NM Docket # 5
The Law of Location

Editor's Note

In practice, legal decisions rarely unfold in isolation. They are shaped by comparisons, by precedents outside the file, and by realities that sit beyond the courtroom.

This edition of NM Docket looks at two such realities. One, the growing tendency to measure India's insolvency framework against global restructuring regimes before deciding how and where financial distress should be addressed. Two, the increasing role of digital evidence and data governance in enforcement and dispute strategy.

We begin with a short case-led reflection, not on a filing, but on a decision that had to be made before any filing at all.

That brings us to Rapid Wrap.

Rapid Wrap: When the First Question Is "Where", Not "Whether"

Rapid Wrap looks at situations that don't yet have a judgment but already have consequences. Moments where the legal issue is clear, but the strategy is still being shaped.
In this instance, the conversation did not begin with default or demand notices. It began with a quieter question: where should this play out?

A business facing mounting financial stress had exposure across jurisdictions. Creditors were located both in India and overseas. Assets were split across entities and borders. Insolvency was no longer theoretical, but neither was it immediate.

What followed was not a rush to invoke the IBC. Instead, there was a deliberate comparison.
India's IBC offered speed and certainty. Once admitted, control would shift decisively to creditors, timelines would compress, and outcomes would follow a structured path. The upside was predictability. The cost was the loss of managerial control and limited room for negotiation.

Foreign restructuring regimes told a different story. In the UK and the US, management could stay in place. Courts allowed negotiated restructuring plans, cross-class cramdowns, and flexible timelines. Value preservation was prioritised, even if the process moved more slowly.

The discussion slowly shifted away from "what the law allows" to "what the business can withstand." Speed versus flexibility. Certainty versus discretion. Control versus compromise.
What became clear was this: insolvency today is not triggered only by default. It is initiated by comparison. The forum chosen can determine who leads the process, how value is distributed, and whether the business emerges restructured or dissolved.

That shift in thinking sets the context for this edition's Guide.

The Guide: India's IBC, Global Restructuring Models, and the Evidence Layer Beneath Them

India's Insolvency and Bankruptcy Code was designed to correct a specific problem: delay and creditor uncertainty. Its architecture reflects that goal. Early displacement of management, strict timelines, and creditor-led decision-making form the backbone of the process.

Placed next to global restructuring regimes, the contrast is instructive.
In the United States, Chapter 11 treats insolvency as a rehabilitation exercise. Management remains in control, negotiations are encouraged, and courts play an active role in approving restructuring plans that balance competing interests.

The UK framework offers multiple rescue tools, with judicial oversight focused on feasibility rather than punishment. Singapore blends these approaches, positioning itself as a restructuring hub by offering procedural flexibility alongside court supervision.
India's IBC sits apart. Its strength lies in certainty and discipline. Its limitation lies in rigidity. That rigidity is not accidental; it is a policy choice. But it also means that businesses with cross-border exposure are increasingly forced to evaluate whether speed outweighs flexibility.

Layered onto this is a second shift that cuts across all forums: evidence is now digital by default.

Restructuring disputes, enforcement actions, and investigations increasingly turn on emails, logs, device data, and server trails. With electronic records recognised as primary evidence, the question is no longer whether data can be relied upon, but whether it has been collected and preserved correctly.

At the same time, data protection law has raised the bar. Investigative urgency must now coexist with consent, purpose limitation, and accountability. Over-collection or informal access can compromise both admissibility and compliance.

What emerges from this intersection is a quiet but important reality. Forum choice determines process. Evidence determines outcome, and data governance determines credibility.

Understanding insolvency today, therefore, requires more than statutory familiarity. It requires an appreciation of how jurisdiction, technology, and enforcement now operate together.

As disputes grow more complex and contracts shoulder greater risk, one clause quietly takes centre stage across restructuring, enforcement, and litigation.
Indemnity.

Before we conclude this edition, here are a few questions we are increasingly asked about how indemnities really operate when things go wrong.

FAQs: Indemnity, Risk, and Real-World Enforcement

1. Is an indemnity the same as damages?
   No. An indemnity is a contractual promise to make good a loss, often without requiring proof of breach or foreseeability. Damages require breach, causation, and mitigation. Indemnities operate on a different footing altogether.

2. Can indemnity clauses override statutory liability under the IBC or other laws?
   No. Contractual indemnities cannot dilute statutory obligations or shield parties from regulatory or insolvency-related liability. They may shift the financial burden between parties, but they cannot defeat the law.

3. Do indemnities survive insolvency proceedings?
   It depends on drafting and timing. Indemnity claims often crystallise as operational debt, but their enforceability during CIRP is subject to moratorium restrictions and claim verification by the resolution professional.

4. Are indemnities enforceable for penalties or fines?
   Generally no. Courts are reluctant to enforce indemnities that cover penalties or punitive liabilities, as this may offend public policy.

5. What should companies pay closest attention to when drafting indemnities today?
   Scope, triggers, caps, exclusions, and survival clauses. In complex disputes, ambiguity in indemnities often becomes a dispute in itself.

Also, a quick update before we close

The conversations we explore in NM Docket are increasingly spilling beyond the written page.

🎙️ ***Off The Record | New Episode***

In the latest episode of Off The Record, Malak Bhatt tackles a dilemma every lawyer knows too well.

When a client demands, “Send the legal notice now,” is it an urgent strategy or self-sabotage?

This episode breaks down how legal notices function across statutes such as the IBC, arbitration law, and the NI Act, and why timing, tone, and restraint often determine outcomes long before litigation begins.

🎧 Listen on Spotify: https://lnkd.in/g_BAdWQQ

Edition 5 was about perspective. How India’s insolvency law compares globally. How evidence is gathered in a digital world, and how privacy is reshaping enforcement and litigation.

Until the next edition, keep reading, keep questioning, and remember that in today’s legal landscape, strategy is as much about foresight as it is about law.