

Insolvency and Bankruptcy Law in India

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Week 04

Lecture 17

Welcome to all.

Today, as a part of the course on Insolvency and Bankruptcy Law in India, we are going to discuss the topic “Initiation to CIRP by the Corporate Data.” Before that, let us recap what we have discussed previously in the previous classes: who can initiate CIRP in case of default. Financial creditors, operational creditors, and the corporate debtor itself can initiate the CIRP process. So, the CIRP process can be initiated by three categories of persons: financial creditors, operational creditors, and the corporate debtor itself. Then, when you are in the previous classes, we discussed that when a financial creditor is making an application to the adjudicating authority, which is the NCLT under section 7, it can be preferred by any creditor either singularly or jointly.

So, a joint application is also allowed. Then the form prescribed for making an application by the financial creditor is Form No. 1. In the previous lessons, we have already seen what form number 1 will look like and what all the various particulars are to be filled in form number 1.

Issues to be considered while making the joint application include whether all creditors joining to file an application should be financial creditors or not. We have discussed that all the applicants must be financial creditors; whether the debts and defaults due to each creditor should be above the threshold value under section 4 is not required. So, if they are able to satisfy the triggering point together, that is sufficient. Whether the claim of one of the several creditors joining to file an application is barred by limitation. Can such a joint application be admitted? We have discussed that, yes, it can be admitted.

So, we have discussed various requirements that the financial creditor must satisfy when he makes an application under section 7. Then, in the subsequent lessons, we have discussed the application by the operational creditor. In Form Number 3, the operational creditor can file an application and give the notice demanding payment under IBC, and Form Number 4 is the form of notice with which the invoice demanding payment is to be attached. In the previous classes, we discussed how an operational creditor can apply before the NCLT and how he is supposed to give notice to the corporate debtor before

making an application. So, all these factors and things we have discussed in the previous lessons.

Today, we are going to discuss the third category, which is corporate debtors. Who can be a corporate applicant for a corporate debtor? So, as per section 5, subsection 5, a corporate applicant means who is considered to be a corporate applicant; a corporate applicant means a corporate debtor. There is a company, corporate debtor, or a member or partner of the corporate debtor who is authorized to make an application. So, if any member or partner of the corporate debtor is authorized, a member will come in the case of a company, and a partner will come in the case of an LLP, because here the corporate applicant includes both a company and an LLP. Therefore, a member or partner of the corporate debtor who is authorized to make an application for the corporate insolvency resolution process under the constitutional document is eligible.

Then there is an individual who is in charge of the management of the operations and resources of the corporate debtor. So, whoever is in charge of the management of the company or the management of the LLP can make an application; he can be a corporate applicant. Alternatively, a person who has control and supervision over the financial affairs of the corporate debtor, or anyone who has control and supervision over the financial affairs of the corporate debtor, can make an application. In simple terms, a corporate applicant can be the corporate debtor, any member or partner of the corporate debtor, or anyone in charge of the corporate debtor, or anyone who has control and supervision over the financial affairs of the corporate debtor. These people can be corporate applicants.

Now, what is a corporate debtor? According to the definition under section 3 subsection 8 of the IBC, a corporate debtor is a person who owes a debt to another person. Then what is a corporate person? A corporate person means a company, or a limited liability or other person incorporated with limited liability, which shall not include any financial service provider. So, if you observe the definition of a corporate person, a corporate person includes a company, LLP, or other persons incorporated with limited liability. The definition of corporate personhood includes these three categories, but it does not include financial service providers. So, this definition we have already discussed in the previous lessons when we were discussing the definitions part.

Financial service provider. Who is the financial service provider? A financial service provider means a person engaged in the business of providing financial services, who they are supposed to engage in the business of providing financial services and has registration granted by the financial sector regulator. Then what are financial services? Financial services include all these activities: accepting deposits, safeguarding and administering assets consisting of financial products, affecting insurance contracts, offering, managing, or agreeing to manage assets consisting of financial products that

belong to another person, and rendering or agreeing for consideration to render advice on or soliciting for the purpose of buying, selling, or subscribing to financial products. So, like this, whoever is rendering some services for consideration. Establishing or operating an investment scheme, maintaining or transferring records of ownership of a financial product, underwriting the issuance or subscription of the financial product, or selling, providing, or issuing stored value or payment instruments, or providing payment gateway services.

So, these are all the various categories of services included in the definition of financial services. We have discussed this definition in detail when we were discussing the definitions part. Then, who is considered the regulator of the financial sector? The financial sector regulator includes the RBA, SEBI, IRDA, PFRA, or other authorities. These are all the various categories of financial sector regulators. Now, who can initiate? How to initiate the CIRP process? When a corporate debtor has committed a default, a corporate applicant may file an application for the initiation of the CIRP process.

The corporate debtor itself can also file an application for the initiation of the CIRP process. The application under subsection 1 shall be filed in such form containing such particulars as may be prescribed. So, the application shall be made in Form number six. Form number six is prescribed for this purpose. Now, let us look at form number six.

What is there? This is form number six, which is an application by a corporate applicant to initiate the corporate insolvency resolution process. Here, we are addressing the National Company Law Tribunal. Wherever the jurisdiction is, you are supposed to address it. Then, from the address, the particulars are part 1: name, address, email address, identification number, and address for communication of the corporate applicant; name, address, email address, identification number, address of the registered office of the corporate debtor; and address of all promoters, directors, etc., and the date of incorporation of the corporate debtor, nominal share capital, name, address of the authority, name, address, and authority of the person submitting the application, and the name and address of the person residing in India.

These are all the basic documents. So here I am going to give the name, address, and basic details about the major people, important people, that is, the company, and those who are authorized; all these things we are going to give here. Then, particulars of the proposed interim resolution professional. As we have already discussed, in the case of the financial creditor and in the case of the corporate debtor, when they are making an application for the CIRP process, they are supposed to give the name of the interim resolution professional. So here in Part 2, they are going to give the name, address, and email ID of the interim resolution professional.

Part 3 particulars of financial and operational debt, that is, credit or vice versa, as applicable. In part 3, we will provide details of financial and operational creditors, including names, addresses, total debt, the date the financial or operational debt was incurred, particulars of the security held, details of the retention of title arrangement, a record of the default, and a list of other documents you are supposed to attach. Then, subsequently, you are supposed to give the affidavit stating that the above information is true to the best of your knowledge, and you are going to sign it. You are supposed to annex, so these are all the basic details to be there. Annexure 1, Annexure 2, Annexure 3, Annexure 4.

So, along with the schedule, there are a total of 10 annexures. This is how you are supposed to make an application. Please remember that when the financial creditor is making an application, he is supposed to pay 25,000 rupees. When the operational creditor makes an application, he is supposed to pay 2,000 rupees. When a corporate debtor is making an application for 25,000 rupees, the fee prescribed under the rules for the operational creditor is a minimum of 2,000 rupees, whereas in the case of the financial creditor and corporate debtor, the fee is 25,000 rupees.

This is how you are going to make an application. Let us return to our discussion on the corporate applicant's initiation of CIRP. As we have already discussed, the application must be made in Form Number 6. Where the corporate debtor has committed a default, a corporate applicant may file an application for the initiation of CIRP; this application must be made in Form Number 6. So, what to do? In Form number 6, Section 10 provides that where the corporate debtor has committed a default, a corporate applicant may file an application for the initiation of CIRP.

The application under subsection 1 shall be filed in such form containing such particulars as may be prescribed. Already, we have discussed that subsection 3 provides that the corporate applicant shall, along with the application, furnish the following information; thus, three details must be given. The information relating to its books of accounts and such other documents for the period as may be specified. So, you are supposed to give the information relating to the books of accounts. The second document, information relating to the resolution professional proposed to be appointed.

So, as we have already seen based on form number 6, we can understand that the information relating to the resolution professional must be given. Then you are supposed to pass a special resolution. So, whenever the corporate debtor wants to make an application, he is supposed to pass a special resolution at the general meeting. The special resolution must be passed by the shareholders of the corporate debtor, or it must be passed with at least a three-fourths majority. So, as we already know, a special resolution means a three-fourths majority.

So, this resolution copy must be attached along with the application. Then, in *Leo Duct Engineers and Consultants Ltd v. Canara Bank*, the NCLT was held to be unable to reject the application on other grounds. So, as we have already seen, it is clearly stated if you observe subsection 3. So, three things must be satisfied whenever you are making an application to the NCLT.

So, you have to provide information about the books of accounts, then you are supposed to provide information about the resolution professional, and then a copy of the special resolution. So, if these documents are there, then NCLT cannot reject the application. The NCLAT held in the case of *Leoduct Engineers and Consultants Limited versus Canara Bank* that the NCLT cannot reject the application on other grounds. Then, in the case of *Unigreen Global Pvt Ltd v Punjab National Bank*, the NCLAT held that if a financial creditor takes any action under the SARFAESI Act 2002, it cannot be a ground for rejecting the application. That means the financial creditor has already taken action against the corporate debtor to recover the amount under the SARFAESI Act.

Then that is not a ground to reject the application because the application is made by the corporate debtor. Therefore, the fact that the financial creditor made an application or took action under the Surface Act cannot be a ground to reject the application under the IBC. Then, in *Gaja Trustee Company Private Limited versus Haldia Coke and Chemicals Private Limited*, in this case law, NCLAT held that shareholders' approval at the general meeting is mandatory. Without having the shareholders' approval at the general meeting by passing the special resolution, you cannot make an application under section 10 of the Act. Subsection 4, the adjudicating authority, so once you satisfy all these conditions, that is, three conditions: the financial statements must be given, the books of accounts must be given, and you are supposed to pass the special resolution.

So, these three conditions, as we have already discussed, must be satisfied. You are supposed to have the name of the interim resolution professional given, and you are supposed to pass the special resolution. Additionally, you are supposed to provide the financial statements. If you satisfy these three conditions along with these three things, and you are making an application to the adjudicating authority, then the adjudicating authority, within a period of 14 days, shall admit the application by an order if it is complete. If the application is complete, then it shall be admitted; otherwise, it shall be rejected if it is incomplete.

However, please remember that before rejecting, he is generally expected to be given an opportunity to be heard. This means you have to provide an option to rectify any mistakes if there are any defects. Then you should give an opportunity. So, it is provided in the section itself that the adjudicating authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days. So once the application is made by the corporate debtor, if there are any defects, then the

adjudicating authority shall give the notice stating that such and such defects are there; please rectify within seven days.

So, once it is rectified, then he may admit the application. The corporate insolvency resolution process shall commence from the date of admission of the application under subsection 4. So, once the application is admitted under section 10, subsection 4 of the Act, it is presumed that the corporate insolvency resolution process has commenced from that date onwards. So, because, as we have already discussed, the commencement date is very, very important. Even in the subsequent lessons, we are going to discuss how the commencement date is very, very important and what the significance of the commencement date is.

So let us recap what we have discussed till now, because until here we have discussed the initiation of the CIRP process. So, till now, we have discussed how the CIRP process can be initiated by the financial creditor. As we have already discussed under section 7 of the IBC, a financial creditor can initiate the CIRP process. Then, in the subsequent lessons, we discussed the operational creditor's initiation of CIRP. Then we discussed the initiation of CIRP by the corporate creditor.

So, with this, we have completed how initiation can be taken by, or how CIRP can be initiated by, financial creditors, operational creditors, and corporate debtors. With this, once the initiation is completed and the application is admitted by the NCLT, which is the adjudicating authority, the CIRP process is initiated. Then, subsequent to that, legal effects will start. So, in the subsequent lessons, we are going to discuss how the moratorium is going to be affected, what the process of CIRP is, and everything we are going to discuss in the subsequent lessons.

Thank you.