Webinar on

"Impact of COVID 19 on the Insolvency and Bankruptcy regime

- Global and Indian responses"

On 24th June 2020

Key Takeaways

1. COVID pandemic has brought the globe closer together in many ways and yet because of the pandemic many businesses are being pushed into insolvency, delivery models are being disrupted and job losses are becoming rampant. However in times like these, insolvency profession on the lines of health care profession is much needed for the rescue of the distressed businesses.

2. Three phases of responses to the insolvency crisis can be:

   - Phase1-Preventing viable firms from prematurely being pushed into insolvency: extraordinary measures with sunset date.
   - Phase 2- Responding to the increased number of firms that will not survive this crisis without going through insolvency: work-outs and debt restructuring tools.
   - Phase3- Individual financial distress and MSEs: specific features that require tailored measures.

3. Work-outs, which were commonly used during Asian crisis of the 90s and during the 2008-2009 financial crisis, provide an enabling framework for multiple creditors and the debtor to quickly negotiate private contractual and confidential restructuring arrangements. Its principles were developed in 1970s by the Bank of England and were not based on legislation. For instance, banks agreeing on a collective view on whether and how a company should be given a financial lifeline. However, work-outs can be more formal particularly during systemic crises where the intervention of the state is deemed necessary. Istanbul approach is an example of a more formal work-out framework, enacted by a banking law in 2002, envisaging an arbitration panel that can clamp down on even dissenting minority creditors.

4. The policy responses to alleviate financial distress in MSME/Household sector may include (i) flexible options for debt rescheduling and repayment (ii) informal, out of court administrative processes that aim to minimize stigma and that are affordable (iii) modern individual or household bankruptcy framework like in few other emerging markets, that allows a fresh start or opportunity to re-enter the economy without any burden.

5. Cross-border insolvency mechanism enables cooperation between two jurisdictions, which enables a foreign IP to come and represent in Indian courts. Such framework identifies the jurisdiction with predominant place of business. In the cases where assets have been acquired overseas against borrowing in India, a cross border legislation can help clear bottlenecks or jurisdiction arbitrage.

6. As desperate situation calls for desperate measures, the suspension of IBC should be seen as a measure to rescue the economy by avoiding temporary or forced insolvencies and also for want of rescuers.