

## **Applicability of IBC**

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**Week 02**

**Lecture 10**

Welcome to all.

In the previous class, we have discussed about BLRC Bankruptcy Law Reforms Committee, BLRC, which is the basis for Insolvency Bankruptcy Code in India. We have discussed BLRC committee report. Then, subsequently we have discussed first ILC report March 2018 then second ILC report October 2018 where they have introduced or they recommended cross border insolvency. Then, subsequently it became the law, then third ILC report February 2020 then, fourth ILC report January 2021 then, fifth ILC report October 2022.

We have to understand that after IBC was notified IBBI they have formed the committee to recommend the changes from time to time. Accordingly, ILC was there ILC was formed by the IBBI. They have submitted various reports first ILC report. second ILC report, third ILC report, fourth ILC report and fifth ILC report. Through these reports they have recommended various changes that to be made in the legislation. Accordingly, we were having amendments in the subsequent years.

Today, we are going to discuss the definitions under the IBC Insolvency Bankruptcy Code and applicability of IBC.

So, let us start the concept, the concept of insolvency and bankruptcy and liquidation. Generally, the words insolvency and bankruptcy, they are used interchangeably and they are used as synonymous generally by the people. But, here insolvency, bankruptcy they are not synonymous with each other. The term insolvency is a state of one whose assets are insufficient to pay his debts or his general life inability to pay the debts.

So, what do you mean by insolvency? when somebody is unable to pay the debts or when the liabilities are more than the assets of any person then such scenario that status is called as insolvency. When any person becomes insolvent then you can go to the court of law. When you are going to the court of law the court of law is going to declare you or declare someone as a bankrupt. That is a condition actually. The word bankruptcy is a condition of insolvency it is a legal status of a person or an entity who cannot repay debts to the creditor. So, when the creditors approach the court of law then the court of law will

declare the person. Here, when I am using the word person, it includes both legal person as well as juridical person. So, the person is declared as bankrupt.

Insolvency is a position whereas bankruptcy is a condition of insolvency. So, when I am giving the legal status to the person, here obviously person includes natural as well as artificial personality. When, I am giving the legal status to the person then that scenario is called as bankruptcy. So, when the concept of bankruptcy starts, the bankruptcy process begins with the filing of petition in a court or before appropriate authority designated for this purpose. So, here please remember because we are having various categories of persons, may be natural person, may be artificial personality. For the time being in India, in case of natural person, we are having insolvency, presidential town insolvency act and provincial town insolvency act.

So, where we have to approach to the debt recovery tribunal whereas in case of juridical personality that is companies and LLPs. We are supposed to approach NCLT national company law tribunal. Once if you approach either NCLT or debt recovery tribunal then the court or the appropriate authority designated for this purpose will start the process. That process is nothing but bankruptcy. Now, let us directly come to the concept of IBC Insolvency Bankruptcy Code 2016.

Till yesterday, till the last week, we have discussed the history of insolvency bankruptcy in India and UK as well as USA and various committees which were formed for the purpose of insolvency or for recommending the changes in the insolvency regime in India. Today, we are going to start Insolvency Bankruptcy Code 2016.

Let us have introduced to The code that was drafted by Bankruptcy Law Reforms Committee, famously known as BLRC. Already in the previous lessons, we have discussed about BLRC, the basic recommendations made in the BLRC committee, everything we have already discussed.

This code was drafted by BLRC committee. Then, it was introduced in the Lok Sabha on 21st December 2015. Then, it was subsequently referred to a Joint Committee of Parliament. Once it is introduced, after introducing in the Lok Sabha, then Lok Sabha referred this to the Joint Committee of Parliament, JCP. Then subsequently, the committee submitted its recommendations and modified the code accordingly. The modified code after BLRC, JCP is there. After JCP, the committee submitted its recommendations and the modified code also, then it was passed in the Lok Sabha on 5th May 2016.

Then, the code is also placed before the Rajya Sabha and on 11th May 2016, IBC Insolvency Bankruptcy Code 2016 was passed and it received the President Assent on 28th May 2016. From 28th May 2016 onwards, this Act came into enforcement. Subsequently, they have notified.

Then, what is the objective of this legislation? As already we have discussed in the previous lessons, in the first week, we have discussed the objectives of insolvency law. What is the basic objective of insolvency law? If you observe that, the basic objective of any insolvency law is to ensure that, to increase the availability of the credit and to maximize the returns.

Okay, what is the basic objective of Insolvency Act in India? To consolidate and amend the laws relating to reorganization and insolvency of corporate persons, partnership firms and individuals. Here, we have to observe that before IBC, we used to have various legislations relating to insolvency in India. Like, in case of individuals and partnership firms. We are having Presidency Towns Insolvency Act and provincial town insolvency act. And we are also having for the recovery of the rates, we are having recovery debt recovery legislation in the year of 1993, we are having one legislation, already we have discussed overview of such legislation in the previous lessons. And we are also having SICA industrial companies SICA act and we are also having some provisions under the companies act.

All these legislations were scattered in nature. We are having in various legislations, we are having the law or legal framework relating to insolvency and we are having various, different legislations dealing with corporate persons and dealing with the partnership force and individual separately. So, the basic objective of this legislation is to ensure that to consolidate all the legislations relating to reorganization and insolvency of three categories of persons. One is corporate persons and partnership forms and individual. So, this is the primary objective of insolvency bankruptcy code.

Then maximization of the assets. So, as already we have discussed the basic objective of any insolvency law is to maximization of the assets because unless you start the process of insolvency or unless you start the process of reorganization at the earliest. So, you may not be in a position to the creditors may not be in a position to realize assets to the maximum extent. So, when you are able to realize assets within a time bound manner, then obviously there is a possibility you are going to realize assets to the maximum extent.

So, this is one of the objectives of this IBC. Then, to promote the entrepreneurship. Please remember, whenever we are doing business there is always a possibility of failure, the ecosystem we need to have in any economy we need to have an ecosystem, whereby we are encouraging the entrepreneurs to do the business, to take the risk. why? because business is nothing but risk. Okay, whenever we are uh doing any kind of business.

Obviously, there is a possibility that you may incur the losses okay. we cannot expect any economy without having NPAs. Okay, non-performing assets is a common character of any economy. So, unless you are able to manage these NPAs or unless you are able to

manage this organize this assets properly. No entrepreneur or no investor would like to invest. Ok, So, that is why to promote the entrepreneurship whereby the entrepreneur is very sure if he is investing in any company or in any business.

So, there is a possibility of exit from the business also very quickly. So, that he can realize the assets and he can maximize the assets value. So, to promote the entrepreneurship this is one of the objective of the legislation.

And another objective of the legislation, just now we have discussed from the point of view of the investor who is investing in the company and who is starting the business. Let us think from the point of view of the creditor also, the financial institutions. Any business if you are taking any business it cannot run only with the equity capital that is practically impossible. we need to borrow the money unless we are borrowing.

Unless we are having the debt capital you cannot run the business. If the business is running into the losses. There should be a mechanism where the creditors are able to realize the value to the maximum extent. When they are able to realize the value to the maximum extent or else when they are able to recover the money quickly this recovered money can be invested somewhere else. Because, As, in the previous classes we have already discussed that what is the meaning of banking? Banking means accepting the deposit for the purpose of lending. When, I am lending when I am giving loan to one company or one business. If there is a failure is there I should be in a position to recover the money. If I am recovering the money properly then I can reinvest this money into some other business, whereby I am increasing the credit or credit availability is increased at the at the macro level. Okay, this is one of the objective of IBC.

Another major objective of the IBC. Then, alteration in the order of priority of payment of government dues. Previously, under the old regime the government used to take the major stake or else I can say when the liquidation process is going on first we have to repay to the statutory debts. Statutory debts here what I mean to say is any taxes to the government or any penalty or else any fees that is payable to the government and your tax liability and your employment liability. Suppose, you are liable to pay some salaries or wages to the employees. Okay, So, all these things will be will be paid back at the at the beginning initially first you are going to pay that. Subsequently, if any amount is left out then only secure creator and secure creator is going to recover the money.

But under the new IBC, they have introduced the concept of waterfall mechanism. Under waterfall mechanism, first we are going to repay to the secured creditor, then subsequently we are going to repay to the unsecured creditor. So, the government has taken, I can say instead of receiving money before everyone, the government is going to receive subsequent to the other people. That, because from the government point of view it's a very small amount whatever they are supposed to receive from the corporate entity

it's a small amount but whereas from the creditor point of view it is a huge amount for the creditor. Here, the creditor should not be affected adversely. that's why, the government has taken a step back and, they have altered the order of priority of payment through this legislation.

But, subsequently we are going to discuss uh we are having few judgments are there by the supreme court given by the supreme court where supreme court has treated the government uh as a secured creditor as a creditor whereby even government will also is going to sit along with the other creditors to recover the money, whereby they are defeating they are deviating from the basic objective of the legislation. Okay, we are going to discuss subsequently what is that legislation and the critic on the judgment okay.

Then another objective of this legislation is to establish IBBI Insolvency Bankruptcy Board of India. So, under this legislation they have established Insolvency Bankruptcy Board of India, if you observe section 3. So, interestingly under this legislation if you observe other legislations. Ok, the definitions part will be there generally I am not saying it is I mean it is a rule actually, but generally you are going to have definitions part in section 2, whereas under IBC you are having definitions part in section 3 and also in section 5. Ok, because. subsequently we are going to discuss various parts under the IBC for each and every part, definitions part is given separately.

Anyways, the board is going to be established uh from this uh based on this legislation. Now, we are having one regulatory authority called as insolvency bankruptcy board of India. So, that is another objective of this legislation now let us look at the structure of the IBC insolvency bankruptcy code So, part one totally the legislation is divided into five parts. Part one is part one dealing with the preliminary part whereby we are having we are having around three sections are there, around three sections are there where introductory part and definitions part is there in the preliminary part. Then, part two deals with the insolvency resolution and liquidation for corporate persons where we having seven chapters are there. So, this is the core concept of IBC, majorly we are going to discuss most of our time we are going to concentrate on part two of this chapter, and liquidation for the corporate person.

So, for the corporate person, how you are going to have the CIRP process? And if CIRP process is a failure or if COC is unable to arrive at the conclusion. Then, the NCLT can give the order for liquidation. Ok, So, all these things we are going to discuss in part 2. Then part 3 insolvency resolution and bankruptcy for individuals and partnership firms. So, even this part we are in this part also we are having 7 chapters, but part 3 is not yet notified. Total part 3 is not yet notified. Some of the provisions were notified, but total part 3 is not yet notified ok.

Then, part 4 deals with the regulation of insolvency professionals and agencies and information utility. So, IU means information utility. So, here even this part is also having 7 chapters, ok. So, under this legislation as already we have discussed.

We have created a profession called as insolvency professionals. Okay, who can be an insolvent professional any per any person who is having minimum eligibility criteria. Subsequently, in the subsequent chapters we are going to discuss who is having eligibility criteria for the time being we can understand that whoever is having minimum of 10 years of experience as a professional either as a CA, CS, CMA, some other qualifications are also there.

Whoever is having minimum of 10 years they can become the insolvency professional. They are creating a mechanism where a professional is created. Okay, insolvency professional is created who is trained in the insolvency matters. Okay, Then, to regulate the insolvency professionals, we are having insolvency professional agencies. So, they are recognized as they are having the insolvency professional agencies like ICAA, IAP, ICSI, IAP and CMA institute is also having IAP ok.

So, both CA, CS, CMA institutes they are having insolvency professional agencies ok. So, in this part we are going to discuss how insolvency professionals are regulated, how professional agencies. Ok, So, these agencies are regulated. and what are the what are all the powers and duties of the information utility services. Okay, what is the use of information utility services all these things we are going to discuss in part four. then part five deals with the miscellaneous activities.

where other provisions okay. Some, other miscellaneous provisions are there in part five. Okay, this is the basic structure of IBC. now suppose today we are going to discuss the basic agenda the major agenda for today is we are going to discuss the definitions part okay, when we are definitely when we are discussing the definition there is a possibility under this legislation. my suggestion is that whoever is watching this video whoever is watching this classes, please keep the bare act ready So you can download the BARE Act from the IBBI website Insolvency Bankruptcy Board of India website.

So please download the BARE Act from the Regulatory Authority website only. Okay, So, then parallelly whenever you are watching this video parallelly please try to look at the Bare Act. that it is comfortable for you to understand the legislation properly.

Okay. So, in the legislation if any words are not defined. So, all the words cannot be defined in the legislation itself ok. So, if any words are is not defined in the legislation, then you have to refer the definitions. In other legislation. So, this is provided under Section 3, Subsection 37 of the Act. So, under Section 3, Subsection 37 of the Act, which legislation we are supposed to refer? So, the first legislation is Indian Contract Act 1872. Suppose if any words are not defined under IBC, then you can refer the Indian Contract

Act 1872, then you can refer other legislation is Indian Partnership Act 1932. You can refer Securities Contract Regulation Act 1956.

So, this Securities Contract Regulation Act specifically deals with the security transactions. So, we are having important definitions like the definition of securities and other important definitions are there under Securities Contract Regulation Act. Then you are supposed to refer the definitions given under SEBI Act, Securities Exchange Board of India Act 1992. Then you are supposed to refer, Recovery of debts due to banks and financial institutions Act 1993, then Limited Liability Partnership Act 2008, then Companies Act 2013. So, these are all the various legislations that you are supposed to refer, if any, if you do not find any definition for any word.

Now, let us discuss about the applicability of IBC. because unless we are clear with the concept of applicability of the legislation. we cannot discuss. Okay, to whom this legislation is applicable. Section 2 of the legislation states to whom this legislation is applicable. Okay, the provisions of this code shall be applicable to any company incorporated under the companies act. Under the companies act 2013, Any company which is incorporated under the Companies Act under 2013 then this legislation is applicable.

Okay, then what is the meaning of company? So, you should understand what is the meaning of company? So, company means it is defined under the Companies Act. Company means any company which is incorporated under this Act or under previous legislation. So, is it a proper definition? I have to say this is not a proper definition. Okay, to understand the meaning of company you have to refer various judgments given by the Supreme Court and various other jurists also they have defined what is the meaning of company for our understanding let me tell you one definition okay, company means it's a group of association, group of persons who are doing the business . when they are doing the business they are contributing the capital okay they are contributing to the common stock the common stock it is called as capital of the company and the capital is divided into share capital of the company okay it is divided into shares okay So, whereby they are sharing the profit and losses, but for the time being or in the present scenarios we may not say that they are sharing the losses, but they are sharing the profits in the form of dividend ok. So, if any company got incorporated under the Companies Act 2013 or under any previous company legislation, because before 2013 legislation we are having Companies Act 1956. Before that we are having 1908, before that also we are having joint stock companies and like that various other legislations are there which are exclusively dealing with the companies.

So, let us discuss about the applicability of IBC. So, before reading any legislation. we have to be very clear to whom a particular legislation is applicable okay. So, IBC the provisions of this code shall be applicable it is provided under section 2 under section 2

which states that the provisions of this code shall be applicable to first category any company incorporated under the Companies Act 2013 or under previous company law. So, what is the meaning of company? So, the definition for the company is given under the Companies Act 2013 which states that company means any company which is incorporated under this legislation or under previous legislation.

So, if you observe the definition given under the Companies Act, it is not a proper definition which is not covering the entire characteristics of the company. Then what is the meaning of company? Company means companies. So, sharing the bread together actually, it means sharing the bread together. So, we have to refer the definitions given by the various jurists and Supreme Court also in various judgments, they have given the definition for company. So, let us try to understand the meaning of company in a simple language.

So, company means whenever we have a group of people, when two or more people are forming together. they are coming together to do a particular business and whereby they are contributing some stock the stock is called as common stock. Here, the stock is called as capital of the company and the capital is divided into shares of the company and one of the character of the company is that the management is different from the ownership of the company and the people who are sharing or who are contributing to the common stock of the company they are called as shareholders of the company and the shareholders share the profit and losses. but here in the present scenario losses is not practically possible they are not sharing the losses because of limited liability of the shareholders, but they are sharing the profits in the form of the dividend ok.

So, company means where it is a group of association whereby, they are creating one entity called as with the name of company. So, here the company may be incorporated under the Companies Act 2013 or under previous legislations because and we have before Companies Act 2013, we are having 1956, Companies Act 1956 and before that we are having Companies Act 1908 and before that we are having Joint Stock Companies Act. So, like that we are having various legislations are there. So, any company which is incorporated under those legislations is called as company. So, these companies are regulated, this to these companies IBC is applicable, ok.

then any company governed by special legislation. So, there is a possibility some companies may be governed by special legislation. So, let me give you one example, State Bank of India. So, State Bank of India which was incorporated by a separate legislation, State Bank of India, even there is also a company but we are having separate legislation is there okay.

let me give you another example life insurance corporation of India LIC. LIC was incorporated by passing a separate legislation by the parliament of India okay. So like

this if you are having any company which is governed by the special legislation even those companies are governed by the IBC but please remember if any provision is inconsistent with the IBC then the parent legislation will prevail over the IBC, because IBC is general in nature even though it is a specific legislation which is exclusively dealing with insolvency, but if any company is governed by the special legislation, then special legislation will prevail. That is why except the provisions inconsistent with the IBC. So, if any provisions are inconsistent with the IBC, then there will be a contradiction between the that special legislation and IBC accordingly we have to decide, ok.

Then any LLP limited liability partnership form. So, this limited liability partnership forms they are registered under the LLP Act 2008. So, if any LLP is created under LLP Act. Then they are also to them also this IBC is applicable ok. such other body corporate under any law. What is this other body corporate body corporate means whenever you are having group of people in a simple language whenever you are having group of people whereby, we are giving a separate legal entity okay.

the court of law or the in the eyes of law we are treating that entity as a separate legal entity. We are treating it as a separate person. whenever you are giving that separate legal entity Okay, you are creating under any legislation. Okay, suppose if you take the example of Reserve Bank of India. it's a separate though it is an authority it's a separate legal entity in the eyes of law it is considered a separate legal entity. SEBI is there, securities and exchange borad of India, SEBI, IRDA. Like that we are having various authorities are there. okay suppose take the example one company maybe one company got incorporated outside India some foreign company in foreign country in some foreign country it was incorporated but they may not call it as a company we are using the word company but they may use some other word. But whenever they are giving the concept of legal entity separate legal entity that is in the eyes of law it is considered to be separate person then such entity whether you are calling it as a company whether you are calling it as with some other name it doesn't matter it is considered to be body corporate okay So, any body-corporate under any law for the time being in enforcement. If any body-corporate is incorporated, then in such cases such body corporate to such body corporate also this legislation is applicable, ok.

Then this legislation is also applicable to personal guarantors to the corporate debtor. So, whoever have given the guarantee to the corporate debtor. individual here I am talking about the individual any individual if he has given any guarantee to the corporate company Okay, then to them also this legislation is applicable. Okay, and to the partnership firms to the proprietor firms. Okay, then to the Individuals other than person referred above. Okay, because, even above categories are also persons because as already I told you under legislation under law will Categorize the persons into two categories one is judicial personality and artificial natural personality.

Okay. Individual is a natural personality remaining all other above Okay, maybe company in corporate under companies are maybe governed by special legislation LLP body corporate These are all considered to be other persons. Okay, other persons are also regulated by this legislation Okay, the points which were highlighted in red color. They are there in part 3. So, I am repeating once again, the points which were highlighted in red colour, they are regulated by, they are there in part 3, because as already we have discussed, this legislation is having various parts. So, if you go to our previous slide, total 5 parts are there, part 2 is already enforced, that is already notified, part 3 is not yet notified.

So, if you observe. These points okay company incorporated companies at company governed by special legislation LLP such other body corporate these are all there in part two okay. Personal guarantors and your partnership firms, proprietary firms, individuals these are these are all there in part three. Okay, the points which were which were there in black color they are there in part two okay the points which were there in red color they are there in part three. But please remember the personal guarantors. Okay, personal guarantors to the corporate data it is all the provisions relating to them is already notified. okay.

Now, even personal guarantors also right now you can enforce the IBC against them. Okay, this is the applicability of IBC. you have to be very clear about the applicability of IBC. Because unless you are clear with the applicability of IBC subsequently you cannot learn the concepts. Okay, In today's lesson, we have discussed about the concept of insolvency, bankruptcy and liquidation and the difference between insolvency, bankruptcy and liquidation we have discussed.

Then we have discussed the objectives of IBC. So, what is the objectives of IBC we have discussed in detail. Then the IBC structure, how many... Parts are there. How many sections are there? We have discussed about the structure of IBC. Then we have discussed the words not defined under the IBC. So, IBC is having definitions part section 3 and section 5 of the IBC deals with the definition part. But some definitions were not there in the IBC. If any word is not having definition under the IBC, then which legislations we have to refer? These things we have discussed in today's lesson. Then we have discussed about applicability of IBC.

Thank you very much.