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ASSET TRACING AND RECOVERY: IS INDIA READY?

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ACKNOWLEDGEMENT

INSOL International is pleased to present a new technical paper, "Asset Tracing and Recovery: Is India Ready?", written by Surbhi Pareek and Monil Chheda (Principal Associates, Cyril Amarchand Mangaldas).

The authors explore a substantive area that has captured the attention of the insolvency world in recent years, as the pace of digital and technological change has increased and the means for insolvency assets to be dissipated has expanded correspondingly. This has, in turn, placed a spotlight on the need for effective asset tracing and recovery tools, particularly those that are capable of being exercised and recognised on a cross-border basis. UNCITRAL's Working Group V is currently developing a "toolbox" approach intended to assist courts, regulators and practitioners in developing a consistent and predictable cross-border framework in that regard.

This paper examines asset tracing and recovery specifically from an Indian perspective, traversing the judicial and legislative scope and means for assets to be identified and for remedies to be granted to restore misappropriated property. The paper also outlines key challenges to asset tracing and recovery in India, and proposes a range of important mechanisms to enhance the efficacy of outcomes for the insolvency estate, including greater specialisation among courts and practitioners and the development of protocols.

The paper reflects INSOL International's strong focus on asset tracing and recovery as an identified area of importance for our members, building on the work of INSOL's dedicated Asset Tracing & Recovery Group.

INSOL expresses its appreciation to the authors for their time and expertise in writing this paper.

INSOL International

June 2024

* The views expressed in this technical paper are the views of the authors and not of INSOL International or the firm to which the authors belong.

1 The authors deeply thank Mr. Dhananjay Kumar, Partner, Cyril Amarchand Mangaldas, for his valuable inputs on this paper.

1. Introduction

With the advent of the digital age and artificial intelligence blurring cross-border jurisdictional lines, the insolvency regime faces new challenges in respect of asset tracing and recovery. These challenges arise particularly in the context of differences in jurisdictional, procedural and substantive rules, inconsistency in practice and divergent domestic laws.

The subject matter has drawn the attention of practitioners across the globe and there has been increasing deliberation on the requirement to have a model legislative provision on civil asset tracing and recovery in insolvency proceedings using a so-called “toolbox approach”.² The United Nations Commission on International Trade Law (UNCITRAL), through its Working Group V, is also working on developing the legislative principles to enhance cross-border cooperation for civil asset tracing and recovery in insolvency proceedings.

While there is no globally accepted definition, the term “asset tracing” has been generally understood to mean a process of identifying and locating assets of the debtor or their proceeds.³ On the other hand, “asset recovery” is an act subsequent to asset tracing which contemplates return to the insolvency estate of those assets of the debtor that under the applicable law are to be made subject to the insolvency proceedings and which can be distributed among creditors.⁴

In the context of insolvency proceedings, the basis for asset tracing and recovery emanates from the principle that the insolvency estate of the debtor shall comprise all the assets of the debtor (whether disclosed or not). In this regard, the UNCITRAL Legislative Guide on Insolvency Law contemplates that the insolvency estate should consist of all assets of the debtor, including rights and interests in assets, wherever located. This entails:

- (a) assets of the debtor, including the debtor’s interest in encumbered assets and in third-party owned assets;
- (b) assets acquired after commencement of the insolvency proceedings; and
- (c) assets recovered through avoidance and other actions.⁵

The Legislative Guide further recommends that any undisclosed or concealed assets should form part of the insolvency estate.⁶ It is in this context that the toolkit for asset tracing and recovery in domestic laws becomes critical for the protection, preservation and maximisation of the value of the insolvency estate of the debtor for the benefit of all stakeholders.

The scope and ambit of the terms “asset tracing” and “asset recovery” covers a wide myriad of commercial transactions in general. This technical paper focuses on the existing framework for asset tracing in India in the context of civil, insolvency and criminal laws, and further attempts to assess the availability, accessibility, effectiveness and efficiency of the existing tools in a domestic and cross-border scenario. This paper also sets out certain indicative recommendations for an efficient asset tracing framework in India.

2. The asset tracing legal regimes in India: civil and criminal remedies

2.1 Existing Indian civil framework for asset tracing and recovery

The Indian legal system is common law-based and shares similarities with the principles and rules of law prevalent among other common law jurisdictions such as England and Wales.

The Indian judiciary has wide-ranging powers, not only in achieving the objectives of various statutes dealing with the subject matter of fraudulent activities, but also to grant / pass such *ad-interim* injunctive relief and orders as may be necessary to protect creditors from the irreparable harm that may be caused by a devious debtor.

Wide powers have been granted to courts under the Civil Procedure Code, 1908 (Civil Code), which is the principal statute dealing with the powers of the court to grant injunctive relief and appoint receivers of property. Further, the mischief of fraud and its ramifications for a transaction are also addressed through specific statutes such as the Indian Contract Act, 1872 (Contract Act), the Transfer of Property Act, 1882 (TOPA), the Companies Act, 2013 (Companies Act) and the Insolvency and Bankruptcy Code, 2016 (Bankruptcy Code).

We have set out below a brief summary of the remedies available to a creditor seeking to discover / trace, attach, and subsequently liquidate properties in the context of these statutes.

2 During its Fifty Second Session (Vienna, 18–22 December 2017), Working Group V received a proposal from the United States (A/CN.9/WG.V/WP.154) contemplating a model legislative provisions on civil asset tracing and recovery in insolvency proceedings using a toolbox approach, i.e., a set of options to choose from for enactment as domestic law in jurisdictions that are interested in enhancing cross-border cooperation in this area. This was followed by another detailed proposal during Working Group V’s Fifty Sixth Session, resulting in detailed deliberation. Eventually, a Colloquium was constituted on Civil Asset Tracing and Recovery (Vienna, 6 December 2019) (A/CN.9/1008). Thereafter, various sessions have been organised by the Working Group since 2020, the latest being on the Sixty Fourth Session held on 13–17 May 2024.

3 Working Group V Sixty Third Session, 11–15 December 2023 (A/CN.9/WG.V/WP.189).

4 *Ibid.*

5 UNCITRAL Legislative Guide on Insolvency Law, Part 1 and 2, Recommendation 35.

6 *Idem*, Part 5, Recommendation 314.

2.2 Temporary relief / ad-interim injunctions

The initiation of civil recovery proceedings, including proceedings initiated with respect to recovery and asset tracing, are predominantly governed by the provisions of the Civil Code. The Civil Code deals with the adjudication of issues, including which court may exercise jurisdiction over a party against whom proceedings are to be initiated⁷ and which court can pass appropriate orders, in each case based on the location of the debtor's assets (as may be situated in India). The Civil Code gives powers to a court to issue temporary injunctions, including an *ex-parte* injunction, against the disposal of any assets, or to restrain any action by a party, until the continuation of the legal proceedings⁸ as an *ad-interim* measure.

The courts apply a threefold test which determines the basis on which an interim relief / injunction for disposal of assets can be granted:

- (a) whether the plaintiff has established a *prima facie* case;
- (b) the balance of convenience; and
- (c) whether irreparable harm or injury may be caused to the plaintiff, which may not be adequately remedied through the grant of damages at a later point in time⁹ and necessitates the granting of the injunction at the present stage itself.

2.3 Freezing injunction prior to decree / judgment

Under the Civil Code, a creditor can seek a freezing injunction to protect itself against the siphoning / transfer of assets of a debtor.¹⁰ The creditor can also seek the appointment of a receiver, who will take possession of the assets and preserve them until the decree is secured.¹¹ The power to attach before decree and seeking appointment of a receiver are used sparingly by the Indian courts. The exercise of such powers is subject to the establishment of a *prima facie* case and showing that the debtor is seeking to dispose of the relevant assets to obstruct the execution of a potential decree.¹²

2.4 Key stages in civil asset tracing and recovery proceedings in India

In the context of the Civil Code, asset tracing and recovery proceedings can be broadly bifurcated into the following key stages:

- (a) identification, investigation and fact check / gather exercises;
- (b) initiation of recovery action, with a special emphasis on seeking an ad-interim relief / injunction on diversion of assets / funds;
- (c) undertaking investigation and discovery with the assistance of the court;
- (d) obtaining a judgment / decree and seeking the provisional attachment of assets before the decree;
- (e) filing for the execution of the judgment / decree, along with seeking details of the assets of the judgment debtor; and
- (f) securing payment of the decree amount through attachment and sale of assets.

The stages set out above involve meticulous efforts from creditors and certain risks to be mitigated. For example, while undertaking the identification, investigation and fact collection exercise, it would be useful to take advantage of the public databases relating to the debtor and its related entities (including the promoters).

Public records available under the Registration Act, 1908, especially for transactions relating to immovable property, are useful tools to discover assets of a debtor. However, obtaining this information is a meticulous and time-consuming process. A central database is not available in India and is something the Indian Government should consider implementing as a need of the hour to facilitate the timely discovery of properties.

In connection with the execution of decrees, the same is required to be instituted by way of separate proceedings by the decree holder after securing a judgment. The Civil Code permits judgments / decrees passed by foreign courts to be executed in India, subject to the relevant foreign country being notified as a reciprocating territory under section 44A of the Civil Code. Countries recognised by India for the purpose of execution of a foreign decree include England, Hong Kong and Malaysia.

In cases where an international creditor has obtained a judgment from a court not located in a reciprocating territory, the creditor ought to bring a suit afresh to enforce the decree in an Indian court. Further, the mechanism

⁷ Section 20, CPC.

⁸ *Idem*, Order 39 Rule 1 and 2.

⁹ *Gujarat Bottling Co. Ltd. v. The Coca-Cola Co AIR 1995 SC 2372.*

¹⁰ Order 38 Rule 5, CPC.

¹¹ *Idem*, Order 40 Rule 1.

¹² *Raman Tech. & Process Eng. Co. v. Solanki Traders (2008) 2 SCC 302.*

for enforcement of foreign judgments under the Civil Code is not broad enough to include all insolvency orders such as orders regarding reorganisation processes, moratoria and administrative and interim orders. This issue was highlighted in a case¹³ where the Bombay High Court overlooked an insolvency order passed in Singapore (non-reciprocating territory) but upheld a Hong Kong order (reciprocating territory) applying rules of comity.

As a part of the initiation of civil proceedings, a party may typically seek a declaration from the debtor on oath of all its assets (in and outside India). Additionally, the Civil Code gives the courts wide powers with respect to executing a decree against a party, including seeking disclosure on oath of all assets of the judgment debtor. This disclosure comes in handy for the attachment of assets when the debtor fails to pay even after a decree is secured against the debtor. Further, a party which fails to disclose all of its assets on oath or provides inaccurate / false information may be liable for contempt-of-court proceedings. If a party fails to pay any amount pending towards the decree, the decree holder can seek the attachment and sale of properties, both movable and immovable, for the purpose of payment of the decree amount.¹⁴ Attachment orders are passed only once the final decree has been secured by a party and the debtor has failed to adhere to its obligations.

One difficulty encountered in the execution of a decree is that the executing court can permit attachment against only those assets which fall within the territorial jurisdiction of the court where the decree is sought to be executed. Accordingly, a party may sometimes be constrained to seek transfer of the decree from one execution court to another, and onward if the assets of a party are located in multiple territorial jurisdictions within India.¹⁵

2.5 Contractual law remedies

The Contract Act regulates contractual arrangement between the parties. The Contract Act defines fraud as an “intentional suggestion of a fact which is untrue, active concealment of facts, false promise, or any other action declared fraudulent by law”.¹⁶

The Contract Act provides for declaring contracts void at the decision of the victim party in circumstances of misrepresentation and fraud. Accordingly, a party that is the victim of a fraud perpetrated through a contract can avoid the performance of the contract. Further, the victim can also seek to be restored to the *status quo ante*, and can seek damages for any loss suffered pursuant to such fraud or misrepresentation by filing proceedings before the relevant courts.¹⁷

2.6 Transfer of Property Act, 1882 related remedies

The TOPA emphasises the protection of creditors (including a decree holder) from fraudulent transfers of immovable property by a debtor. The TOPA provides for seeking the annulment of a transfer undertaken to defeat the claim of any creditor (including decree holders). The only exception is that a *bona fide* purchaser, who does not have any notice of a prior dispute regarding immovable property, is protected from any proceedings instituted to set aside immovable property purchased. In such circumstances, the creditor can only seek restitution or claim damages.¹⁸ This is relevant in the context where an asset is discovered at a belated stage, after it has already been dissipated by the debtor.

2.7 Companies Act Remedies

Under the Companies Act, it is the directors’ responsibility to create adequate internal financial controls that enable the prevention and detection of fraud and other irregularities within a company. Such internal controls include the setting up of channels for reporting of the receipt of a bribe by an agent. In the event of a failure to do so, various recourses are available under the Companies Act, such as prosecution for fraud, an action for disgorgement pursuant to a class action (in the case of egregious default), or an action for unfair prejudice or oppression and mismanagement.

A statutory auditor of the company is obliged to report fraud if he / she detects that a bribe has been received by a company official. The auditor is obliged not only to detect any fraud in the company but also to ensure that the company takes satisfactory action to remedy it, failing which the auditor is obliged to report it to the Central Government. In the event the auditor fails to do so, he / she is exposed to various legal liabilities.

2.8 Indian insolvency framework for asset tracing and recovery

In 2016, India revamped its insolvency law regime by introducing a rescue-based creditor-in control process under the Bankruptcy Code. Since its introduction, a total of 7,325 corporate insolvency resolution processes (CIRPs) had commenced by the end of December 2023, of which resolution plans were approved in 891 cases, with 2,129 either withdrawn or closed on review or settled, 1,899 undergoing CIRP and 2,376 undergoing liquidation.¹⁹ The Bankruptcy Code provides the framework for corporate and personal bankruptcy in India.

13 *Sumikin Bussan v. King Shing Enterprises*.

14 Order 21, CPC.

15 *Idem*, section 39 r/w Order 21 Rule 8, CPC.

16 Section 17 of the Contract Act.

17 *Idem*, section 19.

18 Section 53, TOPA.

19 The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India (October-December 2023) (Volume 29).

The Bankruptcy Code empowers an administrator to pursue remedies against various types of fraudulent transactions, including preferential transactions, fraudulent or wrongful trading, undervalued transactions and extortionate transactions.²⁰ The administrator has a wide ambit of powers to pursue legal actions against any individuals, whether promoters of the company or third parties, to recover dues for the benefit of creditors.

We have set out below a brief summary of the avoidance provisions as provided for in the Bankruptcy Code.

2.8.1 *Avoidance proceedings*

The Bankruptcy Code requires an administrator to examine the transactions entered into by a corporate debtor in the lead-up to the insolvency commencement date, which can be avoided or set aside by the National Company Law Tribunal (NCLT), as applicable for both the resolution process and the liquidation process. These can be categorised into:

- (a) preferential transactions;
- (b) undervalued transactions;
- (c) transactions defrauding creditors; and
- (d) extortionate credit transactions.

The transaction avoidance power of the administrator is one of the most discussed concepts among insolvency resolution ideas. However, the nature and the consequent ramifications of the orders which are permitted to be passed by the NCLT under the Bankruptcy Code are yet to be properly tested in India. The recognition of these orders outside India and *vice versa* has not been dealt with by the Indian courts.

Preferential transactions

Under the Bankruptcy Code, a transaction is considered to be a preferential transaction if:

- (a) the debtor transfers property or an interest thereof of the debtor for the benefit of a creditor or a surety or guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the debtor; and
- (b) the transfer has the effect of putting the creditor, surety or guarantor in a more beneficial position than it would have been in the event of a distribution of assets being made in accordance with the prescribed liquidation waterfall.

A preferential transaction shall not include the following:

- (a) a transfer made in the ordinary course of the business or financial affairs of the debtor or the transferee; or
- (b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that: (i) the security interest secures new value²¹ and was given at the time of or after the signing of a security agreement that contains a description of the property as a security interest, and was used by the corporate debtor to acquire the property; and (ii) the transfer was registered with an information utility on or before 30 days after the corporate debtor receives possession of the property.

The Supreme Court of India recently had the occasion to consider certain transactions which were alleged to have been preferential transactions and after considering the issues.²² The Court was of the view that, in the context of the exemption mentioned in (a) above, a transfer could be considered as being in the "ordinary course of business" of a corporate entity only if it occurs as part of "the undistinguished common flow of business done", and does not arise out of "any special or particular situation"

Further, it was observed that the test of "ordinary course of business" has to be applied in respect of both corporate debtor and the transferee.

In the context of the exemption mentioned in (b) above, for a transaction to be excluded from the purview of preferential transaction, the Court was of the view that it should result in "value enhancement" or "strengthening of the corporate debtor".

Undervalued transactions

A transaction shall be considered undervalued where the debtor: (a) makes a gift to a person; or (b) enters into a transaction with a person which involves the transfer of one or more assets for a consideration which is significantly less than the consideration provided by the debtor, and the transaction has not taken place in the ordinary course of business of the debtor.

²⁰ Sections 43, 45, 47, 50 and 66 of the Bankruptcy Code

²¹ As per the Explanation to section 43(b) of the Bankruptcy Code, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under the Bankruptcy Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

²² *Anuj Jain, Interim Resolution Professional of Jaypee Infratech Limited v. Axis Bank Limited*

Transactions defrauding creditors

These transactions are a subset of undervalued transactions, but which were undertaken or entered into by the debtor with the deliberate intention: (a) of keeping assets beyond the reach of any person who is entitled to make a claim against the debtor; or (b) to adversely affect the interests of such a person in relation to the claim.

Therefore, for a transaction to be considered as a fraudulent undervalued transaction, it must first meet the test of being an undervalued transaction.

Extortionate transactions

A transaction shall be considered an extortionate credit transaction where the terms require the debtor to make exorbitant payments in respect of the credit provided or are unconscionable under the principles of law relating to contracts.

What will the NCLT order?

In respect of preferential / undervalued transactions, the NCLT may issue an order for:

- (a) the property transferred to be vested in the debtor;
- (b) any property representing the application of proceeds of sale of the property to be vested in the debtor;
- (c) release / discharge of any security interest created in the debtor's assets;
- (d) any person to pay such sums in respect of the benefits received from the debtor as a result of such transaction; and / or
- (e) payment of such consideration for the transaction as may be determined by an independent expert.

In respect of extortionate transactions, the NCLT may issue an order for:

- (a) restoring the position as it existed prior to the transaction;
- (b) setting aside the whole or part of the debt created on account of the extortionate credit transaction;
- (c) modifying the terms of the transaction;
- (d) requiring relinquishment of the security interest created in favour of the liquidator / RP; and / or
- (e) requiring the concerned person to repay the amounts received.

For transactions defrauding creditors, if the NCLT is satisfied that the transaction in question was fraudulent or undervalued, it can make an order for restoring the position as if the transaction had not been entered into and protecting the interests of persons who are victims of the transaction.

Challenges with avoidance provisions

The challenge when undertaking meaningful actions in the context of insolvency proceedings and liquidation proceedings for asset tracing and recovery is the limited time period available to complete the process. This is incompatible with the longer time involved in the adjudication of civil proceedings relating to fraud or asset recovery. In view of the issue, the Insolvency and Bankruptcy Board of India (IBBI) has released a discussion paper on the desirability of the sale of any "not readily realisable assets" (NRRAs) and the appropriate mechanism that may be adopted to pursue the same within the provisions of the Bankruptcy Code.²³ Subsequently, there were amendments made to the regulations to permit liquidators of debtors to assign NRRAs, including fraudulent transactions.

2.9 Criminal remedies

India primarily relies on the Prevention of Money-Laundering Act, 2002 (PMLA) and the Code of Criminal Procedure, 1973 (Criminal Code).

2.9.1 PMLA

Under the PMLA, "proceeds of crime" constitute not only the property obtained through fraudulent activities, but also the equivalent value. Accordingly, even if the proceeds of fraud are commingled with other funds, the value of these proceeds may be identified under the enactment. This is significant because it recognises that the tainted property may no longer be available and it may be necessary to recover from commingled property / funds.

The Directorate of Enforcement (ED), which is the investigating agency under the PMLA, is *inter alia* entitled to attach / freeze properties derived or obtained, directly or indirectly, from the proceeds of crime. If, upon

²³ Discussion Paper on Corporate Liquidation Process, dated 26 August 2020.

completion of a trial, the offence of money laundering is proved, such property stands confiscated by the Government and vested free from all encumbrances. If, however, the trial results in an acquittal, the property is released to the persons entitled to receive it. Regardless, the special court trying the offence of money laundering is entitled to direct the Government to restore the confiscated property to a *bona fide* claimant, who may have suffered a loss due to the offence of money laundering, at any point after or during the trial.

For the large-scale financial insolvencies / fraud that rocked the banking systems of India in the recent past, the accused promoters found ways to escape the jurisdiction of India. Accordingly, to deal with such cases, the Fugitive Economic Offenders Act, 2018 (FOEA) was enacted. The FOEA deals with economic offences involving amounts of INR 100 Crores or more and gives authorities extraterritorial jurisdiction to confiscate properties situated outside India. It is pertinent to note that once a property is confiscated (unlike attachment in civil proceedings), the authorities have the right to liquidate the properties and realise the proceeds.

The ED in India now adopts a two-pronged attack: proceedings under the PMLA along with proceedings under the FOEA, with the objective of tracing and recovering assets which are beyond the Indian jurisdiction as well. Once an offender is declared as a Fugitive Economic Offender, his / her assets may be attached, including those which are beyond the Indian jurisdiction. The ED (and other investigating agencies) can apply to the local courts for issuing a "Letters Rogatory" to the courts of the jurisdiction where the assets are to be attached and give effect to the attachment orders issued under the PMLA or FOEA. The assets so recovered by the ED are often utilised to return them to banks and financial institutions that were also defrauded by accused persons.

2.9.2 Companies Act

A company may also pass a special resolution (with 75% shareholder majority) that its affairs are required to be investigated and inform the Serious Fraud Investigation Office (SFIO) constituted under the Companies Act. The SFIO is a multi-disciplinary agency consisting of experts in the field of accountancy, forensic auditing, law and information technology. The Companies Act empowers the SFIO to investigate, arrest and prosecute any company or its personnel while dealing with cases of corporate fraud.

Once the SFIO concludes that fraud has taken place and due to such fraud any personnel of the company or any other person or entity has taken undue advantage or benefit, the Central Government can approach the relevant Indian court for appropriate orders for disgorgement of assets, property or cash.

In 2018, the SFIO carried out an investigation on one of the largest company frauds by one of India's biggest infrastructure and housing finance companies. In compiling its report, the Ministry of Corporate Affairs had approached the NCLT seeking relevant orders including disclosure of movable and immovable assets and properties of the perpetrators and directions for restraining such persons from creating charge or alienating them and further, attachment of such properties.

2.9.3 Criminal Code

Under the Criminal Code, the police are empowered to seize any property or evidence they suspect may have been involved in any fraudulent act. Where the claimant seeks to establish its proprietary rights in a criminal proceeding to recover property, it may make a claim before the court. The court can in that case order the restoration of property after the end of the trial. Such release and restoration of property may be without conditions or with conditions that the claimant shall execute a bond, with or without securities, to the satisfaction of the court.

3. Challenges for asset tracing in India

Challenges arising from asset tracing are similar across the world. They include increasingly sophisticated fraudsters, the use of more complex asset holding structures, unsettled matters of law and bureaucratic hurdles and inertia. Cross-border asset tracing raises additional challenges, such as divergent laws.

The main challenge when undertaking asset tracing and recovery efforts in India is the significant time delays in the adjudication of matters by the courts and lack of recognition of foreign insolvency judgments in the absence of a cross-border insolvency framework. Further, the pendency rate of matters varies significantly among the states due to the varying level of infrastructure deployed therein. Accordingly, any delay in securing interim orders or decrees may give the debtor an opportunity to siphon off and dispose of assets.

Another key challenge remains the establishment of a strong *prima facie* case to secure *ex parte* or *ad interim* injunctions. In certain cases, it has been observed that the victim of fraud may not have access to sufficient records of the transaction to seek the interim relief. The problem becomes more complex in instances of fraud, where the debtor has perpetrated fraud primarily through a digital medium. In fact, with the increasing move towards digitalisation in India, the instances of online fraud and loss of assets are increasing.

Another issue which creditors face is the lack of a central database which can make access to information easy. In India, there are multiple authorities and bureaucratic offices involved for registrations and to get the access to the relevant information, which requires meticulous efforts and a long lead time. This is incompatible with the need for urgent access to information.

4. Conclusion

The efficiency of any asset tracing regime depends on the following factors:

- (a) the quality of enforcement mechanisms;
- (b) access to information;
- (c) professionalism of courts and practitioners involved in asset tracing; and
- (d) an enabling institutional framework.

These are fairly basic baseline fundamentals that are required for swift action that usually arises in asset tracing, since it is more than usual undertaken on the presumption of a default or post an occurrence of a default. The inclusion of merely asset tracing enabling provisions and measures in the law alone will not achieve the asset tracing objectives.

Technology will play a significant role in the smooth functioning of asset tracing. A central database which provides access to the relevant information is the need of the hour in India and while it will be a challenge to implement, it is essential to be achieved. Further, practitioners should have the requisite capacity and tools to handle asset tracing timely and appropriately, including where necessary across borders in cooperation with foreign courts and foreign representatives.

Specialisation of courts in insolvency matters and procedural rules designed specifically for handling urgent asset tracing requests will also prove to be helpful. The absence of a comprehensive one stop framework increases risks of fraudulent dissipation of assets, diminishing the chances of reinstating the integrity of the insolvency estate and successful reorganisation of viable businesses or an orderly and speedy liquidation of non-viable businesses.

Ultimately, an effective and efficient asset tracing framework contributes not only to the objectives of insolvency law and broader objectives of the rule of law and good governance but also to an enabling environment for trade, business, investment, access to credit and sustainable development.



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Published June 2024