

TRANSNATIONAL COMMERCIAL LAW, INSOLVENCY, RESTRUCTURING, ENTREPRENEURSHIP: PROMOTING TRADE AND DEVELOPMENT POST THE PANDEMIC

6-7 January 2021 Virtual Symposium

Confluence of Legal Academia, Policy Makers, Practitioners

Organised by:

CENTRE FOR TRANSNATIONAL COMMERCIAL LAW

NATIONAL LAW UNIVERSITY DELHI. INDIA

Internal Quality Assurance Cell (IQAC)

Supported by:

UNCITRAL RCAP

Insolvency and Bankruptcy Board of India (IBBI)

Nottingham Law School, Nottingham Trent University, UK

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Center on Transnational Business and the Law, Georgetown Law

Norman Adrian Wiggins School of Law, Campbell University, USA

INSOL India

UNCC India

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DAY 1

Wednesday, 6th January, 2021

“CISG@40: Role of UNCITRAL Instruments in Progressive Development of Cross-Border Legal Regime and Trade”

<u>Time IST</u>	<u>SESSION</u>	<u>THEME/ PANEL</u>	<u>SPEAKERS</u>
9:45 am	Joining		
9:55 am	Inaugural session		
09:55 - 11:30 am IST	Inaugural Session	<ul style="list-style-type: none"> About the Symposium 	<ul style="list-style-type: none"> Dr. Risham Garg, Director CTCL NLUD
01:30 - 3:00 pm KST		<ul style="list-style-type: none"> Welcome Address 	<ul style="list-style-type: none"> Prof. Srikrishna Deva Rao, Vice-Chancellor, NLUD
4:30 - 6:00 am GMT		<ul style="list-style-type: none"> Opening Remarks 	<ul style="list-style-type: none"> Athita Komindr, Head UNCITRAL RCAP
		<ul style="list-style-type: none"> Guest of Honour 	<ul style="list-style-type: none"> Luca Castellani, Legal Officer, UNCITRAL
		<ul style="list-style-type: none"> Guest of Honour 	<ul style="list-style-type: none"> Shri P. Harish, Additional Secretary, Ministry of External Affairs, Government of India
		<ul style="list-style-type: none"> Guest of Honour 	<ul style="list-style-type: none"> Shri Anoop Kumar Mendiratta, Secretary, Deptt. of Legal Affairs,

		<p>Ministry of Law & Justice</p> <ul style="list-style-type: none"> Prof. G. S. Bajpai, Registrar NLUD
		<p>Vote of Thanks</p>
TEA		
11:30 - 12:30 am IST	Session I	<p>Towards a Robust Legal Regime in India to promote Cross-Border Trade</p> <ul style="list-style-type: none"> UNCITRAL Model Law Secured Txns 2016 Factoring of Trade Receivables for MSME UN Convention on International Settlement Agreements Resulting from Mediation/ Singapore Convention on Mediation
12:45 - 02:00 pm IST	Session II	<p>Access to Commercial Justice</p> <ul style="list-style-type: none"> Teaching and Learning CISG, Contract Formation, Drafting, Disputes Hardship/Force Majeure/Frustration u/CISG Commercial courts
7:45 am – 9:00 am GMT		<ul style="list-style-type: none"> Prof. Yogesh Pai, NLUD, Moderator Mr. Hamish Lal Mr. Abhay Gaiind Mr. Akshay Shreedhar Mr. Animesh Sinha
LUNCH		
03:00 - 4:00 pm	Session III	Interpreting & applying Transnational

<i>IST</i> <i>10:30 - 11:30</i> <i>am CET</i> <i>Frankfurt</i>		Commercial Law	
<i>09:30 -10:30 am</i> <i>GMT</i>		<ul style="list-style-type: none">▪ Legal Guide to Uniform Legal Instruments in International Commercial Contracts▪ Fintech & IP▪ Choice of Law issues	<ul style="list-style-type: none">• <i>Professor Stefan Vogenauer</i>, Chair of Max Planck Law Institutions• <i>Professor Janice Denoncourt</i>, NTU• <i>Dr. Risham Garg</i> NLUD
<i>4:15 - 5:45 pm</i> <i>IST</i> <i>5:45 am USA</i>	Session IV	Investment Treaty Arbitration <ul style="list-style-type: none">▪ Potential ISDS issues post Covid-19▪ Corruption & Transparency in Investment Treaty Arbitration▪ Multilateral Investment Court	<ul style="list-style-type: none">• <i>Professor Don DeAmicis</i>, Georgetown Law, Moderator• <i>Dr. Aniruddha Rajput</i>, Member, International Law Commission• <i>Dr. RJR Kasibhatla</i>, Deputy Legal Advisor, Deptt of Legal Affairs, Ministry of Law & Justice• <i>Mr. Promod Nair</i>, Arista Chambers

INAGURAL SESSION: LEGAL REGIME TOWARDS PROGRESSIVE DEVELOPMENT

PROFILE OF SPEAKERS

1. Professor Dr. Srikrishna Deva Rao, Vice-Chancellor, NLU

Prof. Srikrishna Deva Rao is currently the Vice-Chancellor of the National Law University, Delhi. He is the former Vice-Chancellor of National Law University Odisha from 2014 to September, 2020. Prof Rao holds a Master's degree in Law from Kakatiya University, Master of Philosophy in Law from NLS, Bangalore and PhD from DU. Prof. Rao has been a Fulbright scholar in the year 2018 and he was invited to visit various universities in United States of America where he had the privilege to visit 14 institutions on behalf of the Fulbright foundation. Prof. Rao had the distinction of working with five prestigious law universities in India for the past three decades: National Law School of India University, Bangalore; NALSAR University of Law, Hyderabad; Gujarat National Law University, Gandhi Nagar; National Law University Delhi and National Law University Odisha. He joined NLU Delhi in the year 2010 as Registrar and Professor of Law. He made significant contribution to the growth and progress of NLU Delhi in its initial days and specially in the area of legal aid and clinical legal education.

2. Athita Komindr, Head UNCITRAL RCAP

Athita Komindr is the Head at UNCITRAL Regional Centre for Asia and the Pacific.

3. Luca Castellani, Legal Officer, UNCITRAL

Luca Castellani is a legal officer in the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). He joined the Office of Legal Affairs of the secretariat of the United Nations in 2001 and the UNCITRAL secretariat in 2004, where he works in the areas of

international sales and of electronic commerce. As secretary of UNCITRAL Working Group IV (Electronic Commerce), he oversaw the preparation of the UNCITRAL Model Law on Electronic Transferable Records. He is also active in the field of paperless trade facilitation and has contributed to drafting the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific. From March 2012 to November 2013, he was assigned as first Head of the UNCITRAL Regional Centre for Asia and the Pacific, located in Incheon, Republic of Korea.

4. Shri Anoop Kumar Mendiratta, Law Secretary, Dept. of Legal Affairs, Ministry of Law & Justice

Anoop Kumar Mendiratta is a serving Judicial Service Officer from Delhi, currently deputed as the Law Secretary at the Department of Legal Affairs, Ministry of Law & Justice. Before posting on central deputation as Union Law Secretary, he was serving as the District and sessions judge of the North-East Delhi District Court. As a judge, Mendiratta headed the North-East Delhi District Court as its district and sessions judge, headed the Motor Accidents Claim Tribunal, and served as a CBI special judge in 2012. Also, in his earlier deputation he had served as Principal Secretary Law Department with the Government of Delhi.

5. Shri P. Harish, Additional Secretary, Ministry of External Affairs, Government of India

Additional Secretary, Ministry of External Affairs, Government of India.

6. Professor Dr. G. S. Bajpai, Registrar, NLU

G.S. Bajpai is the incumbent Registrar of the National Law University Delhi since September 2014. Prof. G. S. Bajpai also serves as Professor of Criminology & Criminal Justice; Chair Professor at 'K. L. Arora Chair in Criminal Law' at National Law University Delhi, and also as Chairperson

at the 'Centre for Criminology & Victimology'. Prior to this, he was Professor and Chairperson at the 'Centre for Criminal Justice Administration' (2007-2011), serving National Law Institute University, Bhopal (MP). He has held prestigious positions in the past, at the 'Indian Institute of Public Administration' (1989); 'Bureau of Police Research & Development' (1989-1995); 'Punjab Police Academy', Punjab; and 'Department of Criminology & Forensic Science', University of Sagar, M.P. He holds a Post-Doctoral titled, "Situational Crime Prevention and Crime Reduction in the UK" (2004); which he earned while as a Commonwealth Fellow, at the 'Department of Criminology', Leicester University, U.K.

SESSION I: LEGAL REGIME TOWARDS PROGRESSIVE DEVELOPMENT

The UNCITRAL Model Law on Secured Transactions reforms and modernizes the law that applies to secured transactions. It aims to increase access and reduce costs of credit in order to boost international trade. The Model Law applies to all types of tangible and intangible assets except intermediated securities, IP rights and some other payment rights which are the subject of other Conventions. It seeks to unify secured transactions law to eliminate gaps and inconsistencies due to the multiplicity of regimes.

To obtain quick finance, a company sells its trade receivables to a finance company, called the factor, which then collects the payments against those receivables from that company's customers. This process is called 'factoring'. MSME sellers face certain problems in converting their trade receivables into liquid funds. In response to this, the RBI introduced TReDS (Trade Receivables Discounting System). TReDS provide MSMEs a secure electronic platform and an institutional mechanism for facilitating the financing of trade receivables through multiple financiers. The Model Law deems these transactions as a security agreement.

The United Nations Convention on International Settlement Agreements resulting from Mediation, also known as the “Singapore Convention on Mediation” codifies international commercial settlement agreements through mediation. It provides a harmonized legal framework for the right to invoke and enforce settlement agreements. It aims to facilitate international trade by promoting mediation as an alternative method to resolve trade disputes that is faster, less expensive and more likely to preserve commercial relationships.

MODERATOR: Mr. Apurv Misra

Apurv Kumar Mishra is currently the Editor-in-Chief of India Law Journal and Senior Research Fellow at India Foundation. He is also a Faculty of Law at Ashoka University and Consultant at University of Chicago India Centre. Apurv is a member of the Executive Council, Institute of Leadership and Governance at Maharaja Sayajirao University, Baroda and teaches courses on law at several institutions including Gandhinagar National Law University, Maharashtra National Law University and National Law Institute University Bhopal. Apurv is a founding member of Robin Hood Army (RHA) - a voluntary organisation of young professionals and students that works to get surplus food from restaurants across to the less fortunate people in 42 cities across 12 countries. He has previously worked at Albright Stonebridge Group- a Washington-based strategic advisory firm and Mumbai office of law firm Amarchand & Mangaldas. Apurv is an alumnus of Young India Fellowship at Ashoka University and has a degree in law from National Law Institute University, Bhopal.

PROFILE OF SPEAKERS

1. Mr. S. Seetharaman, Seetharaman & Associates

S. Seetharaman is the Founding Partner at Seetharaman & Associates (S&A), New Delhi. He was former equity partner at Lakshmikumaran and Sridharan (L&S) and has rich experience in handling matters relating to antidumping, anti-subsidy, safeguards, Competition Law etc. He is an expert on WTO issues pertaining to market access, rules of origin, GATS and other multilateral agreements under GATT 1994 including Regional Trade Agreements. He has worked with Government of India as a senior civil servant in various capacities such as Deputy Secretary, Union Public Service Commission, and Deputy Controller General of Accounts in Ministry of Finance. He holds a Bachelor's degree in Law and Corporate Secretaryship. He is also a Certificated Associate of the Indian Institute of Bankers, Mumbai.

2. Professor Anil Rai, NLU

He is a Professor at the National Law University Delhi, teaching Banking and Corporate Law. He has completed his LLM from the University of Delhi, and later joined NLSIU in 1997 as an Associate Professor. After that, he was associated with Luthra and Luthra Law Offices as a Partner for about 8 years before joining NLUD in 2014. He specialises in banking and corporate law, insurance law, and telecommunication laws.

3. Mr. Shreyas Jayasimha, Aarna Law

He is the Founding Partner of Aarna Law, and has completed his education from NLSIU Bangalore and the University of Warwick. He has over 20 years of experience in dispute resolution, and his practice areas include company law, dispute resolution, intellectual property, technology law and others. He is also the National Coordinator of UNICTRAL National Coordination Committee (India) and a member of the Mumbai Centre for International Arbitration (MCIA). He is the sole member representing India at ICC FraudNet focusing on asset tracing and recovery.

One of the key issues in commercial disputes is the lack of familiarity with the commercial law in general and international commercial law in particular. The legal curriculum ought to be developed with the objective of making it multidisciplinary, covering important areas of transnational commercial law. This will also increase the employability of law students in the international legal market. The session focuses on the methods of teaching and understanding the CISG so as to make the legal curriculum transnational and diverse in nature. Issues on the application of the principles of contract formation, the drafting of the written contract and the current disputes and challenges faced by the parties in contracts governed by CISG, will be covered by the session.

Practice in the area of international sales contracts has also demonstrated that often, unexpected or onerous situations arise, rendering the performance of contracts (particularly long-term contracts) impossible. This is because International trade transactions generally imply a greater element of uncertainty, being subject to political and economic influences in foreign countries. Parties, therefore, frequently include special clauses in their contracts dealing with matters of hardship and *force majeure*. *Force majeure* is generally concerned with settling the problems resulting out of non-performance (by suspension or termination), while the concept of hardship is mainly directed at the adaptation of the contract, where the performance of the disadvantaged party has become more burdensome, but not impossible. The treatment with respect to the provisions concerning the *force majeure*, hardship and frustration of the contracts under article 79 in CISG and the challenges faced both in its interpretation and implementation shall be discussed in this session.

MODERATOR: Prof. Yogesh Pai, NLU

Prof. Yogesh Pai is currently the Co-Director of Centre for Innovation, Intellectual Property and Competition (CIIPC) at National Law University Delhi. He specializes in intellectual property (IP) law and has cross-cutting research interests at the interface of IP with competition, trade and

economic policy. He was also the faculty-in-charge of 'Trade Law and Development' rated among the top in the international trade worldwide. He has book chapters published with Cambridge University Press, Oxford University Press, Cambridge Scholars Publishing, Edward Elgar and Springer and has also been a part of Committee for Evaluation and Continuation of the Scheme of Promotion of Copyright and IPR Beyond the 12th Five Year Plan (2012- 2017) constituted by the DIPP, Ministry of Commerce.

PROFILES OF SPEAKERS

1. Hamish Lal

Mr. Lal joined Akin Gump Strauss Hauer & Feld LLP as a partner in its international arbitration practice. Renowned as a top-tier practitioner by leading legal directories, Mr. Lal's practice covers international construction arbitration in relation to complex, high-value international projects. With respect to transactional matters, Mr. Lal's practice includes drafting International Federation of Consulting Engineers (FIDIC), New Engineering (NEC), Joint Contracts Tribunal (JCT), Institute of Civil Engineers (ICE) and Institution of Chemical Engineers (IChemE) contracts, as well as target cost and alliance contracts. He has been a member of the Council of the Society of Construction Law since 2006.

2. Abhay Gaind

Having completed his LL.B. (Hons.) from Amity Law School, Delhi in 2005 and LL.M. from University College London, Abhay Gaind has been practising as an International Arbitration Consultant since 2013, specialising in international construction, infrastructure, energy, oil & gas, power, sale of goods and white-collar crime. Based primarily out of Zurich, he was previously employed at leading Swiss law firm, Lenz & Staehelin and London-based arbitration firm Robert Knutson & Co.

3. Akshay Shreedhar

Akshay holds an LL.B. (*hons.*) from National Law University, Delhi, and an LL.M from the MIDS programme in Geneva. He is an associate in Quinn Emanuel's Paris office. His practice focuses on international arbitration. His work involves advising and representing companies, states and state-owned entities in disputes touching upon multiple sectors, particularly the energy sector. Akshay also has litigation/arbitration experience in India, having worked as an associate in the chambers of a Senior Counsel, where he represented clients in construction disputes before domestic courts and tribunals.

4. Animesh Sinha

Animesh Sinha graduated from Amity Law School, Delhi in 2008 and joined the leading dispute resolution firm, Karanjawala & Co. Soon after, he commenced his independent practice representing top insurance companies. He is currently a partner at ASP (Animesh Sinha & Partners), which is a multi-disciplinary law firm with considerable experience in dispute resolution, contract preparation and corporate advisory. He specializes in insurance law and apart from civil litigation, he commands expertise in arbitration, infrastructure, contracts and corporate law.

SESSION III: INTERPRETING AND APPLYING TRANSNATIONAL COMMERCIAL LAW

In this increasingly inter-connected world, fuelled by exponential growth of trade and capital links at a global stage, proliferation in cross-border trade and investment has taken centre stage. The present state of the law governing international commercial contracts is hardly satisfactory and cross-border transactions still continue to be subjected to the governance of national laws. In light of the same, it is claimed that harmonisation of commercial law creates a truly transnational commercial legal framework and classifies as a valid alternative to the traditional state-centered conflict of laws scheme. Harmonisation of commercial law is the implementation of instruments such as conventions, model laws and other

instruments designed to facilitate cross border commerce. Since the domestic legal frameworks are inadequate in governing transnational commerce, harmonisation creates a legal framework tailor made for international transactions, making trade between parties from different systems of common law and civil law easier. However, harmonisation comes along with its own drawbacks. Drafting a uniform law creates a conflict of interest between flexibility and certainty. Difficulties relating to the use of language and concepts, translation and use creates barriers to uniformity and highlight differences between various legal systems causing significant problems.

The Legal Guide to Uniform Legal Instruments in the area of international commercial contracts is a joint project of UNCITRAL, UNIDROIT and HCCH. It deals with both instruments on substantive law of sales and private international law with the objective of promoting the adoption, application and uniform interpretation of instruments developed by each organisation in the area of international commercial contracts. Its ultimate aim being the establishment of a predictable and flexible legal environment for cross-border commercial transactions based on the principle of freedom of contract.

In light of the same, this session will focus upon examining the application and viability of the principle of harmonisation and the Legal Guide as uniform rules for governing international commercial contracts, as a means of interpreting and supplementing international uniform law and as a uniform legal instrument to interpret or supplement domestic law.

PROFILE OF SPEAKERS

1. Professor Stefan Vogenauer, Chair of Max Planck Law Institutions

Prof. Stefan Vogenauer is the director of the Max Planck Institute for European Legal History. He was previously Linklaters Professor of Comparative Law at the University of Oxford and has been awarded the Max Weber Prize of the Bavarian Academy of Sciences and Humanities

and the Otto Hahn Medal of the Max Planck Society in 2002, as well as the 2008 Prize of the German Legal History Conference. In 2012 a Humboldt Award was conferred upon him ‘in recognition of his lifetime achievements in research’. Prof. has been a Scientific Member of the Max Planck Society since 2014 and Director of the Frankfurt Institute for European Legal History since 2015. From 2003 to 2015 he held the statutory Chair in Comparative Law at the University of Oxford where he also served as Director of the Institute of European and Comparative Law and as Fellow of Brasenose College.

2. Professor Janice Denoncourt. NTU

Prof. Janice Denoncourt is presently a Senior Lecturer in Nottingham Law School. Prof. is a Senior Fellow of the UK Higher Education Academy and was formerly Chair of the European IP Teachers Network (EIPN) in 2017-2018. She is a longstanding member of the International Association of Teachers and Researchers in Intellectual Property (ATRIP). She is author of The Nottingham Intellectual Property Guide for Creatives (2015) and The Intellectual Property Notebook (2016). She also wrote Q&A Intellectual Property Law 2016 and Intellectual Property, Finance and Corporate Governance (2018).

3. Dr. Risham Garg, NLU

Dr. Risham Garg is presently Associate Professor of law at National Law University, Delhi and is also the Director of Centre for Transnational Commercial Law. He presently teaches courses of Transnational Commercial Laws, Bankruptcy Insolvency & Restructuring, Law of Contracts, Sale of Goods, Private International Law, Legal Writing in the PhD, Post Graduate, under graduate law degree programmes. He has been a visiting faculty at the National Law University Odisha Cuttack, the Indian Law Institute, Amity Business School Noida. He has also acted as a consultant to the Directorate of Legal Education of the Bar Council of India, the Insolvency and Bankruptcy Board of India. He has been involved in publishing and presenting research papers on contemporary issues in commercial laws and active participation in consultations in various forums. He acts as

an Arbitrator at the Willem C. Vis International Commercial Arbitration Moot on the International Sale of Goods (CISG Convention) at Vienna and at Hong Kong; and also, at the India rounds of the Vis Pre-Moot. He has been a Visiting Research Scholar at UNCITRAL, Vienna, Austria in 2007.

SESSION IV: INVESTMENT TREATY ARBITRATION

Investment Treaty Arbitration is an alternative dispute resolution mechanism to resolve disputes between foreign investors and host States (also called Investor-State Dispute Settlement or ISDS). It is usually conducted under the aegis of bilateral or multilateral investment treaties which contain dispute resolution clauses whereby states consent to the jurisdiction of arbitral tribunals. The ISDS mechanism guarantees the foreign investor, access to an independent and impartial dispute resolution process, carried out by independent and qualified arbitral tribunal. This allows the foreign investor to bypass national courts that may be biased or may lack the requisite independence, and to resolve disputes in accordance with protections afforded under international treaties, rather than domestic legislations which can be amended at will by government of the host states.

In this regard, the United Nations Commission on International Trade Law (UNCITRAL) provides a procedural framework for disputes between international investors and hosting states. However, there has been growing concerns among states and stakeholders about the system's reliance on arbitrators given their lack of transparency, issues over the predictability and consistency of their decisions, and the excessive costs involved. Not only there is vagueness in the treaty standards which lend themselves to potentially contradictory outcomes, but tribunals are also not bound by prior decisions, thus creating room for critics to call for a moratorium on the ISDS mechanism. So, the UNCITRAL along with European Union and its member states, aim to address these concerns by establishing a Multilateral Investment Court System that will deal with the concerns of

stakeholders and restore confidence in international investment agreements. This session attempts to discuss potential ISDS issues that would be faced post Covid-19 pandemic. It will also address the lack of transparency and predictability associated with the current ISDS mechanism and the significance of the Multilateral Investment Court System.

MODERATOR: Professor Don S. De Amicis, Professor, Georgetown University

An alumnus of Harvard University, he is currently engaged as a Graduate Programs Professor at the Georgetown University Law Centre and is Co-Director of the 'Center on Transnational Business and the Law' at Georgetown Law. He is also on the tribunals of the European Bank for Reconstruction and Development and Inter-American Development Bank which deal with the issues of fraud, corruption and collusion. Before joining Georgetown, he was a partner at Ropes & Gray LLP, an international law firm, and also the Vice President and General Counsel of the Overseas Private Investment Corporation which is the U.S. government's bilateral development finance institution. He has also served as the Executive Director of the National Law Centre for Inter-American Free Trade, a commercial law reform institute. He continues to act as an arbitrator in international commercial disputes. He has also previously delivered lectures at NLU Delhi.

PROFILES OF SPEAKERS

1. Dr. Aniruddha Rajput, Member, International Law Commission

Dr. Aniruddha Rajput is a Member of the UN International Law Commission (2017-21). He was the Chairperson of the Drafting Committee for the 69th Session of the ILC in 2017. His areas of expertise are international law, dispute resolution, boundary disputes, law of the sea, international

investment law and international trade law. He has advised governments on proceedings before the International Court of Justice (such as the *Kulbushan Jadhav case*), private clients on proceedings under the Alien Tort Claims Act before the US Courts, and human rights and other public international law litigation in the Supreme Court of India. He has taught courses in international law at several universities and was also a member of the Study Group Constituted by the Law Commission of India on the 2015 Draft Indian Model BIT. He is an alumnus of ILS Pune (B.A. LLB), London School of Economics (LLM) and National University of Singapore (PhD).

2. Dr. RJR Kasibhatla, Deputy Legal Advisor, Dept. of Legal Affairs, Ministry of Law & Justice, Govt. of India

Dr. Kasibhatla is presently serving as Deputy Legal Advisor for the Ministry of Law & Justice, Government of India. Before that, he practiced as an Advocate before the District Courts in and around Kakinda and as an Attorney for Patents and Trade-Marks. He has also served as an Asst. Professor at W. B. National Law University of Juridical Sciences. As a Legal Advisor, he was involved in the process of making of IBC and the subsequent amendments. He has also been actively involved in the BIPA/BIT (Bilateral Investment Promotion and Protection Agreement) negotiations with several Countries like Saudi Arabia, Canada, Greece, USA etc.

3. Promod Nair, Arista Chambers

Mr. Nair, Founding Partner at Arista Chambers, is a dispute resolution specialist, with extensive experience in public law, commercial litigation, and arbitration. He is currently a Council Member of the Hong Kong International Arbitration Centre (HKIAC) and a member of the Advisory Council of the Mumbai Centre for International Arbitration. As a counsel, Promod has conducted arbitrations in various jurisdictions in Europe and Asia as well as under various institutional rules such as those of the International Chamber of Commerce (ICC), London Court of Arbitration (LCIA), and Singapore International Arbitration Centre (SIAC). He has also represented the Republic of India in arbitrations commenced under

Bilateral Investment Treaties and has also represented India at the United Nations. He is an alumnus of National Law School of India University, Bangalore.

DAY 2

Thursday, 7th January, 2021

“Insolvency Resolutions, Promoting Entrepreneurship post the Pandemic”

<u>Time IST</u>	<u>SESSION</u>	<u>THEME/PANEL</u>	<u>SPEAKERS</u>
9:15 – 9:45 am	Joining in		
09:55 -11:00 am IST	Inaugural Session	<ul style="list-style-type: none"> About the Symposium Welcome Address Partner Address Inaugural Address Vote of Thanks 	<ul style="list-style-type: none"> Prof. Srikrishna Deva Rao, Vice-Chancellor, NLUD Mr. Amarjeet S Chandhiok, Sr. Advocate President INSOL India Dr. MS Sahoo, Chairperson, IBBI Dr. Risham Garg, NLUD
TEA			
11:30 am - 1:00 pm IST	Session I	<ul style="list-style-type: none"> Corporate Insolvency Resolution Process – key issues, Resolution plans Resolution is not Adjudication Proceedings against Guarantors 	<ul style="list-style-type: none"> Dr. Mukulita Vijayawargiya, WTM, IBBI. Chair Mr. Devansh Mohta, Adv Mr. Kumar Saurabh Singh, KCO Mr. Spandan Biswal, Adv CAM

<p>2:00 - 3:15 pm</p> <p>3:30 – 4:30 pm IST</p> <p>10:00 - 11:00 am GMT</p> <p>4:45 - 6:00 pm IST</p> <p>11:15 am -</p>	<p>Session II</p>	<ul style="list-style-type: none"> ▪ Corporate Liquidations – key issues ▪ Sale of co. as a going concern, maximizing value: opportunities & challenges ▪ Tax issues in insolvency 	<ul style="list-style-type: none"> • <i>Mr. Hemant Kothari</i>, Moderator • <i>Shri Rajesh Sharma</i>, Member NCLT Mumbai, Chair • <i>Mr. Ritesh Kavdia</i>, ED, IBBI • <i>Mr. Anoop Rawat</i>, Adv SAM • <i>Mr. Ravi Sharma</i>, Adv. PwC • <i>Mr. Akaant Mittal</i>, Adv., Moderator
	<p>Session III</p>	<ul style="list-style-type: none"> ▪ Implementing Bankruptcy, Integrating Pre-Insolvency Proceedings, Pre-Packs into the Legal Regime ▪ Pre-Insolvency Proceedings ▪ Schemes of Arrangement & Corporate Restructuring for Insolvency Resolution 	<ul style="list-style-type: none"> • <i>Dr. Navrang Saini</i>, WTM, IBBI. Chair • <i>Shri Bahram Vakil</i>, Founder Partner AZB, Moderator • <i>Mr. Sumant Batra</i> • <i>Prof. Sofia Ellina</i>, NTU Law • <i>Mr. Divyanshu Pandey</i>, S&R Associates
	<p>Session IV</p>	<ul style="list-style-type: none"> ▪ Cross-Border Insolvency Proceedings: ▪ Roadmap to Cooperation – Courts, IP's ▪ Current efforts with the Insolvency Law Committee on Cross-Border Insolvency 	<ul style="list-style-type: none"> • <i>Ms. Kathleen Lannan</i>, Senior Legal Officer UNCITRAL • <i>Ms. Kokila Jayaram</i>, DGM, IBBI • <i>Mr. Somasekhar Sundaresan</i>, Adv., Member, Insolvency Law Committee on

12:30 pm GMT		<ul style="list-style-type: none"> Recognition, Enforcement of Insolvency Judgments USA Bankruptcy Courts Post Covid-19 	<p>Cross-Border Insolvency</p> <ul style="list-style-type: none"> <i>Prof. Irit Mevorach</i>, Univ. Nottingham <i>Dean J. Rich Leonard</i> (US Bankr. Judge Ret.)
6:15 am - 7:30 am USA			
6:00 -7:00 pm IST			
12:30 - 1:30 pm GMT	Special Session V	<ul style="list-style-type: none"> Resolution of MSME, Promoting Entrepreneurship World Bank Principles on MSME Insolvency, Entrepreneurship Insolvency & Entrepreneurship 	<ul style="list-style-type: none"> <i>Shri KR Saji Kumar</i>, ED, IBBI. Chair Ms. Antonia Menezes, IFC <i>Dr. Risham Garg</i>, NLUD <i>Prof. Douglas Cumming</i>, Florida Atlantic Univ.
7:30 - 8:30 am USA		<ul style="list-style-type: none"> Insolvency & Digital Economy Small Business Re-organization 	<ul style="list-style-type: none"> Prof. Rebecca Parry NTU Law <i>Prof. C. Scott Pryor</i>, Campbell

INAGURAL SESSION

PROFILE OF SPEAKERS

1. Dr. MS Sahoo, Chairperson, IBBI

Dr. M. S. Sahoo, an acclaimed thought leader in the area of securities markets and a distinguished public servant, currently serves as Chairperson of the Insolvency and Bankruptcy Board of India. He has served as a Member of the Competition Commission of India, Secretary of the Institute of Company Secretaries of India, Whole Time Member of the Securities and Exchange Board of India, Economic Adviser with the National Stock Exchange of India and held senior positions in Government of India as a Member of Indian Economic Service. Dr. Sahoo has been a Member / Chairman of several committees set up by Ministry of Finance, SEBI, RBI, IRDAI, and WDRA. He also had a brief, but eventful legal practice.

2. Mr. Gyaneshwar K. Singh, Jt. Secretary, MCA

Shri. Gyaneshwar Kumar Singh is a civil servant. He belongs to 1992 batch of IP&TAFS. Having 25 years of working experience in the Government of India at different levels in the areas of policy formulation, project management and monitoring of e-governance projects and social sector development, he is presently also the DG&CEO of Indian Institute of Corporate Affairs (IICA). He has also worked as Director, Ministry of Communications and IT, Director, Ministry of Social Justice & Empowerment, and International Capacity Development Adviser with UNDP-Afghanistan (2007-2012). Since August 2016, he is working as Joint Secretary in the Ministry of Corporate Affairs.

3. Prof. Srikrishna Deva Rao, Vice-Chancellor, NLUD

Prof. Srikrishna Deva Rao is currently the Vice-Chancellor of the National Law University, Delhi. He is the former Vice-Chancellor of National Law University Odisha from 2014 to September, 2020. Prof Rao holds a Master's degree in Law from Kakatiya University, Master of Philosophy in Law from NLS, Bangalore and PhD from DU. Prof. Rao has been a Fulbright scholar in the year 2018 and he was invited to visit various universities in United States of America where he had the privilege to visit 14 institutions on behalf of the Fulbright foundation. Prof. Rao had the distinction of working with five prestigious law universities in India for the past three decades: National Law School of India University, Bangalore; NALSAR University of Law, Hyderabad; Gujarat National Law University, Gandhi Nagar; National Law University Delhi and National Law University Odisha. He joined NLU Delhi in the year 2010 as Registrar and Professor of Law. He made significant contribution to the growth and progress of NLU Delhi in its initial days and specially in the area of legal aid and clinical legal education.

4. Mr. Amarjeet S Chandhiok, Sr. Advocate President INSOL India

A.S. Chandhiok is a distinguished Indian Senior Advocate practising in the Supreme Court and High Courts in India. He was president of Delhi High Court Bar Association for six terms, which is a record. A former Additional Solicitor General of India, Amarjit was also Principal Counsel to the European Union Commission from August 2013 to March 2016. He was the only Indian lawyer who held that position so far. Amarjit is also President of Maadhyam, Council for Conflict Resolution, a professional organization aiming excellence in the development of law and conflict resolution. He is Vice-Chairman of Society of Insolvency Practitioners of India and Member, Advisory Committee of the Insolvency and Bankruptcy Board of India. Amarjit is also Chairman of the Working Group under the Insolvency and Bankruptcy Board of India.

SESSION I: CORPORATE INSOLVENCY RESOLUTION PROCESS

Corporate Insolvency Resolutions – Key Issues – Use & Abuse of Insolvency Proceedings – Engagement of professionals – Resolution plans u/IBC: Key aspects – Proceeding against Guarantors.

The provisions relating to Corporate Insolvency Resolution Process under the Code had come into effect from December 1, 2016. The 2016 Code, for the longest time, did not contain any provisions that allowed withdrawal of the application from the NCLT for initiation of Corporate Insolvency Resolution Process. Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 provides 'inherent powers' to the Tribunals to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of process of the Tribunal. As with any new setup involving multiple stakeholders, the corporate insolvency resolution process also has its set of practical difficulties and challenges. Aside from the undue delays in the IBC process, Section 12 A allows the corporate debtor another chance to make good on the default, and regain control over the company. This has raised concerns over the misuse and abuse of the process. In light of the same, Insolvency Professionals, creditors and potential resolution applicants play a significant role in developing best practices. It is important that practices of all stakeholders ought to be governed by the requirements of fairness, transparency and accountability with the objective of minimizing resource wastage and maximizing the return on the loans. Another aspect closely related to the same and is extremely essential for the effective implementation of a legislation like the IBC is the development of such best practices in the conduct of the insolvency resolution process. Although the engagement of Resolution Professionals has somewhat eased the pressure upon an already overburdened NCLT, they have their own set of challenges. In the making of a resolution plan, understanding the debtor company's fundamentals and strategizing accordingly in a very short period of time becomes crucial and is a taxing process too. Besides this, other hurdles include working with incomplete records, sector-specific challenges that need third-person expertise et al. In addition to this, after a resolution plan is successfully made, the approval process involves many institutional delays due to a multiplicity of applications and subsequent delays in their hearings. Such delays have often led to an impact over the whole chain of stakeholders involved and have a significant effect on the implementation process.

Presently, IBC's most controversial issues relate to the status of corporate debtor guarantors. One aspect of the issue is with respect to the manner in which proceedings can be initiated against the guarantor; can the creditor initiate concurrent proceedings against both guarantor and the principal debtor? While the Insolvency Law Committee in its February 2020 Report recommended that in cases where both the principal borrower and the

surety are undergoing CIRP, the creditor should be permitted to file claims in the CIRP of both of them, the supreme court in the case of Vishnu Kumar Agarwal v Piramal Enterprises Ltd clarified that once for same set of claim application under Section 7 filed by the 'financial creditor' is admitted against one of the 'corporate debtor' ['principal borrower' or 'corporate guarantor(s)'], second application by the same 'financial creditor' for same set of claim and default cannot be admitted against the other 'corporate debtor' (the 'corporate guarantor(s)' or the 'principal borrower'). The other issue is related to the guarantor's right to subrogation under IBC. While the current position allows the right to subrogation to guarantors be done away with under IBC, if the Resolution plan so provides, there could be certain changes introduced to maintain a balance among the rights of creditors, guarantors and the interests of the corporate debtor.

Thus, this session aims to discuss the practical issues faced by each of these stakeholders at different junctures of the CIRP process and effective delineation of their role in the insolvency process.

MODERATOR: Mr. Hemanth Kothari

Mr. Kothari is presently the Assistant to Additional Advocate General, Sr. Advocate Major RP Singh in the High Court of Rajasthan. He is also the Visiting Faculty at National Law University, Delhi teaching a Full-Credit Course on 'Debt Restructuring and Insolvency Resolution Regime in India' to the senior students.

PROFILES OF SPEAKERS

1. Dr. (Ms.) Mukulita Vijayawargiya, WTM, IBBI. Chair

Dr. Vijayawargiya took charge as a Whole Time Member, Insolvency and Bankruptcy Board of India on 13th April, 2017. She is presently looking after Administrative Law Wing of the Board comprising Adjudication, Prosecution and Court Proceedings and is a member of Disciplinary Committee in IBBI. She is also looking after Limited Insolvency Examination, Valuation Examinations, Finance & Accounts, Information Technology divisions and Board Secretariat (Governing Board, Strategy, International Affairs and Parliament).

2. Mr. Devansh A. Mohta, Adv.

Mr. Mohta is currently a practicing advocate. Prior to this, he practiced in the Chambers of Senior Advocates Mr. Gopal Subramaniam and Mr. Iqbal Chagla. He has also been a Member at the Chartered Institute of Arbitrators, UK since 2014.

3. Ms. Ruby Singh Ahuja, Adv Karanjawala & Co.

Ms Ruby Singh Ahuja is a leading dispute resolution lawyer. Ms. Ahuja is a senior partner at Karanjawala & Co and Advocate on Record at the Supreme Court of India. She supervises commercial litigation at the firm and has over two decades of experience as an advocate and as an advocate on record at the Supreme Court of India. She is among the few legal practitioners with comprehensive expertise and specialised knowledge in commercial dispute resolution.

4. Mr. Spandan Biswal, Cyril Amarchand Mangaldas

Mr. Biswal graduated from National Law School of India University, Bangalore in 2007. He is currently a partner at Cyril Amarchand Mangaldas. He primarily focuses on Insolvency, Structured Finance and Infrastructure.

SESSION II: CORPORATE LIQUIDATION

Key issues, Mediating & Negotiating claims; Antecedent Transactions; Tax issues in insolvency; Role of Liquidator

On failure of the resolution process, Part II of the Insolvency and Bankruptcy Code, 2016 (IBC) provides for liquidation of a corporate debtor. With the enactment of new regulations on the liquidation process, issues such as eligibility criteria for initiating liquidation procedures, formal approval, effects on existing contracts, role of the liquidator, and the extent of involvement of courts, creditors, and directors and shareholders have been clarified. However, certain key issues remain unaddressed. Under the Code, the National Company Law Tribunal (NCLT) oversees and approves the process of liquidation. However, with a large number of cases heading for liquidation leading to problems on pendency and delays, ADR mechanisms such as the mediation or negotiation can prove to be a useful alternative. In out-of-court processes such as voluntary liquidation, mediation and negotiation can play a key role in ensuring the liquidation process is completed in a speedy and time-bound manner. This session aims to discuss the necessity and viability of such alternatives.

Further, Section 43 of the IBC, dealing with preferential and antecedent transactions, has stirred up criticism that the disregard towards the existence of any fraudulent intention has reversed its ambit, diverging from its purpose of preventing the shrinking of the asset pool available for distribution so that all creditors are paid back to the greatest extent possible. Instead, the section, as it exists now, disallows transactions which would have had the effect of enlarging the asset pool. The Code has also come up short in clarifying tax implications relating to critical aspects of the resolution process such as debt waiver and interest cuts. Moreover, questions have been raised as to the role of the liquidator in issues such as assessing antecedent transactions, liquidating a debtor with negligible assets, sale of a debtor as a 'going concern' and disposal of distressed, disputed and charged assets, or where a compromise or arrangement under Section 230 of the Companies Act, 2013 is entered into. This session aims to discuss the challenges and opportunities related to these pertinent issues in the corporate liquidation process.

PROFILES OF SPEAKERS

1. Mr. Rajesh Sharma, Hon'ble Member (T) NCLT Mumbai

Mr. Rajesh Sharma is presently serving as a member of the Mumbai Bench of National Company Law Tribunal. He has also occupied the post of Chief Financial Officer of Haryana State Industrial and Infrastructure Development Corporation (HSIIDC) for a period of 5 years and has also served as the Director General of Services Export Promotion Council at the Ministry of Commerce & Industry. He has over 30 years of experience in Finance, Term lending and Investment Banking, Management, Investment Promotion, Accounting, and Taxation.

2. Mr. Ritesh Kavdia, Executive Director, IBBI

Mr. Ritesh Kavdia is currently an Executive Director at the Insolvency and Bankruptcy Board of India. He has also served as a director at the Department of Telecom and the Ministry of Defence after completing his Masters in Public Administration from the Syracuse University.

3. Mr. Anoop Rawat, Shardul Amarchand Mangaldas & Company

Mr. Anoop Rawat is an Equity Partner in the Insolvency and Bankruptcy practice at Shardul Amarchand Mangaldas & Company. He has over 15 years of practice experience and his focus areas include Insolvency & Bankruptcy, Projects, Banking and Finance. He has been instrumental in various notable cases and has represented prominent companies like Bhushan Steel among others.

4. Mr. Ravi Sharma, Price Waterhouse & Co. LLP India

Mr. Ravi Sharma, Advocate is an Attorney with Price Waterhouse & Co. LLP India. He also delivers Guest Faculty lectures at the National Law University Delhi on the Insolvency & Bankruptcy Law.

5. Mr. Akaant Kumar Mittal

Mr. Akaant Kumar Mittal is a practicing lawyer for the past 4 years, based primarily in Delhi and Chandigarh, and specializes in insolvency and bankruptcy law in India. He has also authored a commentary titled “Insolvency and Bankruptcy: Law and Practice” which was launched on 12th December 2020. He completed his B.A., L.L.B (Hons.) degree from National Law University, Delhi in 2015.

SESSION III: IMPLEMENTING BANKRUPTCY, INTEGRATING PRE-INSOLVENCY PROCEEDINGS, PRE-PACKS INTO THE LEGAL REGIME, PRE-INSOLVENCY PROCEEDINGS, CORPORATE RESCUE IN UK AND USA

The Insolvency and Bankruptcy Code, 2016 is one matured step towards providing a painless mechanism and erasing overlapping provisions to resolve financial failures and insolvency. Implementation of bankruptcy is imperative to achieve improved handling of conflicts between creditors and the debtor. Pre-insolvency proceedings is a quasi-collective proceeding under the supervision of an administrative authority, giving the financially troubled debtor an opportunity to restructure at the pre-insolvency stage to avoid the commencement of regular insolvency proceedings. Governments have started appreciating the importance of addressing financial distress during the ‘pre-insolvency’ stage, to maximize the likelihood of business rescue and allow debtors and creditors to intervene early and if needed, negotiate informally before insolvency starts.

Pre-packs are a mechanism to resolve a debt of a distressed company without the public bidding process but by an agreement between the secured creditors increase the efficiency of the insolvency process and create an alternative to the CIRP. India is looking to adopt such a procedure, but the nature of the mechanism in India and the level of involvement by the NCLT and courts are still being debated. There is a going consciousness to find alternatives to the liquidation of the company and shifting towards Corporate Rescue, which requires a statutory corporate insolvency procedure enabling the same. In the past two decades, corporate insolvency laws have been substantially reshaped in the UK & the US paving a path for rehabilitation in face of the high volume of enterprise distress caused by the COVID-19 pandemic. Therefore, it becomes imperative to

analyse the current corporate rescue laws and procedure to ascertain its appropriateness in the current economic climate and examine its inadequacies.

PROFILES OF SPEAKERS

1. Mr. Sudhaker Shukla, Whole Time Member, IBBI

Mr. Sudhaker Shukla is a Whole Time Member of Insolvency and Bankruptcy Board of India where he oversees the Research and Regulation Wing comprising Corporate Insolvency, Corporate Liquidation, Individual Insolvency and Individual Bankruptcy, Research & Publication, Data Management & Dissemination and Advocacy, and is also involved in the Human Resources, National Insolvency & Graduate Insolvency Programmes, Continuing Professional Education and Knowledge Management & Partnership divisions in the IBBI. His leadership led the successful formulation of the draft on Mines and Minerals Regulation and Development Amendment Act, 2015. Furthermore, He has served as a member of the esteemed Indian Economic Services for over 34 years.

2. Shri Bahram Vakil, Founder Partner AZB

Bahram N. Vakil is a founding partner of AZB & Partners. He was a member of the Bankruptcy Law Reform Committee (which provided and led to the implementation of the Insolvency and Bankruptcy Code, 2016 (IBC)) and is currently serving on a Committee that has proposed amendments to the IBC. Bahram is recognised by Chambers and Partners, The Legal 500 and other publications as a leading lawyer for restructuring, banking & project finance in India. Bahram has also served as a member on various high-level government committees on financial reform, foreign direct investment and securities market reform.

3. (Dr.) Alexandra Kastrinou, Principal Lecturer, Nottingham Law School

Dr. Alexandra is the course leader of all Nottingham Law School programmes. Further, she teaches courses on numerous subjects such as Cross Border Insolvency, Business Structures and Insolvency in the EU, Corporate Rescue, and Comparative Workout strategies & Cross border issues in insolvency modules. She is an active member of the Academic Group of INSOL International, and INSOL Europe Academic Forum; a member of the INSOL Younger Academics Network (YAN); Society of Legal Scholars; Socio-Legal Studies Association; Academic member of the Insolvency Lawyers Association. Her countless publications have created a wealth of information in these fields.

4. Dr. Sofia Ellina, Nottingham Law School

Dr. Sofia is currently a lecturer at the Nottingham Law School, Prior to which, she was a faculty member at Lancaster University. She has taught and designed a variety of courses including the law of Contracts, European Union law, Company Law and International Commercial Law. She holds her PhD in Law from Lancaster University where she has done thorough research and analysis on the corporate rescue procedures in Insolvency Law of the UK and Cyprus. Her extensive contributions in these fields along with her courses and publications reflect her vast knowledge and calibre.

5. Mr. Sumant Batra, Managing Partner, Kesar Dass B. & Associates

Sumant is a corporate and policy lawyer of global eminence. He is Managing Partner of Kesar Dass B. & Associates, commonly known as Kesar Dass, a full service commercial and litigation law firm, operating in South Asia.

Sumant is senior international consultant to IMF, World Bank Group and OECD, has worked extensively on policy matters in Africa, Eastern Europe, Middle East and South Asia. Rated as India's No. 1 insolvency lawyer by Legal 500, his contributions to reforms in Indian insolvency

system are well-recognised. Sumant has held leadership positions in prestigious multi-lateral, global and national organisations. He is Immediate Past president of INSOL International. He is a frequent speaker at various international and domestic conferences.

His areas of specialisation are policy & regulatory advice, corporate insolvency & restructuring, foreign direct investment advisory, corporate and commercial transactions, debt recovery, private equity, real estate and corporate governance policy & compliances. He has addressed over 100 international conferences as a speaker from the Indian sub-continent.

6. **Mr. Divyanshu Pandey, Partner S&R Associates**

Mr. Divyanshu Pandey is currently partner at S&R Associates and head of Insolvency & Bankruptcy Practice. Previously he was associated with JSA as an equity partner for a long time. Mr. Pandey focuses on banking, finance and restructuring, including structured finance, cross-border lending transactions, hybrid debt financing, project finance, acquisition financing, real estate finance as well as restructuring, enforcement and insolvency matters. In addition, he also advises on mergers and acquisitions and corporate transactions across industry sectors. Divyanshu has been recognised a leading lawyer in the banking and finance practice by international publications such as IFLR and AsiaLaw. Before joining JSA, he was working with Freshfields Bruckhaus Deringer LLP, London and Slaughter and May, London.

SESSION IV: CROSS-BORDER INSOLVENCY PROCEEDINGS

One of the foremost aims of the Insolvency and Bankruptcy Code was to foster entrepreneurship and business settlement. Cross-border Insolvency was seen as one area of the Code with conflicting interests. It denoted a situation where the insolvent debtor had assets in more than one jurisdiction or where some of the creditors of the debtor were not from the jurisdiction where the insolvency proceedings had been filed. Since, a single set of domestic insolvency law provisions cannot be exclusively applied without regard to the issues raised by the foreign law elements of the case, many scholars suggested the adoption of the *UNICTRAL Model Law on Cross- Border Insolvency (MLCBI)*.

The onset of COVID-19 has disrupted businesses operations and called for adoption of an accommodative stance to fight the pandemic. For instance, the World Bank and IMF have suggested a three-phase response to prevent corporates and individuals from going into insolvency or bankruptcy. The first phase requires implementation of measures to halt insolvency and debt enforcement actions. The second phase anticipates a huge wave of insolvencies and requires implementation of transitional and out-of-court measures to flatten the curve for insolvencies. The third phase would require incorporation of regular debt restructuring tools to address remaining debts and boost economic growth in the medium term.

Around the globe, the governments have quickly reacted by amending their insolvency laws to mitigate the effects of COVID-19. Many European countries have implemented various measures concerning insolvency proceedings, restructuring and rights of creditors generally. The accessibility of insolvency courts and practitioners was observed to be very limited. Hearings were suspended and procedural deadlines enforced. Most European countries have also adopted measures restricting the periods and the rights to file for insolvency. In India, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 was promulgated by the Government which suspended the right to initiate insolvency resolution proceedings against corporate debtors. There was observed a 95% drop in the number of cases heard by the National Company Law Tribunal during the Covid-19 lockdown phase.

However, the relief packages and statutory relaxations are set to expire soon and a surge in insolvency cases is expected from businesses affected by the economic slowdown caused by COVID-19. With a surge in insolvencies during the ongoing pandemic, complex cross-border issues are slated to arise that will require greater cooperation and consensus amongst courts to resolve and provide a comprehensive response. In such situations, the UNICTRAL Model law aims to make co-operation possible without damaging the sovereignty of each jurisdiction and enables recognition of proceedings across borders. Articles 25-27 of MLCBI expressly mandate cooperation and coordination by allowing courts in different jurisdictions to communicate directly and request information or assistance directly for optimal resolution of complex insolvencies. These

provisions become particularly important as the national laws have failed to provide statutory recognition for cooperation between local and foreign courts dealing with cross-border insolvencies.

The MLCBI and recently introduced *Model law on Enterprise Group Insolvency (MLEGI)* provide for cooperation and direct communication between different insolvency practitioners and other state authorities. The MLEGI complements Article 26 and 27 of the MLCBI on international cooperation between foreign representatives for communication of information, supervision of debtor's assets or liabilities, implementation of agreements for coordinating proceedings and coordinating concurrent proceedings against the debtor. In addition, the MLEGI allows for appointment of a group representative to administer resolution of an enterprise group and enables cooperation or direct communication between the group representative and the foreign courts or insolvency representatives in different states.

Since, we live in a world where individuals have assets in more than one state and where they transfer these assets across borders, *the Model Law on Recognition and Enforcement of Insolvency related judgements (MLIJ)* provides a simple regime for recognition and enforcement of insolvency related judgements that can assist in the recovery of value for financially troubled businesses. This increases the potential for successful reorganizations or liquidations to the advantage of all interested parties, including creditors, employees and other stakeholders. The MLIJ complements Articles 7 and 21 of the UNICTRAL Model Law on Cross Border Insolvency to further assist the conduct of cross-border insolvency proceedings. The landmark case of **Jet Airways** laid down an innovative cross border insolvency protocol constructed on the principles of the model law for international cooperation and coordination between all the stakeholders (insolvency practitioners, liquidators) and set a precedent for the universalism of cross border insolvency. The Jet case highlights some of the complications under India's Insolvency law and the unprecedented circumstances brought by the pandemic further underlie the need to adopt a comprehensive regime for cross-border insolvency.

PROFILES OF SPEAKERS

1. Kathleen Lannan, Senior Legal Officer UNCITRAL

Kathleen Lannan is a senior legal officer at the United Nations Commission on International Trade Law based in Vienna. Prior to joining the UN, Kate was in private practice and served as a member of the Canadian diplomatic corps. She has worked in the area of private international law since 1998, and is called to the bars of Ontario (Canada), the State of New York and Washington DC.

2. Dean J Rich Leonard, US Bankr. Judge Ret.

Prof. J. Rich Leonard is the Dean of Norman Adrian Wiggins School of Law at Campbell University. He completed his masters from the university of North Carolina at Chapel Hill and earned his JD degree from Yale Law School. He has previously served as the US Bankruptcy judge for the Eastern District of North Carolina and then as Chief Judge until 2005. He has also served on the prestigious Judicial Conference Committee on Court Administration and Case Management. In 2011, the American Bar Association gave Leonard the prestigious Robert Yegge Award for his Outstanding Contribution to Judicial Administration. For more than a decade Leonard also acted as a consultant to the U.S. Department of State, working with judiciaries in many developing countries, primarily in sub-Saharan Africa.

3. Dr. Kokila Jayaram, DGM, IBBI

Dr. Kokila Jayaram is an Indian Economic Services Officer who serves as the Deputy General Manager at the Insolvency and Bankruptcy Board of India overseeing the Corporate Insolvency Resolution Process amongst other functions.

4. Mr. Somasekhar Sundaresan, Adv., Member, Insolvency Law Committee on Cross-Border Insolvency

Mr. Sundaresan is an Independent Counsel and his work focuses on Indian regulatory litigation covering securities law, competition law, company law, exchange controls and other areas of investment law. Currently, he is a member of the MCA Insolvency Law Committee on Cross-Border Insolvency and has set up chambers after 18 years of practice as a lawyer practicing both transactional work and regulatory litigation, of which 14 years were with JSA as partner and head of the financial sector regulatory practice. He is also an active contributor to public policy in the financial sector in India and fortnightly, a columnist with Business Standard titled ‘Without Contempt.’

5. Professor Irit Mevorach, Nottingham University

Irit Mevorach is a Professor of International Commercial Law and the founder and co-director of University of Nottingham Commercial Law Centre. Since 2006 Irit has been an expert adviser to the UK delegation to UNCITRAL. In 2013, she was appointed Senior Counsel to the World Bank. In that capacity, she has advised governments of some ten countries in Africa, Asia, Europe, and the Caribbean on the reform of business, personal insolvency, and creditor/debtor systems, and has led the Bank's Global Task Force on Insolvency and Creditor Rights. Her book *Insolvency within Multinational Enterprise Groups* (OUP, 2009) won the Edwin-Co/INSOL Europe Prize for Outstanding Legal Scholarship (2010).

SESSION V: SPECIAL SESSION V

The Government in its relief package for the effects of pandemic and in its aim to make an *Atmanirbhar Bharat* provided for a number of incentives for MSMEs and Entrepreneurs. The present session is primarily focused on MSMEs, Entrepreneurship, Insolvency and Digital Economy. And on these lines, the session will be discussing about the principles of World Bank on MSME Insolvency and Entrepreneurship. Effective insolvency regimes, if properly implemented, may mitigate many of the challenges facing MSMEs. The issue of MSME insolvency is of importance to the World Bank Group agenda of financial inclusion, which is considered as a key enabler to reduce poverty and boost prosperity. The session also

focuses on insolvency and entrepreneurship. The insolvency law enables the creditors to decide how to revive the business and is also important for the resolution of those MSMEs. Apart from this the session also focuses on Insolvency and digital economy. The session then also includes discussion on Small Business Reorganization. Small businesses that were facing financial challenges and wanted to stay in business and restructure can reorganize. This is essential considering the effect of the pandemic on the small business.

PROFILES OF SPEAKERS

1. Mr. KR Saji Kumar, ED IBBI

He is the Joint Secretary & Legislative Counsel (Grade 1 of ILS), Ministry of Law & Justice, Legislative Department. He completed his B.Sc Degree from University of Kerala in 1984 followed by LLB from Bangalore University In 1987. After practicing as a lawyer in District and Subordinate courts in Thiruvananthapuram and High Court of Kerala for ten years, he joined the Ministry of Law & Justice, Govt. of India as Assistant Legislative Counsel as direct recruit through UPSC in 1997. He has a vast expertise in Heading Legislative Group in the Legislative Department that deals with Ministries such as Finance, Corporate Affairs, Parliamentary Affairs, Rural Development, Atomic Energy, etc.

2. Antonia P. Menezes, IFC

Ms. Antonia Menezes is a Senior Financial Sector Specialist with the Insolvency & Debt Resolution Team of the World Bank Group based in Washington D.C. Ms. Menezes has published widely in the field of insolvency. Ms. Menezes holds an LLM from McGill University, an LPC from the Oxford Institute of Legal Practice, and an LLB from the London School of Economics & Political Science. She is a Member of the International Insolvency Institute, a 2014 INSOL International Fellow and sits on the INSOL Fellow's Cross-Border Insolvency Committee.

3. Dr. Risham Garg, NLU

Dr. Garg is an Associate Professor of Law and Research Director at Center for Transnational Commercial Law (CTCL) at National Law University, Delhi. He has been involved in publishing and presenting research papers on contemporary issues in commercial laws and active participation in consultations in various forums. He acts as an Arbitrator at the Willem C. Vis International Commercial Arbitration Moot on the International Sale of Goods (CISG Convention) at Vienna and at Hong Kong; and also, at the India rounds of the Vis Pre-Moot. He has been a Visiting Research Scholar at UNCITRAL, Vienna, Austria in 2007.

4. Professor Douglas Cumming, Florida Atlantic Uni.

Dr. Cumming is a Finance Professor at the Florida Atlantic University. He has an exceptional research record, having published more than 150 refereed journal articles and books. He is currently serving on the editorial boards of several leading journals. He earned both a law degree and a doctoral degree in Finance at the University of Toronto. He has lectured and has been a visiting scholar at excellent universities around the world.

5. Professor Rebecca Parry, Nottingham Law School

Prof. Parry is a Professor at the Nottingham Law School. She is the Co-Director of the Centre for Business and Insolvency Law and has been an active member of the Centre for many years. She earned a PhD at the University of Manchester. Before joining NTU she was a lecturer and then senior lecturer at the University of Leicester.

6. Professor Charles Scott Pryor, Campbell University

Prof. Pryor is a Professor of Law at the Campbell University. Prior to Campbell Law, Pryor served on the faculty at Regent University School of Law, as a resident scholar at the American Bankruptcy Institute in Washington, D.C., Fulbright Scholar at the National Law University in Jodhpur, India, and visiting professor at Handong International Law School in Pohang, South Korea. He was also the director of Regent's Summer Program in International Human Rights in Strasbourg, France. He holds a B.A. from Dordt College and an M.A. from Reformed Theological Seminary. He earned his J.D. from the University of Wisconsin College of Law.

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Day 1: **Wednesday 6th January 2021.** Registration link: <https://app.livewebinar.com/595-110-531>

Day 2: **Thursday 7th January 2021.** Registration link: <https://app.livewebinar.com/933-580-070>

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