

Minutes of the Meeting on Insolvency and Exit Issues
Organized by FISME at Chinar, India Habitat Center on 5th April 2010

Participants:

- i. Mr. Jitesh Khosla (OSD, Indian Institute of Corporate Affairs)
- ii. Prof. Bibek Debroy, (Noted economist)
- iii. Ms. Pallavi S. Shroff (Partner, Amarchand & Mangaldas & Suresh A. Shroff & Co.)
- iv. Dr. Laveesh Bhandari (Noted economist)
- v. Ms. Sangeeta Saxena, Dy. Director, DC-MSME
- vi. Mr. V.K. Agarwal, Sr. Vice President, FISME
- vii. Mr. Dinesh Singhal, Past President FISME
- viii. Mr. Anil Bhardwaj, Secretary General, FISME



Left to Right: Mr. Jitesh Khosla; Mr. Sudhir Lamba; Mr. Anil Bhardwaj; Mr. V K Agarwal; Mr. Dinesh Singhal; Prof. Bibek Debroy and Ms. Pallavi S. Shroff



1. FISME as member of the sub-group on insolvency and exit related issues within the PM's Taskforce* for MSMEs, has been asked to explore the contours of a legislation to take care of the following observations in the final recommendation of the Task Force:

“...In place of the outdated Provincial Insolvency Act, 1920, action may be initiated to formulate and circulate a model Insolvency Act within 6 months which will have enabling provisions for time bound revival and exit for the unincorporated firms. The model Act should take into consideration the following 4 critical elements:

- (a) a specialized quasi-judicial body, to appraise viability and set up time bound revival/ closure plans;*
- (b) enabling provisions for a holding period for revival;*
- (c) segregation of business assets from personal assets based on reasonable norms; and*
- (d) speedy winding up in case the business is determined as non-revivable.”*

2. In furtherance of the above mandate and as first step in the process of implementation of the above recommendations of Prime Minister's Taskforce on exit and insolvency, FISME, organized a meeting of the economic and legal experts with representatives from Ministry of MSME. DC-MSME and Ministry of Corporate Affairs/ IICA with a focused and doable objective to:
 - a. Recap the critical MSME specific elements in debate on insolvency, bankruptcy and exit

** Following the meeting of representatives of MSME associations with the Prime Minister of India in Aug 2009, it was decided that a Task Force be set up under Chairmanship of Principal Secretary to the PM to resolve MSME issues. The Task Force classified the issues into 6 separate Sub-Groups for detailed examination namely: (i) credit, (ii) marketing, (iii) labour, (iv) rehabilitation and exit policy (v) infrastructure, technology and skill development and (vi) taxation; and a separate one for North-East and J&K. The final report of the Taskforce has since been submitted.*



- b. Discuss the legislative and administrative reforms that can result in providing succor to individuals and MSMEs in the eventuality of their inability to pay off their debts.
- c. Scope and assign work / roles among cooperating/ participating institutions



Left to Right: Ms. Sangeeta Saxena; Mr. Sudhir Lamba; Mr. Anil Bhardwaj; Mr. V K Agarwal and Mr. Dinesh Singhal

- 3. The house noted important developments taking place in India in the sphere of ‘Body Corporates’ through proposed Companies Bill or LLP Act with regards to limiting liabilities and improving processes for winding-up. Participants were however of the view that as 97% of MSMEs were essentially partnerships and proprietorships, issues arising out of business failure could only be addressed through a modern law on ‘Personal Insolvency’. Therefore, an early consensus was reached during the discussion that the proposed solution would focus on personal insolvency.



4. Representative from DCMSME highlighted that Chapter VII and XI of the US Bankruptcy code could be emulated in India. (Chapter VII provides for liquidation and Chapter XI for reorganization both for individuals and corporates).
5. After engaging discussion on prevalence of various types of provisions of Insolvency and Bankruptcy in other countries, the following consensus points emerged:
 - a. The answer to MSME problems lies in addressing Personal Insolvency legislation and affordable litigation-process/administrative mechanism
 - b. While legislative intent could be picked from US bankruptcy code for its effectiveness/simplicity, litigation-process/administrative mechanism needs be picked from elsewhere (UK or other EU states) so that it should not become too much advocate driven or such a mechanism could become out of reach for most MSMEs.
 - c. Best practices from other countries need to be identified as to how public and private service providers (of insolvency services) could help MSMEs' access improved insolvency mechanism





Left to Right: Prof. Bibek Debroy; Ms. Pallavi S. Shroff and Dr. Laveesh Bhandari

6. The following action plan was agreed to take the initiative forward:
 - a. Ms. Shroff reiterated interest of her organization to draft a legislation and propose an administrative mechanism. She agreed to provide a brief /initial note on scope of work envisaged with indicative time lines
 - b. FISME to provide all the background papers, notes, and books relevant to the subject and also arrange interaction of researchers with stakeholders as and when required.
 - c. IICA agreed to provide research support in this endeavour. FISME to coordinate with the ministry of MSME for a formal request to IICA for this assistance.
 - d. Prof. Bibek Debroy and Dr. Laveesh Bhandari agreed to provide specific inputs requested by the research team.

