u>:

Most of the participants did not agree with this recommendation. They were of the opinion that the present stipulation of initiating of rescue proceedings by at least 50 % of secured creditors is suitable and enables the company to make amends. Lowering this threshold could possibly have a worse effect on the company.

Most of the participants also disagreed with the Committee's reasoning regarding the prevention of abuse due to the threat that the management of the company may change hands. A view that was strongly held was that the directors of the company should be solely responsible for management till the stage that the enterprise is not viable. The recommendation if implemented would end up shifting the primary responsibility from directors (and shareholders) to the NCLT and others.

<u>RECOMMENDATION NO. 3</u>: *Enforcement at the instance of Unsecured Creditors of the Company*

Section 253 of the CA, 2013 permits only secured creditors to file an application with the NCLT. The Committee is of the opinion that the inability of the unsecured creditors initiate rescue proceedings reduces their incentive to provide credit since they are exposed to higher risks. Also certain companies may only have unsecured creditors. In order to prevent abuse, the Committee has suggested that the eligibility criteria for making such application should have a <u>value related threshold</u>. The Committee therefore recommended that the said Section be amended to allow the initiation of rescue proceedings by unsecured creditors representing 25% of the value of the company's outstanding debt to unsecured creditors, if the company fails to pay the same within 30 days of the demand or secure or compound it.

<u>RESPONSE RECEIVED</u>:

All participants disagreed with this recommendation. The distinction between the secured and unsecured creditors is a fundamental one. The unsecured creditor willingly undertakes risks involved in providing finance to a company. The elimination of difference between the two categories of creditors did not find favour with any of the participants. Doing away of the distinction waters down the incentives for a secured creditor and creates further trouble for a company in financial distress trying to attract finance. The safeguard against abuse suggested by the Committee also did not seem very effective to the participants and the NCLT would also be overburdened if the recommendation were put in to practice. The issue of shareholder's activism needs also to be considered at this point.

RECOMMENDATION NO. 4: *Reduced Timelines*

Under Section 253(7) of the CA, 2013, the NCLT must determine whether or not the company is sick within 60 days of filing of application by the creditors or the debtor company. The viability of the company is assessed only after the company has been declared sick. The order of the NCLT may be appealed against resulting in further delay. The Committee therefore recommended that Sections 253 to 258 of the CA, 2013 be amended to reduce timelines to determine the company's viability. It recommended that appointment of an interim administrator within 7 days of the filing of application with the NCLT for determination of Debtor Company's sickness. The scope of the duties of interim administrator will be limited to convening of a meeting of the creditors and submission of report to the NCLT on the viability of the debtor company. A decision of the committee of creditors on whether the company should be rescued or liquidated should be supported by 75 % secured creditors by value (or 75% of all the creditors by value, if there is no secured debt in the company). This would give the creditors greater say in the matter at an early stage and result in reduced time to come to the final conclusion.

<u>RESPONSE RECEIVED</u>:

Nearly all the participants agreed with this recommendation but many had serious concerns over its effective implementation. There were also concerns as to increase in costs.

<u>RECOMMENDATION NO. 5</u>: *Principles of Enforcement through Moratorium*

On an application either by the creditors or the company, the NCLT has the power to grant a moratorium on enforcement proceedings relating to execution, winding up etc, of a company. The moratorium is for a fixed period of 120 days and may be granted with a view to prevent sale of the debtor company's assets and avoid multiple legal actions for purpose of protecting the creditors. [Section 253(2) and (3) CA, 2013]

The Committee is of the opinion that this power of NCLT suffers from several defects such as the wide discretion to grant moratorium, no provision to lift moratorium when once granted, no consideration of creditors' interest. The Committee therefore recommends that the CA, 2013 be amended and the power of NLCT to grant, refuse or lift moratorium must be guided by a specified list of grounds.

RESPONSE RECEIVED:

All participants agreed with the recommendation that the grounds and principles of granting and lifting of moratorium should be clearly specified in the Companies Act. While granting a moratorium, the NCLT is likely to give a detailed and reasoned order. At present there are no guidelines for grant of moratorium. An indicative/ exhaustive list, as recommended by the Committee, would restrict the scope of the NCLT in this regard. The list must, however, be in the nature of guiding principles and not restrictive.

<u>RECOMMENDATION NO. 6</u>: *Appointment of Administrator*

Under the CA, 2013, the NCLT has the power to appoint an interim or company administrator for the debtor company. The Committee is of the opinion that 75% of the secured creditors in value (or 75% of all creditors by value, if there is no secured debt in the company) should be able to appoint a company administrator directly after a company has been declared sick. Appointment must be made within 15 days of order declaring sickness and the terms and conditions of his appointment will be subject to *post facto* confirmation by the NCLT i.e. after the appointment is made. The NCLT may confirm such appointment in the absence of a manifest violation of the prescribed terms and conditions or a challenge by the company or the other creditors. The company and/or other creditors should be permitted to petition the NCLT for the removal or replacement of the company administrator. The NCLT should be able to impose sanctions/costs/damages on a petitioner if it finds that a petition challenging such appointment has been filed to abuse the process of law and dispose of any application for removal or replacement of the company administrator within thirty days.
The Committee also believes that the possibility of abuse can be minimized by incorporating safeguards and allowing the right to appoint the administrator to a large majority of secured creditors.

RESPONSE RECEIVED:

A mixed response was received on this recommendation. Half of the participants agreed and the other half disagreed. Those who agreed were of the opinion that, to the maximum extent possible, the NCLT’s involvement must be reduced but adequate safeguards should be incorporated to minimize the possibility of abuse.

Those who disagreed with the recommendation were of the opinion that if the right of appointment of administrator is given to the creditors, administrator will become agent of the creditors i.e. agent of a private party. Creditors are the claimants. No claimant in any proceeding whatsoever is allowed to appoint its own judge or administrator. Administrator must therefore be an official appointee and not a private appointee.

Regarding the abuse of the recommendation, concerns expressed were as under:

i) That ensuring only the participation of secured creditors (the Committee envisages the participation of unsecured creditors only when there are no secured creditors) is problematic in as much as a company can have a very less proportion of secured creditors and the 75% of such minority can dictate the appointment of the administrator. Thus, the Committee should look for the participation of all the stakeholders, viz. all the creditors (secured or unsecured), shareholders and promoters, etc.

ii) That the method of appointment of administrator by stakeholders with the *post facto* approval of NCLT is problematic as it can be a cause for delay in a situation where the NCLT does not agree with the appointment and also in a situation, where the stakeholders take a considerably long time to decide the appointment of the administrator. To counter this problem and also the systemic problem of cartelization among the stakeholders to appoint a given administrator, the Committee may recommend a process, wherein the stakeholders will nominate a number of proposed administrators (of preferably five members) out of which the NCLT shall appoint one administrator. This process will ensure that the two situations illustrated where delay may occur, do not take place.

With relation to the safeguards in appointing an administrator, the NCLT should be directed by the past record of the administrator and shall allay the fear of conflict of interest of such administrator for being related to any of the directors or the promoters of the company.

RECOMMENDATION NO. 7: *Taking over of Management of the Company – Role of the Administrator vis-à-vis NCLT*

The CA, 2013 gives the power to the company administrator to take over the management of a sick company only if the NCLT so directs. The Committee believes that here also, too much discretion has been given to the NCLT without providing any guidelines. It recommends that the CA, 2013 be amended and guidelines be included for the NCLT to consider while appointing the administrator to take over the management of a sick company.

RESPONSE RECEIVED:

All participants welcomed this recommendation. The Committee has rightly recommended that the powers of the administrator in taking over of the management shall be widened and to that extent the NCLT may be allowed to pass such orders for enabling administrator to perform his/her duty to their best of capabilities. At the same time, the idea of the Committee to give the powers to the secured creditors to determine if the administrator shall take over the management is problematic for reasons mentioned in answer to question 6. The Committee may reconsider this aspect to allow the participation of a wider spectrum of stakeholders in such decision-making.

<u>RECOMMENDATION NO. 8</u>: *Powers and Functions of Company Administrator*

The Committee is of the opinion that certain specified powers be granted and functions assigned to the company administrator. A list specifying such powers and functions is laid down in the interim report of the Committee.

RESPONSE RECEIVED:

All participants broadly welcomed this recommendation. They were of the view that while the Committee has pointed out matters wherein a certain form of discretionary power needs to be given to the administrator for the disposal of his/her functions, there are certain powers whereby the administrator can exercise a very high discretion. To curtail the same and to balance the interests of the management, which is taken over by the administrator, a mechanism needs to be established.

It is proposed that after the administrator takes over the control of the management, the administrator must constitute a panel of advisors, consisting of the representatives of the existing creditors, shareholders and the erstwhile management of the company. The Committee may recommend that the decisions of the administrator should be approved by such panel of advisors. The panel of advisors shall, therefore, supervise the functioning of the administrator, with the right to approach NCLT if it finds any decision of the administrator to be highly prejudicial to the interests of the company.

<u>RECOMMENDATION NO. 9</u>: *Principles for Sanction of Scheme of Revival*

The CA, 2013 provides that in order for the scheme of revival and rehabilitation of a sick company to be sanctioned by NCLT, such scheme must be approved by secured creditors representing 75% in value of the debts owed by the company to such creditors and unsecured creditors representing 25% in value of the amount of debt owed to such creditors.

The Committee believes that this needs to be amended to

(a) provide for a predictable and fair mechanism for sanctioning of a scheme of revival,

(b) avoid hold-outs by debtor companies through their related parties and

(c) prevent diversion of cash flow generated by the business after approval of a scheme of revival.

The Committee therefore recommended that the CA, 2013 be amended to provide for the following principles to be applicable at the time of sanctioning a scheme of revival:

(i) the creditors within the same class should be treated equally

(ii) dissenting creditors should get as much in scheme as they would in liquidation

(iii) consent of creditors who are not affected by a scheme should not be required (for instance, secured creditors who have realised their security interests outside the rescue proceedings)

(iv) related parties should be excluded from the unsecured creditors entitled to vote on a scheme.

Identification of 'creditors who are unaffected by a scheme' and 'unsecured creditors who are related parties of the company' should also be a specified function of the company administrator. The process of identification should be completed before the scheme is put to vote.

RESPONSE RECEIVED:

Most of the participants were of the view that while the Committee has given very practical and pragmatic recommendations on this aspect, there is a need to further specify and guide the process of identification of 'creditors who are unaffected by a scheme' and 'unsecured creditors who are related parties of the company' by the company administrator. The Committee also must not recommend very wide powers for the administrator and wherever possible may provide the guidelines and the governing principles for functioning of the administrator.

<u>RECOMMENDATION NO. 10</u>: *Raising Finance for Revival*

The Committee has observed that in order for a company in financial distress to be able to revive, it needs access to fresh external finance. But given that the company is sick and in the rescue process, it is very difficult to find finance. Lenders do not lend to such companies for the fear that the money will be utilized for repayment of the outstanding debts on which the company has defaulted. The Committee suggested that the CA, 2013 be amended to include 'raising secured and unsecured loans from any creditor (whether existing or external) as part of a scheme of revival', drawn up by the company administrator. The Scheme may also include provisions for 'super-priority' for creditors who provide such finance i.e. the rescue finance providers will rank ahead of all existing creditors subject to such safeguards for the existing creditors as may be provided in the scheme.

RESPONSE RECEIVED:

All participants broadly agreed with this recommendation. The recommendation, however, if implemented, should not be of any mandatory nature but must only facilitate the removal of any legal hurdles which an administrator might face in taking any decision on raising of fresh finance. Though a certain degree of governmental control is required, a free market approach is evidently the best way to enable a company to come out of financial distress.

The recommendation is in line with the idea that in order to revive a distressed company, the administrator should be given the liberty to raise loans from any lawful source available. In such a case the lender shall be incentivized with the super-priority option. Securitization may also be an option which can be explored.

<u>RECOMMENDATION NO. 11</u>: *Parallel Proceedings under SARFAESI Act*

The CA, 2013 permits secured creditors representing 75% of the value of the debt to cause the abatement of rescue proceedings if such secured creditors initiate the debt enforcement process under the SARFAESI Act. This was meant as an escape route initially provided by an amendment to SICA, owing to the widespread opinion that SICA was dysfunctional and not being used for legitimate rescue purposes. But the same carve-outs for secured creditors have been reproduced in the corporate rescue provisions under CA, 2013. However, in stark contrast to SICA which has proved to be dysfunctional in practice, the SARFAESI Act has been fairly successful in enabling secured creditors to enforce their debt against defaulting debtors. Moreover, as discussed above, a scheme of revival needs to be approved by 75% of the secured creditors for it to be approved. If 75% of secured creditors intend to initiate debt recovery proceedings, it is unlikely that they will subsequently approve a rehabilitation plan for the debtor company. The Committee therefore is of the opinion that until there is some evidence to suggest that the rescue proceedings under the CA, 2013 cannot function effectively (i.e., save viable businesses from piece-meal sale or liquidation) in the face of the secured creditors' enforcement rights under the SARFAESI Act, such rights should not be disturbed at this stage.

RESPONSE RECEIVED:

The carve-out for 75% to enforce their rights under the SARFAESI Act was critical in the SIC Act because of the inordinate delays that plagued the entire rehabilitation process. However, in the case of Companies Act, 2013, similar carve-outs in the form of provisos to Section 254 seem premature and display short-sightedness on part of the Legislature. Where a reference has been made to the NCLT and a scheme for revival and rehabilitation is submitted, the first proviso provides that such reference shall abate where 75% of the creditors in value outstanding have initiated debt enforcement proceedings under SARFAESI. If the said majority has already initiated the proceedings, no reference can be made in the first place. By allowing the strength of 75%, the option to initiate proceedings under SARFAESI reduces the creditors' incentive to actively participate and contribute in the formulation of the rehabilitation scheme. This also places the unsecured creditors at a disadvantage because though the scheme needs the consent of both secured and unsecured creditors, the provisos give secured creditors the power to collectively 'veto' the corporate rescue procedure even where the scheme has been submitted to the NCLT and thus, delay the process. The Committee has been correct in its assessment that it is perhaps too early to judge the efficacy of the corporate rescue procedure under CA, 2013 and until the policy-makers empirically gauge a need for such carve-outs, such a provision is unnecessary.

<u>RECOMMENDATION NO. 12</u>: *Scheme of Debt Restructuring*

Schemes of arrangement for debt restructuring under the Companies Act, 1956, was not very popular, except in the case of mergers and acquisitions. The Committee is of the opinion that schemes of arrangement can become a very effective tool for debt restructuring, acknowledging however that such restructurings can also be achieved less formally (and often less expensively) through a workout outside the court. Given that the proceedings for schemes of arrangement can be initiated without any proof of default or insolvency, they can facilitate early intervention and finality. Schemes of arrangement can also facilitate the use of hybrid-rescue mechanisms like 'pre-packaged rescues'. Pre-packaged rescue is a practice evolved in the UK and the US by which the debtor company and its creditors conclude an agreement for the sale of the company's business prior to the initiation of formal insolvency proceedings. The actual sale is then executed on the date of commencement of the proceedings/date of appointment of insolvency practitioner, or shortly thereafter (and the proceeds distributed among the stakeholders in the order of priority). Until the Indian market for insolvency practitioners becomes sufficiently developed and sophisticated, it may not be advisable to allow such sales without the involvement of the court or the NCLT. However, such sales could be allowed as part of a NCLT supervised scheme of arrangement. Subject to prior approval of the different classes of creditors, shareholders and relevant government authorities, such pre-packed schemes may be approved by the NCLT within thirty days of filing (without requiring any separate meetings or hearings) as long as the scheme satisfies the basic requirements <u>as may be prescribed</u>. However, pre-packaged rescues in the UK have also been criticised for failing to take into account the interests of all the stakeholders (specially the unsecured creditors). In view thereof, before any such measure is introduced in India, separate rules will have to be developed to operationalise such pre-packed schemes to protect the interests of all the stakeholders.

RESPONSE RECEIVED:

ALL PARTICIPANTS BROADLY AGREED WITH THIS RECOMMENDATION. The Committee is correct in considering schemes of arrangement can become a very effective tool for debt restructuring, acknowledging however that such restructurings can also be achieved less formally (and often less expensively) without court intervention. Given that the proceedings for schemes of arrangement can be initiated without any proof of default or insolvency, they can facilitate early intervention and finality. However, the Committee has expressed discontent over the fact that though Section 230(2) of the CA, 2013, provides for disclosure of such schemes consented to by seventy five percent or more of the creditors at the time of making the application, it does not provide for sanctioning upon filing, which goes against the recommendations of the J.J. Irani Committee. Under Section 230, of the CA, 2013, the approval of a scheme of arrangement still requires the consent of three-fourths majority of each class of creditors, including secured and unsecured creditors. In the participants' opinion, the consent of such a majority in every class is extremely necessary because any restructuring of the company's debts will invariably have an impact on the interests and stakes of other creditors. It would be unfair to establish a threshold where the consent of 75% of the secured creditors is sufficient for the sanctioning of a restructuring scheme without taking into account the interests and concerns of other creditors.

The scheme of 'pre-packaged' rescue mechanisms that the Committee has suggested based on the experiences of such mechanisms in the US and the UK is too premature for a country like India where a market for insolvency practitioners has not yet developed. Further, there is always the possibility of the interests of unsecured creditors being sidelined. This means that if the mechanism is to be introduced in India, separate rules will have to be developed to operationalize such pre-packed schemes to protect the interests of all the stakeholders, as the Committee has also recognized. At present there is no dire need for such pre-packaged schemes and the idea of introduction of such schemes should be postponed. In the meanwhile, the policy makers should concentrate their efforts on strengthening the mechanism already provided in the CA, 2013, i.e. schemes of arrangement, which is more suited to the Indian environment and which creditors and shareholders have successfully used in the past.

RECOMMENDATION NO. 13: *Winding Up of Companies on the Ground of Insolvency*

One of the grounds for presenting a winding up petition before the NCLT is the inability of the debtor company to pay its debts. The statutory demand test – a single instance of failure to repay an undisputed debt on demand – is provided under the CA, 2013. But courts in India have been inclined to treat such non-payment as an insufficient basis to prove the company's 'inability to pay debts' and require additional evidence to prove the company's insolvency in the commercial sense.

The Committee is of the opinion that certain amendments are needed to prevent the abuse of this provision by solvent debtors. It therefore recommended that if a debtor company fails to pay an undisputed debt of a prescribed value, a creditor should be entitled to a winding up order irrespective of whether it is insolvent (in commercial or balance sheet terms) or not. NCLT should be granted discretion to refer the company for rehabilitation before winding up if the company appears to be prima facie viable.

To prevent abuse by creditors and ensure that it is not misused to settle disputed debts, an amendment should made to the CA, 2013 to provide a list of factors which may be considered by the NCLT in order to determine whether or not, it is a disputed debt. The debt may be considered disputed if the following conditions are satisfied:
(i) the defence of the debtor company is genuine, substantial and in good faith
(ii) the defence is likely to succeed on a point of law and
(iii) the debtor company adduces prima facie proof of the facts on which the defence depends.

NCLT must also have the power to impose costs/ damages on an abusive petition.

The Committee therefore recommended an upward revision of the present value of Rupees One Lakh for triggering the statutory demand test. It also recommended that balance sheet insolvency and commercial insolvency be identified as separate grounds indicating a company's inability to pay debt.

RESPONSE RECEIVED:

The function of the Statutory Demand Test, as understood by the Committee, is to empower the creditor to enforce his debts against the company because where a company has *chosen* not to pay an undisputed debt to the creditor, the creditor may approach the NCLT for an order of winding-up against the company. The proposition of the Committee is that the mere fact that the company has not paid a single debt to a single creditor beyond a prescribed value should give the creditor a statutory right to not just approach the NCLT but also for an order of winding-up against the Committee. This, to say the least, is not only flawed but also precarious as it divorces the non-payment of a single debt (even an undisputed one) from the commercial solvency test that the judiciary has followed in such cases. The conventional judicial approach where such statutory demand is made is that such demand leads to a presumption of insolvency but it goes a step further to evaluate the commercial viability of the company before considering the winding-up of the company. This approach is more welcome as it allows the NCLT the discretion to take into account a number of factors and the interests of other stakeholders in contrast with the right of a single creditor to enforce his debt. To that end, it is suggested that the commercial solvency test should be incorporated explicitly in Section 271 (2) (i) of CA 2013, which will make the statutory demand test not only more equitable but also more efficacious.

If the intention behind employing the statutory demand test is to enforce the debt of the creditor that the company has been unable/unwilling to pay, there must be a statutory provision to the effect that the NCLT must encourage, and if need be, compel the debtor company to negotiate with the creditor to explore options for restructuring of the debt where the company is *prima facie* commercially viable. To entitle the creditor to an order of winding up where the company has not paid a single debt is unfair to the other creditors, shareholders and employees of the company and may lead to abuse by creditors even in the case of disputed debts. The potential of abuse of the process of law, in our opinion, cannot be adequately deterred by costs/damages because more often than not, judges are reluctant to impose such costs on a petitioning creditor.

The Committee's suggestion regarding insertion of commercial insolvency and the balance sheet test as separate grounds is advisable in part; it is suggested that commercial solvency should be a separate ground under Section 271 of CA 2013 because it is a stronger qualitative check on the solvency of the company in contrast to a mere addition and subtraction of assets and liabilities in the balance sheet test.

It should be kept in mind that the creditor has the right to apply for the winding up but does not have the right to get the company wound up.

RECOMMENDATION NO. 14:

14.1Priority of Payments

Generally, Government dues have priority over debts owed to unsecured creditors only. However, when the tax or revenue payable to the Government by virtue of a specific statutory provision is made as a first charge on the assets of the assesee, such tax or revenue gets priority over secured creditors as well.

While the dues are most likely an insignificant amount in comparison with the total Government receipts, the non-payment of such dues to secured creditors (including public sector banks) are likely to be substantial and may even lead to their insolvency and systemic issues for the economy. The Committee therefore recommended, that subject to the *paripassu* charge in favour of the workmen as envisaged in Section 325 of the CA, 2013, or rights of the employees under employee welfare legislations, there should be a separate declaratory provision that upholds the priority rights of secured creditors on their security interests notwithstanding anything to the contrary contained in any state or central law that imposes a tax or revenue payable to the Government by virtue of a specific statutory provision made as a first charge on the assets of the assessee.

RESPONSE RECEIVED:

Secured creditors have priority of payment from their security. Taxes and revenues due to Government automatically create a charge over the property of the assessee but they do not create any priority over the secured creditor's right of repayment from his security. He can always enforce his security for repayment. Preferential payments under the CA, 2013 are made separately from the secured creditors. Secured creditors exist outside the winding up.

14.2 Priority of Crown Debts

Priority of Crown debts i.e. preferential status over other debts to the Government, is a principle of common law which is also present in the Indian legal system. The UK, where the principle originated, has in 2002 abolished the Crown's preferential right of payment and the debt now ranks at par with ordinary unsecured creditors. The Committee, however, is fully aware of the possibility of misuse of such a benefit if, in India, the Crown's preferential status of payment is removed without any qualifications.

RESPONSE RECEIVED:

Participants suggested that priority of payments to crown debts should be abolished in India. There are no cogent reasons in support of the preference to the crown over unsecured creditors. The Committee may engage in consultations with corporate stakeholders to estimate potential of abuse and the safeguards that may possibly be needed to tackle such abuse, if any, by unsecured creditors.

RECOMMENDATION NO. 15: *Strengthening Provisions on Avoidance of Certain Transactions in Winding Up*

Several provisions of the CA, 2013, are meant to invalidate certain transactions which result in dispositions of the company's property in the lead up to insolvency other than for full value, or payments that unduly benefit certain creditors at the expense of others. These include transactions entered into within specific periods prior to the company's insolvency, such as provisions invalidating fraudulent preferences, late floating charges other than for new value and provisions preventing transfers prior to and during the winding up process. A number of them have been retained from the Companies Act, 1956 and have proved ineffective in practice.

These provisions also suffer from several substantive limitations and are not in consonance with international best practices. The CA, 2013 lacks provisions that

i) define the scope of undervalue transactions specifically; or
ii) strike at transactions intended to put the debtor's assets beyond the reach of creditors (which can be resorted to even before a winding up petition is initiated); or
iii) provide for longer time periods for applying such provisions to transactions with related parties.

The Committee noted that provisions relating to avoidance of transactions can be a very effective tool against 'wilful defaulters' engaging in siphoning of assets to defraud the creditors. Accordingly, these provisions must be brought in line with international best practices.

The Committee therefore recommended that :

i) The CA, 2013 be suitably amended in line with UK Insolvency Act, 1986, to lay down clear criteria for challenging undervalue transactions in the lead-up to the insolvency
ii) A provision invalidating transactions defrauding creditors similar to the UK Insolvency Act, 1986, should be inserted in the CA, 2013. Such provision would apply without any time limits and should be available in and outside formal insolvency proceedings
iii) The avoidance provisions under the CA 2013 (Sections 328 and 329) should be strengthened by providing for a longer vulnerability period (up to two years) for avoiding transactions entered into with related parties of the company

RESPONSE RECEIVED:

All of the participants agreed with this recommendation.

RECOMMENDATION NO. 16: *Strengthening Managerial Accountability Provisions in Insolvency*

While the CA, 2013 contains several provisions which provide for the initiation of criminal proceedings, similar provisions under the Companies Act, 1956, proved ineffective in practice. In the past, the provisions relating to prosecution of directors have been rendered ineffective due to funding constraints and lack of institutional capacity.

The Committee has observed that Official Liquidators face several informational constraints in bringing cases against managerial misconduct - the financial information relating to the company is often unreliable or incomplete. They depend on the Registrars of Companies, who are already overburdened, and consequently unable to provide the required assistance efficiently. Therefore, a large number of cases seeking to impose liability on the delinquent directors of the insolvent company are dismissed on account of lack of sufficient supporting evidence in the form of financial data. This indicates that unless issues relating to institutional capacity and informational constraints are addressed, provisions on managerial accountability under the CA, 2013 will not achieve the desired outcomes.

The Committee recommended that all efforts must be made to ensure that the liquidators and their counsel are sufficiently equipped and have all necessary resources to:

(a) discharge their duties efficiently

(b) bring cases against the management for committing offences contemplated in the law during the course of liquidation and

(c) effectively manage the costs associated with achieving these functions.

There is also a pressing need to build appropriate institutional capacity to address issues relating to informational and financial constraints faced by the liquidators in bringing cases against the delinquent management. The 'advisory committee' consisting of creditors in the winding up process should be utilised for bridging this gap.

The Committee also observed that the CA, 2013, lacks a provision similar to the 'wrongful trading' provision under the UK Insolvency law that imposes personal liability on the directors if they fail to take reasonable steps to minimize the potential loss to the creditors when there is no possibility of avoiding insolvent liquidation. It therefore recommended that a civil remedy for wrongful trading should be introduced under Indian law as well – this would prevent directors from taking a gamble on the company's fortunes at the creditors' expense.

RESPONSE RECEIVED: Broadly all participants agreed with this recommendation. However, there were some concerns on further enhancement of directors' liability in this respect.

RECOMMENDATION NO. 17: *Issues Relevant for both Rescue and Liquidation*

17.1 FORUM

The Committee observed that even though the NCLT was first proposed more than a decade ago, it is yet to operate on account of multiple challenges before courts In Union of India vs. Madras Bar Association [1] ('NCLT case'), the NCLT and National Company Law Appellate Tribunal ('NCLAT'), as envisaged under the Companies Act, 1956, were held constitutional but the CA, 2013, has not complied with all the observations of the Supreme Court. Another relevant case is Madras Bar Association vs. Union of India ('NTT case') in which the Supreme Court has struck down the National Tax Tribunals Act, 2005, due to which several amendments may be needed in the CA, 2013. The Committee recommended the following amendments :

i) At least one bench of the NCLT in every State with a High Court
ii) Setting up a bench of the NCLAT in every State with an NCLT bench.

[1] (2010) 11 SCC 1

iii) Exclusive power to President of the NCLT to determine the constitution of benches of the NCLT and the jurisdiction of such benches

iv) Exclusive power to the Chairman of the NCLAT to determine the constitution of benches of the NCLAT and the jurisdiction of such benches

v) The words "who has been a judge for five years" should be deleted from Section 409

vi) Only officers who have held a post at Additional Secretary level or higher will be eligible for appointment

vii) Separate clause should be inserted, in *parimateria*with Section 419 indicating that at least one member of each NCLAT bench will be a judicial member

viii) A clause should be introduced to indicate that in all appeals not involving technical issues, the NCLAT bench hearing such appeals should only comprise judicial members or technical members with legal training, as may be prescribed

ix) The Ministry of Corporate Affairs cannot have representation on the committee to appoint members to the NCLT or the NCLAT. The clauses should be replaced with a provision which gives the Chief Justice of India the final say in the appointment of members to the NCLT and NCLAT, with the relevant inputs being obtained from the concerned ministry

x) The nodal ministry for the administration of CA, 2013 should be different from the Ministry of Corporate Affairs

RESPONSE RECEIVED: A mixed response was received on this recommendation. Only half of the participants were in favour of establishment of separate NCLT benches in each of the States. Nearly all of the participants were against the idea of establishment of a nodal ministry for the administration of CA, 2013.

17.2 PRACTICE AND PROCEDURE

1. The Committee has observed that that several practice and procedure related innovations may have contributed to the failure of the corporate insolvency regime in India. Such practices include
   i) the judicial practice of hearing a matter on merits of the case even before admission of a winding up petition – which allowed recalcitrant debtor companies to cause delays even before admission
   ii) judicial practice of affording a corporate debtor time to repay all or part of the debt owed to a petitioning creditor (including by installments) over a potentially long period of time, prior to the admission of a winding up petition or its advertisement – and the debtor company not repaying in spite of such time having being given (in most cases)
   iii) a change in the interpretation of the SICA that diluted the power of the Board of Industrial and Financial Reconstruction ("**BIFR**") to direct companies found incapable of rescue into liquidation, and expanded the power of the High Courts to reconsider a company's rescue prospects on the merits even after the BIFR had issued a liquidation opinion; and
   iv) relatedly, the development of a judicial practice in the High Courts of permitting the SICA companies to explore rehabilitation after the issuance of a liquidation opinion by the BIFR.

The CA, 2013 contains several provisions, which may cause similar procedural problems and attendant delays. Therefore the Committee recommends that the rules for operationalization of the NCLT should specify that

i) whenever a company is given an opportunity to file a reply before admission of a petition, the NCLT should not hear the matter on merits at that stage
ii) whenever a company has been given the opportunity to repay the debts before admission, such repayment should be as per a prescribed schedule (as specified in the order), which shall not be extendable under any circumstances and such a repayment related order should take into account the interests of all (or substantially all) the creditors and not just the petitioning creditor and
iii) an order that stays a winding up order should only be made in exceptional situations (for instance, where there is evidence to suggest that creditors have abused the process of law to obtain a winding up order) – unviable companies should not be allowed to take the benefit of such stays for extraneous considerations.

It is also recommended to develop a system for on-going training of the NCLT members and insolvency practitioners to ensure that they have complete understanding of the reasons for the failure of the present system and technical issues involved in liquidation and rescue cases.

Further, the relationship between the NCLT and the superior courts should be closely monitored and subject to ongoing review. The judiciary should be sensitised about the economic costs of delays in liquidation and rescue proceedings and benefits of insulating the NCLT and the NCLAT from a review on merits.

Lastly, the NCLT and the NCLAT should be required to record annual statistical data on matters such as the number of pending cases, the number of cases disposed, and the time taken for disposal of cases. This data may be passed on to the Government and the Supreme Court on a regular basis, who can evaluate the data based on standard efficiency parameters and recommend corrective action for tightening of procedural rules as and when required.

RESPONSE RECEIVED: The participants broadly agreed with this recommendation.

RECOMMENDATION NO. 18: *Regulation of Insolvency Practitioners*

CA 2013 provides for appointment of liquidators and administrators from a Government approved pool of private professionals. Although CA 2013 provides for a fairly comprehensive regime for the liquidators, some issues relating to the appointment, qualification and regulation remain to be addressed. Moreover, CA 2013 provisions in relation to regulation of administrators seem fairly underdeveloped and leave much to the discretion of the NCLT.

While the Ministry of Corporate Affairs is already in the process of developing rules that will provide for a detailed criteria for qualification (including experience in insolvency matters), disqualification and regulation of insolvency practitioners, the Committee recommended that such rules should also provide for a code of ethics and address issues relating to conflict of interests (for liquidators, administrators, including any directors nominated by the administrators and experts/professionals engaged by such liquidators or administrators).

The Committee also recommended that the CA, 2013 should be amended to include 'turn-around specialists' or 'business consultants' as well as firms or bodies corporate consisting of professional specialists in insolvency matters as professionals who may be appointed as 'interim administrators' or 'company administrators'.

RESPONSE RECEIVED: The participants broadly agreed with this recommendation.

<u>RECOMMENDATION NO. 19</u>: '*Safe Harbour' Provisions*

Several jurisdictions have 'Safe Harbour' provisions (such as provisions on settlement and netting of transactions in stock exchanges and clearing corporations) which exempt certain financial contracts from the normal operation of insolvency laws. 'Safe Harbour' provisions would include exemption from:

i) the mandatory stays on enforcement upon the contractual counterparty's entry into formal insolvency proceedings (for instance, the provision for moratorium under Section 253 (2) of CA 2013 or stay of suits on a winding up order under Section 279 of CA 2013)
ii) the prohibition on the exercise of termination provisions exercisable upon the entry of the contractual counterparty into formal insolvency proceedings; and

iii) liquidator or other relevant office holder's rights to challenge and avoid transactions entered into at an undervalue or prefer select classes of creditors (Sections 328, 329 of CA 2013

The Committee agreed with the SEBI proposal to amend the Securities Contracts Regulation Act, 1956 ("SCRA") to provide for such safe harbours for clearing corporations and stock exchanges in the event of the insolvency of the clearing members and trading members in the interest of settlement finality in the markets. The proposed amendment is also in line with Section 23 (4) of the Payment and Settlement Systems Act, 2007 that provides similar protection for settlement finality in the payment and settlement systems.

RESPONSE RECEIVED: All participants agreed with this recommendation

RECOMMENDATION NO. 20: *Insolvency Resolution of MSMEs*

The Committee noted that sole proprietorship is the most commonly adopted ownership structure for MSMEs in India. The legal personality of a sole proprietorship is inseparable from the individual who owns the proprietorship. Consequently, the insolvency resolution of most MSMEs is largely dependent on personal insolvency laws (which have proved to be very ineffective in practice). Although the RBI has also issued separate instructions to banks for revival of sick *micro and small enterprises* or MSEs, the said guidelines do not apply to medium enterprises. In order to effectively address issues relating to insolvency of all MSMEs, the personal insolvency regime needs be substantively reformed. The proposed Insolvency Code will be a comprehensive law that will not only cover companies and other forms of business enterprises, but also provide a detailed and modern framework (and institutions) for resolution of personal insolvencies. However, it is important to note that rescue mechanisms involving courts/tribunals or administrators and liquidators can be very costly. Most MSMEs typically have very few assets (especially the service enterprises). In many cases involving small businesses, the cost of such court/tribunal driven proceedings can be disproportionate to the size of the assets under consideration.

The Committee also noted that a key concern among MSMEs under financial distress is that the banks are too quick to initiate recovery proceedings against MSMEs in the event of a default (irrespective of the viability of the entity). The Committee therefore proposes an administrative mechanism for rehabilitation of viable MSMEs under financial distress and recommends that it be given statutory status. The proposed mechanism, if implemented effectively, will provide much needed relief to viable MSMEs under financial distress without involving the crippling costs associated with formal rescue mechanisms involving administrators and courts/tribunals. Such administrative framework will be useful even after the Insolvency Code is operationalised.

RESPONSE RECEIVED:

All participants agreed with this recommendation. It goes without saying that the personal insolvency regime in India has become obsolete and needs a major overhaul. But there is also the need for a mechanism over and above this to address the insolvency issues that arise in the MSME sector. The proposal of the Committee for "Committees for Distressed MSMEs" to be created by banks is quite a progressive one since it creates a platform for the enterprise to negotiate with the creditor bank about possible options of restructuring under a Corrective Action Plan, which will help both parties to arrive at an early and feasible solution to preserve the economic value of the underlying assets as well as the loans under consideration. It is suggested that the Committee should deliberate on the potential structure and nature of operations of these committees rather than expecting the RBI to do the groundwork because the effectiveness of this mechanism will depend largely on how these committees are structured and the interests of the MSME and the banks that have been taken into account. The Committee has suggested that this should be created as a statutory mechanism by an amendment to the MSMED Act, which is acknowledged and accepted.

The Committee has also contemplated the introduction of voluntary auctions for small businesses as rescue tools based on the experience of other countries, which have a speedy, low-cost bankruptcy procedure. This suggestion is welcome but it depends entirely on whether it would be possible to establish a framework which facilitates the development of a market for the sale of businesses, through measures for safeguarding stakeholder interests, promoting accurate financial reporting and valuation of businesses. These considerations will determine how suitable it is for the Indian MSME sector.

Responses received during the First Stakeholder's Consultation held specifically for MSMEs may also be perused (supra Part I).

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Annexure I

Stakeholder Consultation on Insolvency Legal Framework in India with special focus on MSMEs

Consultation Paper

Organised by
School of Corporate Law & Centre for MSME
Indian Institute of Corporate Affairs
February 27, 2015

About IICA

Indian Institute of Corporate Affairs (IICA) has been established by the Union Ministry of Corporate Affairs (MCA), Government of India to act as a think-tank and Centre of excellence to support the growth of the corporate sector in India through an integrated and multi-disciplinary approach. The state-of - the - art campus of IICA is located at Manesar, Haryana.

IICA offers capacity building and advisory solutions to the Government, Statutory Authorities, Private Sector and other stakeholders through its various Schools, Centres and Foundations. It creates tailored programmes for ministries, departments, companies or other stakeholders that seek to provide training as per their requirement. Apart from specialized training, the Institute continues to play an important role in education and awareness through creation of focused and highly specialized content/material for public dissemination as well as seminars and workshops on topics that are of current relevance.

About Consultation - Background

Over the last twenty years, the law of insolvency has moved from being a niche specialist area into the mainstream. The essential role of the insolvency law was said to be to establish effective and straightforward procedures for dealing with and settling the affairs of the insolvent in the interests of its stakeholders; to provide a legislative framework to encourage entities to pay careful attention to their financial conditions so as to recognise difficulties at an early stage and before the interests of stakeholder were seriously prejudiced; to prevent and penalise irresponsible behaviour and negligence on the part of those who manage its affairs; to ensure that those who act in cases of insolvency are capable to do so and act in a appropriate manner; to facilitate the restructuring of entity in difficulties to minimise unnecessary loss to stakeholders and to the economy when insolvency occurs.

At present, law on insolvency in India is primarily covered in the Companies Act, 1956 alongside the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. Companies Act deals with corporate insolvency. Both The Presidency Towns Insolvency Act and Provincial Insolvency Act deal with personal insolvency. Like corporate insolvency laws, there was no significant major review/amendment to personal insolvency laws in India.

Need for consultation

The Micro, Small and Medium Enterprises (MSMEs) basically are non-corporate entities and governed by the Individual/personal insolvency laws in India. "Nearly 97% of MSMEs are either sole proprietorship or partnership entity besides 3% of MSMEs as companies" (*4th MSME Census*). Though they are considered as an important tool for economic growth and employment, the sector did not receive due recognition for reforms like corporate sector. In addition, its creation, existence and development are often stalled by issues like funding, personal liability, guarantor's liability, supply chain management, credit crunch besides stringent exit procedure when insolvency occurs. Therefore, it is the need of the hour, in view of the recent developments in India, to address the concerns of MSMEs in the area of insolvency and to strengthen them at par with corporate sector. Also, there is a need to conduct a comprehensive exercise to improve the law on individual/personal insolvency to ensure that our law provides an effective process of insolvency.

Objectives

To examine that our insolvency regime can keep pace with latest developments, IICA proposes to facilitate a platform to all the stakeholders including financial institutions, guarantors, creditors, shareholders, employees, government professionals, corporate executives, academia and researchers to share their views on existing legal framework on corporate/personal insolvency law in India, especially on MSMEs sector.

Having regard to the objectives of the consultation, IICA has initiated an extensive assessment of the personal insolvency regime in India. The consultation covers the following eight aspects (Questionnaire Survey related to consultation themes below is placed in **Annexure A**) i.e. –

1. Exit/Revival Policy for MSMEs in view of the proposed MSMED (Amendment) Bill, 2014.
2. Sickness of MSMEs: Issues and Challenges.
3. Comprehensive code for Personal Insolvency Laws in India.
4. Review/Amendment of Provincial Insolvency Act, 1920.
5. Exit Policy Framework under National MSME Policy.
6. Joint and Several Liability of Promoters & Guarantors of MSMEs.
7. Early detection of Financial Distress: Issues and solutions.
8. Definition of Micro, Small and Medium Enterprises: Issues and Concerns in India.

Important Date

Date of Stakeholder Consultation – **February 27, 2015.**

Important Instructions:

- The Ministry of Finance, Government of India also constituted a Committee under the Chairmanship of Shri. T.K.Visawanathan, to study the corporate bankruptcy legal framework in India. The said committee has to submit its report by February, 2015. In this context, IICA plans to compile a detailed report with the views and suggestions of stakeholder and forward it to the said committee, through Ministry of Corporate Affairs.

- A List of questions for consultation is set out for ease of reference at **Annexure B**.
- Any questions about the consultation may be addressed to Dr. Pyla Narayana Rao, Assistant Professor, School of Corporate Law & Mr, Rajesh Batra, Head, Centre for MSME, IICA. Mob: 7042712183.

- IICA reserved the right to reproduce and publish submissions, in whole or in part, in any form, and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgment of the party making the submission.

Annexure – A
Questionnaire Survey

1. Exit/Revival Policy for MSMEs in view of the proposed MSMED (Amendment) Bill, 2014.

Purpose of Amendment –

- *"Presently, there is no legal framework for re-organization /winding up/exit for small units under Indian Law. The main objective of this amendments bill is twofold - Revival and Exit of MSME."*
- *"**Revival** - MSMEs that seek early assistance to tide over difficult financial times and provide a framework where a viable MSME can seek standard as well as customized relief and concession to revive; and"*
- *"**Exit–** to provide an easier and expeditious exit procedure for the benefit of promoters and guarantors through liquidation and change in management."*
  (Source - Extracted from the proposed MSMED (Amendment) Bill, 2014)

Question – 1:	Do you agree that the proposed amendments to MSMED Act, 2006 will benefit the stakeholders? Is there any need to have a separate chapter relating to insolvency? Please Comment with reasons.

Question –2:	Do you agree that there should be a separate Tribunal for winding up of non-corporate entities under the MSMED Act, 2006. Please state your answer.

Related Literature –

- "Micro Small & Medium Enterprises Development (Amendment) Bill, 2014 - special dispensation for revival and exit of MSMEs."It can be accessed through – http://msme.gov.in/WriteReadData/Whatsnew/PDF%202.pdf
- "Prime Minister's Task Force on Micro, Small and Medium Enterprises," Government of India – Jan, 2010. Part II (IX) titled "Report of the Sub-Group on Exit Policy"; published by the Govt. of India – This report can be accessed through – http://msme.gov.in/PM_MSME_Task_Force_Jan2010.pdf

2. Sickness of MSMEs: Issues and Challenges.

Causes of Sickness - *The Third Census of Small Enterprises, conducted by Ministry of MSME in 2001-02, identified the following reasons for sickness.*

S. No	Reason for Sickness	Sector related issues
1	Lack of demand	Marketing
2	Shortage of working capital	Management
3	Non-availability of raw material	Diversion of Funds
4	Power shortage	Lack of Technology
5	Labour problems	Delayed Bank Sanctions
6	Marketing problems	Delayed Receivables
7	Equipment problems	Poor Infrastructure
8	Management problems	Change in Govt. Policy

Sources: http://rbidocs.rbi.org.in/rdocs/content/pdfs/84141.pdf visited on 10/12/2014.

Question – 3 :	Do you agree that there should a separate fund for rehabilitation of sick micro, small and medium enterprises? Why? Please give your answer.

Related Literature –

- "FISME Policy Paper (SME Policy Series) Towards Establishing Modern Insolvency and Bankruptcy Codes for Small Enterprises in India" by Anil Bhardwaj, Secretary General at Federation of Indian Micro and Small & Medium Enterprises (FISME), New Delhi.This Policy paper can be accessed through - http://fisme.org.in/document/Policy_Paper.pdf

- "Report of Working Group on Rehabilitation of Sick SMEs".This report can be accessed through - http://rbidocs.rbi.org.in/rdocs/content/pdfs/84141.pdf

3. Comprehensive code for Personal Insolvency Laws in India.

"Personal insolvency deals with individuals, proprietorships and partnerships are governed by two crucial acts – the Provincial Insolvency Act of 1920 (henceforth known as the Provincial Act) and the Presidency Towns Insolvency Act of 1909 (henceforth

*known as the Presidency Act)."(**Source - Extracted from Emerging Insolvency in India: Issues and Options, Published by IICA).***

Question – 4: Do you agree that there should be a comprehensive code for Personal Insolvency Laws in India? Please state your answer.

Related Literature –

- "Emerging Insolvency in India: Issues and Options" - *SMEs & Existing Insolvency Regime: An Introduction*, Fair 2010: Achieving Effective & Efficient Insolvency Regimes for Small & Medium Enterprises published by Indian Institute of Corporate Affairs. It can be accessed through - http://www.iica.in/images/confdetailpaper/Country_Papers.pdf

4. Review/Amendment of Provincial Insolvency Act, 1920

- "*The Provincial Insolvency Act 1920 and the Presidency Town Insolvency Act 1909 both are outdated legislations and seem to be totally incapable to deal with the issues of Cross Border Insolvency and other issues related to modern day insolvency laws.*"

Question – 5: Do you agree that the provincial insolvency Act, 1920 is an outdated legislation and should be repealed, reviewed or amended in view of global developments in the area of insolvency? Give your opinion.

Related Literature -

- "The Provincial Insolvency Act, 1920" published by Govt. of India. It Can be accessed through- http://indiankanoon.org/doc/393016/N

5. Exit Policy Framework under National MSME Policy.

"The exit policy framework is required in the following possible scenarios:

i. *For a successful entrepreneur who would like to exit from the business at a profit, the culture of successful serial entrepreneurship is not there, In India. However, contrary to Indian situation it exists in countries like the US. What type of framework is needed for doing this in India?*

ii. *The second* category *of entrepreneurs who require an exit policy are those who are running a successful business but their next generation is not interested in joining the business. They look for a successful exit.*

iii. *The third category of entrepreneurs looking for exit policy are those who have not done well in their business but the business is still surviving. They would like to cut losses and exit.*

iv. *The fourth category of entrepreneurs who require exit policy are those who have failed, having bank loans and land resources as well as a factory which may be running or may be closed."*

*(**Source -Extracted from Draft Consultation Paper on National MSME Policy, Published by Ministry of MSME**)*

Question – 6:	Do you agree that India should have an exit legal framework related to a successful entrepreneur or do you consider the need of the hour is to have a comprehensive legal framework for exit related to unsuccessful business. Comment with reasons.

Related Literature –

- "The Draft Consultation Paper on National MSME Policy" prepared by Ministry of Micro, Small and Medium Enterprises, Govt. of India. It can be accessed through – http://www.dcmsme.gov.in/MSME_Policy_Consultation.pdf

6. Joint and Several Liability of Promoters & Guarantors of MSMEs.

*"Unlike registered entities under corporate law, where the liability of the shareholder is limited to the extent of the contribution made or due from him, in proprietorships or partnerships there is no separation of personal and business liability. When a business fails, not only do the assets of the business but the entrepreneur's personal assets also get attached to pay off business dues. Further, all guarantors which are drawn from the critical social safety net of the small entrepreneur, are also personally involved and in the eventuality of failure they also get implicated and the whole safety net crumbles." (**Source - Extracted from Report of the Sub-Group on Exit Policy for MSMEs - published by FISME.)***

Question – 7	Do you agree to the proposal on limiting the liability of the guarantors of non-corporate entities? Comment with reasons.

Related Literature –

- "Emerging Insolvency in India: Issues and Options" published by Indian Institute of Corporate Affairs (IICA). It can be accessed through - http://www.iica.in/images/confdetailpaper/Cover_page.pdf

7. Early detection of Financial Distress of MSMEs: Issues and solutions.

*"It is of utmost importance to take measures to ensure that sickness is arrested at the initial stage itself. The management shall have to identify the units showing symptoms of sickness by effective monitoring so as to bring back the units to a healthy track. An illustrative list of warning signals of incipient sickness that are thrown up during the scrutiny of borrowal accounts and other related records e.g. periodical financial data, stock statements etc." **(Extracted from Management and Rehabilitation of Sick Industries – Central Bank of India)***

Question –8:	Do you agree that the timely assistance and rehabilitation efforts will protect the MSMEs when early signs of sickness are detected? Comment with reasons.

Related Literature –

- "Analytiqui" – Published by Bombay Chamber of Commerce and Industry Trust for Economic and Management studies.It can be accessed through - http://bombaychamber.com/admin/uploaded/ANALYTIQUE/ANALYTIQUEJulSep2012.pdf

- "Determinants of Financial Distress: What Drives Bankruptcy in a Transition Economy? The Czech Republic Case" by William Davidson Working Paper Number 451.It can be accessed through - http://deepblue.lib.umich.edu/bitstream/handle/2027.42/39835/wp451.pdf?sequence=3

- "Empowering MSMEs for Financial Inclusion and Growth- Role of Banks and Industry Associations" – Published by Reserve Bank of India.It can be accessed through - http://www.rbi.org.in/scripts/BS_SpeechesView.aspx?id=664

8. Definition of Micro, Small and Medium Enterprises: Issues and Concerns in India.

*"The National MSME Policy must encourage establishment and growth of our units. Let it be understood that big businesses evolve from small business only and go onto become several large companies. The first objective of this policy thus must be not only to encourage establishment and growth, but also, emphasize on growth. For this purpose, at the outset, we need to define our MSMEs in such a fashion that the definition does not become a hindrance to growth (which at present it is). Thus, it must not be the intention of any policy to keep a small entrepreneur, small. We must encourage the entrepreneur to grow and become a global player."(**Source - Extracted from National MSME Policy, Published by Ministry of MSME.)***

Question-9:	Do you agree that review of the definition MSME under the present MSMED Act, 2006 will benefit the stakeholders? Provide your answer.

Related Literature -

- "How Do Economies Define Micro, Small and Medium Enterprises (MSMEs)? Companion Note for the MSME Country Indicators by KhrystynaKushnir. This is a companion note for the MSME Country Indicators (MSME-CI), which records the number of formally registered MSMEs across 132 economies. It can be accessed through http://www.ifc.org/wps/wcm/connect/624b8f804a17abc5b4acfddd29332b51/msme-ci-note.pdf?mod=ajperes

- "The new SME definition - User guide and model declaration" published by European Commission. This guide contains "Details and explanations of the new SME definition which took effect on 1/1/2005.It can be accessed through http://ec.europa.eu/enterprise/policies/sme/files/sme_definition/sme_user_guide_en.pdf

Annexure – B

LIST OF QUESTIONS FOR CONSULTATION

Please answer the following questions with reasons.

Question-1:	Do you agree that the proposed amendments to MSMED Act, 2006 will benefit the stakeholders? Is there any need to have a separate chapter relating to insolvency?
Question-2:	Do you agree that there should be a separate Tribunal for winding up of non-corporate entities under the MSMED Act, 2006.
Question-3:	Do you agree that a separate fund should be created for rehabilitation of sick micro, small and medium enterprises.
Question-4:	Do you agree that there should be a comprehensive code for Personal Insolvency Laws in India?
Question - 5:	Do you agree that the provincial insolvency Act, 1920 is an outdated legislation and should be repealed, reviewed or amended in view of global developments in the area of insolvency?
Question-6:	Do you agree that India should have a legal framework for exit related to a successful entrepreneur or do you consider the need of the hour is to have a comprehensive exit legal framework related to unsuccessful business.

Question-7:	Do you agree to the proposal on limiting the liability of the Guarantors of non-corporate entities?
Question-8:	Do you agree that the timely assistance and rehabilitation efforts will protect MSMEs when early signs of sickness are detected?
Question-9:	Do you agree that review of the definition MSME under the present MSMED Act, 2006 will benefit the stakeholders?

Participants on 27.03.2015 (Stakeholder Consultation with Special Focus on MSMEs)					
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3	Mr. Rajeev Bhargav, Chartered Accountants		703-A, Devika Towers 6, Nehru Place, New Delhi- 110019		R Bhargav & Associates
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7	Mr. Vinay Badoni, Managing Director		Badoni Villa, Dhalwala, near MIT/SBI Rishikesh Uttarakhand, Miyanwala, Balawala Road, near-Peeli Kothi, Dehradun, Uttarakhand		Victory Blaze Renewable Energy Pvt. Ltd.
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Annexure II

Insolvency Legal Framework in India with Special focus on Corporate Insolvency

Consultation Paper

Organised by
School of Corporate Law
Indian Institute of Corporate Affairs
March 19, 2015

About IICA

Indian Institute of Corporate Affairs (IICA) has been established by the Ministry of Corporate Affairs (MCA), Government of India to act as a think-tank and Centre of excellence to support the growth of the corporate sector in India through an integrated and multi-disciplinary approach. The state-of - the - art campus of IICA is located at Manesar, Haryana.

IICA offers capacity building and advisory solutions to the Government, Statutory Authorities, Private Sector and other stakeholders through its various Schools, Centres and Foundations. It creates tailored programmes for ministries, departments, companies or other stakeholders that seek to provide training as per their requirement. Apart from specialized training, the Institute continues to play an important role in education and awareness through creation of focused and highly specialized content/material for public dissemination as well as seminars and workshops on topics that are of current relevance.

About the Consultation

The main reason for a corporation to be wound up is that it has become insolvent, that is, unable to pay its debts. As a result, the stakeholders such as creditors, shareholders, financial institutions, employees, government and economy have been suffering. In this context, the law of Insolvency was introduced to restructure and revive the company, or at least save some part of it, to safeguard the interest of its stakeholders and the national economy. The main objective of the insolvency law is to make it easier for companies in financial difficulties to rescue themselves or be rescued, so as to prevent if possible, the beginning of insolvency.

In India, the law on Corporate Insolvency is covered in the Companies Act, 1956 alongside the Companies Act, 2013, Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDB Act) & Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

Need for consultation

The new insolvency mechanism under the Companies Act, 2013 is very modern than the procedure stated in the Companies Act, 1956. However, it is yet to be notified. It is expected, to make it easier for companies to enter for arrangement with their secured creditors; to focus on improving insolvency procedures; to facilitate greater involvement of the creditors in the rehabilitation process; to facilitate the creditors committee that will have a say in determining whether a company should be liquidated or rescued and to strengthen the mutual rights of majority secured creditors to initiate restructuring. The other major innovation was the tribunal’s order which was designed to vest the powers of management of the company in “administrator” (usually an insolvency expert from one of the leading firms of accountants or insolvency specialists from the panel maintained by the central government). It is then hoped that the administrator will have the necessary skill and impartiality which will enable him to make the tough decisions necessary to rearrange and revive the company, or at least save some part of it. The archaic insolvency procedure in the Companies Act, 1956 has been completely overhauled by the 2013 Act. In addition, there is a fund to be called the Rehabilitation and Insolvency Fund (RIF) for the purposes of rehabilitation, revival and liquidation of the sick companies under the Act.

Although the insolvency provisions under the Companies Act, 2013 have made some improvements, still there are some difficulties which are to be removed and required further changes to confirm that the mechanism adopted under the 2013 Act works efficiently and will lead to expected outcomes.

Objectives

To examine that our corporate insolvency regime can keep pace with latest developments, IICA proposes to facilitate a platform to all the stakeholders such as financial institutions, creditors, shareholders, employees, government officials, corporate executives, academia and researchers to share their views on existing legal framework on corporate insolvency law in India.

Having regard to the objectives of the consultation, IICA has initiated an extensive assessment of the corporate insolvency regime in India. The consultation covers the following four aspects:

- Rescue procedure under the Companies Act, 2013: Bane or Boon
- Role of Secured Creditors under the Companies Act, 2013: Saviors or misusers
- Procedure for enforcing Moratorium under the CA Act, 2013: Need for reforms.
- Administrators and Interim Administrators under CA Act, 2013: Role, Power & Functions.
- The Rehabilitation and Insolvency Fund (RIF).

Important Date

Date of Consultation – March 19, 2015.

Important Instructions:

- The Ministry of Finance, Government of India also constituted a Committee under the Chairmanship of Shri. T.K. Visawanathan, to study the corporate bankruptcy legal framework in India. In this context, IICA plans to compile a detailed report with the views and suggestions of stakeholder and forward it to the said committee, through Ministry of Corporate Affairs.

- A List of questions for consultation is set out for ease of reference at *Annexure A.* Please send your comments & queries to us on or before March 19, 2015 by one of the following means:

By Post to: School of Corporate Law, Indian Institute of Corporate Affairs (IICA), Sector-5, IMT Manesar, Gurgaon-122050 – Haryana, Tel: 0124 –2640088

By Email: scl@iica.in

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Second Stakeholder Consultation on Insolvency Legal Framework in India with special focus on Corporate Sector
School of Corporate Law
19th March 2015 - Registration Details

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7	Navneet Sharma	School of Competition Law and Market Regulation, IICA	Head, School of Competition Law & Market Regulation		
8	Dr. Harpreet Kaur	National Law University, Delhi	Professor of Law		
9	Dr. Naveen J. Sirohi	School of Finance, IICA	Assistant Professor School of Finance		

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We acknowledge the inputs provided by each of the participants of the aforesaid two stakeholder's conference. Without their support this consultation would not have been possible.

Report Prepared by:

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