



**INSOLVENCY
LAW ACADEMY**

An Indian Institute of Excellence in Insolvency

Burford

**JOINT STUDY
ON
PRICE DISCOVERY IN
DISTRESSED ASSETS**

In 2016, India introduced the Insolvency and Bankruptcy Code (Code) paving the way for a much-needed modern framework to deal with the insolvency and bankruptcy of corporate entities in India. The Code has moved forward in leaps and bounds in a very short span of time. Due to effective implementation of the Code, green shoots have already emerged.

However, further efforts are needed to make price discovery for assets, optimum. There is a need to further deepen market for resolution applications to ensure a vibrant market exists and thus offer competitive process and better price discovery.

Optimisation of price discovery is dependent on many factors. State of secondary market for distressed assets, availability of interim finance and use of litigation funding are amongst the elements that influence price discovery.



Insolvency Law Academy, in collaboration with Burford Capital, proposes to undertake an in-depth comprehensive study to identify the impediments and grey areas in optimising price discovery for assets in the process for resolution of distressed assets, within and outside of the Code, with focus on secondary market for distressed assets, interim finance and litigation funding. The study will also suggest solutions to the problems, prepare policy briefs and build awareness.

It is proposed that the study will be carried out by Mr. Sanjeev Pandey and Prof. Sulette Lombard. Mr. Sanjeev Pandey will be responsible for secondary market and post commencement finance component. Prof. Sulette Lombard will be responsible for litigation funding component. A steering committee will guide the research.

The study will culminate into a comprehensive report to be published by Insolvency Law Academy, in collaboration with Burford Capital, and a policy brief to be provided to the policy makers, regulators and other stakeholders.

METHODOLOGY

- An in-depth research and analyses of Indian policy, legal and institutional framework, as the case may be.
- Evaluate the frameworks and best practices in different countries in the backdrop of the dynamics of the Indian market and their application to India.
- Deep consultation with the stakeholders in India through surveys and by interviews.
- Roundtables or symposiums will be held in Mumbai, Goa (at ILA Conference in February, 2024), Dubai and Mumbai, from December, 2023 to April, 2024, for consultation with stakeholders and dissemination of outcomes.



SECONDARY MARKET

A secondary market for distressed assets can reduce the debt collection burden on banks and free up resources and capital to support new lending. It can also enhance bank's risk management strategy by providing another instrument to manage credit and market risks. Buying/ investing in distressed asset markets require specialized expertise and risk capital with higher expectations on return. Distressed assets investment firms are adept at generating capital from sophisticated investors in specialist investment purpose vehicles. These firms have played an integral role in some of the major corporate resuscitations around the world. There is a need for development of a market for such assets with a well-developed platform for facilitating transactions to ensure transparency and reach of the assets for suiters.

POST COMMENCEMENT FINANCE

Preserving value of assets of debtor is critical to achieve maximisation of value of assets and optimising the price discovery. This often requires that the debtor is continued as a going concern.

Conducting business of debtor during insolvency process, requires capital to meet the ongoing business costs and expenses and pay for resolution costs. The Code allows the insolvency professional to raise post-commencement funding to preserve value of and facilitate the resolution process. The Code accords "super priority" status to creditors who provide interim finance which is repaid in priority in a resolution plan and under the waterfall mechanism in liquidation. As a facilitation measure, the Reserve Bank of India has, vide its circular on Prudential Framework for Resolution of Stressed Assets provided that interim finance may be treated as 'standard asset'. However, the market for interim finance is yet to develop in India. There is a need to develop the market for this last mile funding.

LITIGATION FUNDING

Litigation funding has a significant nexus with price discovery and can have significant strategic benefits. The third party funding is a mechanism to facilitate the recovery of claims by individuals and companies, especially those under financial stress, by funding the costs of legal proceedings. The Code also allows the liquidator to assign not-readily recoverable receivables, including from avoidance transactions. A litigation funder finances the cost of the litigation in exchange for a share of any recovery made through the proceedings, rather than the claimant paying the costs of the same. It gives an opportunity to the litigation funder to invest in a specific claim according to its potential. Third-party litigation funding is a popular way in many developed economies to overcome this constraint. There are dedicated ventures that specialise in such kind of funding. India still has a long way to go in terms of realising the potential of litigation funding. However, many stakeholders are looking at this very seriously to meet the costs of litigation involved in recovery of a claim. Litigation Funding is likely to emerge as an important part of the financial sector and can eventually make India's justice delivery system more efficacious and accessible.



LITIGATION FUNDING

Sulette Lombard

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She carried out comparative studies in litigation funding which was funded by INSOL International, with Prof. Christopher Symes as associated lead. The report covers ten jurisdictions and also includes information in respect of surveys that were sent to insolvency practitioners and litigation funders. The scope of the report is limited to commercial (third-party) litigation funding, but does take note of other funding options that are available in each of the jurisdictions (eg. government funding; creditor funding; contingency fees; etc) to provide overall context and an indication of the place of commercial funding in the relevant jurisdiction.

She has also co-authored (mostly as primary author) on litigation funding articles published in Australia (two published articles), New Zealand (in press) and South Africa (in press), and currently working on two more comparative papers - one with a colleague in the USA and another with a colleague in Canada.



POST-COMMENCEMENT FINANCE & SECONDARY MARKET

Sanjeev Pandey

Part Time Advisor (Research on Insolvency & Bankruptcy)
Centre for Advance Financial Research and Learning, Reserve Bank of India,
Former State Bank of India DGM & Head (Bankruptcy Tribunal & Policy)
Former General Manager, Insolvency and Bankruptcy Board of India (IBBI)

He has experience of working with India's largest bank on formulating bank's policy on insolvency, and of supervising developments in bankruptcy courts. He has also worked with IBBI - the insolvency regulator. He has drafted post-commencement financing policy for SBI which has been adopted many other banks. He is also most suitable to work on development of secondary market for distressed assets having worked in this area.

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