

# **Insolvency and Bankruptcy Law in India**

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**Week 07**

**Lecture 32**

Welcome to all.

As part of the course on Insolvency and Bankruptcy Law in India. Today, we will begin discussing the concept of resolution plan considerations as outlined by the judiciary. In the previous classes, we also discussed the resolution plan, which is a continuation of the topic. So, in the previous class, we discussed the mandatory contents of the resolution plan and what should be included in it. We then discussed what insolvency resolution costs are, their meaning, and the definition given under Section 5 of the Act. We discussed the payment to operational creditors, so a minimum value must be specified, and prior payments must be given priority. We discussed this concept.

Then we discussed dissenting financial creditors, so when you propose the plan before the COC and the COC approves it, there is a possibility that dissenting financial creditors may be present. So, the dissenting financial creditors have the right to receive payment in priority; we have discussed this point. Then, the contents relating to the avoidance of transactions in the resolution plan have been discussed. Then, how will you treat the provident fund in the resolution plan? Then, in the resolution plan, we discussed that the resolution plan cannot contravene other legislation. So, we have briefly discussed voting on the resolution plan. These are all the various points we discussed in the previous class.

In continuation of that, today we will discuss what happens once the resolution plan is approved. In the last class, we discussed the resolution plan up to its approval. So, once the resolution plan is approved, how will you file with the NCLT? Then, how are you going to deal with how the NCLT will treat the resolution plan? These are the various topics we will discuss in this class. So, before that, let us consider and look at Form H. Whenever you file a resolution plan with the NCLT, the resolution professional is expected to file the resolution plan in Form H. Now, let us look at Form H. In Form H, you will provide the compliance certificate, so Form H must be attached along with the resolution plan. The resolution plan is one document, and Form H is another. Additionally, along with Form H, you are required to submit an application to the NCLT. So, Form H is essentially the compliance certificate issued by the resolution professional. Here, he will provide the details regarding the CRP, including the name of the CD, the

date of initiation of the CRP, the date of appointment of the CRP and IRP, and the date of publication of the public announcement. As we have already discussed various timelines in the previous sessions, OK, so everything will be here.

Then I have examined the resolution plan received from so-and-so. Is it a resolution applicant? If so, they will write the name. I hereby certify that the resolution plan complies with all provisions of the IBC and the rules made thereunder. Then, list the financial creditors, including the name of the creator, their voting share, and how they voted in favor of or against the resolution. Also, specify the amounts provided for the stakeholders under the resolution plan and how you will provide these amounts: total amount claimed, total amount admitted, and amount provided under the plan. I mean, you are supposed to provide both the amount and the percentage. So, as you can see, you are supposed to provide all the details.

Then the interests of existing shareholders have been altered. How will they be altered? Then, compliance with the Resolution Plan is as follows: there are various sections, so whether you complied with each section or not, you are required to provide a declaration. These are all the various sections we have already discussed, as well as the timeline from the previous lessons. We have discussed the actual timeline under Regulation 40A, and then the actual title. So, did you complete the law or not? From this, we can understand it. The time frame proposed for obtaining the relevant approval, as we have already discussed, must include the approval details. Additionally, if the resolution plan requires approval from any other authority, please specify the timeframe for obtaining this approval and the estimated duration required. Therefore, everything must be provided; if there are any contingencies, please provide the details. If there are any non-compliances, please provide the details as well. Additionally, please provide details of Section 66 or the avoidance of the application file that is pending. Signature. This is how you will issue the compliance certificate. The compliance certificate must be filed along with the resolution plan. Whenever you file an application with the NCLT that involves a resolution plan, you are required to submit Form H and a compliance certificate. Section 30, subsection 6, provides that the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the adjudicating authority. Subsection 6 provides that once approval is given by the COC, the resolution professional is expected to submit the resolution plan to the adjudicating authority.

In the case of Appu Hotels case law, the NCLAT held that the resolution plan was modified after the approval of the COC but before submission to the NCLT, so it amounts to material irregularity. Please remember that once approved by the COC, you are required to submit it to the NCLT. So, after submitting to the NCLT, there is no possibility of modification. Okay, so you cannot modify. Before submitting the resolution plan to the NCLT, if approval is obtained and you are ready to submit it to the NCLT, within this time period, if you are making any modifications, then that modification

amounts to a material irregularity, so it cannot be accepted. In another case, Dinesh Gupta versus Vikram Bajaj, liquidator of Best Foods Limited, the NCLAT held that any alteration to the resolution plan after approval by the COC would require another round of voting. Once the resolution plan is approved by the COC, you are required to submit it to the NCLT immediately along with the approval. Whenever there is a change, you are supposed to undergo the voting process once again. In another case, the Ebix Singapore case, the Supreme Court held that the COC cannot request any modification of the resolution plan. Then, one more condition is whether I can modify it. So, can I request that the NCLT modify it after submitting the plan to them? Can I request a modification? No, even that is not possible. Therefore, COC cannot request any modification of the resolution plan once it has been duly approved and presented before the NCLT.

The only possibility is that, once it is approved, there is again the possibility of modification before submitting it to the NCLT. You can conduct the voting, so modifications must always be made through voting only. Without voting, if modifications are made, it amounts to a material irregularity. Then, once it is submitted to the NCLT, the NCLT will provide approval, as specified under Section 31. If the adjudicating authority is satisfied that the resolution plan approved by the COC under Section 30 meets the requirements referred to in Section 30, Clause 2, Subsection 2, then it shall, by order, approve the resolution plan. He is supposed to verify whether the conditions specified under Section 30, Subsection 2, are satisfied, and once the conditions are satisfied, he shall approve the resolution plan. Then, by order, the resolution plan shall be approved, which shall be binding on the corporate debtor. Once the resolution plan is approved, it is binding on the corporate debtor, its employees, members, creditors, including the central government, state government, and any other authority. That's why, in the previous classes, we discussed that when we talk about the resolution plan, it is approved in rem; it will act in rem, which means against everyone. So, everyone is bound by this resolution plan: the central government, state governments, local authority members, and employees—everyone, okay?

Then, it further provides that any local authority to whom a debt in respect of payment of dues arising under any law currently in force, such as authorities to whom statutory dues are owed, guarantors, or other stakeholders, is binding on everyone. The section further provides that the adjudicating authority, before passing an order for the approval of the resolution plan, must ensure that the plan includes provisions for its effective implementation. As we have already discussed in previous classes, one of the mandatory requirements is how you plan to implement it. How will you manage the resolution plan? There should be some agency for managing the resolution plan. Whether these contents are in the resolution plan or not, the NCLT is supposed to verify that as the adjudicating authority. They are supposed to verify it. Then, once it is done, they will give their approval. So, in the case of K. Shashidhar versus India Overseas Bank, the Supreme

Court held that the adjudicating authority cannot examine matters beyond the tenets of Section 31, subsection 1. So, the scope of the NCLT in this case is very limited; he has to verify only Section 31, subsection 1. According to UNCITRAL's legislative guide, the law does not require or permit the court to review the economic and commercial basis. Therefore, the question for the NCLT is whether it followed the procedure or not. The NCLT or adjudicating authority cannot verify or review the economic and commercial basis of the decision. Please note that the IBC is based solely on the commercial wisdom of the COC, and therefore, they are responsible for making the decision. That is why the UNCITRAL model law also stipulates that the legislative guide should specify that the law should not require or permit the court to review the economic and commercial basis of the decision. Okay, not that it is requesting a review of a particular aspect of the plan in terms of its economic feasibility.

So, NCLT or any other code, because UNCITRAL is a model law. Therefore, any court of law under the insolvency regime cannot assess the economic feasibility of the plan. That is how the resolution plan must be approved. It cannot go beyond the tenets of the legislation. Therefore, if you observe Regulation 35, it stipulates that the resolution plan shall provide both fair value and liquidation value. In the case of Maharashtra Seamless, the Supreme Court observed that a resolution plan with a value below the liquidation value could also be approved. When preparing the resolution plan, you are required to provide both the fair value and the liquidation value of the asset. Even if a professional is appointed as the valuer, they will provide both the fair value and the liquidation value. So, the possibility is there that the COC may approve a plan that is below the liquidation value, but you cannot question that the resolution plan, whose value is below the liquidation value, can also be approved by the COC because it is a matter of commercial wisdom, so the COC is going to make the decision.

Then the resolution plan, which does not conform to the requirements of Section 31, may be rejected. Please remember that Section 31 is mandatory. If it does not conform to Section 31, then it can be rejected. So, when the resolution plan is rejected, what will happen? The CD is either put into liquidation. We will discuss liquidation in the subsequent lesson. A fresh expression of interest for the integration of the prospectors' resolution plan can be initiated, which means the process will start again. Therefore, you can either restart the process or opt for liquidation; however, in most cases, it will only issue an order for liquidation. Then, in the case of Ebix Singapore, the Supreme Court observed that the resolution plan shall take over the CD, regardless of the basis. Therefore, when preparing the resolution plan, it should take over the CD, including all existing content. Whatever it is, it is supposed to be taken. In another case, the Supreme Court held that a conditional resolution plan cannot be approved; therefore, the court must consider various factors when approving a plan. So, can the NCLT approve the

conditional resolution plan? No, the NCLT cannot approve the conditional resolution plan.

Then, in another case, Dr. C. Bharath Chandran versus Sabine Hospital and Research Centre, the NCLT Chennai bench held that the NCLT, as the adjudicating authority, cannot go into the question of justness in rejecting the resolution plan. He is supposed to verify whether they followed the procedure under the law and whether it has been approved by the COC. Therefore, he is not here and cannot verify the justness of the plan, as that is up to the COC. The law has granted autonomy to the COC to approve the resolution plan. In various Supreme Court judgments, it has also been held that commercial wisdom is a paramount and essential factor in decision-making. You cannot question the commercial wisdom of the COC. In another case, Rajesh Kumar versus Rabindra Kumar Mintry, the NCLT held that the approval of the resolution plan by the CoC leads to a presumption of its feasibility and viability, so it was held that once the CoC approves the resolution plan, it is because the members of the CoC are businesspeople who know how to run a business.

Once it is approved, the NCLT will presume that the plan is feasible and viable; then there are consequences of approval. In the previous slides, we discussed various factors to consider when approving something. Once it is approved, what will happen? Section 31, subsection 3, provides that after the order of approval under subsection 1 is given, the moratorium will take effect from the initiation of the CRP, as previously discussed. Once the approval resolution plan is approved, the moratorium order is passed by the adjudicating authority under Section 14. In the previous classes, we discussed the moratorium in detail. Once the moratorium is ordered, it will take effect from the initiation of the CRP until the resolution plan is approved. Once the resolution plan is approved, the moratorium shall cease to have effect. Subsequently, the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the board for recording in its database. You are supposed to forward it to the board. Here, 'board' refers to the IBBI, so you are supposed to forward the data to the IBBI.

Then, once the resolution plan is approved, the doctrine of a clean slate will be applicable. So, what is this doctrine of a clean slate? The concept is that once the resolution plan is approved, the company will be taken over by another management team. Therefore, regardless of the activity or liability the company currently bears, that liability will no longer exist. Such liabilities cease to exist, but does it mean that the persons are also not liable as officers in default? No, officers in default, such persons cannot exclude their liability. However, the company will not be liable for any subsequent activities. So, there is a concept of a clean slate. We are cleaning everything and giving it to the other person. Whoever is submitting the resolution plan to the other person, we are cleaning the company, and we are giving the company to the other person.

There is a basic concept of the doctrine of a clean slate. What are the liabilities for prior offenses? So, if there are any prior offenses, to what extent is the liability? Section 32A provides for liability. So, which provides that notwithstanding anything contained to the contrary in this code or any other law for the time being in force, the liability of the corporate debtor for an offense committed prior to the commencement of the CRP process shall cease.

So, before the CRP process, whatever the liability may be, all this liability shall cease to exist. Please note that the corporate debtor shall not be prosecuted for such an offense from the date the resolution plan is approved by the adjudicating authority. Why? Because all these claims and liabilities will be addressed through the resolution plan. So, by taking everything into consideration, the resolution plan will be prepared. That is why, once the resolution plan is prepared, all liabilities prior to the CRP will cease to exist. The adjudicating authority under section 31, if the resolution plan results in a change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, or a related party of such person. The person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he has abated or conspired to commit the offense, or has submitted or filed a report or a complaint to the relevant statutory authority or the court. So, who will be excluded? No person or individual is excluded from liability. Only companies are excluded from liability. Provided that if a prosecution has been instituted during the CRP process against such corporate debtor, it shall stand discharged from the date of approval. If any prosecution is initiated during the CRP process, all charges will be automatically discharged. So, from the date of approval of the resolution plan, subject to other requirements. So, in the case of Ajay Kumar Bishnoi versus TAP Engineering, the Madras High Court held that the liability of the series was extinguished. When applying the clean slate theory, it applies only to the corporate debtor. Please note that the liability of the CD is extinguished in proceedings, but the liability of the officers in default shall continue. Because a guilty mind is present, they are the ones responsible. That's why the liability of the officers in charge shall continue, but you are only clearing the CD. Okay, this is a key point to remember.

Then, approval from the other authorities is needed. So, section 31, subsection 4 of the IBC provides that. The resolution applicant shall, pursuant to the resolution plan approved under subsection 1, once it is approved by the adjudicating authority, obtain the necessary approvals required under any law for the time being in force within one year. Within one year, if any approvals are required, the company may be subject to regulation by other regulatory authorities; therefore, additional legislation may be applicable. In such cases, within one year from the date of approval of the resolution plan, the resolution applicant is expected to obtain the approval. Then, provided that the resolution plan contains a provision for combination, in the case of combination, as referred to

under Section 5 of the Competition Act, in other cases, once the resolution plan is approved, you are required to obtain approval within one year. However, in the case of a combination, please note that you are required to obtain approval from the COC prior to approving such a resolution plan. Before obtaining approval from the COC, let's consider the approval from the NCLT. Before obtaining approval from the COC, you must first submit your plan to the COC in accordance with the provisions of the Competition Act. Once the resolution plan is submitted and approved by the CCI, the Competition Commission of India, you can then present the resolution plan for approval or voting before the COC. That means, in the case of the Competition Act, approval shall be obtained not from the date of approval of the resolution plan by the NCLT, but rather before it is approved by the COC itself. So, remember this point clearly.

Then let us discuss the other provisions. Section 31 and other provisions relate to approval. So once approval is done, what are all the other consequences? Section 31 provides that the NCLT does not have the power to modify the plan. So, whether NCLT has any power to modify. Please note that, as per the section, the NCLT has the power to either accept, which means approve, or reject; that's it. They don't have any other power. Therefore, Regulation 39 (5) stipulates that the resolution professional shall promptly send a copy of the adjudicating authority's order approving or rejecting a resolution plan to the participants and resolution applicants. Once you receive approval from the NCLT, it is the responsibility of the resolution professional to send a copy of the order to the CoC and other stakeholders. Then, Regulation 39-5A provides that the resolution professional shall notify each claimant who submitted claims within 15 days once the approval is complete. We have discussed in previous lessons how to submit claims by both operational creditors and financial creditors, except for the operational creditors' workmen. We have also reviewed the forms, so whoever has a claim is supposed to inform each person about the order.

Then, Regulation 39, Sub-regulation 7, provides that no proceedings shall be initiated against the IRP or the resolution professional, as the case may be, for any action of the corporate debtor prior to the commencement of insolvency. So, which is giving protection to the resolution professional? When any activity is done during the CRP, the resolution professional is responsible. However, if any activity is done before the CRP process, the resolution professional shall not be responsible, as it was done by the previous management. That is why this regulation stipulates that you cannot take any action or initiate any action against the interim resolution professional for any actions of the corporate debtor prior to the commencement of the insolvency date. Then, Regulation 39-8 provides that a person in charge of management has control over the business and operations of the corporate debtor. After the resolution plan is approved, they shall make an application to the adjudicating authority for assistance from the local district administration. Once you receive the order from the NCLT, you must implement it.

Sometimes, you may require assistance from the local authorities and will be required to approach the NCLT again. NCLT will give the appropriate orders to the local authority.

Then, the local authority and local administration will cooperate with you. In the case of GP Global Energy Private Limited versus Sandeep Mahajan, Monitoring Professional for Allied Strip Limited, the NCLAT observed that the NCLT has jurisdiction to extend the time for implementing the resolution plan in the interest of justice. When you submit the resolution plan, you will also provide a time framework. It will be approved by the COC, which will then submit an application to the NCLT. The NCLT will approve the resolution plan. Generally, the resolution plan will include a timeline. So, can we extend the time frame? Yes. In the interest of justice, the NCLT has the power to extend the time limits for implementation. We are not referring to the time frame under the IBC. Once the resolution plan is approved, does the NCLT have the power to extend the time limit for implementation? Yes. They have the power to extend the time limitation. Then what are all the other obligations? Once the resolution plan is approved by the NCLT, the resolution professional is responsible for preserving the documents. These are all the various documents that the resolution professional is required to preserve. He is required to maintain the documents related to his appointment as interim resolution professional or resolution professional, including those pertaining to his appointment and the handover of the assignment, as well as the terms of his appointment. The admission of the CD into the corporate insolvency resolution process was made upon submission of the relevant documents. Additionally, when the public announcement was made, the accompanying documents were provided. The constitution of the committee of creditors, along with its meeting minutes, copies, and other relevant documents, was also submitted. Then, he must verify the claims list of creditors and receive the claims. He must verify the claims. He must have done so; he must have prepared the list of creditors. So, all these things must be maintained. He's supposed to maintain the registers.

Then, as we have already discussed, the engagement of a professional involves the appointment of a resolution professional, who can then appoint other professionals, including registered valuers. He is expected to appoint a minimum of two registered valuers. Then, he orders the letters relating to appointment letters and the insolvency professional entity, including the work done report, etc., to be submitted by them, so that everything is maintained. He is responsible for maintaining all documents, including the information memorandum, as well as all filings with the adjudicating authority, including any documents he has previously filed with the authority. The invitation for consideration and approval of the resolution plan, as well as the statutory filings with the board, is acceptable to the insolvency professional agencies. Consequently, we will discuss the insolvency professional agencies in the following lessons. You are required to file certain statutory findings with the board, as well as with insolvency professional agencies. All these filings must be maintained. Furthermore, correspondence during the CRP process,

the insolvency resolution process, the costs incurred, and the bills related to that are all supposed to be maintained. Then appeal against the approval of the resolution plan. Once the resolution plan is approved, can you file an appeal? Is there any possibility? Yes, there is a possibility, but the scope of the review is limited. So, under section 32 of the IBC, which provides that when you can go for an appeal, you are supposed to go for an appeal when the conditions specified under section 61, subsection 3, are satisfied.

Now, let us examine the conditions under section 61, subsection 3. When can you go for an appeal? The approved resolution plan is in contravention of the provisions of any law. If the resolution plan is in contravention of any provision of the law, then you can go for an appeal. Then there has been a material irregularity in the exercise of powers by the resolution professional. Therefore, a material irregularity occurred during the CRP process. Then debts owed to operational creditors of the CD have not been provided for in the resolution plan. As we have already discussed, in the resolution plan, you are required to give priority to the corporate operational debtor regarding how you will make the payment. They have not been given priority; they are actually not provided for. Then, the insolvency resolution process costs have not been provided for in priority for repayment. Additionally, when preparing the resolution plan, one important component is that you must pay the costs associated with the insolvency resolution process, as previously discussed. First, you should pay for them. So, that is not provided in the resolution plan. Then the resolution plan does not comply with any other criteria that may be specified by the board. So, if these five conditions are satisfied, you can appeal against the order given by the NCLT. Let us recap what we have discussed today. So, we have discussed filing a resolution plan. How to file the resolution plan that we have discussed. Then we discussed the approval of the resolution plan by the NCLT. So, how will the NCLT approve the resolution plan that we have discussed?

We have discussed that the resolution plan of CD shall be taken over, whatever it may be. As it stands, you are supposed to take over. So, if there is no concept of change, then what are the consequences of approval once the plan is approved? The moratorium will be suspended, the doctrine of a clean slate will be applied, and then liability for prior offenses will be imposed. How the officers or corporate debtor are liable for the prior offenses has been discussed. Then approval from the statutory authorities is required; generally, once the approval is obtained, the plan is approved. Subsequent to that, within one year, you are supposed to obtain approval from the statutory authority; however, there is one exception: in the case of the Competition Act, approval must be obtained in advance. Then, we discussed the power of NCLT to modify the resolution plan, whether NCLT has the authority to modify the resolution plan, the immunity of the resolution professional, and the obligations of the resolution professional to preserve the record. These are all the various concepts we have discussed in this lesson.

Thank you.