



DR. RAM MANOHAR LOHIYA NATIONAL LAW UNIVERSITY

12TH RMLNLU INTERNATIONAL LEGAL ESSAY WRITING
COMPETITION ON INSOLVENCY LAW

JOURNAL COMMITTEE RML
NLU

 Lakshmikumaran
& Sridharan
attorneys

An ISO 9001:2015 and ISO 27001:2013 certified law firm



INTRODUCTION

The Journal Committee ("Committee") at Dr. Ram Manohar Lohiya National Law University, Lucknow is organising the 12th edition of the RMLNLU International Legal Essay Writing Competition ("RILEC") along with the RMLNLU - Conference on Insolvency Law.

ABOUT RILEC

Since its inception in 2013, RILEC has expanded to greater horizons and today it is an internationally anticipated event. Every year, the Committee labours to promote legal scholarship. We provide intellectually challenging and contemporarily relevant themes for the legal fraternity to research and write on. During the course of our journey, we have covered numerous themes of law ranging from International Trade Law to Financial Regulatory Laws. For the 10th edition, the Committee invited submissions on Intellectual Property Rights and Technology Law and collaborated with Nishith Desai Associates. RMLNLU International Legal Essay Writing Competition 2024 was the 11th edition of RMLNLU's flagship essay writing event conducted in collaboration with Khaitan & Co. The competition had Competition Law as its main theme along with various sub-themes which covered a wide-ranging issues of contemporary relevance. After receiving more than 120 entries and conducting an intensive review procedure, the top 3 teams were invited to present their essays in front of a panel from Khaitan & Co. The competition augmented the knowledge of many and was successful in its endeavour. Thus, the intention behind organising such an event paid off in the form of increased acuity in the particular field of law and the exploration of fresh perspectives with respect to the various sub-themes.



ABOUT RMLNLU



Dr. Ram Manohar Lohiya National Law University was established in 2006 to match the new challenges in the legal field and to strengthen the vision that was given by the establishment of the first National Law School in the country. The University is committed to providing excellent infrastructural

facilities and an environment to advance and disseminate learning and knowledge of the law and legal processes. The University aims to develop in students and research scholars, a sense of responsibility to serve society in the field of law by developing skills in advocacy and legal writing.

ABOUT THE JOURNAL COMMITTEE

JOURNAL 
COMMITTEE

The Journal Committee has been constituted with the objective of promoting legal research and writing. The RMLNLU Law Review is the annual peer-reviewed law journal of the

committee which runs parallel to the RMLNLU Journal on CMET (Communication, Media, Entertainment, and Technology) Law. Both these journals publish articles, essays, case notes/comments, and book reviews from contributors all over the world. To encourage legal research writing in the field of law, the Committee also organises the Dr. RMLNLU International Legal Essay Writing Competition, inviting entries on specific themes. The RMLNLU Law Review Blog is another such initiative of the Committee which provides a platform for people in the field to express their opinions on contemporary legal issues.

ABOUT LAKSHMIKUMARAN AND SRIDHARAN



Founded in 1985 by Shri V. Lakshmikumaran and Shri V. Sridharan, Lakshmikumaran & Sridharan has been a leading law firm with multiple offices splattered all across India more than 400

professionals who are specialists in their fields. Lakshmikumaran & Sridharan specializes in areas such as corporate & commercial laws, dispute resolution, taxation and intellectual property and have professionals with experience of working in both traditional sectors such as commodities, automobile, pharmaceuticals, petrochemicals and modern sectors such as e-commerce, big data, renewables.

The firm hosts a myriad of teams specializing in multiple areas like arbitration, banking & finance, commercial litigation, competition & antitrust, corporate, customs, direct tax, employment law, goods & services tax, insolvency, intellectual property, international trade & WTO, mergers & acquisitions to name a few. The firm has a rich history of over 35+ years of experience representing clients' interests in over 50,000 tax disputes before various forums like appellate bodies, DGFT, Tribunals, High Courts, and over 2000 cases before the Supreme Court of India.

The insolvency team at Lakshmikumaran & Sridharan (L&S) supports clients with advisory as well as litigation services. The firm provides clients with comprehensive and efficient counsel owing its extensive knowledge in fundamental corporate and commercial legislation as well as its awareness of different business sectors. The team at L&S has been involved in several matters involving the Insolvency and Bankruptcy Code, 2016 representing both creditors as well as debtors before various company law and appellate tribunals and has also represented creditors in various sectors, such as power, heavy industries, tourism, and financial sector.

ABOUT THE JUDGE



Asish is a Partner at Lakshmikumar & Sridharan and practices in the areas of general corporate, M&A and regulatory. Based in Mumbai and with more than 10 years of experience, Asish has rich experience in advising various domestic and multinational companies in restructuring, M&A, regulatory, GST and commercial dispute resolution matters. He has assisted various clients with GST impact assessment and implementation. Additionally, he has done notable transactions in relation to transition, supply chain, re-modelling, and business transformation and anti profiteering assignments.

Asish advises clients on general corporate advisory matters and has worked on various transactions and matters pertaining to M&A, corporate restructuring, investment, FEMA, payment regulations and real estate including carrying out due diligence, drafting and negotiating transaction documents. He specialises in dealing with clients from digital and e-commerce space.

Asish also has experience of being a part of the service tax team of Lakshmikumar & Sridharan. As a part of the team, he had advised various leading companies on issues related to service tax like taxability, classification, exemption and credit optimization strategy.

THEMES AND SUB-THEMES

1. Cross-border Insolvency.

The Indian corporate landscape has been expanding and reaching a global space. However, there has been much academic discussion on whether the Insolvency & Bankruptcy Code (IBC) is enough to deal with cross-border relationships and, thus, cross-border insolvency. Sections 234 and 235 of the IBC attempt to provide a framework for cross-border insolvency but have largely remained unsuccessful. Presently, cross-border insolvency matters are handled on a case-by-case basis, relying on judicial precedents and bilateral agreements, which can be inconsistent and unpredictable. There is a need for a comprehensive framework that is internally consistent to amend uncertainty and complexity, issues on asset recovery, cross-border legal conflicts, and rights of creditors across different jurisdictions.

The Ministry of Corporate Affairs has acknowledged this gap in the legal landscape and has made several recommendations with respect to the Indian Cross-Border Insolvency Regime. In its October 2018 report, one such recommendation was framing the Indian law in consonance with the UNCITRAL Model Law on Cross Border Insolvency. It will provide clarity, predictability, and fairness in dealing with such cases, benefitting creditors and debtors alike and reinforcing India's position as a reliable and business-friendly jurisdiction. Alternatively, various bilateral and multilateral agreements could ensure headway into allowing a more internationally cooperative bankruptcy code. However, there exists a debate as to bilateral agreements being a hindrance to uniformity in the law, leading to inconsistencies while dealing with cases.

Participants are encouraged to explore the multilayered controversies and ambiguities surrounding cross-border insolvency in the Indian legal framework. They can analyze the above-mentioned suggestions to deal with the lack of regulation of cross-border insolvency in India. The participants are further encouraged to make other recommendations dealing with the issue. They can carry out comparative analysis with other legal jurisdictions with successful cross-border insolvency regimes.

2. Integration of ADR for effective resolution of insolvency disputes

Insolvency disputes fundamentally stem from the inability to repay borrowed funds. This inability may arise from unforeseen circumstances or poor decision-making in the past, but the outcome is consistent: creditors vie for a limited pool of assets, which rarely suffices to satisfy all claims. This competition often leads to the liquidation of the debtor, resulting in the cessation of business operations, loss of jobs, and reduced tax revenue for the state. Such outcomes are unfavourable for all involved parties.

Traditionally, courts have handled insolvency disputes, with specialised Bankruptcy Courts or Tribunals ensuring fair treatment of creditors, equitable distribution of debtor assets, and efficient liquidation of insolvent entities. However, recently, there has been a global shift towards resolving these disputes through Alternative Dispute Resolution (ADR) mechanisms, reflecting a broader trend towards collaborative and less adversarial dispute resolution methods. ADR can be an effective forum for resolving certain insolvency-related disputes as it offers practical benefits like tailored proceedings, fast-track options, and reduced court burdens. However, the inconsistency in the legal framework for the arbitrability of these issues has been highlighted by the cross-border debt recovery and creditor-debtor issues. While the UNCITRAL Model Law on Cross-Border Insolvency and Arbitration aimed to recalibrate the relationship between these two legal frameworks, it did not succeed in achieving full consistency.

Participants can look into the lack of a uniform approach, leading to inconsistent criteria for determining the arbitrability of insolvency disputes. Participants can also analyse the proposal to establish a consistent framework for assessing the arbitrability of insolvency matters, which involves the separation of non-arbitrable issues from those that can be resolved through arbitration, and the Insolvency and Arbitration Toolkit published by the International Bar Association.

3. Intersection of Insolvency and Money Laundering

Insolvency law deals with the restructuring or liquidation of businesses that cannot pay their debts. Money laundering, on the other hand, focuses on disguising the origins of illegally obtained funds. The intersection and convergence of these two areas arise when insolvency proceedings uncover evidence that a company's financial woes stem from money laundering activities. Although the PMLA is a powerful tool against financial crimes, the conflict between the IBC and PMLA arises when competing claims are made on the same properties. This situation frequently involves secured creditors with legitimate liens on assets clashing with PMLA enforcement agencies aiming to address money laundering provisions.

The tension escalates when lenders have financed these assets, and PMLA authorities seek to confiscate them due to alleged offences by the owner that fall under PMLA-listed crimes. In India's modern legal landscape, the intersection of the IBC and PMLA has become a complex and contentious area, posing numerous challenges and sparking significant debate.

Participants can explore this sub-theme by outlining the effectiveness of the current insolvency and money laundering frameworks. It would include potential loopholes that allow tainted assets to go undetected, and possible solutions that may solve this legal quandary. On the same line of thought, participants can provide policy suggestions and possible amendments that will solve this long-standing issue. Moreover, participants can attempt to resolve the tussle between the provisions of IBC and PMLA, on which one should be given primacy.

Participants may also explore the challenges that stem from the IBC's Section 14 moratorium, which safeguards the corporate debtor during CIRP and the PMLA's aim to seize assets associated with money laundering, creating a legally intricate situation. Additionally, the conflict arising from the operation of Section 32A of the IBC with respect to prosecution under PMLA can be explored with respect to PMLA. Alternatively, participants may investigate to what extent the Insolvency & Bankruptcy Code (Amendment) Act, 2020 has been able to harmonise the dilemma between IBC and PMLA. Finally, the participants can do a cross-jurisdiction comparison where countries have been able to overcome the contention between insolvency and money laundering and how India can learn from the same.

4. Real Estate Sector & IB Code, 2016

The real estate sector in India has the second-highest number of admitted CIRPs. The recent interactions between insolvency law and the real estate sector, along with atypical and innovative judicial approaches, have left ample room for discussion. The IBC and RERA, both discrete in their approaches – the former being creditor-centric and the latter homebuyers-centric – invariably engage in a constant tug-of-war. Harmonising the two for the ultimate aim of safeguarding homebuyers is also complicated by the unequivocal wording in Section 238 of the Code. A slew of judgements in the past few years have upheld the classification of homebuyers as financial creditors under the Code via the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. Although seemingly progressive, this development doesn't address lacunae such as the potential for exploitation by homebuyers.

Apart from having their own set of challenges, the judiciary has brought forth unique concepts to deal with this niche of insolvency. Project-wise CIRP, for example, entails a piecemeal completion of real-estate CIRP, accelerated by the proposal of a Resolution Plan and investment by a promoter. This mechanism has been further supplemented by the recent amendments carried out in the CIRP Regulations of 2016 in February 2024.

Given this backdrop, the participants are encouraged to analyse the multiple amendments and judgements, as well as the resulting legal implications of such legislative and judicial intervention. Further, the nuances of real estate insolvency and the uniqueness of the issues and concepts warrant an in-depth exploration that participants may take up.

5. Green Insolvency

Due to the increasing acknowledgement of the importance of addressing environmental issues and promoting sustainable practices within the corporate landscape; green insolvency emerges as a viable approach to the existing conundrum. Green insolvency strives to incorporate environmental considerations and sustainability principles into the insolvency and restructuring processes. The intersection of environmental and bankruptcy laws has only recently garnered significant attention. Traditionally, major indices evaluating insolvency regimes did not consider how jurisdictions handle the environmental obligations of insolvent firms or the protections for environmental matters during insolvency proceedings. This oversight is now being recognized, prompting a growing focus on integrating environmental considerations into insolvency frameworks.

Within the IBC framework, environmental authorities are treated as operational creditors, but the process of claims does not directly apply to the insolvency resolution process. Operational creditors are entitled to either the liquidation value of their debt or the amount that would have been paid under the resolution plan. Environmental claims, often involving unliquidated damages or penalties, pose challenges in quantification.

There is a growing call for amendments to the IBC to address these challenges and align insolvency practices with environmental goals. This includes explicitly mandating the consideration of Environmental, Social, and Governance (ESG) factors during the evaluation of resolution plans for distressed companies. Given the growing global focus on sustainability, integrating green principles into insolvency proceedings becomes imperative.

Participants can explore various aspects of green insolvency, such as the legal and regulatory framework for addressing environmental claims in insolvency, the role of stakeholders in promoting green restructuring, and the potential impact of green insolvency on corporate sustainability practices. Participants can also write about the need for including mandatory ESG considerations in resolution plans. This could involve addressing the civil claims and statutory liabilities related to environmental damages. Additionally, they might discuss the pliability of principles of “absolute liability” and “polluter pays” with respect to restructuring under IBC’s resolution regime. Through their essays, participants can advance discussions on how insolvency laws can better serve environmental objectives while ensuring the viability of distressed companies.

6. Impact of IBC on Credit Culture

An inefficient insolvency and bankruptcy regime acts as a stumbling block to the progress and development of credit markets. The role of Insolvency and Bankruptcy code is to reform its framework by providing a streamlined and time-bound process for insolvency resolution, thereby enhancing creditor confidence and improving the overall efficiency of accessing credit. It was a shift towards a creditor-in-control regime which promised to reduce the cost of debt, improve credit supply and nudge firms towards long-term loans. The objective of IBC was to create conditions so that credit could be generated from the domestic market and investments could be drawn from the international market. This has, in turn, facilitated better risk assessment by financial institutions, leading to increased credit availability and enhanced market discipline among borrowers. Additionally, the IBC has contributed to a reduction in non-performing assets (NPAs) and improved asset quality for financial institutions by enabling more effective debt recovery. In order to achieve those objectives, it was necessary to create a culture of deterrence against default. IBC ensures that lenders get repaid on time, making India a more attractive investment destination for international stakeholders. The impact of IBC on credit markets has resulted in a significant reduction in the cost of debt and improvement in debt structure, and through these channels, an improvement in the overall performance of distressed firms vis-à-vis non distressed firms. Continuous improvements and stakeholder engagement are crucial for sustaining the positive role of the IBC in India’s credit culture.

Participants may analyse the impact brought about by IBC in the credit system for domestic & international actors. They can also explore the impact of IBC on business culture and how it has aided firms and corporate entities from recovery to revival. Participants are further encouraged to address the challenges faced by IBC due to capacity constraints of the NCLT, and the adoption of best international practices to promote greater awareness and understanding of the code among stakeholders.

ELIGIBILITY OF PARTICIPANTS

Authors must be pursuing their 5-year integrated LL.B. (Hons.) course/3-year LL.B. course/LL.M. from any recognised university in India and equivalent law degree, abroad for the academic year of 2024-2025, to be eligible to participate in the competition.

STRUCTURE

All entries will be judged and ranked by the Committee and Lakshmikumaran & Sridharan. The top three entries will be selected after an intense review procedure for an offline paper presentation. The participants may adopt any suitable means for presenting the papers including audio-visual aids, such as PowerPoint presentation. The final rankings of the authors will be determined on the basis of the cumulative score of the paper presentation in the offline conference and that of their essay. The entries selected for the offline conference will also be considered for publication in the next issue of the RMLNLU Law Review Journal & the RMLNLU Law Review Blog and will be monetarily rewarded by the Committee.

PRIZES

- **Winner - INR 15,000/-**
- **First Runner-up - INR 10,000/-**
- **Second Runner-up - INR 5,000/-**
- The authors of the top three entries to the competition will upon the discretion of Lakshmikumaran & Sridharan get an opportunity to intern at Lakshmikumaran & Sridharan's office. Lakshmikumaran & Sridharan reserves all rights to determine the office, dates and team under which the internship is granted. The top three entries will receive a 'Certificate of Merit'.
- Top three entries will be published on the RMLNLU Law Review Blog.

- Top three entries may be considered for publication in the next issue of the RMLNLU Law Review Journal.
- All participants shall be receiving a 'Certificate of Participation'.

PARTICIPATION GUIDELINES

Co-authorship of entries (maximum two) among individuals from the same or different institutions is allowed. Multiple entries from the same authors are not allowed. Entries should be original, unpublished and non-plagiarized.

SUBMISSION GUIDELINES

Participants are requested to adhere to the following submission guidelines:

- Word Limit for the Competition: 4000-5000 words (excluding footnotes).
- Individual Attachments: Name; e-mail; contact number; current academic status (year of study, name of university etc.); undertaking as to guarantee of originality.
- Formatting specifications:
 - Font and size for the essay: Times New Roman | 12
 - Font and size for footnotes: Times New Roman | 10
 - Line spacing: 1.5
 - Page size: A4 - Margin - 1' from all sides
 - Alignment: Justified
- Citation Style: Footnotes must be properly cited strictly in accordance with the latest OSCOLA (4th edition) format. No endnotes or speaking footnotes (descriptive footnotes) are permitted.
- Entries should be emailed to rilec.rmlnlu@gmail.com under the subject title "Entry for 12th RILEC - [Name(s) of Author(s)]" in Microsoft Word (.doc or .docx) format.
- Any queries relating to the Competition should be addressed to rilec.rmlnlu@gmail.com.

MISCELLANEOUS RULES

- The copyright for all entries shall vest with the Committee which herewith reserves the right to modify, postpone or defer the Competition and its adjudication indefinitely as and when exigencies of an unforeseen nature may arise.

- Any attempt, direct or indirect, to contact the panel of judges will be met with the immediate disqualification of the relevant entry.
- Any indication of the author's name or university in the entry shall lead to immediate disqualification from the Competition. Details about the author may only be specified in the body of the mail and the name of the author must not be mentioned in the name of the file submitted.

DATES & DEADLINES

- Last date for submission of manuscript: **13th September 2024**. Late entries will not be entertained.
- The offline conference will be held in February, tentatively. The exact dates of the conference will be announced soon.

CONTACT DETAILS

Write to us at rilec.rmlnlu@gmail.com in case of queries.

You may also reach us through the phone.

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