

Insolvency and Bankruptcy Law in India

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Lecture 37

Welcome to all.

Today, as part of the course on Insolvency and Bankruptcy Law in India, we will discuss the Insolvency and Bankruptcy Board of India. Today, we will discuss the legal framework related to the IBBI, including its establishment, composition, and other relevant matters. In the previous class, we discussed the legal framework relating to information utility. Then, we discussed the registration of the information utility, including how it would be registered, the governing board of the information utility, and its core functions. So, while discussing the core functions, we also covered how they plan to maintain the debtor bank and other topics we addressed. The importance of information utility. Then we discussed the challenges. One of the major challenges is that we currently have only one information utility. Therefore, it may have problems related to monopoly issues. That could be one of the problems.

Let us begin with the concept of IBBI. Today, we will discuss the Insolvency and Bankruptcy Board of India. The Insolvency and Bankruptcy Code, 2016, is the central legislation that provides for the establishment of the IBBI as a regulator for IPs, IPAs, and Information Utilities. Today's lesson includes the following slides: IP (Information Professionals), IPA (Insolvency Professional Agencies), and IU (Information Utilities). So, wherever you find the words 'IP', 'IPA', and 'IU', you must interpret them accordingly. Okay, IPA means insolvency professionals, IPA means insolvency professional agencies, and IU means information utilities. Then, the Insolvency and Bankruptcy Code is a legislation that provides for the establishment of the IBBI now.

Let us examine the key provisions related to the IBBI. Section 188 provides for the establishment of the board, which creates the IBBI as a statutory body. Then it declares it to be a body corporate, which means it has a separate legal entity in the eyes of the law. So, IBBI is considered to have legal personality. Then, it has perpetual succession. So, perpetual succession means—let me explain generally—perpetual succession means, especially in the case of companies, companies are expected to have or are considered to have perpetual succession. Perpetual succession means the company will exist forever; the members may come and go, but the company will remain in existence, so it is an

entity created by virtue of law. So, how can one bring the company to an end? You can put an end to the company only through the process of law.

Similarly, the IBBI has perpetual succession. It will not be affected by the members and has a common seal. As an entity, it cannot have hands, so it cannot sign; that's why, instead of a signature, it has a common seal and the power to acquire, hold, and dispose of property. Therefore, the IBBI is considered a body corporate; it has the power to acquire, hold, or dispose of any property. It can purchase, hold, and sell a property depending on the requirements. The IBBI then has the power to enter into contracts and file a case against anyone, while anyone can also file a case against the IBBI. So, it can sue and be sued.

Now, let us discuss Section 189. Section 189 speaks about the composition of the board. The IBBI will have a chairman, who will be appointed by the central government, and three ex officio members nominated from the Ministry of Finance, the Ministry of Corporate Affairs, and the Ministry of Law. One chairman will be there, along with three ex officio members: one from the Ministry of Finance, one from the Ministry of Corporate Affairs, and one from the Ministry of Law. Additionally, there will be one member nominated by the RBI and five other members nominated by the central government. So out of these five, a minimum of three members must be full-time members. Okay. So, there is one chairman, three ex officio members, four plus one member, five, and then five additional members. A total of ten members can be present: six persons, three ex officio members, one member nominated by the RBI, and five other members.

Then, how will you appoint these members? So, these members are appointed, or their appointments are based on the recommendations of the selection committee. One selection committee will be present, and it will conduct the screening. Based on the screening, they will appoint the members. Generally, the selection committee will be headed by the cabinet secretary. Then, Section 190 discusses the term, salary, and removal of members. The term of office is 5 years or until the age of 65. The chairman and full-time members will serve on the IBBI for a term of 5 years or until they reach the age of 65. Then, can you remove it? So, you can remove it. There are possibilities, are there? So, on the grounds of insolvency, if any member becomes insolvent or if there is any misconduct or conflict of interest, that means he has some other office, whereby there is a conflict of interest, or else physical or mental incapacity, or conviction of an offense involving moral turpitude. So, these are all the various grounds where you can remove any member's Salary will be prescribed by the central government from time to time. Sections 196 and 192 provide information about the powers and functions of the board.

Key functions under Section 196 include the registration and regulation of IPs, IPAs, and IUs, which are insolvency professionals, insolvency professional agencies, and

information utilities. The key functions under section 196 include provisions relating to the registration and regulation of IPs, IPAs, and IUs. Then what are they going to do? They will monitor and regulate the performance of these entities. The IBBI will monitor and regulate the performance of these entities, namely IPs, IPAs, and IUs. Then, they will lay down the minimum eligibility requirements. So, who can become an insolvency professional, who can act as an IPA, and who can act as an IU? They will therefore establish the minimum eligibility conditions, standards of conduct, and professional development guidelines. Yesterday, as we previously discussed in class, we explored professional development opportunities for insolvency professionals and the Insolvency Professional Agency. They are required to conduct regular educational training programs and provide the required CPE hours, as prescribed by the IBBI. Then, the IBBI will specify the mechanism for disciplinary proceedings, including suspension and cancellation of registration. The IBBI provides information on how to register, cancel registration, and the disciplinary proceedings. Then, conducting examinations for qualifying as insolvency professionals. So, whoever wants to become an insolvency professional and satisfies the eligibility conditions discussed in the previous classes. So, these examinations are conducted by the IBBI. So, these are all the key functions of the IBBI. They are going to publish the information, debtor, and research guidelines relating to insolvency.

Now, let us look at section 195. Section 195 refers to the advisory committee. According to Section 195, the central government may constitute an advisory committee to assist the board in policy matters when formulating policy. Therefore, the central board may constitute an advisory committee that will guide the IBBI in framing the policy frameworks. Let us then examine the supporting rules and regulations. So, IBBI is empowered to issue subordinate legislation. Some of the key regulations include the Insolvency Professionals Regulations. As in the last classes, we have discussed IBBI Insolvency Professional Regulations, which provide for qualifications, registration, duties, and a code of conduct for the IPs. Another important regulation is the IBBI model bye-laws and the governing board of insolvency professional agencies. So, in 2016, these regulations were established. Generally, these regulations provide for model bye-laws that govern the composition of the governing board in insolvency professional agencies. So, everything is there; everything will be there in the model bye-laws, okay, these regulations.

The IBBI Information Utilities Regulations, 2017, set the rules for the registration and operation of information utilities that store financial information related to insolvency. Okay, so these three are major regulations that outline the subordinate authorities. Please note that this does not mean IBBI will not frame other regulations. Whatever we have discussed so far—CRP regulations or the next lessons we will discuss regarding insolvency regulations or liquidation regulations—were all framed by the IBBI. Okay,

but these regulations are primarily focused on regulating other profiles and bodies, as well as other pillars of the IBC code. We also have other regulations, including the IBBI Grievance and Complaint Handling Procedure Regulations 2017. Through these regulations, we have provisions relating to the establishment of a grievance reduction mechanism, including how meetings are to be conducted, how complaints are to be received, and how complaints are to be disposed of. All the provisions relating to the complaint or grievance mechanism are included in these regulations.

Now, let us look at the administrative framework of the IBBI. The IBBI reports to the Ministry of Corporate Affairs. Under the Ministry of Corporate Affairs, we have the IBBI and the Competition Commission of India. So, your institution, ICAI, and these are the various institutions that generally report to the Ministry of Corporate Affairs. Therefore, the IBBI will report to the Ministry of Corporate Affairs. The accounts of the IBBI are supposed to be audited by the CAG, the Controller and Auditor General, under Section 194. So, CAG auditing is compulsory, and they are required to submit an annual report and annual accounts to the central government. Because it's a government organization, they are required to submit their annual report, as well as the annual accounts, to the central government compulsorily.

Now, let us look at the judicial oversight of the decision. Suppose, because IBBI is a regulatory authority, it is also quasi-judicial. So, those are the disciplinary proceedings they are going to take. So, if any person is not satisfied, the decisions of the IBBI can be challenged before the NCLT or NCLAT, depending on the matter. Then, the Supreme Court also has the power to review final decisions under Article 136 of the Constitution of India.

Let us then discuss the powers and functions of the board. So, this is the main agenda for today's class. Section 196 of the IBC code outlines the powers and functions of the board. Let's examine Section 196. The board shall, subject to the general directions of the central government, perform all or any of the functions. What are they going to do? Therefore, the IBBI will be responsible for registering, renewing, withdrawing, suspending, or canceling IPAs, IPs, or IUs. Therefore, the IBBI is the proper authority responsible for registering IPAs, IPs, or IUs. Who is going to renew it? Generally, if the registration is completed, a specified period will be provided within which you are required to renew it. The possibilities are that they can withdraw the registration from any person, suspend it, or cancel it as well. These are all the powers of the IBBI. Now promote the development of and regulate the working practices of IPs, IPAs, and IUs. Therefore, the IBBI will promote the development and regulate the working practices of the entities it oversees. What are the best practices to be followed by these IPAs, IPs, and IUs, as well as other institutions, for the furtherance of this code? Perhaps you could also include other institutions. So, all these institutions are governed by IBBI. The IBBI will then specify the minimum eligibility requirements for registering as an IPA, IP, or IU. In

previous classes, we have already discussed the eligibility requirements for registering IPA, IPs, and AU. So, all these eligibility requirements are prescribed only by the IBBI. They are going to levy fees and other charges for carrying out the purpose of this code. For the purpose of this code, suppose we take the example whenever you are making an application—imagine you are making an application under section 7, section 9, or section 10. The fee is prescribed by the IBBI. They will also levy additional charges to fulfill the purpose of this code, including fees for the registration and renewal of IPAs, IPs, and IUs. Whenever you want to register for IPA, a specific fee will be required, so you are expected to pay that fee. Then specify the regulations standard for the functioning of IPAs, IPs, and IUs. So, as we have already discussed in the previous classes. Therefore, the model law will be in place. So, IBBI is going to prescribe the model law, which specifies how you are expected to work. Therefore, they will establish standards for functioning through regulations.

As we have already discussed, there are separate regulations governing insolvency professionals. For IPAs, there is a separate regulation. Therefore, through regulations, they will prescribe the standards. Then laid down by regulation, the minimum curriculum for the examination for IPA is for their enrolment as IPA. So, what are they expected to read? To qualify as an insolvency professional, what is the curriculum? This curriculum is prescribed by the IBBI. Then, carry out inspections and investigations on IPAs, IPs, and IUs, and issue orders as necessary to ensure compliance with the provisions of this code. Therefore, since registration is provided by the IBBI, IPA, or IUs, these individuals fall under the purview or control of the IBBI. They fail to follow any terms and conditions or any regulations; then IBBI can conduct the inspection and investigation as well. Accordingly, once the thorough investigation is completed, if something is proven wrong, then the IBBI has the power to take the necessary steps, including imposing penalties and other measures. Then, monitor the performance of IPAs, IPs, and IUs, as they have the power to pass any directions. Therefore, they have the authority to provide any directions as may be necessary for compliance with the provisions of this code. To comply with the provisions of this code or the regulations, as amended by this act, the IBBI has the power to frame regulations as well. They will monitor the performance of IPAs, IPs, and IUs.

Then they can request information and any records from the IPAs, IPs, and IUs whenever necessary. The IBBI will publish information related to debtor studies and other relevant details; let me provide a few examples, if you don't mind. How many, I mean, how many CRP proceedings are going on? What is the claimed amount? What is the actual admitted amount? What is the percentage? Any haircut? All debtor related to the CRP process, liquidation process, and entering the IBC regime. All debtor relating to the IBC regime is maintained by the IBBI. Then specify by regulations the manner of collecting and storing the debtor by IU. As we have already discussed in previous classes, IBBI has prescribed

regulations outlining how IU is expected to maintain debtor security, store debtor, and transfer debtor as required. Everything is prescribed by the IBBI. Then, IBBI will collect debtor relating to IBC cases, so that the public can be informed about what is happening. So, they will collect, maintain, publish, and disseminate debtor related to insolvency cases.

Then, constitute such committees as may be required. So, they can also constitute the committees. They are then supposed to promote transparency and best practices in their governance. Then, maintain websites and other universally accessible repositories. Visiting the IBBI website will provide access to a wealth of debtor. So, all the judgments, your ads, regulations, and meeting minutes will be available.

The IBBI committee meets regularly. Therefore, the minutes and recommendations will be available, as will public announcements. All debtor will be maintained on the IBBI website. Then they have the authority to enter into an MOU with any statutory authority for the furtherance of the IBC. The IBBI has the power to enter into any MOU with other statutory authorities. As we discussed yesterday, in previous classes, we covered the delisting of a corporate debtor. Therefore, if a company is being delisted through the process of a resolution plan, you are expected to follow both the IBC and the delisting agreements. In such cases, the IBBI is expected to work in conjunction with SEBI to ensure uniform rules and regulations. There are exemptions from the applicability of delisting regulations to the CD, specifically for those undergoing the CRP process. But you can only get these exemptions when you have an MOU or when you are dealing with other people, unless you are dealing with other authorities. So, these exemptions will not come. So that's why IBBI has the power to enter into any MOU with other statutory authorities.

Then, issue necessary guidelines to IPAs, IPs, and IUs, and specify the mechanism for redressing grievances against the IP, IPA, or internally, also explaining how they are expected to address the grievances. Conduct periodic studies, research, and audits to assess the functioning and performance of IPA, IPs, and IUs. There will be a separate research wing. Therefore, they will conduct research and audits on these IPAs and IPs. Then specify the mechanism for issuing regulations. Regarding the code of conduct for the public consultation process, please note that, generally, whenever the IBBI issues regulations, it provides draft regulations for public comment. So, consultation will always be there before framing any rules and regulations. Then, establish the regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this code, including the mechanism for the time-bound disposal of the corporate debtor's and debtor's assets. Therefore, they will establish rules and regulations for the timely disposition of cases. So, what is to be done, and what is expected from the government? Therefore, they will also submit their recommendations to the central government. Apart from this, they are going to make the regulations. Therefore, if you have observed CRP

regulations, we have previously discussed them and the prescribed timelines in previous classes. The maximum time limitation for completing the CRP process is 180 days. However, there are exceptions, and an extension can also be granted, but it remains 180 days. So, if you observe regulation 40, model timelines are available. These model timelines are prescribed by IBBI. Then perform such other functions as may be prescribed. According to rules and regulations, and by virtue of legislation, the central government will also prescribe certain additional functions.

Then the board may make model bye-laws. These model bye-laws can be adopted by professional agencies. Then, these things can provide for the modal bye-laws that can establish a minimum standard of professional competency. Anyone who becomes a member of the IPA, the Insolvency Professionals Agency, is expected to meet minimum standards. Additionally, there is a standard for professional ethical conduct among members. Then, the requirement for enrolling a person as a member. So, who can be a member of the IPA? These are the requirements you will prescribe. Then, for the purpose of this class, the term non-discriminatory means a lack of discrimination. So, they are not supposed to discriminate based on sex, gender, caste, or place of birth. Okay, so you won't discriminate. Okay, so, without discrimination, you are expected to establish the rules and regulations for enrolling persons.

Then, the manner of granting membership and how to issue the membership is specified, and in the designated format only, you are expected to issue the membership. Then, establish the governing board for the internal governance and management of IPA in accordance with the relevant regulations. Therefore, the IBBI will establish its governing board. According to the regulations, you are required to have a governing board. In the previous classes, we discussed how to form the governing board. So, what is the composition of the governing board in the case of IPA? We have discussed this in the previous classes. Then, the information required to be submitted by the members, including the form and the time for submitting such information, specifies the class of person to whom services shall be provided. You must specifically include and state to whom we are to provide the services. Sometimes, at a concessional rate, you are required to provide. Then the ground on which penalties may be levied against the members of IPAs and the manner thereof. So, how do we impose a penalty on IPs and Insolvency Professionals, because members of IPAs are essentially Insolvency Professionals? How do we impose a penalty? What are the grounds? When can we impose a penalty? Everything is prescribed by the IBBI. Then, a fair and transparent mechanism for the redressal of grievances, as we have already discussed, is the establishment of a grievance redressal mechanism, which is one of the core functions of the IBBI. Therefore, they are supposed to have a fair and transparent mechanism for addressing grievances against IPA members.

Then, the grounds under which the IPs may be expelled from the membership are. So, when can you remove them? When can you expel an IP from the IPAs? So, what are all the grounds that will be prescribed by the IBBI? The quantum of the fee and the manner of collecting the fee for inducting members are specific to members, so how much fee are you supposed to pay? Generally, annual membership fees are expected, so you are required to pay the annual membership fee. This annual membership fee will be prescribed by the IBBI. The procedure for enrolling a person as a member of IPA is that if someone wants to enroll as a member of IBBI, they are expected to qualify for certain eligibility criteria. As we have already discussed, he is expected to have a minimum of 10 years of experience as a CA, CS, CMA, or advocate.

Subsequently, he can write the examination. After qualifying for the examination, he is expected to undergo training with the IPA. After completing that, he can be registered with the IPA. This procedure is prescribed by the IBBI. Then, how should the examination be conducted? So, where should we conduct the examination? What is the duration of the examination for the enrollment of IPs? So, everything is prescribed by the IBBI. The manner of monitoring and reviewing the work of insolvency professionals, including their performance, will involve obtaining feedback and verifying whether they are working within the time framework. Then, the duties and other activities to be performed by the members are as follows. The manner of conducting disciplinary proceedings against its members and imposing penalties is prescribed by the IBBI. So, for everything, please remember that they will frame the regulations. Therefore, they will outline the procedure for conducting disciplinary proceedings against the members.

Then, the manner of utilizing the amount received as a penalty imposed against any IP is questioned. So, how should the penalty be utilized? Okay then, these are all the various functions. Section 196 further provides that nothing contained in any other law for the time being in force shall restrict the IBBI, which is vested with the powers of a civil court. While exercising its jurisdiction and powers, the IBBI will have the powers of a civil court. So, these are all general powers; generally, these powers will be available to any other authority. The discovery and production of books of accounts and other documents give them the power to issue summonses. They can summon and enforce the attendance of any person whenever they are conducting the inquiry. There is also an inspection of any books of accounts and other documents at any location, issuing a commission for the examination and witnessing of the documents. So, they can examine the witness and ask any person to submit the documents. So, these are all the various functions of the IBBI.

Now, let us recap what we have discussed so far. In this lesson, we have discussed the establishment of IBBI, including its formation, composition, and the roles of its chairman and ex officio members. We then discussed in detail the functions and powers of the IBBI. Thank you.