

**ADDRESS BY JUSTICE NV RAMANA, JUDGE, SUPREME COURT OF INDIA**  
**AT THE COLLOQUIUM OF MEMBERS OF NCLT AND NCLAT ON**  
**“JUDICIAL SENSITIZATION ON INSOLVENCY LAW AND ASSOCIATED BEST PRACTICES”**  
**HELD ON FRIDAY, 6<sup>TH</sup> MARCH, 2020**

1. Before starting, I must quote Lord Mishcon who said that ***“Insolvency is not a very thrilling or amusing subject”***. However, as Edward Jenks, the noted English jurist said, “... ***uninteresting as it may be, it is nevertheless a very important subject area***”.
2. The importance of this subject cannot be undermined, as it has implications on a host of other sectors such as employment, banking, company law, *etc.*, and the economy at large. Therefore, the progress of insolvency law must happen in consonance with its philosophy.
3. The earlier position was much like what was jokingly described by Blake Odgers in the following words, “*Bankruptcy is the state of things which exists when, a man being unable to pay his debts, his solicitor and an accountant divide all his property between them*”.
4. While insolvency is perceived as a matter of private rights, another vision of insolvency is also possible. A holistic view requires the weighing of the interests of various stakeholders and just redistribution. Such a view requires that insolvency law should

attempt to ensure the survival of organizations, and if the same is not possible, then their orderly liquidation. One ought to remember that liquidation should be the last resort, and rarely has advantages over restructuring or revival. This is the core philosophy of the present insolvency regime in our country.

5. In recent years, the Indian banking sector has faced the problem of non-performing assets, which has contributed to economic stagnation at times. **Although companies/industries took massive loans, they preferred a declaration of insolvency over the repayment of the loan amount.** The assets depreciated and the amount that could be recovered was insufficient for the employees themselves. The earlier mechanism also did not provide for any effective mechanism for revival. Therefore, the country went on to have a staggering amount of NPAs.
6. The impact of the same was not just limited to the domestic market, but also adversely affected foreign investments. Therefore, it was imperative to update the laws and incorporate best practices from across the world. **This led to the enactment of the Insolvency and Bankruptcy Code in 2016, which consolidated the existing framework by creating a single law for Insolvency**

**and Bankruptcy, which was based on the UNCITRAL Legislative Guide.**

7. Under the earlier regime, one of the major issues was delay in proceedings, which resulted in largescale reduction in the value of assets of companies. **The IBC attempts to streamline the process of insolvency with added focus on ensuring speedy resolution of insolvency and bankruptcy.** The Code also envisages the retrieval of the maximum value possible, thereby benefiting all the stakeholders.
8. Moreover, the IBC has shifted the process, from being debtor-centric, to being creditor-centric. **The Code has brought in better credit culture in borrowers as they are apprehensive of the initiation of insolvency, and resultantly, losing control over their assets.** At the same time, the fear of insolvency proceedings, should not result in an atmosphere that demotivates young business owners. I read yesterday that the proposed amendments to the Companies Act seek to decriminalize certain corporate activities, and to reduce the penalties under other provisions. This would go a long way towards creating a business-friendly environment.

9. Most of the provisions of the Code have very few parallels with the older provisions. This means that **the cases that come up, raise completely new questions of law, which members have to deal with every day.** Such an activity can only be undertaken with highly qualified and efficient members who are motivated and enthusiastic about their work, with the right incentives in place. **Members are required to approach the cases with a commercial sense, and not merely like any other civil dispute. The adjudication must happen in consonance with the basic character of insolvency law: that is, transactions involving money and maximization of the assets. Furthermore, the technical members are also required to take into consideration principles of justice and equity, while applying their technical expertise.**
10. It is truly admirable to see the work that the members have put in. **As of February 2020, the realizable amount through cases resolved under the IBC amounts to around Rs. 3.57 lakh crores,** according to a report in a leading daily. However, it must also be stated, that the problem of delays is starting to surface even in the IBC process, requiring all stakeholders to come together and avert the same.

**11. Insolvency professionals also constitute a key element in the current insolvency regime as they are one of the primary stakeholders.** More importantly, the day to day decision of insolvency professionals has a great significance on all stakeholders. Therefore, they are required to possess not just a high level of competence, but must also be highly ethical. Without this, the trust in the insolvency process would reduce.

**12.** As with other Tribunals, NCLTs suffer from the **problem of vacancies** in the posts of members, which leads to inefficiency in the system. I believe that ultimately, **service conditions discourage people from applying**, which is an issue that was recently considered by the Supreme Court in the ***Rojer Mathews*** case. In that case, the Court passed interim directions to **apply service conditions, salaries or emoluments on an equal basis without there being distinction between technical, judicial or other members. The Court also observed that the short tenure and other conditions set by the Government discourages meritorious candidates from applying.** The Government has recently, notified rules pertaining to the salaries and service conditions of members of NCLTs, which need to be analyzed and whose effect can only be seen in the future.

- 13.** The Tribunals also suffer from **a serious lack of** physical infrastructure in some of the benches. With the increasing workload of the members because of expansion of the jurisdiction of the Tribunal, it is necessary to also ensure that the infrastructure keeps pace with the same.
- 14.** India is presently going through a phase wherein it is developing as one of the biggest financial markets globally. **Many economies around the world are trying to evolve best practices in their insolvency regime which are aimed at streamlining proceedings while ensuring effective participation of the stakeholders and balancing of their interests.**
- 15.** This brings us to the importance of the present conference, which acts as a **bridge to bring Indian insolvency jurisprudence closer to the rest of the world and facilitate the development of a ‘Universal perspective’.** I believe that such conferences are necessary, in the present age of globalization and cross border investment.
- 16.** There are various issues which require greater consideration, relating to what the best steps forward are. **This conference provides an opportunity to deliberate on these issues of great**

**relevance. I have seen the topics chosen for the sessions at this conference pertaining to the maximization of a debtor's estate, general principles of restructuring, practical issues faced by an insolvency practitioner and cross border insolvency, among others.** I am sure that the combined experience and expertise of the eminent judges, jurists and experts participating in this conference, from India and abroad, will result in wonderful discussions and debates, ultimately enriching everyone present. This is after all the real object of a conference such as the present one, which I am sure everyone here is looking forward to be a part of.