

Corporate Insolvency Laws of India¹

Optional Course – 40 teaching hours

Duration – 4 weeks (5*2) (**Commencement date July 10th - August 10th** Class hours- 8am-10 am Monday to Friday)

Evaluation- Written Project, Presentation and Take Home Essay

Target Group-4th Years (Minimum – 15 Maximum – 25)

Objective of the Course - the course aims at discussing the status of assets which may be claimed by the company's creditors, and once claimed the procedure to be considered for distribution of proceeds and the treatment and the legal proceedings for those responsible for the company's losses. In addition the course seeks to develop an understanding of the ways these issues are resolved by the current. The students are expected to analyse and evaluate the relevant laws.

The course would be dealt in two parts. The part one would begin with an overview of the functions of insolvency procedures. Part Two would then turn to the procedural aspects of securing and continuation of viable business enterprises which in has been defined as 'corporate rescue'. An in-depth study of Company Law is considered as it this has a major role to play in relation to insolvent companies and the procedure to be followed.

¹ Course Teacher: Vaneeta Patnaik, Assistant Professor (Law)

Course Outline

Part One - Procedural Aspects of Corporate Insolvency

The Corporate insolvency is dealt under the Companies Act of 1956. Besides the Companies Act the other relevant legislations are – the ‘Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) this is currently incorporated into the current amended Companies Act, the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDB Act). The related legislations are ‘The Transfer of Property Act, 1882, and ‘The Securities and Exchange Board of India Act 1992. The Companies Act has since seen as many an amendment. Some of the major amendments to the Act were made through Companies (amendment) Act of 1988 on the recommendations of Sachar Committee and then again in 1998, 2000 and finally in 2002 through the Companies (Second Amendment) Act of 2002 as a consequence of Eradi Committee Report.² This Eradi committee was set up by the Government of India in 1999 and was headed by Justice Eradi – a retired judge from the Supreme Court of India.

Principles and provisions in India:

- a. Basic principles of corporate insolvency
- b. Winding up of insolvent companies under the Companies Act - sharing of proceeds
- c. Sick companies: procedures under the SICA and proposed provisions of the Companies Act

Literature:

- a. Sections 433 to 483; 528-545 of the Companies Act, 1956
- b. Sick Industrial Companies (Special Provisions) Act the current Ss424A to 424L in Part VI A of the Companies Act 2002
- c. Sections 391-394 of the Companies Act, 1956
- d. Principles of Corporate Insolvency Law 2nd Edn by Prof. R.M. Goode(pgs 24-35, 118-136,141-169,443-482)
- e. Corporate Insolvency Law by Vanessa Finch (pgs. 527-673)

²<http://www.primedirectors.com/pdf/JJ%20Irani%20Report-MCA.pdf> hereinafter(J.J Irani Report on Company Law, 2005)

- f. Report of High Level Committee headed by Justice Balkrishna Eradi on Insolvency of Companies
- g. Report of the N L Mitra Committee on Insolvency law reforms

Part Two- Corporate Rescue

Corporate Rescue has been over a period drawing attention; this may have been due to the developments which can be traced in the recent past. Corporate rescue is not always about saving a company; it is also about selling off the assets on a piecemeal basis and to use the proceeds for the satisfaction of the creditors. An appropriate rescue system would aim at flexibility which would permit a tailored solution to the situation prevalent.

1. Basic Principles of Corporate Rescue

2. Principles and provisions in India:

- a. Securitisation Act in India:
 - a. Enforcement of security interests under the SARFAESI Act
 - b. Requisites for taking action under sec 13
 - c. Priorities and sharing of proceeds
 - d. SARFAESI Action and the rights/ obligations of the borrower
- b. SICA Provisions: Ss424A to 424L in Part VI A of the Companies Act 2002
- c. The Banker's Remedy of Set-Off 3rd edition by Sheelagh McCracken (pgs.219-299)

Literature:

- a. Corporate Rescue by Rebecca Parry 1st edition (Pgs.13-19, 131-150,151-172,187-205,233-249)
- b. Corporate Insolvency Law: Perspectives and Principles 2nd edn by Vanessa Finch (pgs. 241-292, 294-324,479-514)