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**Nottingham Trent
University**



**GLOBAL INITIATIVE OF ACADEMIC NETWORKS
MINISTRY OF EDUCATION, GOVT. OF INDIA,
SPONSORED COURSE ON**

**“COMPARATIVE INSOLVENCY AND BANKRUPTCY LAW”
Course Code: [196028W01]**

ORGANISED BY

**CENTRE FOR TRANSNATIONAL COMMERCIAL LAW
NATIONAL LAW UNIVERSITY DELHI
SECTOR 14 DWARKA, NEW DELHI- 110078.**

27-February to 11-March 2023

Mode: OFFLINE

Course Overview

The last few years have presented significant challenges for companies. In 2020 the Covid-19 pandemic illustrated the great struggles that companies can face in remaining profitable and the important role of insolvency laws in helping companies to survive difficult times. Although governments around the world intervened with loans and other financial support, which will have helped companies to survive, many are now facing other challenges. It is obviously unsustainable for the government to keep supporting struggling companies and there is also a role for legal procedures which enable companies to make changes that can help them to survive in market conditions once the support ends and this is one of the roles of insolvency law.

It is important to have regard to the broader international context in looking at insolvency laws. Since 1991 the world has experienced increasing globalization. National systems of market capitalism need a subsystem to deal with market failures. A legal system that provides effective recognition of property rights and contract rights must have a corresponding legal subsystem to reallocate those rights. Unlike some legal systems in the past that made insolvency a penal offence, the principal goal of modern restructuring law is pragmatic: to provide a supervised forum in which there is a moratorium on actions by individual creditors while the assets of the failed firm are disposed of in a way that provides more to creditors (and society) collectively. In other words, restructuring laws provide a means by which the value of even an unsuccessful firm can be maximized to the good of all concerned.

This short course will examine twelve themes of the restructuring laws of primarily two nations: India, which recently enacted the Insolvency and Bankruptcy Code 2016, and the United Kingdom, which has longer-established insolvency laws in the Insolvency Act 1986, recently augmented in an emergency response to Covid-19. It will compare the various ways these legal systems seek to achieve the principal goal of realizing the going-concern value of a firm for the

benefit of all creditors, noted above. The means to achieve this goal may differ. The history and legal culture of a nation, when combined with differing secondary goals, also contributes to the differences among these systems. The course will analyse these issues by references to cases such as the Jet Airways (India) Ltd bankruptcy.

We thus hope that this short course will not only increase the knowledge of its students but provide them with useful and practical insights into perhaps more efficient ways to achieve the principal goal. This course is a result of our consideration of these pedagogical issues focusing on private transactions. The approach to be adopted is one that we hope is not overly burdensome or taxing to students and professors but will be interesting and engaging, drawing upon recent examples, including the response to Covid-19. We have tried to keep the amount of material in the course to that which should be easily manageable in a thirty to forty hour course.

Objectives:

The primary objectives of this course are as follows:

1. To introduce participants to comparative aspects of insolvency and bankruptcy law.
2. To gain an understanding of relevant legislation and case law analysis, through detailed discussions of judicial and arbitral decisions involving insolvency and bankruptcy laws.
3. To provide instruction on the importance of the contract—the agreement between the parties – and the impact of insolvency on contracts.
4. To introduce insolvency & bankruptcy resolution mechanisms—resolution plans, restructuring, pre-packs, etc.
5. To introduce the concepts and basic approaches to cross border insolvencies.

Teaching Faculty

1. **PROFESSOR REBECCA PARRY (RP/Parry):**
2. **DR. RISHAM GARG <Host Faculty> (RG/Garg) :**

Teaching Method: The teaching method will be primarily via lecture. However, students will be expected to answer questions on assigned readings and to engage in discussion on the course materials. In particular, the assigned readings will include court decisions, arbitral awards, and hypothetical or practical problems that the students will be expected to analyze and discuss in class.

Course details

Duration: February 27 – March 11, 2023

20 hours lectures and 20 hours Tutorials | 4 hours per day | 2:30 pm to 6:30 pm

Tentative Lecture Schedule

Day	Date	Faculty	Topic
1	Monday, 27-Feb 2023	Parry	Nature and incidence of Insolvency and Bankruptcy, Corporate Rescue. Collective Proceedings; Insolvency Procedures; Alternatives to Formal Insolvency Laws. The administrative machinery- Adjudicatory Authority, Regulator, Insolvency Professionals; The Insolvency Application
		Garg	Case study on Insolvency Applications u/IBC S.7,9,10.
2	Tuesday, 28-Feb 2023	Parry	The Moratorium under UK Law; Proceeding against Guarantors; Obligations of Insolvency Professional
		Garg	The Moratorium in India u/IBC; Obligations of Insolvency Professional. Case study on Moratorium
3	Wed. 1 st March 2023	Parry	The Creditors' Committee, Managing the business as a going concern. Resolving Insolvency in UK- Negotiating the Restructuring Plan, Cramdown Failure of Restructuring process, the Liquidation and priority of payments in UK Case Study Liquidation and priority of payments in UK
4	Thu. 2 nd March 2023	Garg	Resolving Insolvency in India- Negotiating the Resolution Plan. Failure of Resolution process, the Liquidation and priority of payments in India Case Study on Resolving Insolvency in India- the Resolution Plan
5	Fri. 3 rd March 2023	Parry	Impact of Insolvency on Executory Contracts in the UK

		Garg	Avoidance Transactions in Insolvencies in India Case study on Avoidance Transactions in Insolvencies
6	Mon. 6 th March 2023	Parry	Transaction Avoidance in Insolvencies-1 Transaction Avoidance in Insolvencies-2 Case Study Transaction Avoidance in Insolvencies UK
7	Tue. 7 th March 2023	Garg	Liability for non-implementation of Resolution Plan; Offences under IBC.
		Parry	Liability of Directors and others in insolvency. Directors' duties in the twilight zone. Director disqualification and insolvency offences. Mock Case on director liabilities
8	Wed. 8 th March 2023	Parry	Small and medium company (SME) insolvencies including family businesses, guarantees.
		Garg	Small and medium company (SME) insolvencies including family businesses, guarantees. SMEs and prepacks in India. Prepacks – how to make these more effective in India
9	Thu. 9 th March 2023	Parry	Disclaimer of Transactions, Distribution of Assets, Exempted Property, Discharge order- UK Case study on insolvency practitioner regulation- UK
		Garg	Insolvency and Bankruptcy Resolution of Personal Guarantors to Corporates
10	Fri. 10 th March 2023	Parry	International Insolvency- Key concepts, Public Policy UNCITRAL Model Law on Cross-Border Insolvency- Relief to Insolvency Professionals, Judicial Insolvency Network
		Garg	Insolvency Judgments, Recognition of Foreign Proceedings Case Study on Cross-Border Insolvency- Key concepts
	Sat. 11 th March	TEST	TEST

Course Faculty

Professor Rebecca Parry



Nottingham Law School

Rebecca 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 teaches several insolvency law modules at Master's level and she has supervised 19 PhD students to successful completion. She has previously held visiting appointments at Padova University, Radboud University, Nijmegen, Michigan State University, Johann Wolfgang Goethe -Universität, Frankfurt am Main and the University of Bremen. Rebecca became an academic after studying for a PhD at the University of Manchester (1995-1997). Her thesis was on avoidable transactions in insolvency law and it was supervised by Professor David Milman. Before joining NTU she was a lecturer and then senior lecturer at the University of Leicester (1997-2007). She is a Fellow of the Higher Education Academy.

Research areas

Rebecca's main research interests lie in the area of insolvency law and, in particular, international and comparative insolvency law with a focus on the UK, the USA, the EU and China. She has interests in related areas of company law, notably directors' duties and director disqualification. Recent publications and projects have concerned insolvent partnerships, cloud computing insolvencies and the development of insolvency laws and institutions in China. Current work looks at state intervention in insolvency proceedings and how insolvencies of nonstate companies who supply public services are handled.

Selected recent publications:

Books and Reports

Transaction Avoidance in Insolvencies, 3rd edn (with contributions from J Ayliffe, S Shivji, G Olliff-Cooper and with H Anderson and W Trower as

consultant editors) (Oxford University Press, 2018) (approx 80% contribution)

Law of Insolvent Partnerships and LLPS (with Elspeth Berry) (Wildy, 2015)

Extending Foreign Restrictions to the UK - a report prepared for the UK Insolvency Service (June 2014), 35,055 words.

China's New Enterprise Bankruptcy Law (edited with Y. Xu and H. Zhang), (Ashgate, 2010), xiv + 357pp. ISBN 978-0-7546-7637-9

Corporate Rescue (Sweet and Maxwell, 2008), xlv + 287pp. ISBN 978 0 421 96670 3

Corporate Rescue: An Overview of Recent Developments from Selected Countries (edited with K. Gromek Broc), (Aalphen aan den Rijn, Netherlands: Kluwer, 2006), xvii +406pp. ISBN 90-411-2414-4

Corporate Rescue: An Overview of Recent Developments from Selected Countries in Europe (edited with K. Gromek Broc), (Kluwer, 2004) 236 pp, ISBN 90-411-2123-4

Refereed articles:

'An Insolvency Regime to Support the Digital Economy' published online in *Forward Thinking - A research and technical conference presented by the Insolvency Service* at

<https://sites.google.com/view/forwardthinkingconference2021/home>

Legal Approaches to Management of the Risk of Cloud Computing Insolvencies (with R Bisson) (2020) *Journal of Corporate Law Studies* (forthcoming, published online 26 Feb 2020

<https://doi.org/10.1080/14735970.2020.1724504>)

Is the Balance of Power in UK Insolvencies Shifting? (with S Gwaza) (2019) 7 *NIBLeJ* 2

Host Faculty & Course Coordinator:

Dr. Risham Garg



Director, Centre for Transnational Commercial Law (CTCL),

Director, Centre for Regulatory Studies (CRS)

Associate Professor of Law,

National Law University, Delhi,

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Dr. Risham Garg holds a Doctor in Laws (LL.D.), doctoral research degree on International Commercial Contracts and Arbitration titled "UN CISG Convention- A Case for Ratification by India". He presently teaches courses of Corporate Insolvency & Bankruptcy, Regulatory Practicum (Corporate), Regulatory Governance, Private International Law in the LLM programme and as Seminar courses; he also teaches courses in the BA.LLB. (Hons.) program on Law of Contracts and Sale of Goods.

Risham also serves as a Co-editor of the Journal of Economic Laws and Policy (JELP) along with Rebecca Parry. He is also the Faculty Advisor and Mentor of the NLUD Journal of Transnational Commercial Law (NTCLR); both of these journals are published by the Centre for Transnational Commercial Law (CTCL). 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. He has been a Visiting Research Scholar at UNCITRAL, Vienna, Austria in 2007. He has previously worked as a Lecturer at the Amity Law School, (IP University Delhi) for over six years during 2002-2009. He has been a visiting faculty at the Delhi Judicial Academy (DJA), LBSNAA, NCLT Members Judicial Colloquium, NLU Odisha Cuttack, the Indian Law Institute, IIT, IIM, IICA, ICAI, ICSI, ICMA.

Risham is also member of professional bodies like the American Bankruptcy Institute, American Society of International Law, INSOL India. He is actively involved with the Insolvency and Bankruptcy Board of India, ICAI, ICSI, ICMA. He has been involved in presenting research papers on contemporary issues in commercial laws and active participation in consultations in various national and international forums.

He has organized the following three MHRD GIAN Courses; viz.,

- (1) GIAN Course on Comparative Contract Law & Practice, during May 12-22, 2016. This course was co-taught by Professor Stefan Vogenauer, Chair of the Max Planck Law, along with Dr. Risham Garg. <http://nludelhi.ac.in/news2.aspx?id=121>
- (2) GIAN Course on Cross-Border Business Law & Practice, during October 10-23, 2016. This course was co-taught by Professor Bruno Zeller of the University of Western Australia, along with Dr. Risham Garg. <http://nludelhi.ac.in/news2.aspx?id=1136>
- (3) GIAN Course on International Business Transactions, September 25-30, 2017. Co-taught by Professor Don Scott DeAmicis, Professor of Law at the

Georgetown University Law Centre, Washington DC; and Dr. Risham Garg

Other Research initiatives:

2019: British High Commission and CII Project on 'Implementation of Cross-Border Insolvency and Individual Insolvency in India'.

2018-2020: SPARC Scheme for Promotion of Academic and Research Collaboration: MHRD IIT Kharagpur 'Legal Education Reforms in India and China' as Co-Director

2022 Research support to the International Financial Services Centres Authority (IFSCA) VCC Committee on 'Commercial Courts at the GIFT City'

Recent Publications:

- *Differential Treatment Among Creditors Under India's Insolvency and Bankruptcy Code, 2016: Issues and Solutions, Charles Scott Pryor and Risham Garg, The American Bankruptcy Law Journal, Volume 94 Issue 1 Winter 2020.*
- *Issues in Corporate Group Insolvencies, 2019 NLUJ Law Journal, published by Sage Publishers; Citation 6(1) 50-64, 2019*
- *Role of Directors in Cross-Border Insolvency, April 2018, ICAI Journal*
- *"Enforcing Cross-border Mediation Settlement Agreements", Maadhyam Law Journal, Jan., 2018*
- *Uniform Commercial Laws as an Aid to Doing Business and Enforcing Contracts in India, Series in Transnational Commercial Law, 2017. ISBN: 978-93-84272-09-8.*
- *Issues in Drafting and Enforcing International Commercial Contracts in India: An Empirical Analysis- Dr. Risham Garg*
- *World Bank Ease of Doing Business Report and the Indian Business Environment-Dr. Risham Garg, Amrita Singh, Prakhar Ganguly*
- *Maritime Dispute Resolution- Dr. Risham Garg, Amrita Singh*
- *Corporate Insolvency and Bankruptcy in India- A welcome move towards a Unified Law- Dr. Risham Garg*
- *Towards an Effective Cross-border Insolvency Regime in India- Dr. Risham Garg*
- *Uniform Commercial Laws as an Aid to Doing Business and Enforcing Contracts in India, Series in Transnational Commercial Law, 2017-18, National Law University Delhi. ISBN: 978-93-84272-09-8*

Email: Risham.Garg@nludelhi.ac.in

Areas of interest: Corporate Insolvency & Bankruptcy, Transnational Commercial Laws, Private International Law, Law of Contracts & Sale of Goods, Fintech Regulation, Regulatory Governance.

CREDITS

The course is credit based. Candidates will earn **TWO Credits** upon successful completion of this course, as per MHRD Guidelines on GIAN. Participants will have to identify a compatible course from their institution to be able to transfer the credits, they will have to process applications in their respective institutions.

LOGISTICS

Faculty/students from academic institutions are also required to send a copy of their current valid Identity card or a bonafide certificate from their institution.

The maximum number of participants will be limited to fifty only. As per GIAN Guidelines, candidates of the host institution can fill a maximum 50% of the total seats.

In the event that the number of applications received exceed 50, a selection criteria identified by the University shall be adopted to shortlist the participants; increasing the no. of seats may also be considered.

YOU SHOULD ATTEND IF

- Law students at all levels (BA LLB/LLB/LLM/JD/JSD/PhD);
- Faculty from law schools, universities, colleges and higher education;
- Lawyers, In-house counsels; Insolvency Professionals, Bankers
- Professionals from industry involving insolvency and bankruptcy

Course Fee Structure Participation fees is as follows

(Excluding onetime GIAN Portal Registration fee of Rs 500/-):

COURSE FEES: The participation fees for the course are as follows:

A. Professionals/Lawyers/Non-Academics (without accommodation): Rs. 40,000/-

B. Faculty/Students from academic institutions (without accommodation): Rs. 20,000/-

C. Faculty/Students from academic institutions (including accommodation): Rs. 45,000/-

D. Faculty and Students from National Law University, Delhi: Rs. 5,000/=

E. Participants from outside India: US \$500/-

The above fee includes all instructional materials, classes and internet facility. The participants will be required to pay separately for food/meals. Accommodation may be provided within the University campus only in case of availability, which

will be in limited numbers. Preference shall be given to faculty members and outstation candidates.

How to Register

Step-1: Web Portal Registration: Visit <http://www.gian.iitkgp.ac.in/GREGN/index> and create login User ID and Password. Fill up the registration form and complete one time web registration by online payment of Rs. 500/-. This provides the user with lifetime registration to enroll in any number of GIAN courses offered.

Step-2: Course Registration: Login to the GIAN portal with the user ID and Password already created in Step 1. Click on Course Registration option at the top of Registration form. Select the Course titled “Comparative Insolvency and Bankruptcy Law” from the list and click on save option. Confirm your registration by clicking on “Confirm Course”.

Step-3: Initiate the payment (as per table above) for the course

Step-4: Once the payment is made, send email to insolvency.practicum@nludelhi.ac.in to secure your seat and receive confirmation of participation.

Email: insolvency.practicum@nludelhi.ac.in

National Law University Delhi, Sector-14, Dwarka, New Delhi-110078.

<http://nludelhi.ac.in/gian.aspx>

Course Coordinator:

Dr. Risham Garg