Preface

The reference of corporate insolvency law an international context has increased significantly over the past decades, with globalization of business turning insolvency into an international affair. Growth of any economy is dependent upon the ease of doing business in that country and because of this sole reason, many countries which target higher growth and investment are targeting to achieve the best possible rating in the world, so that investment can be increased manifold. The text on corporate insolvency law in developed countries like US, UK, EU is available in excess but much has not been done to address the corporate insolvency law in developing economies. Observing these facts, I decided to edit this volume to present a cross-border analysis of corporate Insolvency law in Emerging Economies.

The existence of corporate insolvency law is associated with an attempt to balance the interests of those who are 'stakeholders' in corporate insolvency, such as creditors, employees, local community and the public. If we quote the example of India, where the is ranked on 130 among the world with being second fastest economy in the world, it can be reliably said that despite of being such a great market, doing business in this country is not easy. One of the major reasons behind such a position of this country has been that commercial laws are very old and are not focusing on efficient functioning. Corporation is an artificial juristic person which undergoes an inherent metamorphosis as a part of the business cycle. Despite conflicting view by noted experts, if one draws a human analogy, a corporation too takes birth at incorporation and attains its optimum splendour by wealth maximization. It at times suffers from 'ailing financial health' which is termed as 'corporate insolvency' and just like medication, tools like 'corporate rescue' are used to revive the financial ill health of a corporation. The purpose of insolvency law is not to save all companies from failure. Thus, it has a significant impact on entrepreneurship and economic growth. The prime focus of corporate insolvency law framework is to consider on three major frontiers:

- Coordination problems
- Ex-ante efficiency
- Ex-post efficiency

Recognizing the importance of Corporate Insolvency law in the financial architecture of the emerging economies, it's my pleasure to write the preface of this volume. The text deals with fundamental issues of corporate insolvency law in emerging economies. The structure of the chapters follows the issues as they arise in evolving jurisprudence of corporate insolvency proceeding while addressing objectives of insolvency laws, opening and governance of proceedings, ranking of claims, the position of secured creditors and shareholders, and rescue proceedings. Jurisdictions worldwide differ significantly with respect to the 'bankruptcy philosophies' that they pursue. The IMF, World Bank & UNCTAD have recommended that states create, via legislation, options for the reorganization of business operators.

With the globalization of economy, the issues relating to corporate insolvency have assumed greater significance. Weakness in bankruptcy and rescue law system, makes it impossible for the corporate sector to rehabilitate in the face of a high volume of enterprise distress and long term economic recession. As a result, corporate rescue has become increasingly a fashionable topic, which has long been a subject of global interest. It has been commanding very significant legislative, academic and professional attention. Thus, The Law of Corporate Insolvency forms an increasingly important legal arena & it play an important role in the economy and in society. Insolvency law policies also allow resources to be quickly returned to productive use by enabling viable but financially troubled companies to restructure instead of filing for bankruptcy. Thus, this volume is of great relevance for the students of Law, researchers and professionals in corporate Insolvency law. The book is also useful for policy makers, economists, lawyers, and insolvency professionals. This book is of great help for students of business and law to understand the jurisprudence and policy of corporate Insolvency law.

The book is divided into 11 chapters addressing various issues of corporate insolvency law and policy reforms in emerging economies.

Chapter 1 of the book, "The Relevance of a Sound Closing Business Framework in Developing Countries," reflects on the corporate insolvency framework for closing business is crucial for developing the economy. It breaks up nonviable businesses, saves viable businesses, and improves credit access. Many countries lack insolvency frameworks, ignore its usefulness or disregard its applicability. Similarly, among many businesses there is a lack of knowledge of the benefits of the insolvency regime. Latest developments of bankruptcy laws shows that there are options other than mere liquidation of the business. Restructuring, ongoing concern sale or piecemeal sale are some of the possibilities referenced in the chapter.

Chapter 2, "Cross-Border Insolvency Law in BRIC," addresses that the effective cross-border insolvency regimes are absent in many emerging economies around the world & the BRIC nations are not the exception to this fact. Nevertheless, Law on Cross-Border Insolvency which establishes the international standard in this area is not addressed by domestic laws of these nations. This had led to a glaring gap in international insolvency regime, where there is the absence of any uniform and stable law, however, the UNCITRAL Model Law on Cross-Border Insolvency which establishes the international standard that could be followed by any country. The chapter addressed the insolvency law regime in BRIC nations & has made an attempt to analyze the cross-border insolvency regulations in said countries in light of UNICITRAL Model Law on Cross-Border Insolvency.

In Chapter 3, "Corporate Insolvency Law in South Asia," the authors have talked about, the history of corporate insolvency law in select South-Asian and South-East Asian countries, viz. Bangladesh, Bhutan, India, Malaysia, Nepal, Pakistan, Sri Lanka, and Thailand. The Chapter seeks to acquaint the readers with the efforts which led to the various reforms in these jurisdictions.

Chapter 4, "Corporate Insolvency Law and Bankruptcy Reforms in the Global Economy," reflects on the 2008 financial crisis was followed by a global economic downturn, a credit crunch, and a reduction in cross-border lending, trade finance, and foreign direct investment, which adversely affected businesses around the world. The consequent increase in the number of firm insolvencies in the corporate sector highlights the need for commercial bankruptcy laws to liquidate efficiently unviable firms and reorganize viable ones, so as to maximize the total value of proceeds received by creditors, shareholders, employees, and other stakeholders. India's weak insolvency regime, its significant inefficiencies and systematic abuse are some of the reasons for the distressed state of credit markets in India today. The authors also comments that the Code promises to bring about far-reaching reforms with a thrust on creditor driven insolvency resolution. It aims at early identification of financial failure and maximizing the asset value of insolvent firms.

Chapter 5 of this book is on "Corporate Insolvency Law and Reforms in South Africa." South Africa has had this legal infrastructure since 1926 when the statutory procedure of judicial management was introduced by the Companies Act 1926. The chapter discuss the judicial management, mechanisms to secure unpaid debts, carrying on business during insolvency and the new corporate rescue procedures applicable or South African companies as provided in Companies Act 2008. The chapter also puts a light on corporate insolvency informs in South Africa.

In Chapter 6, "An Introduction to Corporate Insolvency Law and Reforms in Australia," the authors have analyzed the provisions of The Corporations Act of 2001 which regulated the probable insolvency proceedings of all companies incorporated in Australia and companies incorporated or possessing separate legal.

For personal insolvency, a specific legislation called bankruptcy Act is there but the basic framework of corporate insolvency law has been there since the inception of Corporations Act 2001 enactment which includes all the aspects of company formation, management, governance & dissolution. The authors have highlighted to recent reforms, however, the main concentration of this chapter is on the legal infrastructure of corporate insolvency law at present as the reforms are not yet in force. The chapter also put forth the problems faced by corporate debtor & creditors in the proceedings of insolvency resolution & has also expressed the scenario of cross-border insolvency in Australia in light of UNICTRAL Model law of cross-border insolvency which has been adopted by the Australian government in 2008.

In Chapter 7, "An International Perspective of the Changes Proposed to the Debt Recovery Laws of India," the authors have analyzed the recent reforms of corporate insolvency in India. This book chapter relates to the recent changes made to certain debt recovery laws enforced in India and the current parallel legal regime relating to debtor protection in U.S. and U.K. As per the statement of objects and reasons, these amendments are being proposed to facilitate the speedy disposal of cases by the debt recovery tribunals. This book chapter analyzes the relevant international legal regime in place in U.S. and U.K. to suggest changes to the current Indian regime relating to debtor's rights, so as to better balance the interests of the debtors with the interests of the creditor. The authors request the Indian legislature to draw guidance and inspiration from the current regime of legal rights as available to the debtors in U.S. and U.K. and pass laws for preventing banks and financial institutions from exploiting debtors further.

In Chapter 8, "The New Law of Corporate Restructuring in Malaysia: Analysis of the Concept of Scheme of Creditors' Arrangements in Corporate Insolvency Proceeding," The authors have evaluated the passing of the Malaysian Companies Bill 2015 (Companies Act 2016), which replaced the Companies Act 1965 (Companies Act 1965), marks the most comprehensive legislative change in Malaysia's corporate law in 50 years. The Companies Act 2016 makes some significant changes to Malaysia's corporate insolvency regime, as it introduces two new insolvency processes: judicial management and corporate voluntary administration. It also modifies the existing law relating to schemes of arrangement. The objective of this paper is to study and evaluate the legislative position in United Kingdom, Australia and Malaysia with regard to the Scheme of Creditors' Arrangement. The introduction of the Judicial Management mechanisms is a move towards bringing Malaysia's insolvency laws up to the same international standards as many other countries in the region. It also discusses on the strength and limitation of the mechanism as opposed to the concept of judicial management.

In Chapter 9, "The Resolution of Insolvency in Cameroon," the authors have examined that, in a world driven by credit, a speedy resolution of insolvency will build predictability and commercial confidence among credit providers, resulting in increased credit and reduced borrowing costs, facilitate the resuscitation of viable businesses, thereby maximizing the going concern value and preserving jobs, and also benefit entrepreneurs and lower the rate of liquidation of distressed firms. With this, the paper employs one argument that Cameroon has not registered a success in the resolution of insolvency. The purpose of this paper, therefore, is to highlight and discuss the reasons behind the poor performance of the country in resolving insolvency. The value of this paper lies in the contribution it makes in the understanding of the OHADA legal framework on insolvency and improvement of the country's performance in the Doing Business ranking on insolvency. Keywords: Resolution, Insolvency, Cameroon and Reform.

Chapter 10 is on "Corporate Insolvency Laws in Singapore." The authors have analyzed the new reforms of corporate insolvency law in Singapore in lucid way. The chapter reflects that Corporate Rescue Mechanism in Singapore is based on colonial structure, wherein the companies in distress can go for informal workouts or Judicial Management and Schemes of Arrangement under Companies Act. Singapore has just amended the company act and incorporated the provisions relating to Insolvency and Bankruptcy. The chapter reviews the use of schemes of arrangement and judicial management in Singapore as a corporate rescue mechanism & address the reform legislation of 2017 for corporate insolvency.

Chapter 11 of this book is titled "A Comparative Analysis of the US and Malaysian Bankrupted Corporations." The authors have reviewed in this chapter that, The renowned agency theory and thus most of the corporate governance (CG) regulations stress upon the independence of corporate boards and its various committees such as nomination and audit, among others. However, the review of the specific previous empirical literature does not fully support this public myth by unveiling that independence related CG practices such as separate leadership structure, the majority of independent directors on the board and independence of the nomination and audit committees could not escape the demise of Enron, WorldCom and Global Crossing in the USA. Also, these CG practices could not avoid the fiasco of the linear corporation, Kenmark and Sime Darby in Malaysia at the dawn of the twenty-first century. The review infers that despite a pivotal role, it is not only the independence of the board and its committees that avoid corporate failures. Overall, this review has important insights for Governments, regulators, policy makers, corporate boards, stock exchanges and shareholders of both the developed and developing countries around the world.

All the chapters in this book tell a story. The story is of corporate insolvency law reforms in emerging economies. It can be concluded that, the framework of corporate insolvency law in all the economies in not very old & have similar characteristics, yet, the world's legal systems have developed no uniform traditions for channeling reorganization proceedings. However, providing the option of reorganization as an alternative in the insolvency law of a state always points to the objective of allowing a business operator subject to bankruptcy proceedings to continue operating under certain circumstances instead of being liquidated. Many developing countries have improved their rankings on Ease of Doing business by making reforms in Corporate Insolvency law. The book has been updated and expanded to cover current issues of great importance in corporate Insolvency law reforms. This chapters addresses the growing cross-border corporate activity in emerging economies and regulatory framework. The book provides, clearly and concisely, the general philosophical principles Corporate Insolvency Law. The book includes major changes in insolvency legislation in South Asia, BRIC Nations and other emerging economies while reflating the regulatory structure existing in past and recent reforms.

This book has relevance across the common law world and will appeal to academics, legal professionals, company secretaries, chartered accountants, and students at advanced undergraduate as well as graduate level, and readers wishing to broaden their understanding of comparative and cross-border insolvency law.

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