

Insolvency and Bankruptcy Law in India

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Week 05

Lecture 23

Welcome, everyone.

As part of the course on Insolvency and Bankruptcy Law in India, we will discuss the concepts of public announcement, filing of claims, and verification of claims today.

As we have already discussed, once the application is admitted by the adjudicating authority, which is the petition made by the financial creditor, operational creditor, and corporate debtor, if it is admitted, then the IRP will be appointed, and he is supposed to make the public announcement.

Today, we will discuss how to make a public announcement, its format, and when the IRP files a public announcement. He is going to invite the claims from the creditors, and the verification of the claims is also done. Today, in this lesson, we will discuss the various formats to be used for public announcements, filing claims, and verifying claims. So, section 13 of the declaration of moratorium public announcement provides that the adjudicating authority, after admission of the application under section 7, section 9, or section 10, shall, by an order, declare a moratorium for the purposes referred to in section 14.

In previous classes, we have already discussed the scope of Section 14. Then, cause a public announcement of the initiation of the corporate insolvency resolution process and call for the submission of claims under section 15. Once the CRP process is initiated, he will make a public announcement to initiate the CRP process and call for the submission of claims under Section 15. And appoint an interim resolution professional in the manner laid down in the section, so once the adjudicating authority admits the application under section 7, 9, or 10, we will first make the declaration of the moratorium, then make the public announcement for the initiation of the insolvency resolution process, and appoint the interim resolution professional. So, these three things will happen when the application is admitted by the adjudicating authority: the public announcement referred to in clause b of subsection 1 shall be made immediately after the appointment of the interim resolution professional. Once the interim resolution professional is appointed, you will make the public announcement immediately.

Let us then discuss Section 15, Public Announcement of the Insolvency Resolution Process. The public announcement of the corporate insolvency resolution process under the order referred to in Section 13 shall contain the following information, so whenever you are making the public announcement, these details must be included in the public announcement: the name and address of the corporate debtor under the corporate insolvency resolution process, and the name of the authority with which the corporate debtor is incorporated and registered. Then the last date of submission of claims, as may be specified, is the details of the interim resolution professional who shall be vested with the management, because once the CRP process starts, you are going to rely upon the IRP, who is going to replace the board of directors and be responsible for receiving the claims, because he is the person who is going to receive the claims. These items must be included in the public announcement, along with any penalties for false and misleading claims. The date on which the corporate insolvency resolution process shall close is limited by time constraints, and it will be completed within 180 days from the date of admission of the application under sections 7, 9, and 10. Okay. Therefore, under the act, the CRP process must be completed within 180 days. Okay, but anyway, we will discuss in another lesson how to complete it within the time limitation, whether the judiciary has the power to extend it, and whether we are practically able to complete it within the time limitation or not. We will discuss filing a claim by the creditor in another lesson, once you have made a public announcement. The purpose of the public announcement is to invite claims from various creditors. The primary purpose of issuing the public announcement is to solicit claims from these creditors.

Then what is the claim? A claim is defined under section 3, subsection 6, which means a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured. So, whenever I have a right to payment, this definition, which we discussed in the previous lesson when we were covering the definitions, is the definition of a claim in detail. In simple terms, whenever I have a right to payment, that right to receive payment may be reduced to a judgment; perhaps I have already received the judgment. Based on the judgment, I am entitled to receive the payment. It is fixed, or it may be disputed, or undisputed, secured, or unsecured. The right to receive the payment is one claim. Then, regarding the right to remedy under the claim, we should highlight two key points: the right to payment and the right to remedy. Right to remedy for the breach of contract under any law for the term being enforced, so whenever you have a right to remedy. So, suppose the other person has failed to perform their contract, then you have the right to remedy; you can go to court. So that is the right remedy. Whenever I have either the right to payment or the right to remedy, that is referred to as a claim within the meaning of Section 3, subsection 6.

Then, the filing of claims by the operational creditor, other than the workman and employee. So, before that, let us discuss how to make the public announcement. So, I'm going to show you the format for the public announcement, Form Number A. In Form Number A, you will make the public announcement. This is the format for Form Number A, Schedule One, a public announcement. These are all the various details to be provided: the name of the corporate debtor, the date of incorporation of the corporate debtor, the authority under which the corporate debtor is incorporated, the corporate identity number, and the LLP number. In the case of the company, the CIN number will be present, as will the LLP identification number, the address of the registered office and principal office, the insolvency commencement date, and the estimated date of closure of the insolvency resolution process. As we have already discussed in the section, these are the basic details: the name and registered address of the insolvency professional, the registration number of the insolvency professional, the address and email of the interim resolution professional, and the email address to be used for correspondence. The last date for submission of claims, classes of creditors, if any, under clause b, the name of the classes, how many classes you have, and the names of the insolvency resolution professionals, along with their identification numbers and relevant forms. These are all the basic details to be given in a public announcement. This is the format number one. In this format, you are supposed to make a public announcement. Then, once you make the public announcement to various categories of creditors, they can claim and submit their claims.

Now, let us discuss each category individually. One by one, we will discuss the filing of claims by operational creditors, excluding workmen and employees. Regulation 7 of the Insolvency and Bankruptcy Board of India (IBBI) Insolvency Resolution Process for Corporate Persons Regulations 2016 provides for claims by operational creditors other than workmen and employees. Here we have one format, Form B. Let's examine Regulation 7 and Form Number B. Regulation 7 speaks about claims by the operational creditor. According to Regulation 7, a person claiming to be an operational creditor, other than a workman or employee of the corporate debtor, shall submit the claim to the interim resolution professional by post or electronic means in Form B. We will also examine Form B. He is supposed to submit the claim. What should be given along with form number B? So, records are available with the information utility if any other relevant documents, like the contract for the supply of goods and services with the corporate debtor, an invoice demanding payment for the goods and services supplied to the corporate debtor, or an order of the court or tribunal that has adjudicated upon the non-payment of debt. Therefore, you are supposed to provide the contract of supply because the operational creditor must have supplied some goods or rendered some services.

As we previously discussed, the contract for that invoice stipulates that the operational creditor must demand payment of the receipt from the corporate debtor before filing a

petition. An invoice demanding payment, any court order, and financial accounts are required. Then, you are supposed to give copies of the relevant extracts of the GSTR-1. You are also supposed to provide the GSTR-1 and GSTR-3B. So, you are supposed to give this data. Then, provisions of the relevant laws relating to the GST Act, and e-way bills, if any. These are all the basic documents to be given along with Form No. B. Now look at Form No. B, Schedule 1, Form No. B. Proof of claim by the Operational Creditor except for Workmen and Employees. To the interim resolution professional, it is in the format of a letter. The following details must be provided: the name of the operational creditor and its identification number. If the operational creditor is an incorporated body, please provide both the identification number and proof of incorporation.

Suppose it is a company; the certificate of incorporation must be given. The LLP certificate must include the address and email address of the operational creditor for correspondence, the total amount of the claim, details of the documents by the reference number, and you are supposed to submit the claims along with the reference numbers, claim number one, claim number two, for these attachments. Then, details of any dispute, as well as the record of the pendency. So, in case there are any disputes, you are supposed to provide the details of the disputes, as well as details of how and when the debt was incurred, details of any mutual credit, and details of these matters, including any security held, the value of the security and its date, and any retention of title arrangement. Therefore, this basic data should be provided along with Form Number B, and then details of the bank account to which the claim amount or any part thereof can be transferred should be provided, along with a list of attached documents. These are all the basic documents, and after that, you are supposed to give the declaration. These documents must be attached along with Form Number B. Next, we will discuss the filing of claims by workers and employees.

So, regulation 9 of the CRP regulations deals with the filing of claims by workmen and employees, read with form number D. In form number D, proof of claim by workmen or employees is provided, and here they will give the details of the name of the employee or workman, PAN number, passport, the identity card issued by the election commission, Aadhaar card, any ID card, address and email address of the workman or employee, total amount of the claim, the amount being claimed, details of documents by reference to which the claims are to be submitted and substantiated, details of any dispute as well as the record of pendency, and details of how and when the claim arose. Then, details of any mutual credit, mutual debit, debts, or other mutual dealings between the corporate debtor and the creditor; then, details of the bank account, including a list of documents. So, these documents must be given in this form.

Let us then discuss the filing of claims by financial creditors. The filing of claims by financial creditors is discussed in Regulation 8 of the CRP regulations, and Form C is expected to be used to make the application. Now, let us discuss the filing of claims by

financial creditors. Regulation 8 of the CRP regulations deals with the filing of claims by financial creditors. The creditor is expected to make an application in form number C. Submit the claim in form number C. Let us examine Form Number C. Rule 1. Form C provides for the submission of a claim by a financial creditor. Here, the financial creditor claims in form number C. These are all the basic details. Name of the financial creditor. Identification number of the financial creditor. If it is an incorporated body, provide the CIN number; if it is a partnership or an individual, provide the relevant data accordingly. Address and email address of the financial creditor for correspondence. Details of the claim. Compared with the operational creditor, the details he is expected to provide are more detailed. Amount of the claim. Amount of the claim covered by the security interest.

Then the amount of the claim covered by the guarantee, if any. Name and address of the guarantors. So, this data must be provided. Then, details of the claim if it is made against the corporate debtor as a guarantor, if he has given the guarantee; a financial creditor has given the guarantee, then the amount of the claim recovered by the financial security interest; then the amount of the claim covered by the guarantee; name and address of the principal borrower; then the amount of the claim if it is made in respect of financial debt. Then, provide details of how and when the debt is incurred, any mutual credit arrangements, and bank account details.

Then, you are supposed to provide the declaration. This is how you are going to submit your claim. Regulation 8a of the CRP regulations provides for the filing of claims by financial creditors in class, so Form CA is a relevant form for filing claims by financial creditors in class. Here is how he plans to file the claim. The name of the financial creditor, identification number of the financial creditor, and more or less similar facts are in the case of an incorporated body, CIN number, partnership firm registration number, LLB registration number, then address and email address, total amount of the claim, details of the documents, and details of how and when the debt was incurred.

Then, details of any security held and details of mutual credit, if any, are provided. Next, details of the bank account, including the list of documents, and the name of the insolvency professional who will act as the authorized representative, are provided. In the case of a class, as we have already discussed, the class cannot represent itself; therefore, it should be represented by an authorized representative. So, in the case of the insolvency professional, who is going to act as the authorized representative of the creditor?

Then you are going to give the declaration of the power of the interim resolution professional or resolution professional in relation to the claim filed by the creditor, so as per section 18, subsection 1, clause b, the IRP is duty-bound to receive and collate. Please remember that the words “receive” and “collate” are very, very important. He is expected to receive the claims and collate them, which is the basic duty of the interim resolution

professional. All the claims submitted by the creditors, as we have already discussed, are in various forms. He is supposed to receive the claims, then collate all the claims submitted by the creditors to him, pursuant to the public announcement made under Sections 13 and 15. So in the case of Bijay Prabhakaran Pulipra, RP of PVS Memorial Hospital Private Limited versus State Tax Officer/Works Contract, the NCLAT held that the RP may, under regulation 10, call for clarification; for instance, when submitting any claim, if he has any doubt or if he requires any clarification, the RP has the power to ask for clarification to substantiate the whole or part of the claim. Therefore, for each and every part, because you may claim two to three amounts, he can ask for information to substantiate the claim.

Then, in another case law, Sumat Kumar Gupta, RP of Vallabh Textiles Company Limited, versus Vardhaman Industries Limited. In this case law, the NCLAT held that the RP or IRP shall maintain an updated list of claims. So, it is the responsibility of the resolution professional. Whenever they submit the claims, he is supposed to maintain one register. So, in this register, he is supposed to update the claims. The RP, while examining claims, is expected to act in a manner that inspires confidence in the financial creditors. He is expected to act in such a manner, in good faith, and in simple language. He is expected to act, and he is not expected to take any action that is prejudicial to the interests of creditors.

Then, in another case, Law Earth Gracia Private Limited versus Earth Infrastructure Limited, the NCLAT held that it supported the decision of an RP to reject the claims based on the documents. So, RP has the freedom to make decisions when claims are submitted to the resolution professional.

So, if any claim is considered fraudulent. You see, if he's of the opinion that any claim is fraudulent, then in such cases, the Resolution Professional has the right to reject the claim. Regulation 10 addresses the substantiation of claims. Regulation 10 provides that the interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from the creditor for substantiating the whole or part of its claim. Whenever a creditor is mentioned, it encompasses both financial and operational creditors. If any creditor is submitting the claim, then the resolution professional should be notified. Therefore, he may request additional information and evidence to substantiate the claim submitted by the creditor. And then Regulation 11 provides that a creditor shall bear the cost of proving the debt due to them. So, it is the responsibility of the creditor who shall incur the cost. If any expenses are incurred, then the creditor must bear them. Then, Regulation 12 provides for the filing of claims and outlines the time limit for filing them.

Therefore, a creditor must submit the claim, accompanied by proof, on or before the last date specified in the public announcement. In the public announcement only, we will

generally mention the date by which you are expected to submit. Provided that a creditor who fails to submit the claim with proof within the time stipulated in the public announcement may submit his claim with proof to the interim resolution professional or resolution professional, as the case may be, up to the date of issue of the request for the resolution plan. Please remember that when issuing the public notice, we will provide the date by which you are required to submit the claim. However, this is not a hard and fast rule; it is merely a guideline. So generally, you have time up to the submission of the resolution plan. You have up to the date of issue of the request for the resolution plan to submit your time.

After the public announcement and the collation of claims, the resolution professional will make a public announcement inviting the proposed or probable resolution applicants to submit their resolution plans. Until that time, you have either the time or 90 days from the date of insolvency commencement, whichever is later. Generally, in the public announcement, you will mention the time limitation, but the maximum time limit is 90 days. Within 90 days, provided that the creditor shall provide reasons for the delay in submitting the claim beyond the period of 90 days from the insolvency commencement. According to the rule, you are required to submit within 90 days. If there is any delay, you are expected to inform the creditor submitting the claim of the delay and provide the reasons for it, especially if the creditor in sub-regulation one is a financial creditor.

Then it shall be included in the committee as of the date of claim admission. The financial creditor who is submitting the claim shall be included in the committee from the date of admission of such claim. When the claim is admitted, the financial creditor will be admitted to the committee of creditors, as the committee consists solely of financial creditors. Therefore, whenever a claim is admitted by the financial creditor, it becomes part of the committee of creditors. Provided that such inclusion shall not affect the validity of decisions taken by the committee prior to such inclusion. Therefore, you cannot say that someone is coming now; consequently, any decision made before their admission is not valid. Therefore, any decisions made by the committee of creditors prior to the admission of this new creditor are valid and binding.

In the case of Mukul Kumar RP of KST Infrastructure Limited versus RPS Infrastructure Limited, the NCLAT held that claims filed after the time limitation cannot be accepted. Therefore, a 90-day time limitation applies, and any extended time limitation should be noted. Suppose you fail to submit the claim within the time limitation, NCLAT held that you cannot accept the claim. why? Because if the claim is submitted after the extended period, and it is accepted, it will delay the entire CRP process. It will affect the entire process. That's why you are not supposed to accept any claims submitted after the deadline. The limitation period is as follows: if a claim is submitted after the extended period, the RP should have rejected the claim. The NCLT is of the opinion that if a claim is submitted after the extended period, then the RP should have rejected the claim.

In another case, the Law Office of the Assistant State Tax Commission, State Tax Department, Government of Maharashtra versus Sri Parthiv Parikh, the NCLAT held that claims cannot be entertained after the time limitation; so clearly it was held that, even though it is a state government and there is tax liability, once the public announcement is made and there is a limitation, you are expected to submit the claim within the time limitation. If any creditor fails to submit a claim within the time limit, please note that such claims cannot be admitted, as it would impact the entire CRP process. The primary objective of IBC is to ensure that the CRP process is completed within the time limit, allowing us to recover the assets. Maximization of assets is one of the basic purposes of IBC. So that's why the law is very clear: you cannot accept any claim beyond the time limitation. Regulation 12A provides that a creditor shall update its claim as and when the claim is satisfied; then immediately, it shall update it, partly or fully, from any source in any manner after the insolvency commencement date. If any creditor has other reasons through alternative means and is receiving the money, then in such cases, if the claim is satisfied, they shall inform the resolution professional; that is their responsibility. Regulation 13 provides for the verification of claims and the compilation of a list of creditors.

So, this regulation provides that the interim resolution professional, or the resolution professional as the case may be, shall verify every claim. Please remember that once the claims are submitted in different forms, as we have already discussed. Once it is submitted, it is the responsibility of the IRP to verify each and every claim. Then, within seven days from the last editor's receipt of the claim, please note that once the claims are received, you are required to verify them. After that, you are supposed to maintain a list of creditors containing the names of the creditors, along with the amounts, interest, and other details. This is necessary because they will provide various data in the form, such as the name of the creditor, the amount, and the nature of the interest, among others. All this data must be maintained in the register. Then Regulation 14 addresses the determination of claims, where the amount claimed by the creditor is not precise due to any contingency or other reasons, and they are unable to provide the precise amount.

In such cases, the resolution professional, or the resolution professional as the case may be, shall make the best estimate of the amount of the claim based on the information available to him. So, if the amount cannot be determined or if the financial creditor is not providing a proper picture or figure, then in such cases, the resolution professional must use their prudence to determine the claim based on the information available to them. Then, the interim resolution professional, or the resolution professional as the case may be, shall revise the amount of claims admitted, including the estimates of claims made under sub-regulation 1, as soon as practicable when additional information becomes available. Therefore, he has already prepared the claims; if there are any additions, please

note that it is the responsibility of the interim resolution professional or resolution professional, as the case may be (IRP or RP, respectively), to update the data accordingly.

Then, in one of the case laws, Rajdeep Clothing and Advisory Pvt Ltd vs. Brijesh Kumar Mishra RPF Krishna Knitwear Technologies Ltd, the resolution professional cannot delegate the functions. From regulations 10 to 14, we have the powers that we have already discussed. In the previous slides, regulations 10-14, IRP or RP have certain rules. Therefore, it was held that these duties or powers cannot be delegated, as they are all functions that must be delegated by the resolution professional. Therefore, these functions cannot be delegated to others. Regulation 15 provides that claims received in a foreign currency should be converted into Indian Rupees. So, suppose any financial credit is from a foreign country or the debt is in a foreign country. If any claim is made in a foreign currency, please note that it must be converted into rupee value accordingly, and the claim must be specified. You cannot hold both Indian rupees and foreign currency at the same time; that is not possible. Whenever you maintain the data, it must be done on a uniform basis. You are supposed to maintain it only in Indian rupees. With this, we have completed the concept of public announcements, followed by claims from various individuals, including financial credit, operational credit, and workmen, along with the related forms.

In today's session, we discussed the public announcement filing of claims and verification of claims. While covering these topics, we also examined the provisions of Section 13, which includes the declaration of moratorium and public announcement. Then we discussed the provisions of Section 15, which concern the public announcement of the corporate insolvency resolution process. Then we discussed the filing of claims by creditors, including how to file claims in detail across various categories of creditors, such as operational creditors other than workers and employees. We also discussed which forms we need to use. And when workmen and employees, other than those involved in the operational creditor's claims, are filing claims, we have discussed how to file them. Then, if any workers and employees file claims, we have discussed how to file them. We have also discussed the filing of claims by the financial creditor.

Then we discussed the filing of claims by the financial creditor in class. We then discussed the power of the interim resolution professional or resolution professional in relation to claims filed by the creditor, specifically regarding the extent to which they may accept or reject them, and whether they have the authority to do so. We have discussed this in class. Then we discussed Regulation 10 of the CRP regulations, which is the substantiation of claims. We have discussed the provisions. We then discussed the provisions related to the determination of claims under Regulation 14 of the CRP regulations.

In today's lesson, we discussed the concepts of public announcement, filing claims, and verifying claims in detail.

Thank you.