

Restructuring & Insolvency Academic Forum (RIAF 2026)

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TRACING AND RECOVERING ASSETS IN INSOLVENCY OF SMALLER ENTERPRISES

Opening Lecture by
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Centre for Asian Legal Studies
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The Restructuring & Insolvency Academic Forum (RIAF) is a regional academic partnership platform jointly developed by the Centre for Asian Legal Studies at the Faculty of Law, National University of Singapore and INSOL International (Asia Hub) with support from leading policy and academic institutions across Asia. It serves as a bridge connecting research, practice, policy, and reforms in Asia.

The RIAF 2026

RIAF 2026, held on 18–19 June 2026 and hosted by Thammasat University, The Prachan Campus, Bangkok, Thailand, brought together leading academics, practitioners, policymakers, and emerging researchers from across Asia to explore the critical issues shaping the future of corporate restructuring and insolvency. The forum served as a vibrant platform for rigorous, regionally grounded academic dialogue on a diverse range of themes, including cross border insolvency, restructuring reforms, business turnaround strategies, asset tracing and recovery, and the evolving insolvency landscape across the Asian region.

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1. A very good morning to the esteemed members of the judiciary, fellow academics and practitioners, and other guests. I feel deeply honoured to have been invited to deliver this lecture at the Restructuring & Insolvency Academic Forum (RIAF) 2026, hosted by the Thammasat University Faculty of Law, and co-organised by the Centre for Asian Legal Studies, Faculty of Law, National University of Singapore, the Thammasat University Faculty of Law, and INSOL International Asia Hub, with support from the INSOL International Academic Focus Group, the Asian Law Centre, Melbourne Law School. As President of the Insolvency Law Academy, I am thankful for the opportunity to Insolvency Law Academy to associate with this prestigious event. The Insolvency Law Academy is committed to mission of building insolvency scholarship in India and beyond.

2. The subject of my talk is complex, perhaps as intricate as running a small business, or for that matter how complicated the entrepreneurship itself can be in many jurisdictions. Besides being an insolvency lawyer, who has advised on both, policy and transactions including, asset tracing and recovery, and one of the largest clawbacks in ten year history of India's new insolvency regime, I have also been an entrepreneur myself. In the year 2011, just after I completed my term as INSOL International President, I took a five year sabbatical while I was at the peak of my career, to set up a boutique hotel - a small business in the Himalayas. I stayed in the Himalayas for 5 years to build this dream hotel. From my endeavours and experience, I discovered that entrepreneurship is a system, not an accident or simply a pursuit of an individual's aspiration. The entrepreneurial outcome may begin as a product of ambition, creativity or necessity, but as the enterprise grows, it becomes a hub of economic activity beyond the entrepreneur. The small 21 room property that I built, in the middle of nowhere in the mountains, rapidly flourished. In 7 years, the hotel gave birth to a small township with multifarious economic and social activities that provide jobs and happiness to hundreds of families. During the course of my entrepreneurial journey, and while building institutions, like, INSOL India, Insolvency Law Academy and Indian Cinema Heritage Foundation – three premier Indian institutions with global footprints, and as a longest serving director on INSOL International Board in its initial years, I have also learned that entrepreneurship

is much more than I initially believed or had understood, it is a reflection of national choices about education systems, finance, architectures, regulatory environments, workforce development, digital infrastructure and cultural attitudes towards risk and failure. Where these systems are coherent, entrepreneurship can even turn into a national strategic asset.

3. At times, an entrepreneur, the very person we seek to encourage, can profoundly disappoint. In the life cycle of an enterprise, the line between a brilliant business manoeuvre and transactions that hurt legitimate interest of enterprise's creditors, can be incredibly thin. Commonly, the fiduciary duty of the managers is to multiply wealth for the shareholders. In times of financial distress, however, this duty shifts to preserving value of the enterprise for the benefit of creditors. However, when management sees the writing on the wall, the instinct for self-preservation often overrides their fiduciary duty to their creditors. The promoter may execute transactions that may be systematically detrimental to the claim of the creditors in particular, and the legal system in general. This act manifests as a deliberate attempt at value destruction. The challenge for an insolvency professional is not merely to identify these transactions in law, but to trace the missing assets, gather admissible evidence, and persuade the courts to order their recovery before the trail goes cold.

4. The insolvency laws anticipate this disappointment and provides the clinical tools to diagnose these actions, and for their claw back into the insolvent's estate, primarily through the framework of voidable transactions and wrongful or even fraudulent trading. This investigative process of identifying and locating hidden or misappropriated assets by following a trail of money and links to entities associated with the person concealing the assets has come to be termed as 'asset tracing' in insolvency parlance. The process of retrieving hidden assets located through asset tracing and returning those assets to the rightful claimant is termed as asset recovery. Asset tracing and recovery (ATR) is, in fact, one of the means to achieve the core objectives of any insolvency proceedings, to protect, preserve and maximize the value of the insolvency estate so that creditors could receive the maximum possible distribution in insolvency proceedings.¹ Additionally,

¹ Asset Tracing and Recovery in Insolvency Proceedings UNCITRAL Toolkit and Background Notes, United Nations Publication, 2025, Accessed June 16 2026 <http://uncitral.un.org/sites/default/files/media-documents/EN/Texts/UNCITRAL/2513250e-uncitralbackgroundnotesatr-ebook-accessible.pdf>

the ATR is triggered by broader objectives, such as the rule of law, and also relies on other laws, including effective enforcement and sanctions regimes outside the insolvency law framework that supplement, complement and reinforce insolvency law measures.² In reorganization, the ATR serves as a means to restore the financial well-being and viability of the debtor so that it can continue to operate. The outcomes of ATR prospects may often determine if the creditors are willing to give the debtor another chance or opt for its liquidation.

5. ATR can be challenging for many reasons - increased sophistication around pilferage of assets, use of more complex assets holding structures that slow down and complicate the ATR, rapid digital movement of asset, long and time consuming process of law, undriven creditors in many cases, bureaucratic hurdles, and even inertia. Asset tracing can be even more complex when assets are hidden in offshore company structures. The lack of funding to finance ATR actions can also become a hurdle. Asset tracing investigation specialists are crucial for anyone looking to uncover hidden assets. They come at a cost.

6. These challenges are even more profound for small businesses. Most entrepreneurial activities worldwide are small by size but forms the backbone of the global economy. According to the World Economic Forum, there are around 400 million enterprises worldwide. SMEs account for approximately 90% of this business population, generate 60-70% of employment, and contribute up to 70% of global GDP and almost 55% in many developed economies.³ They account for two-thirds of business employment in advanced economies—and almost four-fifths in emerging economies—as well as half of all value added. In India, the world's fourth-largest economy, SMEs account for 30.1% of the country's GDP.⁴ They are critical for achieving the sustainable development by promoting inclusive and sustainable economic growth, employment and decent work for all, and to build resilient infrastructure, promote sustainable industrialization and foster innovation. They power dynamism and play an important role in preserving competitiveness in an era of shifting global production. They are the lifeblood of economies around the world. Differently put, SMEs do not just significantly contribute to the economy – they

ARE the economy. Ironically, just as SMEs are present in large numbers, so do they fail in big numbers. Millions of people launch ventures but many are unable to cross the threshold into durable, job-creating, innovation-driven businesses. Small businesses often operate with inherent vulnerabilities that make them attractive target for asset stripping. Unlike larger corporations, they typically lack robust internal controls and dedicated compliance departments. Many operate with a close-knit, family-like atmosphere built on trust, which, while positive for culture, can lead to reduced oversight and verification procedures.

7. In small enterprises, voidable transactions can be deceptively simple, but harder to detect, as the lines between personal and business assets are often blurred. A transaction, on its face, may appear to be in the ordinary course of business, but a deeper examination may reveal a deliberate and premeditated act of asset stripping. According to the Association of Certified Fraud Examiners' (ACFE) *Report to the Nations* (2010, 2012, 2014, and 2016), asset misappropriation is the most commonly occurring form of insider financial fraud. Of course, these findings cannot be generalised to small businesses, however, in many SMEs, the temptation and opportunity for asset diversion are heightened because smaller companies often don't maintain complex internal accounting documentation and checks, thus, it becomes difficult for lenders to spot these leakages. Assets can easily move from one balance sheet to another. In the digital age, the touch of computer keys can shift assets through multiple enterprises, even jurisdictions, within minutes, pushing the asset entirely into the digital wild west, creating significant challenges for recovering value. Employees may divert company's funds for personal use, or practice skimming and larceny, stealing cash directly before or after it gets reported in the accounting system. They may falsify timesheets, inflate sales, or ghost payroll. The process of taking out assets is accelerated when insolvency is imminent.

8. A successful ATR process contains the tracing and identifying of assets; freezing them; and, taking possession and returning of assets. Each one of these steps heavily depends on the previous one. Executing all these steps can be challenging particularly when

² Ibid

³ Future Readiness of SMEs World Economic Forum, Accessed June 16 2026 <https://initiatives.weforum.org/sme-resource-hub/home>

⁴ Press Note dated July 4 2025, Accessed June 16 2026 <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2142170®=48&lang=2>

dealing with two or more jurisdictions.⁵ Various factors may impact the tracing and recovery of enterprises assets: (i) the lack of sufficient powers of insolvency practitioners to trace and preserve assets of debtors; (ii) the challenges of digital transactions; (iii) the availability of adequate information; (iv) the cost of ATR; (v) reliance on third parties; (vi) cross-border cooperation; and (vii) absence of adequate civil law measures or tools that creditors can rely on to trace and recover the assets of their debtors. I will touch on some of these in a little detail.

9. Insolvency practitioners tend to have a broad range of powers under national law to trace and preserve assets, e.g., compel the production of books and records (including from lawyers, accountants and banks); conduct audits; request issuance of a search order; request issuance of freezing order; examine corporate officers; report suspicious transactions to law enforcement authorities; access registers of assets; launch any other civil or administrative proceedings for the purpose of tracing and preserving assets; and in the cross-border context, where applicable, request mutual assistance or to turn to a judicial authority in their jurisdiction to request mutual assistance in another jurisdiction. Nonetheless, there may be obstacles to the effective exercise of such powers. For example, banking secrecy laws can prevent disclosure of account information that would help to identify the accounts that hold those assets. In terms of cross-border cases, when seeking mutual assistance in another jurisdiction, the requested jurisdiction may consider that a request is not supported by enough information or evidence to justify the order sought. Furthermore, differences in legal traditions, legal processes, and legal terminology often makes it hard to communicate effectively between and among jurisdictions. This can lead to lengthy proceedings and a lower recovery rate as a result, if creditors will consider the whole process as too financially and institutionally burdensome.⁶

10. The technology can both facilitate and allude ATR. The structural vulnerability of SME reaches its

absolute zenith when we step onto the modern digital frontier. When a distressed SME promoter decides to shift value out of the corporate stream, he is increasingly bypassing traditional banking networks entirely in favor of virtual digital assets. How do we chase what we cannot physically touch or see? This is where international legal frameworks become indispensable. The *UNIDROIT Principles on Digital Assets and Private Law*⁷ provide a vital foundational architecture for how modern insolvency systems must interpret control, ownership, and transfer of digital holdings. We may also get some guidance from the ongoing work of UNIDROIT's *Project on Best Practices for Effective Enforcement*.⁸

11. Another obstacle in ATR in small business insolvency is the absence of adequate information. Financial information is a key element in the mechanics of a market economy. Without proper, reliable, comparable financial statements, stakeholders cannot make investment decisions and the *ex post* control of the behaviour of market agents. In some jurisdictions, particularly in the less developed economies, the very existence of the information cannot be taken for granted. These can be difficult in collecting and disseminating the required information because of inefficient or non-existent record keeping systems, whether caused by a lack of resources or simply not seeing a need for them. The informal nature of many SMEs, particularly in developing countries, further complicates record keeping. An adequate level of formality and, more precisely sufficient financial information, are the key to a workable system to tackle ATR in SME insolvency. Especially in developing economies, the level of informality is high: sometimes entrepreneurs and small entities do not have a legal duty to file proper accounts, or the duty is rarely enforced; owners and managers have little or no knowledge of account drafting; public training courses and awareness campaigns are very scarce. SMEs conduct their activity “the way it's always been”, with, at best, home-based accounting practices.⁹ Corporate governance is often

⁵ Study on tracing and recovery of debtor's assets by insolvency practitioners, Accessed June 16 2026

<https://commission.europa.eu/system/files/2023-02/Final%20Report%20%20Study%20on%20tracing%20and%20recovery%20of%20debtor%E2%80%99s%20assets%20by%20insolvency%20practitioners%20-%20March%202022.pdf>

⁶ Ibid

⁷ UNIDROIT Principles On Digital Assets And Private Law, Accessed June 16 2026 <https://www.unidroit.org/wp-content/uploads/2024/01/Principles-on-Digital-Assets-and-Private-Law-linked-1.pdf>

⁸ Enforcement: Best Practices, Study Lxxvi B: Best Practices For Effective Enforcement, Accessed June 16 2026 <https://www.unidroit.org/work-in-progress/enforcement-best-practices/>

⁹ World Bank Group Insolvency and Creditor/Debtor Regimes Task Force, Working Group on the Treatment Of MSME Insolvency, Report On The Treatment Of MSME Insolvency, Accessed June 16 2026 <https://documents1.worldbank.org/curated/en/9733331494264489956/pdf/114823-REVISED-PUBLIC-MSME-Insolvency-report-low-res-final.pdf>

reduced to a kitchen-table discussion. The "board of directors" is frequently just the promoter, their spouse, and an extended family member. Statutory board minutes are rubber-stamped over Sunday dinner. The financial controller is a single, unchecked accountant who has held the master password to the company books for fifteen years. Ineffective gathering and dissemination of information to relevant parties can strain the ATR. The ATR works best when debtors provide creditors and other relevant parties with the information they require, from time to time. Efforts have been taken by policy makers to improve corporate governance in SMEs mainly by encouraging them to institutionalise their legal form. However, SMEs prefer to operate informally as institutionalising business comes at a cost - of compliance and time; they had rather spend the money and time on focusing on businesses.

12. The procedure of ATR invariably involves a degree of forensic accounting, legal expertise, and investigative techniques. These come at a significant cost. The SME insolvency estate often lack funds to finance ATR. Without investigation, possibly the avoidance and other insolvency law remedies may remain unaddressed. As a result, assets that should be part of the insolvency estate may never be discovered or recovered. In addition, it may permit a creditor or a group of creditors to advance the approximate costs of ATR subject to authorization by the court or other creditors. However, creditors are usually willing to fund only when they believe that it would be possible to recover an asset of a significant value.

13. ATR is assisted by obligations of third parties that arise under insolvency law. They include general obligations to assist insolvency proceedings and any appointed insolvency professional. More specifically, upon commencement of insolvency proceedings, third parties that have had dealings with the debtor, have knowledge about the debtor, its assets or business records or are in possession or control of those assets or records, may have statutory obligations within a short period of time (subject to a penalty for delay) and free of charge: (i) to provide the court or the insolvency representative with information and documents in their possession or control about assets and affairs of the debtor, including its bank accounts and counter parties to debtor transactions; (ii) to open

rooms and containers where the assets of the debtor or business records may be found for inspection by authorized officials; and (iii) to turn over the assets of the debtor and business records, or supply documents, information, keys and other attributes necessary to effectively access and take control of the assets of the debtor and business records. In some jurisdictions, a separate court order may be required to compel third parties to fulfil those obligations. In other, the insolvency representative may demand performance of those obligations under law, with the assistance of enforcement authorities, if necessary, subject to some limitations, such as: (i) those arising under law-established privileges and rules (e.g. the attorney-client privilege and banking secrecy rules) that may prevent full disclosure of certain information, although those limitations do not usually apply where the insolvency representative becomes the debtor's representative (see further below); (ii) depending on the type of information obtained, restrictions on subsequent disclosure and use of information (e.g. the insolvency representative may be obligated not to reveal the obtained information to other persons, or it may be obligated to make sure that the information is not used for purposes outside the insolvency proceeding); and (iii) exemption of assets used for public purposes (e.g. impoundment in a criminal proceeding).¹⁰ In small businesses, such people may often be mostly relatives or friends of the promoter or have family and societal ties. Social pressures lead to them protecting the promoter in such times. Extracting cooperation and information can be even more complex from the community that forms the eco-system of promoter of a SME.

14. A cross-border ATR in a small enterprise insolvency can offer even greater challenges where the debtor in one jurisdiction; a wrongdoer (e.g. a former director liable for dissipation of assets) in another jurisdiction; other wrongdoers or witnesses in various other jurisdictions; and the concealed or dissipated assets in one of those or held through structures involving a chain of companies and trusts in several jurisdictions. Coordinated actions of courts and insolvency representatives are essential in those situations to prevent further concealment or dissipation of assets, especially when urgent relief is needed, including simultaneously in several States in order to cover all possible layers in the asset holding

¹⁰ Study on tracing and recovery of debtor's assets by insolvency practitioners, Accessed June 16 2026 <https://commission.europa.eu/system/files/2023-02/Final%20Report%20-%20Study%20on%20tracing%20and%20recovery%20of%20debtor%E2%80%99s%20assets%20by%20insolvency%20practitioners%20-%20March%202022.pdf>

structure. The UNCITRAL Model Laws on Cross-Border Insolvency envisages direct communication and cooperation of courts and insolvency representatives and coordination of concurrent proceedings and relief.¹¹ While many countries have tools to enable ATR, these tools differ from jurisdiction to jurisdiction and often are not recognized across borders in a manner that keeps pace with the need for rapid ATR, particularly during insolvency. In many jurisdictions, the policy makers are apprehensive of exposing their enterprises to the risk of courts in foreign jurisdictions deciding the fate of their SMEs. As SMEs are critical to any economy, the caution sought to be applied by policy makers cannot be simply brushed aside.

15. There is a pressing need to address ATR in insolvency of small businesses, as it is a critical matter for the economies. An economy's health relies heavily on the efficient recycling of trapped resources and insolvency law is, at its core. It is a clearing mechanism designed to reallocate dead or distressed capital back into productive macroeconomic cycles. In the realm of smaller enterprises, given their scale and participation in the economy, it is a vital act of economic preservation. In India, an estimated ₹3.90 lakh crore (approximately \$46.8 billion USD) (as on 30 June, 2025) is currently locked up in contested avoidance transaction applications pending adjudication before the bankruptcy courts.¹² These figures, however, tell only part of the story. The volume and value of such applications underscore the magnitude of the asset-tracing challenge confronting Insolvency Professionals and creditors alike. As of 31 March 2026,¹³ Resolution Professionals in India had filed 1,878 avoidance applications before the bankruptcy courts involving transactions worth approximately ₹4,38,169 crore, well over US\$ 52 billion. Yet, recoveries directly secured from erstwhile promoters amounted to only about ₹6,434 crore.¹⁴ When you read, *The Jaypee Infra Insolvency Saga*¹⁵, one

will find the most of it comes from a single ATR. Huge amounts trapped in these transactions can be well put to use for economic growth.

16. The ART implication has a direct nexus with access to finance and its cost to SMEs. When creditors have confidence that assets can be effectively traced and recovered in the event of default, the perceived risk of lending declines. When an SME loses its assets and value due to various reasons the lenders do not simply absorb that loss, they socialize it. A reduction in risk can translate into lower borrowing costs and improved access to finance, particularly for SMEs. Conversely, where assets are unlawfully dissipated and recovery becomes uncertain, lenders inevitably factor that uncertainty into their credit decisions, increasing the cost of borrowing for businesses.¹⁶

17. Many of these problems can be addressed by appropriate policy and legislative measures to strengthen frameworks of tracing and recovering different types of assets. But we must remember that issues involving small business insolvency cannot be easily addressed by any one-size-fits-all approach. While the overall insolvency related problems faced by the SMEs are similar across jurisdictions, there are significant differences in their priorities and needs for different countries. In fact, the term SMEs itself encompasses a wide-ranging spectrum of businesses which are immensely heterogeneous in their size, age, sector, ownership, business models. Most are nearly micro in size even compared to medium size business and usually includes sole proprietorships and single-employee businesses. Small businesses often face specific challenges that make them fundamentally different from large enterprises. In *Report on the Treatment of MSME Insolvency*, the World Bank notes that many jurisdictions treat SME insolvencies the same as for other corporate entities, or conversely, natural persons, despite their unique attributes.¹⁷ An

¹¹ E.g. MLCBI, chapters IV and V; and MLEGI, chapter 2.

¹² Rajya Sabha Unstarred Question No. 2940, Answered On Tuesday, August 19, 2025, Accessed June 16 2026 https://Sansad.In/Getfile/Annex/268/Au2940_Ruqo68.Pdf?Source=Pqars

¹³ IBBI quarterly Newsletter January-March 2026. Vol 38, Accessed June 16 2026 <https://ibbi.gov.in/uploads/whatsnew/62bde7e8797a6a91abc577742098b840.pdf>

¹⁴ Rs 3.8 lakh crore stuck in pending clawback from promoters of bankrupt firms evading recoveries, Accessed June 16 2026 <https://www.moneycontrol.com/news/business/companies/rs-3-8-lakh-crore-stuck-in-pending-clawback-from-promoters-of-bankrupt-firms-evading-recoveries-13574332.html>

¹⁵ Sumant Batra, *The Jaypee Infra Insolvency Saga*, Om Books International, 2024.

¹⁶ Behavioral Impact of IBC, Indian Institute of Management Bangalore, May 22, 2025, Accessed June 16 2026 <https://cdn.ibclaw.online/legalcontent/ibc/Reports/Study+on+Behavioral+Impact+of+IBC+by+IIMB+Bangalore+-+May+22%2C+2025.pdf>

¹⁷ World Bank Group Insolvency and Creditor/Debtor Regimes Task Force, Working Group on the Treatment Of MSME Insolvency, Report On The Treatment Of MSME Insolvency, Accessed June 16 2026 <https://documents1.worldbank.org/curated/en/973331494264489956/pdf/114823-REVISED-PUBLIC-MSME-Insolvency-report-low-res-final.pdf>

insolvency law designed with the complexity and sophistication of large companies in mind, will likely only compound the problems faced by small businesses.

18. Keeping this in mind, I suggest a few measures that may be considered.

19. Information is the lifeblood of asset recovery. The success of ATR critically depends on the availability of complete, correct, and up-to-date information about the debtor. The non-availability of information may impede resolution and compromise the objective of value maximisation. The monopoly over financial records allows defaulting promoters to execute evasion tactics. This information asymmetry will have to be addressed in equal measures by adopting suitable incentives for good corporate governance measures and by creating a repository of critical information for use in insolvency process. India has set up an Information Utility (IU) – a digital vault, a registry of financial information about debtors for expeditious completion of various processes under the Insolvency and Bankruptcy Code 2016. National E-Governance Services Limited (NeSL) – the licensed IU¹⁸ seeks to bridge the information gap, converting what used to be a long, blind paper chase into a transparent, data-driven recovery process. The IU, as visualised and implemented under the Indian Code, has no parallel anywhere in the world.¹⁹ At its core, the IU functions as an independent digital repository that systematically collects, verifies, stores, and disseminates financial information relating to debt and default, and other information. What distinguishes this framework is not merely the storage of information but its authentication. Before a debt record is accepted, the parties are provided an opportunity to verify and authenticate the information, thereby creating a far more reliable evidentiary foundation than the books of account maintained solely by the corporate debtor. The NeSL, has grown into a vast repository of active financial data. As of March 2025, it maintained over 30.8 million active debt records, covering 2.648 million corporate entities, 5.231 million other business

entities, and 37.6 million individuals.²⁰ Importantly, its database is not confined to financial creditors alone; it also captures information relating to trade creditors, debenture trustees, and debtors, significantly broadening its utility within the insolvency ecosystem. From the perspective of ATR, the potential of the IU framework is immense. The insolvency professional can use the data available in books and bank account of the debtor and match with the data recorded by NeSL (which acts as a digital vault) to instantly spot discrepancies. The IU framework levels the playing field by shifting the source of financial truth away from the debtor's internal, easily manipulated records into an independent, centralized digital ecosystem. It also acts as a primary tool for forensic accountants during corporate audits. The Record of Default (RoD),²¹ issued by the IU is treated as the *prima facie* (conclusive) evidence by the bankruptcy court. This cuts down pre-admission delays, freezing the company's asset movement before further stripping can occur and weeding out artificial claims. It has been a successful experiment and worthy of being considered by developing economies.

20. The problem of funding can also be significantly solved by taking suitable measures. As far back as in early 2000s, an expert committee of which I was a member proposed a novel idea – the establishment of an Insolvency and Bankruptcy Fund (IBF) to address the problem of funding in insolvency process, an idea that was adopted by the Bankruptcy Law Reforms Committee in 2015 and incorporated in the IBC in 2016. The objective of IBF is to establish a readily available fund to provide liquidity to sustain the insolvency process in cases where the cash flow was not adequate. IBF is envisioned as a reserve, as a financial cushion to ensure that insolvency resolution, liquidation, and bankruptcy processes are not paralyzed by a lack of funds or systemic resource crunches. It was recommended that contributions to the IBF can be made by any one – banking companies, distress fund investors or even corporate houses. To incentivise investment, tax benefits may be offered to build a large corpus of fund. The IBF can be professionally managed like any investment fund but

¹⁸ The Information Utility – the IP's Personal Assistant (PA), Accessed June 16 2026 <https://www.nesl.co.in/information-utility/the-information-utility-the-ips-personal-assistant-pa/>

¹⁹ Information Utilities: A Key Pillar of Insolvency Proceedings Information Brochure, pg. 3, Accessed June 16 2026 <https://ibbi.gov.in/uploads/publication/ee64e0a0330c81c11c0ab538b5e4b946.pdf>

²⁰ National E-Governance Services Ltd, 9th Annual Report 2024, Accessed June 16 2026 https://www.nesl.co.in/wp-content/uploads/2026/04/9th-Annual-Report_NeSL.pdf

²¹ The Emerging Role of the Information Utility, Accessed June 16 2026 <https://www.nesl.co.in/information-utility/the-emerging-role-of-the-information-utility/>

with mandate only to provide interim funding, fund litigation cost and for ATR, etc. in insolvency. The government can also contribute fund to subsidise part of the funding in insolvency of SMEs. The funding by IBF to meet costs would have priority in repayment in both reorganisation and liquidation, and would also earn commercial returns on investment, making the idea of the fund commercially viable.²² Although IBF is yet to be operationalised in India, the 5th Insolvency Law Committee (ILC), a high-powered committee constituted initially in 2017 by the Ministry of Corporate Affairs, has recommended that the government may consider building incentives or mandates in order to enable regular contributions to the IBF.²³ The IBF can go a long way to alleviate some of the challenges faced by the insolvency professionals and to achieve better outcomes from insolvency process.²⁴

21. Empowering the insolvency professional with real-time access to the advanced digital tool sets required to dismantle sophisticated corporate fraud, is critical. Digital tools are the instruments that harvest, extract, organise, and connect that information into actionable evidence. In an era, where billions can be layered through shell networks or converted into digital tokens in seconds, a forensic auditor relying on traditional spreadsheets is bringing a knife to a laser fight. Without advanced analytics, identifying look-back period anomalies relies on random sampling or lagging tips. Digital tools shift this paradigm from a reactive guessing game to an automated dragnet. This need is particularly acute in the context of small enterprises. In small enterprise insolvency, the challenge is rarely a sophisticated offshore corporate structure. For an IP, appointed months later after the avoidable transactions take place, these transactions leave only a fragmented digital trail. Without technological assistance, reconstructing this trail within the strict timelines of insolvency process becomes an almost impossible exercise.

22. The insolvency law may provide different approaches for addressing the shortage of funding the ATR, for example, levying a surcharge on creditors to fund ATR, establishing a public office or utilizing an existing office to pursue ATR and establishing a fund

out of which the costs of ATR may be met. Where creditors are unwilling to invest time and resources in ATR, the law may allow raising funds from other sources, subject to authorization by the creditors or court and other safeguards. Litigation funding is another key resource. The Insolvency Law Academy has undertaken a detailed study on this subject on its potential use in India. To incentivize the provision of alternative funding for ATR, the recovered assets or value, can be used first to satisfy the claim of the funder, with only the remainder going to the insolvency estate, subject to a duty of detailed accounting. It is easier said than done as the size of assets involved in ATR of SMEs may not be attractive enough for large litigation funder firms to consider funding them. The costs and terms offered by litigation funding firms may also not be viable for creditors of SMES. Another approach is to reimburse from the insolvency estate on a priority basis, only expenses and costs of successful ATR, up to any limit established by law.

23. In some cases involving SMEs, alternate methods of recovery may be more suitable; recovering assets can be achieved through negotiation with the party who is holding them. This might involve offering a settlement or proposing a way for them to return the assets without facing legal consequences. If negotiation fail, asset recovery often requires filing a lawsuit to obtain a court order compelling to return the assets. This can be a complex legal process that requires a lawyer with experience in asset recovery cases along with broader legal powers to seize the assets or pursue criminal charges. The infrastructure for use of mediation in ATR should also be encouraged.

24. There is a common misconception that cross-border insolvency only happens to global airlines or tech titans. In reality, modern SMEs are deeply integrated into international supply chains through e-commerce, global vendors, and cross-border trade. Standard international litigation is completely cost-prohibitive for a SME. The UNCITRAL Model Law on Cross Border Insolvency is the bedrock framework for cross-border cooperation, access, recognition, and coordination of foreign proceedings. It is aided by the

²² Sumant Batra, Corporate Insolvency, the Road to Viksit Bharat: Law: Policy and Practice, 2nd Edition, Chap. 3, page 48.

²³ The ILC report dated 20th May 2022, pg 54, para 2.98 Accessed April 20 2026 <https://ibbi.gov.in/uploads/whatsnew/7c9bde175431a4abb8c33bb105e1f2dd.pdf>

²⁴ Vikram Kumar, The need for an Insolvency and Bankruptcy Fund, Accessed June 16 2026 <https://www.iiipicai.in/wp-content/uploads/2025/05/30-35-Article-The-need-for-an-Insolvency-and-Bankruptcy-Fund-Vikram-Kumar.pdf>

insolvency-related judgments, and enterprise groups. The policy makers can be apprehensive about the vulnerability of SMEs in their country to orders passed by foreign courts. Much of this apprehension can be an exaggeration. The Model Law provides sufficient safeguards and can reduce compliance and legal costs, making it economically viable for a SME (or its creditors) to pursue cross-border recovery.

25. The most profound economic impact of robust asset tracing is behavioural, it fundamentally alters the credit culture by neutralizing moral hazard and destroying the historic illusion of the 'consequence-free exit.'

26. One of the far-reaching spill-over effects of a good insolvency law is the behavioural change effectuated by it - a cultural shift in the dynamics between lenders and borrowers. However, this view is debatable.²⁵ Incorporating 'nudges' as professed by Thaler and Sunstein in their 2008 book, *Nudge: Improving Decisions about Health, Wealth, and Happiness*²⁶, into the insolvency framework can alter

the behaviour of debtors. Nudge theory is essentially an indirect approach, which seeks to modify situations for people by encouraging positive choices, rather than trying to restrict undesirable behaviour with some kind of sanctions or restricting freedom of choice. Many studies state that in India the IBC has nudged thousands of debtors to settle their dues even before the initiation of insolvency proceedings.²⁷ The State Bank of India, the largest and oldest public sector bank in India, claims that the biggest change that IBC has brought in the default is no longer a bank problem, it has now become the borrower's problem.²⁸ Recovery of an enormous debt²⁹ in applications withdrawn before their admission into IBC³⁰ is cited as a sign of behavioural change. This, according to some economists, is the nudge effect of the IBC.³¹ There is a need to undertake a comprehensive study focused on application of nudge theory for SMEs to address some of the problems amplified in my talk.

27. It is important for all the stakeholders to work together to improve the framework for ATR in small business insolvencies.

²⁵ The 'Real' Behavioural Change, pg. 27. Accessed April 20 2026

<https://ibbi.gov.in/uploads/publication/36cd64096137032d8a949419ec1e85b9.pdf>

²⁶ Badhani, Pragyan. "Behavioral Economics in Policy Making." Misra Centre for Financial Markets and Economy, Indian Institute of Management Ahmedabad, March 27, 2024. Accessed June 16 2026 https://www.iima.ac.in/sites/default/files/2024-04/MCFME_RPIFME_1_27.03.2024.pdf

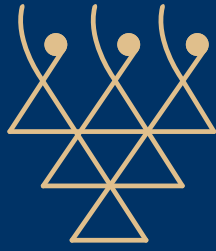
²⁷ Government of India. Economic Survey 2022-23. Ministry of Finance, Department of Economic Affairs, economic Division. Accessed on April 20, 2026. <https://www.indiabudget.gov.in/economicsurvey/>.

²⁸ Das, Kumud. "IBC Brought Behavioural Change Among Borrowers, Says SBI MD." BizzBuzz, September 21, 2023. Accessed on December 15, 2024. <https://www.bizzbuzz.news/trendz/ibc-brought-behavioural-change-among-borrowers-says-sbi-md-1249770>.

²⁹ Government of India, Economic Survey 2022-23. Ministry of Finance, Department of Economic Affairs, Economic Division. Accessed on December 15, 2024. <https://www.indiabudget.gov.in/economicsurvey/>.

³⁰ Insolvency and Bankruptcy Board of India. "Chairperson's Editorial Note." IBBI Quarterly Newsletter: July September 2024. Accessed on December 15, 2024. <https://ibbi.gov.in/uploads/whatsnew/edc044b410d37f0fd22cbe07a74665f3.pdf>

³¹ Guru, Anuradha. "The Code: A Behavioural Perspective." Insolvency and Bankruptcy Board of India. Accessed December 15, 2024. <https://ibbi.gov.in/uploads/whatsnew/2456194a119394217a926e595b537437.pdf>



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