

EDITORIAL NOTE

Lord Mishcon once said, “*Insolvency is not a very thrilling or amusing subject.*” Yet, as Edward Jenks, the distinguished English jurist, astutely observed, “... *uninteresting as it may be, it is nevertheless a very important subject area.*” Few legal domains have experienced as profound a metamorphosis as insolvency law, particularly in the wake of the Insolvency and Bankruptcy Code, 2016 “IBC”. The enactment of this seminal legislation heralded a paradigm shift from the ‘debtor-in-possession’ regime to a ‘creditor-in-control’ framework, recalibrating the contours of liquidation. Over the years, the evolution of the IBC has been marked by judicial dynamism, legislative refinements, and global jurisprudential shifts, compelling a recalibration of insolvency jurisprudence in India.

In this milieu, the RGNUL Financial and Mercantile Law Review “RFMLR” — one of India's preeminent law reviews takes immense pride in presenting this Special Issue on Emerging Trends in Insolvency and Bankruptcy Laws, 2024. This compendium embodies the legal erudition and intellectual vigor that define RFMLR. It features meticulously curated articles from the 4th RGNUL-SAM Conclave on Emerging Trends in Insolvency and Bankruptcy Laws, organized in collaboration with Shardul Amarchand Mangaldas & Co. in November 2024. We extend our profound appreciation to SAM & Co. for their unwavering support in fostering critical discourse on this ever-evolving legal landscape.

The Special Issue reflects the pressing need to analyze and refine the IBC’s existing framework in light of emerging challenges. Cross-border insolvency and its global ramifications, the treatment of contingent claims in corporate insolvency, and the disruptive potential of emerging technologies such as

blockchain and artificial intelligence in insolvency proceedings are but a few of the pivotal themes that seek attention. The deliberations of the Expert Panel at the Conclave, comprising esteemed luminaries — Mr. Saurav Panda, Mr. Vaijayant Paliwal, Mr. Sagar Dhawan, Mr. Pratik Datta, and Mr. Navneet Gupta were instrumental in conversing these complexities. Their profound insights on Green Finance’s use of IBC for Responsible Debt Restructuring and Recovery, the Value Maximization Potential of Avoidance Applications in insolvency proceedings, and the influence of emerging technologies on insolvency and bankruptcy enriched the discourse immeasurably. We express our deepest gratitude for their invaluable contributions.

This Special Issue also examines the fraught intersection of insolvency and environmental claims. India’s insolvency jurisprudence, while priding itself on expediency and economic efficiency, has yet to fully reconcile corporate insolvency with environmental obligations. Section 53 of the IBC, with its waterfall mechanism, accords primacy to financial creditors, relegating environmental claims to a residual status. This not only imperils corporate accountability but also raises constitutional concerns vis-à-vis Article 21, which enshrines the right to a clean environment. Further, the IBC’s non-obstante clause in Section 238 has, at times, been judicially interpreted to override environmental liabilities, thereby exacerbating the tension between corporate interests and public rights. The imperative for a principled reconciliation of these competing considerations is thus paramount.

Another focal point of this Issue is the nascent yet complex realm of cryptocurrency exchange bankruptcies. The foundational question of whether crypto assets qualify as ‘property’ under bankruptcy law is now overshadowed by more intricate concerns: the valuation of crypto assets, the enforceability of digital wallets, and the interplay between traditional insolvency

mechanisms and decentralized finance. With regulatory frameworks still crystallizing, navigating crypto bankruptcies necessitates a robust, avant-garde approach that this Issue seeks to explore.

Further, the treatment of Intercreditor Agreements under the IBC remains a topic of deliberation, with jurisprudence grappling with the delicate balance between creditor rights and the overarching objective of insolvency resolution. The Issue also delves into the IBBI's proposed overhaul of insolvency regulations, which aspires to streamline processes and bolster institutional efficacy. Additionally, a comparative analysis of global insolvency paradigms contextualizes India's legal framework within the broader international spectrum, offering invaluable insights into best practices and potential reform trajectories.

The landmark Lalit Kumar Jain case has reignited deliberations on the enforceability of third-party guarantees in insolvency proceedings. Should insolvency jurisprudence mandate their absolute enforcement, or should a nuanced, case-by-case approach prevail? This Special Issue endeavors to dissect this contentious question, drawing upon domestic and international precedents.

At RFMLR, we remain steadfast in our commitment to fostering scholarly discourse that is both doctrinally rigorous and practically relevant. The Editorial and Advisory Boards of RFMLR have been instrumental in upholding the Journal's legacy of excellence, and I extend my deepest gratitude to each member for their unwavering dedication. My sincere appreciation also extends to our Patrons and our esteemed readership, whose engagement and critical reflections continue to shape the intellectual trajectory of this Journal.

Insolvency law is no longer merely an esoteric domain of liquidation and debt recovery, rather it is the fulcrum upon which financial stability and economic resilience hinge. As India continues to refine its insolvency architecture, it is incumbent upon legal scholars, practitioners, and policymakers to engage in informed and pioneering discourse. This Special Issue aspires to be a catalyst in that endeavor.

YUVRAJ MATHUR

Managing Editor

RGNUL Financial and Mercantile Law Review