

TESTING INDIA'S SME INSOLVENCY LAW USING SOCIAL CHOICE THEORY: SOCIAL CONSIDERATIONS IN INSOLVENCIES OF SMALL AND MICRO ENTERPRISES AND INVESTIGATING THEIR INSOLVENCY REGIME IN THE CURRENT TIMES

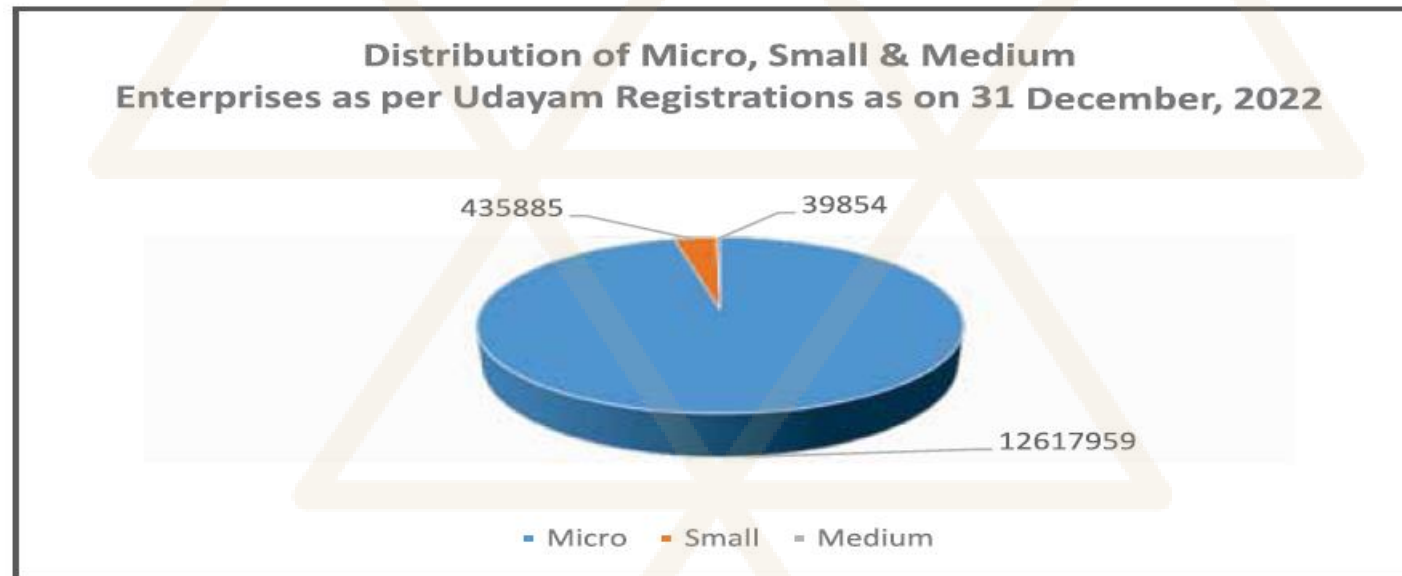
Preeti Nalavadi
Associate Teacher of Law & PhD Candidate
The University of Adelaide- Law School
Commonwealth of Australia

WHY DO WE CARE ?

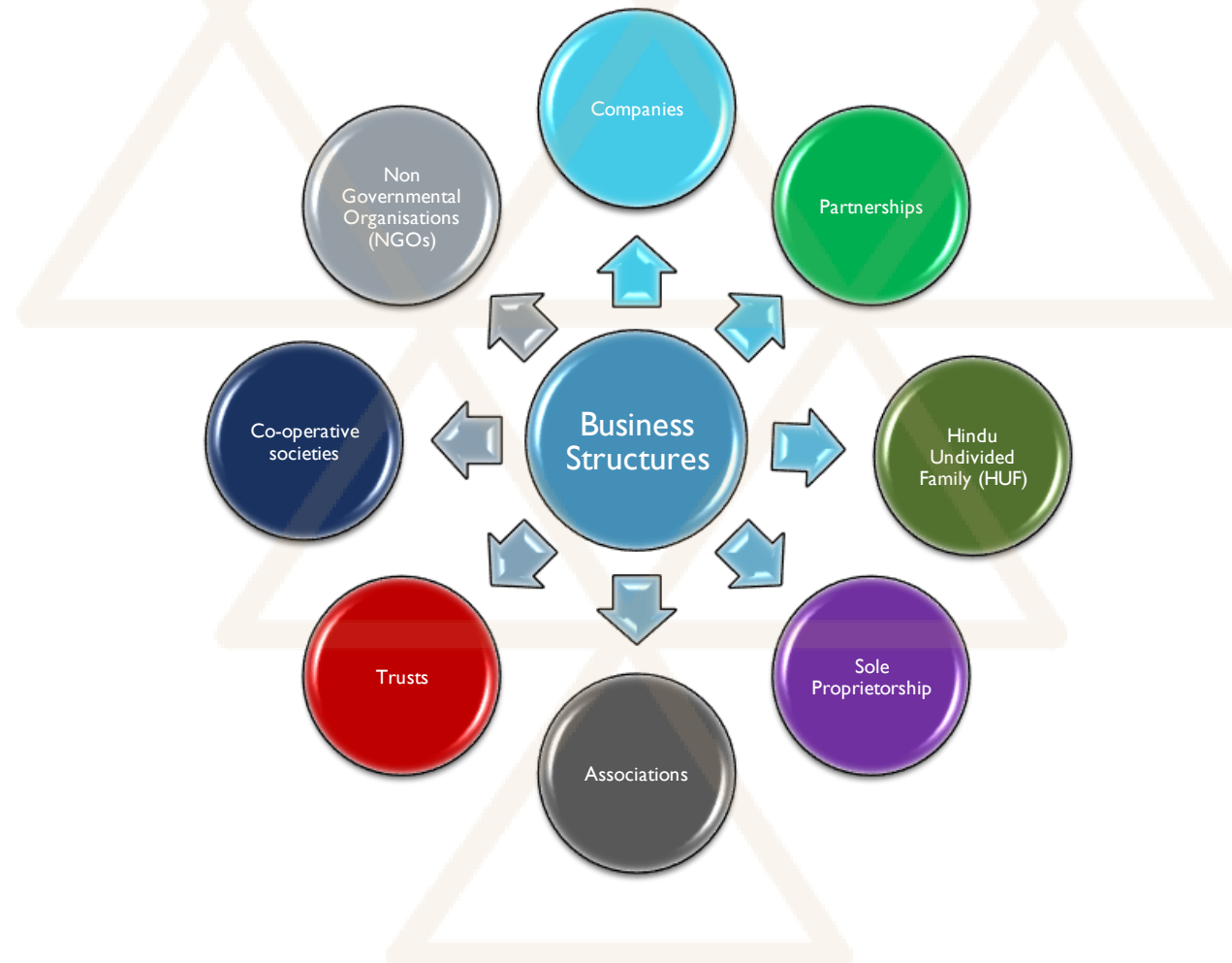
- ❑ India has amended Insolvency and Bankruptcy Code (IBC) by adding Chapter IIIA- for MSME insolvency
- ❑ World Bank Report on MSMEs - 2017
- ❑ India has introduced *prepacks* for MSMEs.
- ❑ Has India adopted a one size fits all approach for MSMEs under Ch III A?
- ❑ See Dr Jason Harris and Preeti Nalavadi, 'One size doesn't fit all? Comparing insolvency law reforms for MSMEs in Australia and India' (2023) 22 Insolvency Law Bulletin 109

MSME LANDSCAPE IN INDIA ANNUAL REPORT 2022-23 (MSME MINISTRY GOI)-SHOULD INDIA BE CONCERNED ?

Figure 2.11: Distribution of Micro, Small & Medium Enterprises as per Udayam Registrations as on 31 December, 2022



INDIAN BUSINESS STRUCTURES- A COMPLICATED BUSINESS



SMALL AND MICRO ENTERPRISES – IS IBC CONDUCTIVE TOWARDS THESE ?

- ❑ Part III A applies to corporate debtors only
- ❑ Structural issues – what are these enterprises ?
- ❑ The Promoter issue- can they participate- Yes and No!!
- ❑ The problem of *unorganised sector*
- ❑ Do they know the law and can they afford to use it? General awareness and costs
- ❑ Any alternatives to IBC? Could be

SEN'S IDEA OF JUSTICE AND ITS APPLICATION TO IBC

- Applying Amartya Sen's Social Choice Theory to the Indian Insolvency and Bankruptcy Code (IBC) involves- assessing how the IBC incorporates the preferences, welfare, and interests of various stakeholders, including creditors, debtors, employees, and shareholders.
- Sen's theory emphasizes collective decision-making that reflects the diverse interests and values of a society.
- In the IBC context, this means evaluating how insolvency resolutions are derived, considering the aggregate welfare of all parties involved, and ensuring that the process is not just legally sound but also socially optimal and inclusive.
- How do small and micro enterprises position themselves under this ?

APPLICATION CONTD...

- ❑ Amartya Sen's *social welfare* theory
- ❑ Does the law as it stands satisfy this ? Does insolvency law improve lives of people and does it contribute towards social welfare ?
- ❑ Indian Constitution and social welfare - guaranteed under Directive Principles of State Policy (Part IV)
- ❑ Micro and Small businesses

CONCLUDING REMARKS

- ❑ SMEs need a simple and cost effective resolution mechanism
- ❑ India needs to involve the stakeholders effectively before making changes to the law
- ❑ Unless the SMEs are provided with a proper resolution mechanism the MSME sector will continue to remain stressed
- ❑ Urgent need to explore other mechanisms beyond IBC

Thanks to ILA and ALS for their sponsorship and support.

My contact- preeti.nalavadi@adelaide.edu.au
pnalavadi@yahoo.com

