

From the Editorial Desk

1. The market-driven economies require market-oriented legal and regulatory framework and methods of operation to reduce risks. The secured lending is one such method. The economic efficiency of secured transactions lead to better management of credit risks, better access to credit and lowering of transactional cost. It encourages lending and enhances investments through comprehensive availability of collateral as a basis for secured lending. The latter however requires more comprehensive public notice system providing public notice on security interest in property which can be achieved by a scheme of computerised registration on a national level. It also calls for certain determination of priorities among creditors with reduced reliance on judicial system. An overall need thus exists to examine systematically the relationship between the legal framework for secured transaction and the actual use and investment of security interest by lenders and borrowers in India. The analysis of a secured transaction shows that it impinges on law at each of the three stages viz., creation, perfection and enforcement of security interest covering not only Personal Property Law but also Real Property Law. Closely connected with the secured transactions are also issues of reforms in the legal framework for the recovery and restructuring of corporate debts and issues like the priority of secured lenders in a bankruptcy process. The inadequacy of bankruptcy and insolvency regimes affects reorganisation and rehabilitation of the insolvent companies. The insolvency laws should aim at making easier for insolvent companies to restructure and return to running economically viable businesses. Any modernisation of extant archaic insolvency law to an implementable systematic insolvency law is important in restoring investor confidence in our economy, since lack of framework in systematic restructuring of debts or efficient liquidation of business may cause impediment to economic recovery, block the rehabilitation of financial sector institutions and stifle foreign investments. The insolvency laws therefore should look at not only liquidation, receivership and trusteeship but also at rehabilitation, administration, restructuring and reorganisation of insolvent enterprises. The inadequate credit system and weak enforcement and implementation of existing bankruptcy laws could cause a drag on developing economy. We are happy to note that an international institution like Asian Development Bank (ADB) is undertaking a Regional Technical Assistance Programme on issues like secured transactional law reforms and insolvency law reforms, covering analysis of the actual practices in Asia of lenders and borrowers in the use of security interest. The Assistance programme is developing comparative report providing a broad strategy and recommendations for implementation of secured transaction law and insolvency law reforms. The ADB deserves to be congratulated for initiating workshops and symposiums to generate an awareness in the key areas in which legal reforms are needed badly.

2. This issue opens with a study of the legal intricacies involved in the relationship between banks and their financial subsidiaries, in particular the question whether the corporate veil of a financial subsidiary can be lifted just because it happens to be a subsidiary. This is followed by an article on the implications of the recent Supreme Court judgement on mother's right to guardianship inter alia directing the Bank and similarly placed other organisations to formulate appropriate methodology in the light of the

judgement. Yet another article presents an interesting overview of the principles of interpretation of statutes laid down by the Supreme Court from time to time.

3. In the Judgements Section, we have covered as usual an assortment of recent judgements of the Supreme Court and the High Courts which will be of general interest. The Legislation Section contains the text of the Companies (Amendment) Act, 1999. In Book Review and Bibliography, we present a review of the recent edition of Sanjiva Row's Law of Insolvency and also select bibliography. Apart from these, we have included all our usual features like LD News and Mail Bag.

We hope the readers would find a varied and interesting fare.

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