2019 INSOLVENCY & BANKRUPTCY SYMPOSIUM

CENTRE FOR TRANSNATIONAL COMMERCIAL LAW (CTCL)

NATIONAL LAW UNIVERSITY, DELHI

In Collaboration with

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

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"3 Years of IBC: Tracing its journey, challenges for building the road ahead"

Sunday, 10th November 2019

Moot Court Hall, National Law University Delhi,
Sec-14 Dwarka, New Delhi – 110078. INDIA

United Nations UNCITRAL
Regional Centre for Asia and the Pacific

भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

॥न्यायस्तत्र प्रमाणं स्यात्॥
NLU DELHI

2019 INSOLVENCY & BANKRUPTCY SYMPOSIUM
Centre For Transnational Commercial Law (CTCL)
National Law University Delhi,
09:45 am; Sunday, 10th November, 2019
Moot Court Hall

"3 Years of IBC: Tracing its journey, challenges for building the road ahead"

In Memory of
Late Shri Arun Jaitley, former Union Finance and Minister for Corporate Affairs, who spearheaded the enactment of the Insolvency & Bankruptcy Code, 2016

UNCC India
UNCITRAL National Co-ordination Committee India

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A think tank for insolvency industry

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PROGRAM SCHEDULE

Time	Session	Theme/ Panel	Speakers
09:15 - 09:45	**Registration**		
09:45 - 11:15	Inaugural Session In memory of late Shri Arun Jaitley	- About the Symposium - Welcome Address - Partner Address - Inaugural Address - Presidential Address - Vote of Thanks	Dr. Risham Garg Prof. Dr. Ranbir Singh, Vice Chancellor Mr. Amarjit Singh Chandhiok Dr. M. S. Sahoo, Chairperson IBBI HMJ Pratibha M. Singh, Judge Delhi HC Prof. Dr. G.S. Bajpai, Registrar
11:15 - 11:30	**TEA**		
11:30 - 12:20	Session I	**Resolving the Resolution Process: tangling and untangling the knots** 1. S.30 (2) Protecting OC & minority FC 2. Avoidance Transactions, asset tracing 3. Time-bound disposal of application, CIRP -330days; Essential goods, services	Chair: Shri Rajesh Sharma Hon'ble Member NCLT Mumbai 1. Mr. Ashish Makhija, AMC Law 2. Ms. Pooja Mahajan, CM 3. Divyanshu Pandey, JSA
12:30 - 1:30	Session II	**Stimulus to The Resolution Applicant and the challenges therein. (Ss.31,33)** 1. Safeguards-to what extent can you extinguish contingent liabilities 2. Waiver clauses in Resolution Plans 3. Drafting of Resolution Plans 4. Need for Effective Alternatives to IBC for Stress Resolution	Chair: Shri Pawan K. Kumar, IRS, Executive Director, IBBI 1. Mr. Ashwin Bishnoi, Khaitan Co 2. Mr. Ravi Sharma, PwC 3. Mr. Satwinder Singh, Vaish A 4. Mr. Dinkar Venkatasubramanian EY
1:30 - 2:30		**LUNCH**	
2:30 - 3:30	Session III	**Running the Liquidation Process: potholes on the highway** 1. Liquidation Process and Tax issues 2. S230 vs Going concern vs Liquidation; bar to promoters (29A); 3. Role of Creditors in Liquidation	Chair: Shri K. R. Saji Kumar, Executive Director, IBBI 1. Mr. Anil Goel, AAA 2. Mr. GP Madaan, Madaan Law 3. Mr. Gaurav Gupte, CAM
3:45 - 4:45	Session IV	**Emerging Jurisprudence – key issues** 1. Resolution in Infra sector, RERA v IBC 2. Consolidation of Cos 3. Cross-Border Insolvency	Chair: Dr. Risham Garg 1. Ms. Swarupama Chaturvedi, AoR 2. Ms. Vandana Garg, PwC 3. Mr. Aakash Sherwal, AarnaLaw
4:45 - 5:00		Vote of Thanks	
5:00 pm		High Tea	

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RESEARCHERS AND ACADEMICS ROUNDTABLE

11TH NOVEMBER 2019

NATIONAL LAW UNIVERSITY DELHI

ROOM 506 | 09:30 am to 11:30am

Chair: Prof. Anil K. Rai

PAPERS FOR THE SESSION

1. EMPIRICAL ANALYSIS OF THE SUCCESS OF IBC
2. ROLE OF GUARANTORS IN POST INSOLVENCY PERIOD
3. INSOLVENCY PROCEDURE IN INDIA AND UK
4. MEDIATION IN INSOLVENCY
5. ANTECEDENT TRANSACTIONS IN THE REALM OF IBC: A COMPARITIVE STUDY WITH UK INSOLVENCY ACT
6. ANALSYSING THE NEW INDIVIDUAL INSOLVENCY REGIME IN INDIA
7. TIMELINES UNDER IBC POST 2019 AMENDMENT
8. TIME VALUE OF MONEY: ISSUES OF DEFINING FINANCIAL CREDITORS

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BACKGROUND PAPER & INTRODUCTION TO THE SYMPOSIUM

About the Theme

The enactment of the Insolvency and Bankruptcy Code (IBC) was seen as a watershed moment for the Indian economy as it introduced a modern framework to deal with the insolvency of individuals and corporate entities. While the personal insolvency regime is yet to be enforced, the corporate insolvency regime is up and running. A new ecosystem for corporate insolvency comprising of the Insolvency Professionals, Insolvency Professional Agencies, Insolvency and Bankruptcy Board of India and National Company Law Tribunal has already been set in place in with the aim of promoting entrepreneurship and innovation.

SESSION I: RESOLVING THE RESOLUTION PROCESS: TANGLING AND UNTANGLING THE KNOTS

The core reason that the Insolvency and Bankruptcy Code or the IBC exists is to introduce a streamlined, faster and fairer process of insolvency resolution. Insolvency resolution plan refers to a resolution of insolvency of corporate debtor or persons. Through Insolvency resolution, the debts of such entities are restructured, and they can pay their lenders over an extended period of time. One path of insolvency resolution is to sell the company in order to repay the creditors. The resolution plan is like a Revival plan for an insolvent company presented by anyone eligible under the code. It will spell out all details of restructuring of business operations, financial re-engineering and thereby making the company prosper from the condition of Insolvency Section 30(2) of the Insolvency and Bankruptcy Code states that the resolution plan approved by the committee of creditors of the adjudicating authority with the provisions of the applicable laws makes it legally implementable.

Operational creditors account for nearly half of the bankruptcy cases admitted at the NCLTs, and the haircuts in resolutions taken by them are at par with the same taken by financial creditors. The operational creditors -- vendors and companies who have dues from a distressed company -- are assumed to be unsecured creditors, unlike the secured financial creditors like banks. The principle emerging from NCLAT ruling on Binani Industries Limited v. Bank of Baroda & amp; Anr. is that the resolution plan should not be discriminatory against one or other financial creditors or the operational creditors, else the same can be held to be against the provisions of IBC. However, from the said ruling of NCLAT the question of whether discrimination can be done between the secured and unsecured financial creditors as they are not similarly situated is still left unanswered.

The success of CIRPs lies in the time-bound disposal of insolvency proceedings. Therefore, S. 7 (5) of the Code has prescribed a period of 14 days for NCLT for admitting or rejecting an application for initiation of insolvency proceedings and proviso to the section allow a period of 7 days for rectification of defects in the application. In furtherance of time-bound resolution of insolvency proceedings, the 2019 Amendments have sought to bring back timeliness of CIRPs into practice by amending S. 12 of the Code. The growing judicial practice, as seen in ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, of allowing exclusion of certain time periods from the strict 180 days (or 270 days) period for CIRP effectively rendered the objective of the Code with regards to time-bound insolvency proceedings a dead letter. Therefore, the 2019 Amendment to S. 12 of the Code attempts to enforce strict timeline envisioned under the Code by limiting completion of entire CIRP to 330 days, inclusive of time spent on litigation.

What constitutes "essential goods and services" is envisaged under regulation 32 of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (***CIRP Regulations***). Regulation 32 of the CIRP Regulations states that "the essential goods and services referred to in section 14(2) of the Code shall mean electricity, water, telecommunication services; and information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor." The issue pertaining to this provision is that it compels the supplier of the above-mentioned essential goods and services to keep supplying such goods and services knowing that the costs incurred in providing such goods and services may never be realised from the corporate debtor.

This is because section 53 of the Code, popularly known as the 'waterfall provision', lays down the priority in which the proceeds from the sale of the liquidation assets will be distributed. The first and foremost costs that need to be paid in full are the insolvency resolution process costs and the liquidation costs. If the tribunal orders that the costs incurred by the supplier of the essential goods and services will form part of the insolvency resolution process costs and liquidation costs, then, in all probability, the supplier will be paid back in full when the company liquidates. The question of interest on these delayed payments is up to the discretion of the tribunal.

One of the key features of the Code is the provisions regarding the avoidance transactions. UNCITRAL Legislative Guide on Law of Insolvency defined avoidance provisions as "provisions of the insolvency law that permit transactions for the transfer of assets or the undertaking of obligations prior to insolvency proceedings to be cancelled or otherwise rendered ineffective and any assets transferred, or their value, to be recovered in the collective interest of creditors". These transactions have undertaken during the process of insolvency or prior to a company's insolvency.

In IDBI Bank Limited v Jaypee Infratech Limited, the preferential transaction was discussed extensively. It was held that the security interest has been created without any consideration by

Jaypee Infratech Ltd. (hereinafter referred to as the 'JIL') for the lenders of the parent company, i.e., Jaiprakash Associates Ltd. (hereinafter referred to as 'JAL'). Such transfer put JAL, which is also one of the creditors of JIL, in a better situation vis-à-vis other creditor. In such case, the said transaction is considered to be preferential as well as undervalued one and also covered under section 45 of the Code.

Two important aspects are, Firstly, the property of the corporate debtor wherein it was stated that "The subject of transfer must be property or interest in such property of the corporate debtor…if any action on the part of the corporate debtor has the effect of affecting the availability, marketability or value of the any of the ingredients of liquidation estate must be covered by the section". Secondly, security interest as preferential transfer, where it was stated that "a secured creditor is better placed than an unsecured creditor in insolvency/liquidation proceedings. Therefore, when a security is being offered to a creditor, he is being placed in a better position than other creditors. However, that does not necessarily result in preference. Grant of security interest, per se, is not preference, but may be proved to be a preference on fulfilment of conditions as above.

In Bhushan Power and Steel Ltd case, a forensic audit was started by SBI. Thereafter, it was conducted by the PNB, one of the lenders to BPSL which leads to the investigations led by different government bodies including CBI, ED. They noticed that 85% of its exposure to the bankrupt steel mill had been redirected and that the organization had misused bank funds and manipulated record books which manifests the possible fraud and channelizing the money by the company's promoters. PNB stated that BPSL has abused bank reserves, controlled books of records to raise assets from consortium loan specialist banks. Allahabad Bank has also reported misappropriation of funds by BPSL. Thirty-three lenders have been introduced to this troubled company which is experiencing the insolvency resolution process. The recent update is that under the Prevention of Money Laundering Act, ED has attached BPSL's properties worth Rs 4025 Cr.

SESSION II: STIMULUS TO THE RESOLUTION APPLICANT AND THE CHALLENGES THEREIN

One of the contentious issues is treatment of contingent liabilities. Many holding companies extended corporate guarantees to creditors/banks on behalf of its subsidiaries. When the holding company (corporate debtor) is admitted for insolvency, the question remains whether the corporate guarantee on behalf of its subsidiaries can be considered as financial debt, even when no guarantees are invoked. In many cases, admission of such guarantees as financial debt could lead to sweeping changes in the COC composition as the quantum of guarantee may exceed the

other financial debt. Resolution of collectively Rs 10,000 crore is currently held up in NCLAT for want of clarity on this issue.

In case of contingent liabilities such as statutory dues, penal interest, late fees and others, it is difficult to factor their value in the bid amount as not only their occurrence is contingent, but also ascertaining their value is highly subjective. Similarly, there are divergent views on whether the financial lenders can invoke personal guarantee given by the promoters when the IBC process is initiated. In one of the rulings by NCLAT, the tribunal took the view that once the corporate debtor is admitted to the NCLT, the moratorium period gets triggered and no legal action that affects the assets and liabilities of the corporate debtor can be taken.

The ruling offers relief to the promoters of the corporate debtor, but it is detrimental to financial lenders in accepting personal guarantee as an acceptable form of securing the debt. This issue is also being adjudicated in other NCLT benches and needs to be clarified for effective functioning of the system. The Hon'ble Supreme Court (CIT v. Mahindra and Mahindra Limited (2018) 93 taxmann.com 32 (SC) held if a loan was obtained and utilised for acquiring a capital asset and no deduction was claimed in respect of such a loan in any of the previous years, then the waiver of such a loan is akin to a capital receipt and should not be subject to tax as business income.

This is an issue which will persist in all cases under the Code as the resolution plan in majority cases would involve write-off/waivers of huge sums and accordingly, tax implications will play a crucial role. There is, therefore, a need to find a way where specific aspects that emerge out of a resolution plan accepted by the committee of creditors and the NCLT, do not result in undue tax hardship.

In the interest of IBC companies, a resolution plan may seek relief from certain statutory dues outstanding, including past income tax and indirect tax dues. However, the tax authorities may not readily accept such loss of revenue. In such cases it is relevant to understand the possibility of getting a waiver of tax dues under the Code. The Code expressly does not grant any relief from outstanding tax liabilities of the Target. However, in some rulings, the NCLT has rejected the proposal which included in the resolution plan, waivers of liabilities which may arise due to ongoing tax litigations.

An Insolvency Resolution Plan for any Corporate debtor is a one of a kind which is a combination of legal, financial as well as the management and technical features which would provide a reasonable assurance of sustainable viability over the period of recovery from internal or external stresses. Resolution Plan, drafted by the resolution applicant and submitted to the resolution professional, prepared on the basis of the information memorandum as per the Code and the regulations. Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution

Process for Corporate Person) Regulations, 2016 shall provide with an inclusive list forthe measures, as may be necessary, for insolvency resolution of the corporate debtor so that the valuation of the assets can be maximised. Regulation 38 of the said regulation states the necessary contents of the resolution plan.

Since the main focus of the Code is on the stakeholders, the resolution plan has been integrated in a time- bound manner. Very often, it is seen that resolution plan define the timelines for all kinds of payments. E.g. in the cases where the interests of the homebuyers are in question, resolution plan protects their interest.

In Committee of Creditors of Amtek Auto Ltd. and Ors. v Dinkar T. Venkatasubramanian and Ors., resolution plans filed by two entities namely, M/s. Liberty House Group Pte Ltd. *and* Deccan Value Investors LP were considered by CoC. However, later on, Deccan Value Investors LP withdrew their resolution plan. On the issue of, if the resolution plan is not implemented, it cannot be *the* ground for exclusion of any time period for the calculation of 270 days of CIRP, the NCLAT held that the "in case where the 'Resolution Plan' earlier approved within a reasonable period of 180 days or much before completion of 270 days, one may request the Adjudicating Authority to allow the 'Resolution Professional'/ 'Committee of Creditors' to consider the pending 'Resolution Plan (s)' or to call for fresh 'Resolution Plan'/ 'Revised Resolution Plan', in absence of any application under Section 33(3) filed by any person whose interest is prejudicially affected by contravention of the plan by the 'Corporate Debtor'." Thus, NCLAT abstained from extending the period of 270 days or to exclude the period of default of the Resolution Applicant from the period of 270 days of CIRP and thus, passed the order for liquidation.

SESSION III: RUNNING THE LIQUIDATION PROCESS: POTHOLES ON THE HIGHWAY

The law of insolvency and bankruptcy code 2016 is novel legislation. Most concepts when taken in pragmatic approach lack clarity in legislation and this creates doubts and chaos. One major challenge of liquidation is about taxation issues. There are several potential issues involved while undergoing resolution under the Code. It is imperative to understand these while framing the resolution plan. Drafting a resolution plan is relevant since there could be potential tax liabilities in the hands of acquirer due to restructuring of shareholding or haircut of liabilities. Once liquidation comes into existence the company as an entity will cease to exist. Issues such as- against whom assessment proceedings can be initiated in case of a dissolved company, question of representatives before authorities, liabilities of directors of the insolvent company.

Recently, the CBDT addressed the uncertainty on the on-going income-tax proceedings against a large number of shell companies struck off last year. It lists down the situations whereby request/appeal for restoration of name of the struck off company can be made. Section 281 of the ITA, requires a taxpayer to obtain permission of the income tax officer prior to creating a charge on or transfer of specified assets. Even the transfer of stressed assets would require prior permission from the income tax officer. This is certainly to cause hardship to the companies undergoing insolvency proceedings.

In the case of Insolvency Resolution Process costs is deductible from an income tax perspective as there is lack of any specific provision. There are only judicial precedents on this point. Implementation of GST's effect on the assets of an insolvent company and the further claims over it is a mooted question. Priority of payment of all outstanding debts and recovery of tax. These issues are evolving, and new issues comes on practical instances which had to be learned and understood to emerge a solution.

Section 230 of the Companies Act allows for promoters or any class of creditors of a company to reach a compromise or arrangement with other stakeholders of the company to take control of the company. Therefore, this provision is closely related to the concept of corporate debt restructuring. This institutional settlement of disputes between creditors and the company also ensures that the company has a chance to save itself from insolvency or liquidation by doing a deal with at least a majority of creditors.

After the 2019 IBC amendment, any scheme of compromise or arrangement proposed under section 230has to be completed within ninety days of the order of liquidation. 'Going concern' as recognised by the 2018 amendment to the IBC Code, implies that the "corporate debtor would be functional as it would have been prior to initiation of CIRP, other than the restrictions put by the code." The main feature of a going concern sale is that it aims at value preservation of the undertaking, including intangible assets as well, thereby also allowing synergy as the collective value of assets would be higher than salvage value of the assets disposed of separately.

In the landmark case of Gujarat NRE Coke Limited Case, the NCLT-Kolkata, with an objective of protecting the livelihood of the workmen of the Corporate Debtor, directed the liquidator of the Corporate Debtor to attempt to sell the Corporate Debtor as a 'going concern'. As soon as the liquidation order is passed, the entity ceases to be a going concern, and the liquidation process is initiated. Unlike going concern sale, liquidation process entails disposal of the asserts of the entity.

Section 29A, as introduced via the 2018 Amendment to the Code, deals with the eligibility criteria for resolution applicants. The purpose of introducing this provision was to restrict those persons from submitting a resolution plan who could have an adverse effect on the entire corporate

insolvency resolution process, but this section imposes four layers of ineligibility – first, where the person himself is ineligible; second, where a "connected person" is ineligible; third, where "related party" of connected persons is ineligible; and fourth, where a person acting jointly/in concert with a person suffering from first layer/second layer/third layer ineligibility, becomes ineligible. This multi-layered disqualification under section 29A can lead to the exclusion of *bona fide* resolution applicants and also debar crucial stakeholders who may want to bid for the revival of the company. Therefore, despite its noble intention, section 29A is an extremely harsh section and remains contentious.

An Inter creditor Agreement is a contract between two or more creditors. Such an agreement comes into effect when the borrower has two or more lenders. Such, an agreement is important to all the creditors as it lays the foundation for the rights and priorities in case the borrower is unable to pay. If one doesn't enter into such an agreement, each creditor will proceed in its own way. Such a process could prove uneconomical and at the same time, turn into a legal mess.
Secured charges are created when a company borrows money against security. In other words, a secured loan is a type of loan in which a borrower pledges an asset against that loan. The loan amount made available to the borrower is usually based on the value of the collateral. If in case the borrower defaults the loan, the lender can liquidate the asset and recover the loan amount, making these loans risk-free for the lender. As a result, these loans are easier to obtain and charge a lower interest rate than an unsecured loan.

SESSION IV: EMERGING JURISPRUDENCE: KEY ISSUES

One of the key objectives of the Real Estate (Regulation and Development) Act, 2016 was to protect the interest of the consumers in the real estate sector. Complications and conflicts between RERA and the IBC arose when home-buyers started filing complaints against delinquent developers under the IBC, until the NCLAT in Nikhil Mehta v. AMR Infrastructure (Company Appeal AT No. 07/2017, July 21, 2017) held that only those home buyers who had an assured returns clause in their agreement could file an insolvency petition while others could not. Further, The Insolvency and Bankruptcy Code, (Second Amendment) Act, 2018 was introduced.

The amendment amended the definition of financial debt and further broadened its scope by inserting an explanation to the definition of 'financial debt' under Section 5(8) of the IBC to provide that any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. Therefore, any amount raised from an "allottee" under a real estate project would be deemed to be an amount having the commercial effect of a borrowing, therefore, falling under the ambit of the term "financial creditor" under the Code.

While this amendment was upheld by the Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v Union of India (WP No.43/2019, August 9, 2019), this has resulted in new issues cropping up, such as, now that the allottee is to be considered as a financial creditor, whether it be said that a real estate developer is engaged in providing construction services to a consumer and that he transaction is akin to borrowing and hence there is no service rendered by the developer for levy of GST. The judgement has created confusion regarding the character of monies in the hands of the developers and has paved the way for inevitable conflict in the future when the IBC precedent and tax precedents will be juxtaposed against each other.

The doctrine of substantial consolidation, which enables the adjudicating authority to merge the assets and liabilities of all such individual entities in a common pool which can then go into a common corporate insolvency resolution process (CIRP) helps to get a fair value for the stressed industries which are group companies as a going concern keeping in mind the interests of the creditors. The Mumbai bench of the National Company Law Tribunal (NCLT) in State Bank of India v Videocon Industries Limited recognised the doctrine of substantial consolidation and allowed the consolidation of 13 of the 15 Videocon group companies. However, the doctrine strikes at the basic principle of corporate law of limited liability and corporate separateness.

Substantial consolidation has over the years established itself to be different remedy from 'piercing the corporate veil', both in applicability and application. In substantial consolidation, the subsidiaries are merged horizontally whereas while piercing the corporate veil subsidiaries are merged vertically with their holding company, although the genesis of both lies in remedying the fraudulent behaviour of the corporate group. In case of substantial consolidation, fraud is usually that the financial or operational creditors were made to believe through the debtor's action that they are dealing with the group rather than the individual entity.

The first 'check list' approach of the tribunal developed in this case points towards identifying this fraud. This approach is close to what is known as 'modern' or 'liberal trend' in the US bankruptcy regime. The criterion will end up being satisfied in a majority of cases as most of the factors get an affirmative vote owing to the corporate structures to evade tax liabilities. Therefore, it attracts much criticism as well for availing of the otherwise rare remedy too generally.

In the era of globalization, there has been a tremendous growth in the international business and expansion of international trade giving rise to the number of cases relating to international insolvency in India. For a new law like the IBC, keeping a close watch on the emerging cases becomes even more important as they provide us with a metric to judge the impact and effectiveness of the law in its initial stages and also helps in bringing the issues to the forefront.

One of the aims of IBC was to encourage business sentiment and entrepreneurship. However, one area of the Code which was seen as a let down by many was the part on Cross-Border Insolvency. It is majorly because the code lacks extra- territorial applications. As a consequence

of which, various complexities and intricacies concerning cross- border insolvency evolved in the recent past. Cross- border insolvency is the bankruptcy proceedings wherein the insolvent debtor has assets lying in the international jurisdiction or when the creditors are foreign nationals. Such a situation gives rise to issues like multiplicity of laws, concurrent proceedings, overlapping of interests etc.

Cross-Border Insolvency is a reality today in the context of rapid globalisation. However, the Code restricted itself to only providing the tool of reciprocal agreements to deal with cross-border insolvency. Considering entering such agreements is discretionary as well as time consuming. As a response of which, on 20th June 2018 Ministry of Corporate affairs (MCA) came up with a draft chapter on the cross- border insolvency to be incorporated under Insolvency & Bankruptcy Code, 2016 (IBC) which is majorly based on UNCITRAL model law on Cross- border Insolvency. However, the adoption of the UNCITRAL Model Law will bring with it the contentious issue of determination of Centre of Main Interest (COMI) and its interplay with the IBC. Hence, this session will try to evaluate the advantages and disadvantage of the existing regime on Cross-Border Insolvency in India along with discussing the viability of the adoption of the UNCITRAL Model Law, especially in the context of insolvency of enterprise groups.

Summary of Insolvency and Bankruptcy Code (Amendment) Act, 2019 (6th August 2019)

Amendments	Description
Amendment of section 5	In section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the principal Act), in clause (26), the following Explanation shall he inserted, namely: *"Explanation* - For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;"
Amendment of section 7	In section 7 of the principal Act, in sub-section (4), the following proviso shall be inserted, namely: "Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same."
Amendment of section 12	In section 12 of the principal Act, in sub-section (3), after the proviso, the following provisos shall be inserted, namely: Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor: Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.".
Amendment of section 25A	In section 25A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely: "(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance

with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).".

Amendment of section 30

In section 30 of the principal Act,
(a) in sub-section (2), for clause (b), the following shall be substituted, namely:

"(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

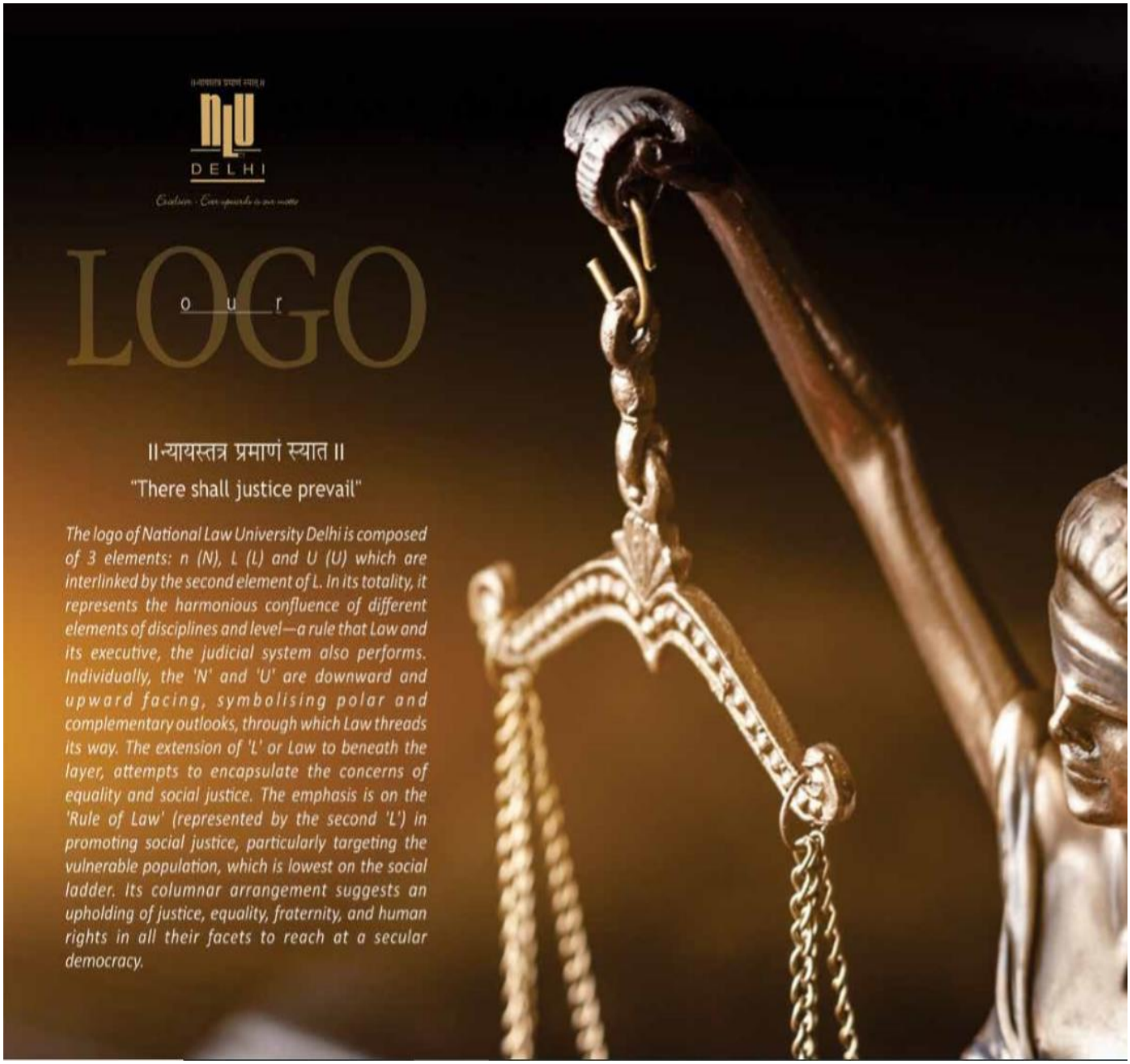
(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 2 - For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-
(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

	(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;"; (b) in sub-section (4), after the words "feasibility and viability,", the words, brackets and figures "the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53. including the priority and value of the security interest of a secured creditor" shall be inserted.
Amendment of section 31	In section 31 of the principal Act, in sub-section (1), after the words "members, creditors,", the words "including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed," shall be inserted.
Amendment of section 33	In section 33 of the principal Act, in sub-section (2), the following Explanation shall be inserted, namely: *"Explanation* - For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.".
Amendment of section 240	In section 240 of the principal Act, in sub-section (2), in clause (w), for the words "repayment of debts of operational creditors", the words "payment of debts" shall be substituted.


DELHI
Evolve · Ever upwards is our motto
LOGO
our
॥न्यायस्तत्र प्रमाणं स्यात ॥
"There shall justice prevail"
The logo of National Law University Delhi is composed of 3 elements: n (N), L (L) and U (U) which are interlinked by the second element of L. In its totality, it represents the harmonious confluence of different elements of disciplines and level—a rule that Law and its executive, the judicial system also performs. Individually, the 'N' and 'U' are downward and upward facing, symbolising polar and complementary outlooks, through which Law threads its way. The extension of 'L' or Law to beneath the layer, attempts to encapsulate the concerns of equality and social justice. The emphasis is on the 'Rule of Law' (represented by the second 'L') in promoting social justice, particularly targeting the vulnerable population, which is lowest on the social ladder. Its columnar arrangement suggests an upholding of justice, equality, fraternity, and human rights in all their facets to reach at a secular democracy.