

# Preface

*The Insolvency and Bankruptcy Code is one of the most significant financial laws in the recent past, affecting companies, unincorporated bodies, lenders, providers of credit, etc. While experience with implementation of the law may bring its own challenges, but if it does as designed, the law will bring some far reaching changes in the way both borrowers and lenders look at credit. For lenders, the ad hoc approach to security interest enforcement laws such as SARFAESI Act may need a basic relook. For borrowers, they need to realize seriously that a business either meets the trust of its creditors, or it needs to give up the steering wheel to the latter who are empowered to decide whether the business will continue to run or be dismembered, and sold by the piece, to pay off creditors.*

*While what has attracted lot of attention is the law dealing with insolvency and liquidation of companies, but it is notable that the roots of insolvency laws lie in personal bankruptcy. Over 500 years ago in England, the law was designed not to be good or lenient to the insolvent: on the contrary, historically, the law was harsh and would even go to the extent of Shylock-style punishment, such as cutting the ears of the dishonest insolvent who would borrow and not repay! It is only over time that the tone of the law changed from dealing the prodigal to the dealing with honest debtor, who, for turn of misfortune, could not pay, and therefore, the idea of discharge emerged. The US laws had overpowering tones of debtor discharge, and stand out as a highly debtor-friendly regime. While there have always been concerns that the law that removes the stigma of bankruptcy with mandatory discharge provisions may actually promote the cult of credit, with individuals leading luxurious lives at the cost of their lenders, it comes very clearly from insolvency laws that insolvency is not a crime. The legal system even discharges criminals after a certain punishment; bankruptcy is merely a passing phase in life.*

*India is not the only country that has recently reformed insolvency laws - in fact, in India, the process is overdue for over 60 years, as the Law Commission report that highlighted the need for reforming insolvency laws dates back to 1964. Commendably, what could not be achieved over decades, and despite one after the other Committee highlight the need for doing so, has been achieved in a matter of months by the Bankruptcy Law Reforms Committee.*

*The enactment of the bankruptcy law is a huge step on the part of the lawmakers in India. The boldness with which the law was passed, with Government claims being subordinated to the claims of even unsecured creditors, and the speed with which law-making was concluded on a subject that has been elusive over decades, are highly commendable. Surely enough, the process of implementation will bring a lot of reforms over time, as judicial precedents give shape to an age-old, rewritten law.*

*Writing a comprehensive book on the Code has been very challenging indeed. Insolvency and bankruptcy laws involve a whole range of laws - law of credit, insolvency principles, commercial lending practices, law of enforcement of security interests, etc. Additionally, we have endeavoured to provide a global pretext to the Indian law. Clearly, the Indian law has been inspired by the UK Insolvency Act - therefore, not only did we explore the nuances of the law and rulings from UK to fill the missing gaps of the law, we also did a comprehensive study of laws of other prominent jurisdictions. A huge amount of insolvency law is Judge-made law - as any major bankruptcy brings in questions which were never envisaged by the lawmakers, and that is where judges sit to create principles that serve as precedents in times to come.*

*The book is a collective effort of our team, though we specifically acknowledge the efforts of Niddhi Parmar, one of our associates, in helping us completing this project in time.*

*We have tried to make the commentaries as elaborative as possible, yet we look forward to readers' suggestions.*

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