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THE IMPACT OF INSOLVENCY REGIMES ON CORPORATE GOVERNANCE: A CLOSER LOOK

Yadwinder Singh[*] and Amarbir Singh Bhalla[**]

Abstract: *Corporate governance involves a set of relationship between a company management, its board, its shareholders and other stakeholders (The OECD Principles of corporate governance, 1999). In the course of recent decades, corporate governance renovations have risen as a focal centre of corporate law in nations across the development panorama. Officers and directors of a solvent corporation owe fiduciary duties to the corporation and its shareholders. During the recent times while evaluating the conduct of director's significant case law has created holding that director of an insolvent organization owe trustee obligations to enterprise and its shareholders as well as to its creditors. This article examines the responsibilities of directors of corporation when firm enters the zone of insolvency. Corporations enter the zone of insolvency well before filing of bankruptcy before court and it includes 'Insolvency in fact' and 'Vicinity of insolvency'. This article investigates the impact of insolvency system on corporate governance mechanisms by taking into account insolvency arrangements models which are followed across the globe. This article further, talk about liability of directors for the breach of fiduciary duties to the creditors and various protective measures available to the directors of the corporations. In the end this paper examines in detail the insolvency and corporate governance experiences in India by considering various insolvency laws prevailing in India.*

Keywords: Corporate governance, Insolvency regimes, Zone of insolvency, Directors, Corporations.

JEL Classification: G33, G34

INTRODUCTION

Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders (The OECD Principles of corporate governance, 1999). In the course of recent decades, corporate governance renovations have risen as a focal centre of corporate law in nations across the development panorama. Efficient corporate governance standards enhance investor's morale, which is essential for the companies listed on the stock exchanges contesting for capital. The phrase "corporate governance" describes "the framework of rules, relationships, systems and processes within and by which

* Research scholar, Department of Commerce, Guru Nanak Dev University, Amritsar,

** Research Scholar, University Business School, Guru Nanak Dev University, Amritsar.

authority is exercised and controlled within corporations. It encompasses the mechanisms by which companies, and those in control, are held to account."[1]

Typically the officers and directors of a solvent organisation owe fiduciary obligations to all the stakeholders including the corporation and its shareholders. The violation of duties by director may put director in deep trouble involving court case for breaching personal liability. These duties include the duty of transparency, duty of responsibility, and duty of integrity when seeking shareholders action. Courts generally apply "Business judgement rule" while assessing behaviour of director in performing their fiduciary duties."The business judgment standard is an assumption that in settling on a business choice, the executives of a business corporation followed up on an educated premise, in accordance with some basic honesty and in the genuine conviction that the move made was to the greatest advantage of the organization.

During the recent times while evaluating the conduct of director's important case law has created holding that director of an insolvent organization owe trustee obligations to enterprise and its shareholders as well as to its creditors i.e. North American Catholic Educational Programming Foundation v. Gheewalla,930 A.2d 92 (Del. 2007) ("*Gheewalla*"). This theory has its root in the "Trust fund doctrine" Principle. The "Trust fund doctrine" trades the contractual relations between an indebted company and its lenders into that of a trustee and its recipients. Tragically for those looking for consistency, the exact development whereupon these extended obligations emerge may be hard to pinpoint. While a formal filing of bankruptcy may be adequate to trigger trustee obligations to the corporation creditors. However corporation get into the "Zone of insolvency" well before filing bankruptcy. So this article examines the responsibilities of directors of corporation when firm enters the zone of insolvency. Further this article explores the effect of insolvency framework on corporate governance mechanisms by taking into account insolvency arrangements models which are followed across the globe.

Zone of Insolvency

Zone of insolvency is a word used to portray a firm nearing insolvency, but not yet insolvent, and can be characterized in a huge number of ways. Neither the Delaware Court of Chancery nor the Delaware Supreme Court "absolutely characterize" the term and the Delaware Supreme Court noted that their choice blocked the requirement for an exact definition. Insolvency is usually defined as Indebtedness is generally characterized as being not able to pay bills as they turn out to be expected or having the value of liabilities more than the market value of all assets held by corporation (LaSalle Nat. Bank v. Perelman, 82 F. Supp. 2d 279, 290 (D. Del. 2000).

Further it should be noted that corporations enter the zone of insolvency well before filing of bankruptcy before court and it includes 'Insolvency in fact' and

'Vicinity of insolvency'. To further intricate the issue there are clear cut standards to examine when a corporation become insolvent under any definition. "Insolvency in fact" can be judged by applying (i) Cash flow test (ii) Balance sheet test. Delaware law indicates that a firm is insolvent when it "is unable to pay its debts as they become due in the ordinary course of business" or when "it has liabilities in excess of a reasonable market value of assets held."[2] This second test, or "balance sheet test," is based on a subjective valuation of assets.[3] Some courts have embraced both tests for i.e.A.R. Teeters & Assoc. v. Eastman Kodak co,172 Ariz. 324 (1992) 836 P.2d 1034 (Court of Appeals of Arizona. 1992).

"Vicinity of insolvency" is a situation when a firm have an "unreasonable small capital". It is insolvency before "Insolvency in fact". "Insolvency in fact" is eventually a preview examination of an organization reasonability measuring an organization capacity to pay its obligations. Subsequently utilization of balance sheet and cash flow test help executives in figuring out if a corporation is technically solvent or not. In merging of these limits a some courts have held that director duties to creditors are triggered within the "Vicinity of insolvency" or when organization has irrational little capital i.e. See generallyNorth American Catholic Educational Programming Foundation v. Gheewalla,930 A.2d 92 (Del. 2007) ("Gheewalla"). See alsoE. Norman Veasey, Counseling the Board of Directors of a Delaware Corporation inDistress, AM. BANKR. INST. J., Jun. 2008, at 60.

Under these standards liability to creditors would emerge before a corporation really insolvent however when indebtedness is sensible predictable or when an exchange make a preposterous danger of bankruptcy.Some warning signs identified by courts and valuation experts are (i) Not paying undisputed debts as they become due (ii) Projecting an inability to pay debt as they come due (iii) Violation or projected violation of loan covenants (iv) Financial statement indicate negative equity (v) Auditors issue a going concern opinion on financial statements (vi) Debts trading at deeper discounts (vii) Inability to raise additional capital in market place.

Corporate Governance Issues in the Zone of Insolvency

In the zone of insolvency there are many corporate governance issues are involved two major corporate governance issues are:

Fiduciary Duty of Director to the Shareholders

Shareholder primacy has since a long time ago assumed a vital role in delineating director fiduciary duty (Dodge v ford motor co.)[4] and in forming corporate governance norms. There are different approaches to conceptualize the obligation which is forced upon directors by shareholder primacy. The "traditional conception" of this "shareholder fidelity," which is usually used by courts to

examine fiduciary duties, affirms that a director's obligation runs first to the firm and afterward to the shareholders as the leftover recipients. This conception is based on "the presumption that what is good for the corporation is good for the shareholder."

In correlation, "actual shareholder wealth maximization," a more extreme but largely hypothetical form of shareholder primacy, portrays an enforceable obligation to enhance short-term share value even at the risk of reducing a firm's long term suitability. This idea is typically utilised in the formulation of theories regarding the financial impact of the fiduciary duty to shareholders.

A development of the fiduciary duty to creditors into the zone of insolvency, particularly if combined with creditor standing to pursue direct breach of fiduciary duty claims, would undermine shareholder primacy as well as the general fiduciary duty to the firm which exists under the "traditional conception." This expansion of the fiduciary duty to creditors would undermine shareholder primacy because it would make a clashing duty to creditors whose return on investment might no more depend upon the company's profits yet rather upon the maintenance of corporation assets that would be valuable in the occasion of liquidation.

Director Independence

Director autonomy is of vital significance in making productive corporate governance that will eventually advantage shareholders. Presumably if courts were to enlarge fiduciary duty to creditors the "Business judgement rule" would still apply. Indeed, even with this continued protection however such enlargement in director fiduciary duty could cripple director independence by increasing director vulnerability to law suits from a variety of creditors.So executive independence is another vital corporate governance issue which is involved in the insolvency regimes and need careful attention by courts or corporations because director independence is crucial for effective working of the organisations.

Directors Fiduciary Duties to Creditors, Shareholders and Other Constituencies

When a company is inside of the zone of insolvency the officer and directors owe trustee obligations to both creditors and shareholders. Not clear is whether the duties owned to creditors supplant the obligations claimed to shareholders or whether the executive owes simultaneous obligations to both.Courts held that they are liable to both. Other courts shift from stockholders to creditors. There is little case law talking about what duties if any are owed to other corporate supporters upon indebtedness. Further it is indistinct whether courts will draw upon "Business judgment standard" in assessing the business obligation. Those courts which apply the business judgment assumption to directional behaviour are liable to maintain the chief choice unless those seeking damages can demonstrate that such activities

are dishonest. Additionally courts are more prone to apply the most weight to the "Business judgment principle" when director are focused on maximizing the value of the corporation.

Economic models may indicate that a director who attempts to comply with the fiduciary duty to shareholders, usually characterized as "Actual shareholder wealth maximization," is acting inefficiently.[5] Thus, some scholars criticize the Shareholder value maximization ("SVM") and instead advocate "financial value maximization" ("FVM")[6] or "FVM including performance creditors."[7]FVM is a conception of fiduciary duties that requires directors to maximize the value of all financial claims against the firm, not merely those of shareholders.[8]

"FVM including performance creditors" contracts from FVM in that the former posits that the most efficient fiduciary duty regime would be one that maximizes the value of both financial and performance based claims against the firm Then again, it is imperative to remember that SVM's impact on director behaviour is decreased by managerial opportunism, by other agency issues (such as director incompetence), and by Delaware's utilization of a "traditional conception" of duty rather than "actual shareholder wealth maximization."[9] Smith posits that rational investors would pick FVM instead of SVM as the default standard to fill in holes in the "corporate contract."[10]

Liability for Breach of Fiduciary Duties to Creditors

In US directors are for the most part not subject to criminal punishments but rather civil law suits are there regarding breach of fiduciary duties. Executives may confront huge fiscal obligation as a consequence of civil lawsuits by aggrieved creditors. In the recent high profile scandals like Enron, Global crossing and WorldCom creditors joined shareholders to file suit.

Safeguards Available to Directors While Performing Fiduciary Duties

Chiefs to satisfy their expanded fiduciary duties post insolvency ought to first recognize whether the enterprise is inside of the zone of insolvency. Perceiving the fiduciary duties to creditors may rise well before the enterprise liabilities surpass its benefits.

Moreover management should provide sufficient data to director including

- Competent cash flow projection covering reasonable future periods along with the evaluation of downside scenario.
- Monthly GAAP financial statement.
- Impact of material transaction.
- Due diligence of transaction under consideration or pending events.

- A report of any payments or policy that prevents payments from being made according to contracted terms with creditors.
- Director should then follow up on an informed basic in such a path, to the point that considers the interest of corporate enterprise not just the corporation shareholders (Business Judgement Rule).
- Critical choices ought to be driven by objective of the boost of corporate value.
- Moreover executive ought to keep away from assertions that the organization was keep running without the desire that creditors could be paid.

Further there are various legal measures available to directors and they can use any of the following strategy to minimize the liability towards creditors including:

- Filing of bankruptcy
- Obtaining professional advice
- Exculpation by corporate charter
- Insurance or indemnity funds (Directors & Officers Liability insurance policy (D&O).

1. Filing of Bankruptcy

Creditor interest becomes paramount importance to directors so they can file appeal before court to declare their firm bankrupt. And the decision taken by firm after filing bankruptcy require court approval which may protect director's from attack and minimize their liability towards creditors.

2. Obtaining Professional Advice

Director of corporation can obtain the advice of outside financial advisor to assess the condition and outline of the corporation to identify whether the corporation is within the vicinity of insolvency or identifying whether directors have a reasonable chance of averting insolvency. This will help the directors to take reasonable care so that fiduciary duties towards creditor will be reasonably performed.

3. Exculpation by Corporate Charter

Company certificate of incorporation may contain a clause which reduce or limit the the personal liability of a director to the corporation or its stockholders for money related damages for the break fiduciary duties as a director provide that such procurement might not dispose of obligation of an executive obligation of reliability to the partnership or its stockholders. A corporation may adopt an exculpatory corporate character to reduce the liabilities of the director towards both creditors and shareholders.

4. Insurance or indemnity funds (Directors & Officers Liability insurance policy (D&O)

- Director can request the corporation to purchase D&O liability insurance policy, establish an indemnity fund. Such measures ensure the protection in case of lawsuits by creditors.
- Lawsuits brought by creditors involve large sum of money so it will be beneficial for the corporation to it purchase Directors & Officers Liability insurance policy (D&O).
- Ultimately the cost of litigating creditors will be passed on to the corporation by insurance company in the form of higher premiums.
- Insurance company may provide single policy to cover the directors and officers as well as coverage to the corporation for the default or fraud made by executives

So there are various protective measures available to the directors to reduce or minimise their liability towards creditors but it is desirable that director should perform their fiduciary duties towards creditors with full care and responsibility.

Corporate Governance Model for Bankruptcy Reorganizations across the Globe

Insolvency regime has strong impact on the corporate governance mechanism. Further there is no single model for insolvency arrangements across the globe. The reason relate to:

- Different demeanour towards entrepreneurship and risk taking.
- A distinctive jurisdictional blend of carrots and in the empowering early invocation of corporate salvage systems.
- Different originations of the indebtedness handle and their points and destinations.
- Effect of historical circumstances on the way on handling insolvency.
- Taking the case of developed economies US law is pro-creditor While UK law is pro-debtor.

Different corporate governance model for bankruptcy reorganizations across the globe are as follow:

(i) The American Debtor-In-Possession (DIP) Model- In DIP demonstrate possibly the current administration stay in control of the debilitated organization amid the rearrangement period yet are lawfully contributed with another status that of DIP. Still, even under the terms of the DIP Model, the performance of incumbent management is subject to the critical examination by bankruptcy judge's scrutiny. Further it is subject to the surveillance by senior creditors.

(ii) European-oriented Trustee Model –In this model the incumbent management is replaced with an insolvency professional appointed by secured creditors having security over the entire assets owned by corporation. This model is followed by UK.

(iii) Hybrid reorganization regime –Some academician's scholars seem to have taken amixed i approach, by combining the benefits of both model i.e. Trustee Model and the DIP Model. According to his model when a firm file bankruptcy a trustee would be appointedalongside incumbent management. The role of trustee will basically limited to two decision i) whether to liquidate the firm ii) whether to reorganize the firm. While incumbent management runs the day to day operations of the firm by retaining control over the assets of the firm. This model is followed by Canada.

Different countries follow different models while Anglo- Saxon countries follow European-oriented Trustee model. In Germany under a comparatively new process, all proceeding begin as a liquidation but can then be converted into reorganisation proceeding. Management loose there power and trustees appointed like UK Trustees model.Most jurisdictions in East Asia present challenges to the realisation of value from troubled enterprise different those in Europe and US. Although each jurisdiction has its own particular there are number of common attributes. Despite the variety of social system and economies, there generally a preference for out of court arrangement in various countries.

Impact of Insolvency System on the Corporate Governance Mechanism

This section briefly discusses the impact of insolvency systems on the corporate governance mechanisms of the corporation.

- **Weak insolvency** regime mechanisms that lack credibility and faith have a profoundly negative effect on corporate governance mechanism of the organisation.
- **Discharge,** i.e. the probability for the debtor to re-enter business on a clean slate reason taking after a business disappointment is a central persuading power lever to enable entrepreneurial danger taking.. A debtor (or its directors) that will see filing as the end of their career will either not take enough risks or, as the possibility of insolvency looms, might become reckless. In some creating markets, the nonattendance of discharge has been exacerbated by a social disfavour for the bankrupt. In Korea, liquidation cases climbed compellingly taking after a change of the law and the reinforcing of execution procedures in 1998-99.
- **Avoidance powers and related parties** - Most bankruptcy mechanism provides for avoidance powers for the insolvent debtor, i.e. Avoidance

powers are rights given to the bankruptcy trustee or the debtor in possession to recover certain transfers of property such as preferences or fraudulent transfers or to void liens created before the commencement of a bankruptcy case. In nations described by large block holdings, avoidance powers are crucial. Solid shirking forces are joined with a standard of expanded carefulness by the board as money related trouble sets in. This could accordingly provoke a more raised measure of reasonability and more drew in organization of threats by organization and the board.

Cross Border Insolvency: Indian Law Vis A Vis International Law: Uncitral Mode

The rapid development of worldwide economy has prompted broad global exchange and this extension in universal exchange has carried with it expanding potential outcomes of cross border insolvency proceedings. Cross border insolvency is a terminology used to portray circumstances in which an insolvent debtor has asset and/or creditor in more than one country. In the above guise, the issue of Cross Border Insolvency represents a genuine test to Business Corporation.

The Model Law

According to UNCITRAL, a legal body within the United Nation system in the field of International Trade, national insolvency laws were either badly prepared or falling behind to manage the instances of Cross Border Insolvency. The problem has always been that every nation has its own particular manner of managing the issues of Cross Border Insolvency and different national indebtedness laws and practice are essentially excessively assorted.

Seeing the prerequisite for sureness and clarity on these issues, UNCITRAL received the content of Model Law on Cross Border Insolvency issues on 30 May 1997. This Model Law was endorsed by determination of United Nations (UN) General Assembly on 15 December 1997. The Model Law focuses on four parts distinguished as key components for the behaviour of Cross Border Insolvency cases: Access, Recognition, Relief (Assistance) and Cooperation.

Indian Scenario

There are deficient acquirements in the Indian common law administration to empower the Indian courts to perceive and implement the rights and cases of the foreign creditors and the judgment went by the courts in remote locale. Above all there are no acquisitions in the current bankruptcy enactment or in any authorizations in India to manage Cross Border Insolvency cases. In the year 1999, the Government of India set up a High Level Committee headed by Justice V.B. BalkrishnaEradi[11], retired judge of the Supreme Court of India for re-showing the current laws identifying with indebtedness and ending up of organizations to get

them tune with the worldwide practices in this field. One of the guideline proposition of the board was that the part VII of the Companies Act, 1956 ought to fuse new substantive procurements to receive the UNCITRAL Model Law and that the Model Law itself may be incorporated as schedule to the Companies Act, 1956 which will apply to all instances of cross border Insolvency.

Some essential proposals of Eradi Committee, the Companies Act (second Amendment) Act 2002 was passed yet sadly this revision has disregarded to give any structure to Cross Border insolvency with acknowledgment of outside procedures. Henceforth the present position is that if an outside organization is taken into liquidation outside India, its Indian business will be dealt with as discrete matter and won't be consequently influenced unless an application is recorded under the watchful eye of Insolvency Court for twisting up its branches in India. This issue can however be resolved through the apparatus of Coordination and Cooperation between international courts gave by the UNCTIRAL Model Law.

In this way the selection of UNCITRAL Model law for Cross Border Insolvency issues will empower India to meet the requests of the development of economy and to manage universal bankruptcy on the world discussion. This will profoundly change the introduction of Indian Law in the present situation of insolvency cases and make it suitable for managing the difficulties emerging from globalization and expanding incorporation of Indian economy with the world economy.

Insolvency Laws in India

Indian legal system follows common law which is influenced by British Law. The major insolvency law in India includes Law of liquidation (Companies Act, 1956), Law of rehabilitation (Sick Industries Companies Act, 2003). Further supervision of liquidators is done by Ministry of corporate affairs while National Company law tribunal is responsible for jurisdiction of the liquidation process. The secured creditors can nominate liquidators and also appoint committee of inspection in case liquidation and there role is fairly defined under the SARFAESI Act (The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002). While limited right is given to the unsecured creditors to initiate restructuring or participation under the Sick industries companies Act, 2003.

Insolvency and Corporate Governance Experiences in India

Good corporate governance practices are very crucial during the time of insolvency but in India less emphasise is given on transparent governance practices during the insolvency regimes. Apparent weaknesses in the root of the Indian corporate insolvency and governance system are as follow:

- The companies act, 1956 governing liquidation has been laggard.

- The SICA, 2003 governing restructuring has been a failure being subject to the complete abuse by debtors seeking to delay creditors.
- The National company law tribunal (NCLT) to fast track company law cases and corporate structuring by replacing the company law board and the BIFR got the approval of Supreme Court in 2010.
- There are cases of rampant asset stripping.
- There is lack of sanctions against management resulting in poor corporate governance in insolvency situations.
- There is no special responsibility or obligations on the board of directors in the twilight zone.

Table 1
Ease of Doing Business in India

Topics	*DB 2015 Rank*	*DB 2014 Rank*	*Change in Rank*
Starting a Business	158	156	-2
Dealing with Construction Permits	184	183	-1
Getting Electricity	137	134	-3
Registering Property	121	115	-6
Getting Credit	36	30	-6
Protecting Minority Investors	7	21	+14
Paying Taxes	156	154	-2
Trading Across Borders	126	122	-4
Enforcing Contracts	186	186	0
Resolving Insolvency	137	135	-2

Source: World Bank Ease of doing Business Report 2015

But over the period of time various progressive steps are taken under the Companies Act, 2013 to improve corporate governance practices during the insolvency regime. Following important steps are taken by Government to improve the transparency in the system.

- The criteria of erosion of 50% of net worth for filing application with the BIFR have been done away.
- Test for determining stress necessitating regulatory intervention is made uniform i.e. inability of a company to pay debts account
    - If a company fails to pay debts due to its secured creditors representing 50 per cent or more of outstanding amount of debt within 30 days of demand, any secured creditors may file an application to NCLT to declare such company as sick company.
    - Companies can himself made an application to NCLT to declare it as sick company.

- The companies act, 2013 replace the high court with the NCLT which will consist of judicial & technical members as central government may deem necessary.

DISCUSSION AND CONCLUSION

Corporate governance is about promoting fairness, transparency and accountability in the business corporation. In the course of recent decades, corporate governance renovations have risen as a focal centre of corporate law in nations across the development panorama This article throw light on the fact that during the recent times while evaluating the conduct of director's significant case law has created holding that director of an insolvent organization owe trustee obligations to enterprise and its shareholders as well as to its creditors. Further fiduciary duties to the creditors will triggered well before filing of bankruptcy before the court i.e. director owe fiduciary duties to the creditors when firm enters the zone of insolvency and it includes 'Insolvency in fact' and 'Vicinity of insolvency'. This situation raised important corporate governance issue that whether director gives more importance to shareholders primacy or owe fiduciary duties to creditors. Not clear is whether the fiduciary duties to creditors replace the duties owned to shareholders or whether the director owes concurrent duties to both. But Courts cases in different countries concluded held that they are liable to both shareholders as well as creditors.

Anotherimportant issue which need careful attention is Director Autonomy or independence because it is very essential element in creating transparent corporate governance framework that will ultimately benefit shareholders. This paper observed that if courts were to expand fiduciary duty to creditors the "Business Judgement Rule" would still apply. Further when firm enter the zone of insolvency Directors should promote "financial value maximization" ("FVM") instead of Shareholder value maximization ("SVM") as suggested by Smith (1999).

In addition this paper discussed about impact of insolvency system on the corporate governance mechanism by taking into account various corporate governance model for bankruptcy reorganizations which are followed across the globe. This paper investigated that insolvency system has strong influence of corporate governance mechanism of corporation. In the end this paper discussed about insolvency and corporate governance experiences in India by explaining various laws prevailing in the country.

This paper points towards the various apparent weaknesses in the root of the Indian corporate insolvency and governance system. At last paper suggests that India should adopt UNCITRAL Model law to deal with cross border insolvency issues. This will in a broad sense change the introduction of Indian Law in the present situation of indebtedness cases and make it suitable for dealing with the challenges rising up out of globalization and expanding joining of Indian economy with the world economy.

Notes

1. SeeHIH Royal Commission. (2003). The Failure of HIH Insurance. Volume 1: A Corporate Collapse and Its Lesson. Commonwealth of Australia.
2. See LaSalle Nat'l Bank v. Perelman, 82 F. Supp. 2d 279, 290 (D. Del.2000).
3. See Michelle M. Harner& Jo Ann J. Brighton, The Implications of North American Catholic and Trenwick: Final Death Knell for Deepening Insolvency? Shift in Directors' Duties in the Zone of Insolvency?, NORTON ANN. SURV. BANKR. L., 2008, at 1, 12–13.
4. See, e.g., Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919).
5. See Crespi, G. S. (2002). Rethinking Corporate Fiduciary Duties: The Inefficiency of the Shareholder Primacy Norm. SMUL Rev., 55, 141.
6. See Smith, T. A. (1999). The efficient norm for corporate law: a neotraditional interpretation of fiduciary duty. Michigan Law Review, 214-268.
7. SeeFried, J. M., &Chaver, A. (2002). Managers' fiduciary duty upon the firm's insolvency: Accounting for performance creditors. Vanderbilt Law Review, 55, 1813-1844.
8. See Crespi, supra note 5.
9. See Hu, H.T. & Westbrook, J. L. (2007). Abolition of the corporate duty to creditors. Columbia Law Review, 107, 1321-1403.
10. See Smith, supra note 6.
11. Eradi Committee submitted its report to the Prime Minister on 31st August 2000.

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