

Insolvency and Bankruptcy Law in India

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Lecture 26

Welcome to all.

Today, as part of the course on Insolvency and Bankruptcy Laws in India, we will discuss the concept of persons ineligible to act as a Resolution Applicant.

In the previous classes, we discussed the concepts of Expression of Interest and Public Announcement when a Resolution Professional is appointed. Then, he will invite expressions of interest, and subsequently, the prospective resolution applicants will submit their resolution plans. In the previous classes, we have discussed all these topics; today, we will focus on individuals who are not eligible to act as resolution applicants. Section 29A of the IBC provides for the persons who are not eligible to be Resolution Applicants.

Let's examine Section 29A in detail. A person shall not be eligible to submit a Resolution Plan if such person or any other person is acting jointly or in concert with such person. Here, when we consider a person, we have already discussed the definition of a person; a person encompasses both natural persons and artificial personalities. So, when you look at section 29A, which provides that a person shall not be eligible to submit a resolution plan if such person or any other person is acting jointly or in concert, the possibility is that person. Therefore, we are including a person acting jointly in concert. They are an undischarged insolvent. This is the first category of persons who are not eligible. So, any person who is an undischarged insolvent cannot file an application for a resolution plan. Therefore, he cannot file a resolution application. Then he is a willful defaulter in accordance with the guidelines issued by the Reserve Bank of India. So, under the Banking Regulation Act of 1949, the Reserve Bank of India will declare willful defaulters. Therefore, if any person fails to make the payments, certain criteria will be used to determine if they are willful defaulters.

Then, at the time of submission of the resolution plan, there is an account, so we have three categories under this. At the time of submission of the resolution plan, who has an account or an account of the corporate debtor under the management or control of such a person? The first category is any person who has an account or, under the management or control of such a person, who is a promoter classified as an NPA. Therefore, we will

discuss these three categories in detail subsequently. Therefore, if any account is classified as NPA and is under the management or control of such a person or pool, that person is considered a promoter. These three categories are not eligible to file a resolution plan. Then, provided that the person is eligible to submit a resolution plan, they must make a payment of all overdue amounts, including interest and charges related to non-performing asset accounts, before submitting the resolution plan. In the previous clause, we discussed that if any NPA is present, then such a person is not eligible.

We have three categories of persons; let us discuss them subsequently. So, if an NPA is present, such a person is not eligible to submit the resolution plan. However, if such a person clears the amount or makes a payment of the overdue amount, along with the interest and charges related to non-performing assets, then in such cases, the person has a resolution plan. The second provision further stipulated that nothing in this clause shall apply to a resolution applicant that is a financial entity and is not a related party to the corporate debtor. So this clause states that such a person is a financial entity. As a financial entity, there is a regular activity of lending money. Therefore, this is why financial entities are regulated by a regulatory authority. As we have already discussed in previous classes, these financial entities are regulated by the Reserve Bank of India. Therefore, separate rules and regulations will be applicable to them. Therefore, Section 29A stipulates that this section does not apply to financial entities.

Let us look at the explanation. What is the meaning of “related party”? In the previous clauses, there is the term “related party.” Let us discuss the concept of “related party.” For the purpose of this provision, the expression “related party” shall not include a financial entity regulated by a financial sector regulator. If it is a related party, then in such cases, such a financial entity shall not be considered to be a related party if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of the conversion or substitution of debt into equity shares. This concept has already been discussed in the previous sessions. Suppose any financial creditor, who happens to be a financial entity that has given a loan to the company, or any corporate debtor, then this debt is converted into equity. When this debt is converted into equity, the financial entity is considered a corporate debtor; merely because it has equity capital, it cannot be considered a related party. This concept has been previously discussed in lessons. Therefore, a related party shall not include a financial entity regulated by the financial sector regulator; merely because it has equity capital in the corporate debtor, it cannot be considered a related party. So, what are they saying here? An applicant has an account, or an account of a corporate debtor under the management or control of such a person, or of whom such a person is a promoter. Now, suppose we take the example of a company that wants to participate in the CRP process and file a resolution application. However, that company has already been taken over by another person. Through the resolution process, when it is taken over by another person, there is

always a possibility that an NPA can be there. That's why they are giving an exception; such an account was acquired pursuant to a prior resolution plan approved under this code. This means that the NPA was already acquired through the CRP process.

Now, the same entity wants to be the resolution applicant in the present CRP. Okay. Then, in such cases, they are exempted. Okay. This section is not applicable if one has been convicted of any offense punishable by imprisonment. If any resolution applicant is convicted of an offence that is punishable by imprisonment for 2 years or more. So, what are the conditions for 2 years or more under NIS, or for seven years or more under any law currently in force? Provided that this clause shall not apply to a person after the expiry of two years from the date of his release from imprisonment. So, who is not eligible to be a resolution applicant if any person has been convicted of any offense? Okay, so under Schedule 12, there is a list. Therefore, if a person is convicted and sentenced to imprisonment for two years or more, or if a person is imprisoned for more than seven years, that person, if convicted, is generally not eligible to act as a resolution applicant. However, if the imprisonment is completed and he has been released from jail, and two years have elapsed, then in such cases, he can again be a resolution applicant. Provided further that this clause shall not apply in relation to connected persons referred to in clause 3 of explanation 1. Generally, in normal circumstances, other disqualifications also apply, and even related parties are disqualified; however, in the case of imprisonment, related parties are not disqualified.

The next category is disqualified from acting as a director under the Companies Act; therefore, under the Companies Act, we have certain categories. There are no qualifications required for anyone to become the director of a company. But there are disqualifications. If any person is disqualified from acting as a director under the Companies Act, they are not eligible to be a resolution applicant under this Act. The next category is prohibited by SEBI from trading in securities or accessing the securities market. So, if any person is prohibited from accessing the market, there may be a violation of insider trading regulations or other regulations, such as the SAST regulations, which were passed by SEBI. If there is any violation under certain provisions of these regulations, SEBI may prohibit any person from accessing the market. Therefore, if any person is prohibited from accessing the stock markets, they cannot be a resolution applicant in such cases.

The next category includes a promoter or someone in the management or control of the corporate debtor who engages in preferential transactions, undervalued transactions, extortionate credit transactions, or fraudulent transactions. Generally, it is referred to as PUEF. So, preferential transactions, undervalued transactions, extortionate credit transactions, and fraudulent transactions. So, if these transactions were there, these are the transactions you will discuss in the subsequent lessons. As part of the liquidation, we will discuss the concept of avoiding transactions in detail. Whenever you are involved in

a preferential transaction, an undervalued transaction, an extortionate credit transaction, or a fraudulent transaction, such transactions can be avoided during liquidation. We will discuss this further in the subsequent lessons. Any person who is a promoter, or in the management or control of, any corporate debtor where these PUEF transactions are present. Then, in such cases, such a person cannot be a resolution applicant. Then, provided that this clause shall not apply if a preferential transaction, undervalued transaction, exorbitant credit transaction, or fraudulent transaction has taken place prior to the acquisition of the corporate debtor. So even that company was acquired by another party through the CRP process. And the preferential transaction, this PUE of transactions took place before the acquisition. In such cases, this disqualification is not applicable.

The next category: an application for insolvency resolution made by such a creditor has been admitted under this code, and the creditor has invoked the guarantee, and it remains unpaid in full or in part. This is the case of a corporate debtor's guarantee to the personal guarantee of the corporate debtor. Therefore, any person who has executed a guarantee in favor of a creditor in respect of the corporate debtor. Guarantee in favor of the creditor; then, in such cases, such a person, whoever gave the guarantee, is not eligible to file a resolution application and is subject to any disability corresponding to clauses a to h under any law in a jurisdiction outside India. So, in India, we have discussed the conditions; suppose any person outside India wants to be a resolution applicant. Then, if he is subject to any disability that they may not have in such a country, you may not have the same provisions, but more or less similar corresponding provisions are there. Then, in such cases, according to the law to which he is subject, if he is ineligible, he is also ineligible to file a resolution plan in India. For the purpose of this class, the expression "connected person" refers to someone who is considered to be a connected person. A connected person refers to any individual who is a promoter or is in the management or control of the resolution applicant. So, whenever someone wants to be a resolution applicant, if that person is a promoter or has management or control of the resolution applicant, suppose one company wants to be a resolution applicant. So, if any person in management or having control over the business of the corporate debtor during the implementation of the resolution plan, when the resolution plan CRP process is going on against one company, and in such a company someone is a promoter, or someone is in management, or someone has control over the business of the corporate debtor, then in such cases, he cannot be a resolution applicant. Therefore, he is considered a connected person.

Then, holding companies, subsidiary companies, and associated companies are related parties of a person referred to in clauses 1 and 2. So, in the case of a holding company, subsidiary company, or associated company, they are also considered to be related persons or connected persons according to this section. Let us discuss, provided that it applies to a resolution applicant who is a financial entity and is not a related party of the

corporate data, provided further that the expression “related party” does not include financial entities. Here they are, clearly stating that the concept of related party-related entries will not be applicable to financial entities because they are separately regulated by the RBA. That’s why they are to them. A financial entity, as we have already discussed, refers to entities that meet the criteria and conditions prescribed by a central government. Financial entities include scheduled banks, any entity regulated by a foreign central bank (such as the RBI), and, similarly, any central bank, securities market regulator, or other financial sector regulator of a jurisdiction outside India. If any person is a regulated investor or a foreign venture capital investor, the terms shall have the meanings assigned to them in Regulation 2 of FEMA. If any investment vehicle registers with an institution, separate rules and regulations apply to it. These regulations will not be applicable to them.

As a pre-construction company under the SARFAESI Act or an alternative investment fund registered under the SEBI, such categories of persons as may be notified by the central government. They are considered to be. So far, we have discussed the definition. We have discussed Section 29A in detail, which lists the persons who are not eligible to be reservation applicants. Until now, in the next lesson, let us recap what we have discussed today.

In today’s lesson, we discussed the concept of a person being ineligible to act as a resolution applicant. So, who is ineligible to act as a resolution applicant? We have discussed. We then discussed the provisions of Section 29A in detail. Then, who is considered a connected person? We have discussed what a financial entity is; therefore, in today’s lesson, we will focus on who is eligible and ineligible to act as a resolution applicant. Half of the part is remaining; the remaining half will be discussed in the next session.

Thank you.