

# **Insolvency and Bankruptcy Law in India**

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**Week 05**

**Lecture 24**

Welcome, everyone.

As part of the course on Insolvency and Bankruptcy Law in India, we will discuss the concept of timelines and the individuals who are not eligible to make an application under the IBC today.

In the previous classes, we have already discussed how to make an application under Sections 7, 9, and 10. Under Section 7 of the IBC, financial creditors can make an application, and under Section 9, operational creditors can make an application. While under Section 10, a corporate debtor can make an application for the initiation of the CRP process, we will first discuss the concept of persons who are not eligible to make an application under the IBC. This means that if any person falls under this section, then they cannot make an application under section 7. Before that, let us discuss the concept of suspending the initiation of CRP for defaults that occurred during the COVID-19 period. During the COVID-19 period, the central government introduced Section 10A, suspending the initiation of the CRP process against any company due to the pandemic. So, there is no business, actually, as the lockdown was imposed. Therefore, this is why the Central Government inserted Section 10A, which provides relaxation to all corporate debtors.

Now, let us look at the section. So, notwithstanding anything contained in sections 7, 9, and 10, no application for the initiation of CIRP of a CD shall be filed for any default arising on or after 25th March 2020 for a period of six months or such further period not exceeding one year from such date as may be notified in this behalf. This section clearly provides that you cannot initiate the CIRP process during the period if there is any default between 25th March 2020 and the actual notification of the section. This section clearly states that you cannot initiate the CIRP process during the period if there is any default between 25th March 2020 and the date the section was notified. A six-month period is given, or the central government has the power to prescribe a period not exceeding one year, so they have utilized the maximum power, whereby one year is given. So, from 25th March 2020 until 24th March 2021. Whenever there is a default, you cannot file an application under sections 7, 9, or 10, as applicable. Now, provided that no application shall ever be filed for the initiation of the CRP process of a corporate debtor for the set

default occurring during the set period. So this section further provides that. So, if there is a default, it is there. So, is it temporary in nature? No. So, if there is a default, is it between 25th March 2022 and 24th March 2021? Okay. During this period, if a default occurs, it will be evident. So you cannot file it. That means this period is totally ignored. I can say this period is totally ignored. That is 25th March 2022. 24th March 2021 is totally ignored. It is removed from the IBC period. So, if there is a default between these two periods, that is from 25th March to 24th March, you cannot file a case before the adjudicating authority. Then, for the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under this section before 25th March. Sir, what is excluded from the purview of the IBC? Any default from March 25th to March 24th, 2021, is noted. If there is any default before this period, which is before 25th March 2020, and if a default occurs, please note that you can file against such a period.

The period excluded from the IBC is from 25th March 2020 to 24th March 2021. If there is a default before this period or a default after this period, both are included; we are only excluding the one-year period, that is, from March 25, 2020, to March 24, 2021. Then, in one of the case laws. That is Ramesh Kymal versus Siemens Gamesa Renewable Power Limited; in this case, the Supreme Court held that, when deciding whether to accept the application or not. Section 10A clearly states that it is to be totally ignored. This period is to be totally ignored. This period is totally omitted from the IBC each year. When any case is before you, the adjudicating authority need not verify the actual financial difficulty or the extent of financial difficulty suffered by the CD. It doesn't matter whether the corporate debtor suffered the loss during the COVID period or not. It doesn't matter. Because the period from 25th March to 24th March is totally excluded, that's why when any application is before the adjudicating authority where the due date is during this period, from 25th March 2020 to 24th March 2021, you can directly reject the application; so, you need not verify whether there are actual financial difficulties. What does the extent of the financial difficulty mean in all these things; it doesn't matter. So, it need not be gone into. In another case, Law Plus Corporate Ventures Private Limited versus Transactional Growth Fund Limited, the NCLT held that a default had been committed. Therefore, it cannot be combined with the default outside the specified period. So, as we have already discussed in the previous classes, what is the triggering point? The triggering point for making an application under this Act is a default of ₹ 1 crore. So, suppose we take the example before 2020, that is, 25th March 2020; there is a default there. Then, after 2020, on March 25, 2020, there is a default. Can you club this amount and that amount, which is before the period amount and after the period? No, you cannot club. So, you have to consider only before 2020. The default committed during the period cannot be covered and cannot be clubbed with the default. Thus, this is what the NCLAT held in the case of Less Corporate Ventures Private Limited versus Transactional Growth Fund Limited. So, you cannot club the default before 2020 and

during 2021. So, this default cannot be clubbed. Then, in another case, Vishal Agarwal vs ICICI Prudential Real Estate AIF-I, the NCLT held that the default during the period, i.e., March 25, 2021, is forever excluded, so it is no longer relevant. This is totally forever excluded; it is an absolute bar from the initiation of CRP, so you cannot club this amount or do anything. This period is totally excluded and ignored from the purview of the IBC; specifically, it is a one-year period.

Then, let us discuss the individuals who are not entitled to make an application. So far, we have discussed in previous classes how to create an application and who can be considered an applicant—that is, financial creditors, operational creditors, and corporate debtors. They can make an application for the initiation of CRP. Now, under Section 11, there are certain categories of people who are ineligible to make an application and are not entitled to make an application under the IBC. Now, let us discuss Section 11: a corporate debtor undergoing a corporate insolvency resolution process or a prepackaged insolvency resolution process. As we know, they can file an application under section 10. However, if the corporate debtor is already undergoing the CRP process, and there is a prepackaged insolvency resolution process ongoing, we need to consider these two circumstances. In the subsequent classes, we will discuss what PPIRP is, the process for implementing PPIRP, and other legal formalities related to PPIRP. We will discuss these subsequently. So, if any corporate debtor is undergoing a CRP process or PPIRP process, then in such cases, that corporate debtor is not entitled to make an application under IBC.

Then, a financial creditor or operational creditor of the corporate debtor undergoing PPIRP must be consulted. As we have discussed, Sections 7 and 9. Under Section 7, a financial creditor can make an application. In the case of a financial creditor or operational creditor, the PPIRP is increasing, resulting in three categories of individuals who can submit an application: the financial creditor, the operational creditor, and the corporate debtor. The first clause refers to the corporate debtor; the second clause pertains to the first two categories, namely, the financial creditor and the operational creditor. Therefore, if a prepackaged insolvency resolution process is underway, they cannot submit an application under the IBC.

Then, a corporate debtor having completed the CRP process 12 months preceding the date of making an application. Once the CRP process is completed against any corporate debtor, please note that within 12 months, they cannot make an application for the CRP process against another person. So, if the CRP process is completed, you must wait a minimum of 12 months. After 12 months, you may then apply for the CRP process. Then, a corporate debtor in respect of whom a resolution plan has been approved. The CRP process is currently underway. After the CRP process is completed, the resolution plan is also finalized and approved. Once the resolution plan is approved, within 12 months from the date of approval of the resolution plan, such a corporate debtor cannot make an application under this section.

Then, a corporate debtor or financial creditor who has violated any terms of the resolution plan is liable. Once the CRP process is completed, the COC will approve the resolution plan. Before that, the resolution applicant will submit an application to propose the resolution plan. It will then be approved by the COC.

We will discuss in subsequent lessons how the resolution plan will be approved and the voting rights of the committee of creditors. Everything we are going to discuss in the subsequent lessons. The resolution plan has already been approved. From the date of approval onwards, within 12 months, you cannot make an application under sections 7, 9, or 10 for a corporate debtor in respect of whom a liquidation order has been made. In the previous classes, we have discussed the entire process. In this process, once the resolution professional is appointed, the COC will be formed, and subsequently, you will invite people to submit resolution plans. If the resolution plan is approved, you will implement it. Suppose you fail to approve the resolution plan, or if the committee of creditors is unable to come to a conclusion, in such cases, the adjudicating authority can issue an order for the liquidation of the company. If the adjudicating authority gives the order for liquidation of the company, then that company cannot file an application under this section. Therefore, such a person is not entitled to make an application under the IBC.

Then, for the purpose of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. So, who is the corporate debtor? The corporate debtor means a corporate applicant. Suppose one company is there; under Section 10, that X company can make an application for the initiation of CRP against itself only. That is why the corporate debtor includes the corporate applicant in respect of such corporate debtor, as they can also make an application under Section 10. Whenever they use the term 'corporate debtor', it means they cannot make an application against themselves. That is the meaning of a corporate debtor. Next explanation 2: For the purpose of this section, it is clarified that nothing in this section shall prevent the corporate debtor referred to in classes A to D from initiating CRP against another corporate debtor. This means, for example, that if X company is listed under Section 10, in normal circumstances, X company can initiate the CRP process against itself. Therefore, if X company is undergoing CRP, it cannot initiate the CRP process against itself. But can X company initiate the CRP process against Y company? Yes, so for the purpose of this section, it is hereby clarified that a corporate debtor, referring to clauses A to D, cannot initiate the corporate resolution process (CRP) against corporate debtors. This means that if the CRP process against company X is completed within 12 months, they cannot make an application for the initiation of the CRP process against company X, but they can make an application for the initiation of the CRP process against company Y. This is the meaning of this section.

Now, in one of the cases, *Manish Kumar v. Union of India*, the Supreme Court held that Section 11 imposes a bar on a corporate debtor, including a corporate applicant, for the

initiation of any proceedings for insolvency against itself, and the same is no bar for a corporate debtor to initiate proceedings against another person. So, as we have already discussed in explanation 2, even in the case of *Manish Kumar v. Union of India*, the Supreme Court held that against an ex-company, if a CRP process is initiated or a liquidation order is given, then X company cannot initiate the CRP process against itself; however, whether X company can initiate the process against or make an application for the initiation of the process against Y company is affirmative. So, that's what they are saying: it imposes a bar on the corporate debtor, including the corporate debtor applicant, for the initiation of any insolvency proceedings against itself. X company cannot make an application against X company, but X company can make an application against Y company. There is no bar for a CD to initiate proceedings against any other person. Therefore, if you are initiating the CRP process against another person, there is no bar under Section 11.

Now, let us discuss the time limitation for the CRP process. This is one of the primary objectives of the IBC. Under IBC, one of the basic aims is to complete the CRP process within the time limitation. Section 12 addresses the time limitation. So, whether it is followed in toto, in letter and spirit, or not, we will discuss it subsequently. Section 12 provides that the CRP process shall be completed within a period of 180 days. Once the application under sections 7, 9, or 10 is admitted by the adjudicating authority, the CRP process must be completed within a period of 180 days, with a maximum of 180 days. Then, the resolution professional shall file an application with the adjudicating authority to extend the period of CRP beyond 180 days if instructed by the COC, provided that a vote of 66% of the voting shares is obtained. So, is there any possibility of filing an application for an extension? Yes. The resolution professional can file an application before the adjudicating authority to extend the time limitation beyond 180 days, but provided that whenever he is making an application for extension, it has to be supported by the resolution passed by the COC, or such resolution must be approved by at least 66% of the voting powers. When the application for extension is filed by the resolution professional, the adjudicating authority may, if it is satisfied that the subject matter of the case is such that the CRP process cannot be completed within 180 days, issue an order for extension, the duration of which shall not exceed 90 days. So the adjudicating authority can give the extension. Once the resolution professional submits an application, the adjudicating authority can grant an extension. However, this extension cannot exceed 90 days, which means that, primarily under the Act, you are expected to complete it within 180 days. Additionally, if you are submitting an application to the adjudicating authority, the total period is 180 days plus 90 days. So that is 270. You are expected to complete the process within 270 days. The above extension cannot be granted more than once. Please note that the adjudicating authority has the power to grant an extension of up to 90 days; however, such an extension is generally not granted more than once.

Generally, they will give an extension of 90 days at a time, which means 180 days plus 90 days equals 270 days. There is another section, in which another clause states that the CRP process shall be mandatorily completed within a period of 330 days. So here you may have a doubt. In the previous class, it was stated that the normal time limitation is 180 days. Then, if you are making an application to the adjudicating authority, the adjudicating authority can add plus 90, that is, 180 plus 90. However, if you examine this, the CRP process is expected to be completed within approximately 330 days. That means they are giving an additional 60 days. 180 plus 90, 270 plus 60, 330. 60 days. So what is this? 60 days. The CRP process shall be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of CRP granted under this section and the time taken in legal proceedings in relation to such resolution process of the CD.

Here, when they calculate these 330 days, what they are actually doing is giving an extension of 90 days, which is 180 plus 90, making it 270 days. Within 270 days, you must complete it. But there are instances where some dates are excluded. Suppose legal proceedings are pending before a court of law. Therefore, until the case is disposed of, you cannot proceed with the CRP process. Thus, such a period is excluded. Therefore, while calculating these 270 days, some dates are excluded. Therefore, even after considering those exclusions, the CRP process must still be completed within 330 days.

That is the meaning of 330 days. So, this 270 to 330, that's 60 days. It can be used to exclude dates. Maybe you didn't receive the order copy. Alternatively, the resolution professional. The board of directors is not cooperating with the resolution professional. There are so many reasons for the delay. All these things can be excluded while calculating the 270 days. Even after excluding the 60-day exclusion, the period cannot exceed 330 days. That is the meaning of 330 days. Provided also that where the resolution process of CD is not completed within the period of such resolution process, it shall be completed within a period of 90 days. So, this through the Amendment Act 2019 was stated that even after the extension of the period, which is 180 plus 90, totaling 270 days, if it is not completed within 270 days, then, before the commencement of the 2019 Amendment Act, if there are any proceedings, such proceedings must be completed within the period of 90 days.

So anyway, we still have 90 days for the additional time period. Now, let us discuss the judicial interpretation. In the case of Quantum Limited versus Inverse Finance Corporation Limited, the NCLAT held that an application for extension beyond 180 days may also be filed after the expiry of such a period if there are justifiable reasons. Generally, under normal circumstances, you are expected to complete it within 180 days. If COCs are of the opinion that they cannot complete the process due to technical difficulties, then they have to authorize the resolution professional within 180 days; that means you are supposed to complete it by the 180th day, or by the 179th day, you are

supposed to authorize the resolution professional to make an application for an extension. As a normal rule, the application for extension shall be made during the validity period; that means, after the expiry period, you cannot make an application for extension. However, there are instances where, if justifiable, the NCLAT has held that the adjudicating authority may allow such an application even beyond 180 days. Then, Regulation 40 of the CRP regulations provides that the CoC may instruct the RP to make an application to the NCLT under Section 12; thereafter, the RP shall make an application to a delegating authority. Sir, who is responsible for submitting an application for an extension? It is the RP. The resolution professional is supposed to make an application for an extension. That is 180 days plus 90 days; for such a 90-day resolution, a professional must make an application. Can he make the application himself? No, so the CoC has to instruct. The CoC may instruct the RP to make an application. Although the regulation uses the word “may,” it is actually not a matter of “may”. Therefore, here the CoC must instruct. In accordance with the instructions received from the CoC, the resolution professional shall submit an application to the adjudicating authority for an extension of the time limitation.

Then, when calculating these 270 days, certain dates need to be excluded from the CRP period. In the matter of *Re Aniba Subramanyam, Resolution Professional of Karur KCP Packagings Limited*, the NCLAT held that exclusion can be granted only to the extent of 60 days after the expiry of 270 days. Why? As we have already discussed, the extension is 180 days plus 90 days. Therefore, you are expected to complete 270 days of service. But as a whole, the resolution process must be completed within a period of 330 days, which means 330 minus 270 equals 60 days. So when you exclude any dates, such exclusion can never be more than 60 days. Exclusion can be granted only for a period of up to 60 days.

In another case, *Anil Tayal, RP of Horizon Buildcon Pvt. Ltd. vs. COC of Horizon Buildcon Pvt. Ltd.*, the NCLAT held that the period lasting on account of orders being reserved and pending judgment in the related application can be excluded from the CRP process. So maybe the CRP process is going on, and partly there are other proceedings against the company or maybe by the company related to this CRP process, so if the orders are reserved or if any judgment is pending in such matters, because until such other matters are decided, you cannot continue the CRP process, that’s why while calculating these 60 days, which is an exclusion, you can include those dates.

Then, in another case, *Ramachandra D. Chaudhary v. COC of Maharashtra, Shetkari Sugar Limited*, the NCLAT held that they had excluded the period lost due to non-cooperation. Therefore, there is a possibility that once the resolution professional is appointed, the promoter group or the suspended board of directors, as the case may be, is required to cooperate with the resolution professional. But there are instances in which

the promoter group may not cooperate with the resolution professional. So, the period during which there is non-cooperation can be excluded from the CRP period.

In another case, *Ashish Chaturvedi v. Inox Leisure Ltd.*, the NCLAT held that, prior to the loss due to the delayed CRP admission order, the IRP was excluded from the CRP period. Generally, when the CRP process is initiated, i.e., when you are making an application under Section 7, 9 or 10, the adjudicating authority will issue an order for the admission of the application, provided the conditions are satisfied. When the application is admitted, this information shall be provided to the IRP immediately. If there is a delay in informing the IRP, the delay period must be excluded when calculating the 270-day period.

Then, in another case, *Committee of the Creditors of Essar Steel India Limited versus Satish Kumar Gupta*, the Supreme Court held that the tribunal has the power to extend the time limitation by a further 330 days. According to the law, it must be completed within a maximum of 330 days. So, whether the tribunal has the power to extend the time limitation beyond 330 days, can it exercise judicial discretion? Yes, it can exercise judicial discretion, but it shall be exercised sparingly and judiciously. So, keeping in mind the objects of the IBC, One of the objectives of IBC is to settle the matter quickly; that is, the CRP process must be completed within the time limitation. Considering the objective of IBC, in exceptional cases, where the tribunal is of the opinion that an extension beyond 330 days is necessary in the interest of stakeholders, it is possible that they may grant an extension beyond 330 days as well. However, it is only in exceptional cases; please remember that you cannot use this power regularly. You can only use it in exceptional cases. So, upon the lapse of 270 days, in the absence of the COC resolution requesting further time. Generally, the COC has to make a request for further time, as we have already discussed in the case of the Committee of the Creditors of Essar Steel India Limited. In exceptional cases, the NCLT can grant an extension.

However, in the absence of an application for extension beyond 270 days, under normal circumstances, if you fail to complete the CRP process, liquidation shall be ordered as a general rule. As we have already discussed, when a liquidation order is given, if you fail to complete the CRP process within the time limit, or if the COC decides to proceed with liquidation, or if you don't receive a resolution applicant, in such circumstances, liquidation shall generally be ordered. If you fail to complete the CRP process within 270 days and the COC also fails to apply for an extension, in such cases, the liquidation order shall be issued under Section 33, subsection 1, clause a. Therefore, we will discuss liquidation subsequently.

Now, let's examine the timelines under the Regulation 90 CRP regulations. This is the model timeline as outlined in the regulations. So, T is the transaction date, as per Section 16, commencement of CRP. Then, T plus 3 is the public announcement. Within three

days of the IRP's appointment, a public announcement shall be made. Then, within 14 days, T plus 14, which is 14 days from the appointment of IRP. Then regulation 12 pertains to the submission of claims, so up to the 19th, there is T plus 19. Once the public announcement is made, any financial creditor, operational creditor, or creditor can submit their claims within 90 days. There are T plus 19 and T plus 21, so Regulation 13 covers the verification of claims. Here, you must submit the claims within T plus 14 days. Once you receive the claims, which is T plus 14, look at the next slide, T plus 21. So 14 plus 7. Within 7 days of receiving the claims, you are required to verify. Verification of claims received under Regulation 12.1 or 12.2. So, in the case of 12.2, t plus 97. Why is that? So, this is the submission of claims. Under 12-2, it is 90 days, t plus 20. Under 12-1, it is t plus 14, okay? So,  $t + 14 + 7$  gives us  $t + 21$ . T plus 90 plus 7. So, in both cases, it is only 7 days. Within 7 days from the receipt of the claim. According to Regulation 12.1, it must be received within 14 days. Under regulation 12.2, the claim must be received within 90 days. So, from such 14 days or 90 days, as the case may be: 14 plus 7 or 90 plus 7, 21 or 97. The application for the appointment of A.R. should be submitted within 2 days of verifying the claims received under Regulation 21, reporting the certification of IR.

Even in this case, T plus 23 and T plus 30 apply; therefore, the first meeting of the COC must be conducted within 30 days from the date of commencement and within 7 days of the filing of the report certifying the constitution of the COC. So you have to constitute the COC, as we have already discussed. The COC resolution professional will constitute the COC; once it is constituted, you are required to conduct the meeting within 7 days. Then TPS 30 resolution to appoint the RP resolution professional by COC is okay, so in the first COC meeting, they are supposed to appoint the RP. As we have already discussed TPS 30, but... It will come into effect immediately, as there is no time limitation; once the adjudicating authority issues the order, it will take effect. Then, T plus 40 IRP performs the functions of RP until RP is appointed. If RP is not appointed by the 40th day, it means there is a 10-day time limitation. Therefore, the resolution to appoint RP is scheduled for the 30th, and then there is a 10-day time limitation, which is the 40th day. Within 40 days, if RP is not appointed, then IRP will continue, that is, T plus 40. The appointment of a valuer should occur within 7 days from the date of the RP's appointment, which is 40 days;  $40 + 7$  equals 47 days, T plus 47.

Submission of the application for withdrawal of the application before the issue of the expression of interest must be made; you have to withdraw the COC and dispose of the application within 7 days of its receipt or 7 days of constitution. So when COC has to dispose of the application that is W plus seven. Then, the filing of an application for withdrawal is required. If approval is by 90%, a 90% majority is required whenever you want to withdraw the application. In subsequent lessons, we will discuss the withdrawal of the application separately, covering the legal rules and regulations within 3 days of the

approval of the COC, that is, W plus 10. So, this is only a withdrawal, and that's why we have W, W plus 7, and W plus 10. Then again, come back to the original time limitation. So, RP should form an opinion on preferential or other transactions. If preferential transactions are present, then those transactions can be excluded. That is within 75 days, T plus 75. Then RP made a determination on preferential or other transactions. Then it must be done within 115 days plus 115 days. Then the RP has to file applications with the adjudicating authority for appropriate relief, such as in cases of preferential transactions where the money is siphoned. If the siphoning of the money is done, then in such cases, the RP can file an application with the adjudicating authority for the appropriate relief. This must be completed within 130 days from the commencement. This is about preferential transactions now. Submission of IM to COC within 95 days of the commencement. Publish the Form G. Form G is for Public Announcement. Submission of Expression of Interest; though this publication must be then T plus 60. Submission of Expression of Interest: T plus 75, then the provisional list of resolution applicants by the RP is T plus 85. Then, submission of objections, if any, is due T plus 90; then the final list of resolution applicants is provided by the RP; then T plus 100. That is, 90 plus 10, T plus 100. Then, the issue of RFRP, including the evaluation matrix and IM, must be addressed within 5 days, that is, T plus 105. Then, receipt of the resolution plan must be done within T plus 135 days. Then, the submission of the COC approval resolution plan must be done; it must be approved by the COC, which is T plus 165. Then it must be submitted for approval of the resolution plan by the adjudicating authority within T plus 180 days. So these are all the various time limitations. Whether these time limitations are strictly adhered to or not, we have just discussed that 180 is the time limit. There is a possibility that it can be extended by 90 days, that is, 180 days plus 90 days, but another section states that it must be controlled within a period of 330 days.

In this lesson, we have discussed who is not eligible to file an application under sections 7, 9, and 10. Then, we subsequently discussed the time limitations: 180 minutes, 90 minutes, and an additional 60 minutes. While calculating the 60 days, certain dates can be excluded. What can be excluded? Those are the things we have discussed. And model the time framework prescribed under the regulation.

Thank you.