

Insolvency and Bankruptcy Law in India

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Lecture 38

Welcome to all.

As part of the course on Insolvency and Bankruptcy Law in India, we will discuss the concept of the Fast Track Resolution Process today. Before that, let us recap what we discussed in the previous class.

In the previous class, we discussed the Insolvency and Bankruptcy Board of India. In that lesson, we discussed the establishment of the IBBI, its creation, and the legal framework governing its establishment. We then discussed the composition of the IBBI, followed by its powers and functions. So today, let us discuss the fast-track resolution process. Therefore, if you examine the statutory provisions related to this fast track, sections 55 to 58 of the IBC provide for a fast track CRP. So, we also have the Regulations, Insolvency, Bankruptcy, and Fast Track Resolution Process for Corporate Persons Regulations 2017. Then, why was this fast-track resolution process introduced for corporate persons? The basic purpose of this legislation, these regulations is to facilitate expeditious insolvency resolution for small and simple business entities with lesser complexity and limited results. If you observe the general CRP process, it takes a minimum of 180 days, which can extend up to 330 days, as previously discussed, and is a very complicated process that requires managing many things in parallel. Whereas in the case of small industries, where they may not have a big capital base and may not have a number of creditors, it is not relevant or required for them to follow the detailed procedure; therefore, if they want to exit from the business, we need to facilitate their exit from the business easily. That is why the IBBI has introduced the concept of a fast-track resolution process for corporate persons, specifically the fast-track CIRP process for small and simple business entities. So that is the basic objective of the fast-track resolution process.

Now, let us discuss the fast-track insolvency resolution process. As per Section 2, Subsection 1, Clause H of the Insolvency and Bankruptcy Board of India, Fast Track Insolvency CRP Process, Fast Track CRP Regulations 2017, the Fast Track Process is defined as the Fast Track Insolvency Resolution Process for persons under Chapter 4 of Part 2 of the Insolvency and Bankruptcy Code. To be factual, if you observe the definition given under Section 2, Subsection 1, Clause H of the IBC, it defines that the fast track process means the fast track process for corporate persons under Chapter 4.

Therefore, there is actually no definition. Therefore, they are only stating that the process outlined in Chapter 4 of Part 2 of the IBC, when followed, is referred to as the fast-track CRP process. What is the basic objective of this fast track? Fast-track CRP enables small and micro firms to efficiently restructure or liquidate by providing a time-bound, cost-effective, and professional method for insolvency resolution. The primary purpose of this CRP Fast Track is to facilitate MSMEs or MSME companies in liquidating in a time-bound and cost-effective manner using a professional methodology. Therefore, without adhering to the detailed procedure applicable to the general corporate sector, we can liquidate or restructure the company within a minimum timeframe. That is the basic purpose of the fast-track insolvency resolution process.

Let us discuss what the benefits are of opting for fast-track CRP over regular CRP. Why do we need to adopt fast-track CRP over the regular CRP? So, if you observe fast-track CRP, the resolution process can take a maximum of 90 days. There is a possibility. NCLT can extend the time limitation by 45 days. Therefore, at most, you can complete the CRP process within 135 days, compared to the regular CRP process. Compared with the regular CRP process, it will take up to 270 days or 330 days, as we discussed in the previous classes; it can go up to 270 days or 330 days, as the case may be, whereas in the case of the fast-track CRP, it takes a maximum of only 135 days. This faster approach lowers expenses, decreases company disruption, and helps protect asset value. So, if you observe, one of the objectives of IBC is the realization and maximization of assets.

Maximization of asset value is one of the core objectives of IBC. Here, if you can complete the CIRP process in a timely manner, it helps us maximize our assets. So that's why this fast-track CIRP process will help small-scale industries restructure their companies in a speedy manner, allowing for a reduction in the cost of CIRP. It is especially useful for small businesses that have a simpler debt structure, allowing for a more streamlined and quicker bankruptcy resolution process. So, to whom is the CRP process useful? I mean, the fast-track CRP process is useful. This fast-track CRP process is particularly useful for smaller businesses or companies with a straightforward debt structure. Perhaps they are borrowing from one or two individuals, where the debt structure is relatively simple. In such cases, this fast-track CRP is useful. Then, by addressing financial difficulties early on, the fast-track CRP promotes faster recovery and business continuity. As we have already discussed, the process under the fast-track CRP is very quick; we are aiming for a minimum time period of 90 to 135 days at most. So, it addresses the financial difficulties early on.

The fast-track CRP promotes faster recovery. Since we can complete within 90 to 135 days, it enables us to achieve faster debt recovery, ensuring the business remains continuous. Then, who is eligible for the fast-track insolvency process under the IBC? So, if you observe Section 55, subsection 2, which provides that a corporate debtor with assets, turnover, and income below the prescribed threshold. The section is silent about

the threshold. The section is enabling the IBBI to prescribe regulations. So, we are having the triggering points under the regulations. So, if you observe the section, any corporate debtor with assets and income below the prescribed threshold, corporate debtors with specific classes of creditors and debt amounts as notified, and other categories of corporate persons as notified by the central government. These three categories are eligible for the fast-track insolvency resolution process. Now, let us proceed according to the regulations. If you observe, to whom are these regulations applicable? Small companies. So, there is a definition for small companies under the Companies Act. So, this fast-track CRP process is applicable; otherwise, who is eligible? Small companies are eligible for the fast-track CRP process, and startups, excluding partnership firms, are also eligible. Partnership firms are excluded from Part Two. So, there is another part, is there? As we have discussed previously, partnership firms and individuals are regulated by another part that is not yet notified. So, startups, excluding those in partnership forms, are eligible for the fast-track CRP process, as well as unlisted companies with total assets not exceeding ₹ 1 crore. Based on the previous financial year's balance sheet, if the total assets do not exceed one crore rupees, you can opt for the fast-track CRP process in such cases. Please note that this is only applicable to unlisted companies, as they are not eligible for the fast-track process.

For example, in the case of Sri Infrastructure Finance Limited versus Right Towers Private Limited, the NCLT. In this case, they have confirmed the eligibility of an unlisted company with assets under ₹ 1 crore, allowing a fast-track CRP process for Sri Infrastructure Finance Limited. Now, applying for the fast-track process: how to make an application. Before discussing how to make an application, let's first consider who is eligible to make one: a creditor or a corporate debtor? When I use the term 'creditor,' it encompasses both financial creditors and operational creditors. As we have already discussed in the previous lesson, sections 7, 9, and 10, the same provisions are applicable here as well. Financial creditors, operational creditors, and corporate debtors may initiate the process. Then the application must include proof of default.

Perhaps in previous classes, we discussed information utility. The primary purpose of an information utility is to maintain the debtorbase. Therefore, you may have some debtorbases and evidence in the information utility. Therefore, the proof of default can be obtained from the information utility or any other means specified by the IBBI. There is also evidence to support eligibility for fast-track CRP.

So, as we have already discussed, who is eligible to apply under the fast-track CRP? As you can observe from the previous slide, these are small companies, startups, and unlisted companies where the total assets do not exceed one crore rupees. These three criteria are what you are supposed to satisfy; any one of the criteria can be met by a small company, a startup, or an unlisted company where the asset value does not exceed 1 crore rupees.

So, when you are making an application, you should provide evidence to show eligibility for the fast-track CRP. So, are you a small company? Are you a startup company or an unlisted company with assets valued at no more than 1 crore rupees? You have to show the eligibility. Section 57 discusses the procedure for initiating the fast-track CRP. We have detailed procedures outlined in the regulations. You are also expected to follow the procedures under the regulations. This procedure must be followed whenever you want to initiate the application for the fast-track CRP process.

Then, the resolution plan requirements. When pursuing the fast-track CRP process, the resolution plan must include the details of the resolution applicant and connected persons for credibility assessment. More or less, these requirements are similar to those of the regular CRP process. Additionally, you are expected to follow Regulation 37(3) of the CRP regulations. In the previous classes, we have already discussed the lesson on the resolution plan, so there is no need for a separate lesson on it. We have already discussed the mandatory contents and the contents of the resolution plan, so the contents of the resolution plan are prescribed under Regulation 37. Therefore, the same contents must be included even in the case of the fast-track CRP process. Additionally, during the fast-track CRP process, the resolution professional has specific duties, including submitting all complaint resolution plans. When I use the word 'compliant', it means that all the resolution plans are in compliance with the regulations. I am not talking about a complaint; I am talking about compliance. Therefore, the resolution professional is expected to submit all resolution plans that comply with the regulations. Then, submit details and orders relating to Regulation 38, which requires preferential transactions to be reported, including undervalued transactions, extortionate credit transactions, and fraudulent transactions.

In the subsequent lessons, when discussing the liquidation process, you will cover the PUEF. Generally, these are referred to as PUEF transactions, which include preferential transactions, undervalued transactions, extortionate credit transactions, and fraudulent transactions. So, the resolution plan shall submit details relating to these four transactions. Then, other applicable provisions you are expected to follow. Additionally, we have other applicable provisions from the provisions of Chapter 2 of the CRP process, Chapter 7 offenses and penalties, and Part 2 of the IBC, as well. As applicable, you are also expected to follow other relevant provisions. In simple language, I can say that although the time limitation is very limited, being only 90 to 135 days, if you observe the regulations, you will understand the detailed procedure. Okay, so the procedures relating to regular CRPs are applicable even in the case of fast-track CRPs.

Let us discuss the stages of the fast-track CRP. First, the initiation process, as we have already discussed in previous classes, also includes who can initiate the CRP process. Forget about the fast track; regularly, those who can initiate the CRP process are financial creditors, operational creditors, and corporate debtors. Even in the case of fast-track CRP,

financial creditors, operational creditors, or corporate debtors can initiate the CRP process. Then, you must subsequently submit an application to the NCLT. So, if the NCLT approves, that is, if it admits it. As we have already discussed, once the application is made, the NCLT may accept, admit, or reject the application. So, once it is admitted, the Interim Resolution Professional (IRP) will be appointed. Then, within three days, this IRP is expected to make the public announcement. So, the statement requests that creditors submit their claims. In the previous classes, we discussed how to submit claims in detail, along with the necessary forms. A statement requesting the creditor to submit the claims will be given once the claims are received by the corporate debtor. They will then verify the claims. Submission and verification of claims will be done subsequently. Then, after that, you will do these things in parallel. The formation of the CoC will occur, so once the IRP is appointed, they will form the CoC.

Then, the COC will conduct its first meeting, so we have discussed the rules and regulations related to the formation of the COC and who can be part of it. The concept of a related party encompasses everything we have discussed in the previous classes. Then, the COC will conduct its first meeting. At the first meeting, they may proceed with the IRP or appoint another RP (resolution professional). The interim resolution professional may not continue; another RP may be appointed. Then, you will subsequently prepare the information memorandum. Then you will invite submissions for the resolution plan. So, you will invite prospective resolution applicants, who will submit their resolution plan. We have discussed the resolution plan and the expression of interest in detail in previous classes. Generally, unless otherwise specified in the regulations, the same rules and regulations will also apply in the case of a fast-track CRP.

Then, a resolution plan is examined and approved. Once approved by the COC, you will place it and submit it to the NCLT for their approval. Then, the plan is submitted to the NCLT. The NCLT will not verify the commercial wisdom, as discussed in previous classes. They are not going to verify the commercial wisdom. They will verify the procedural aspects to determine whether you followed the procedure or not. Once that is done, the NCLT will approve the resolution plan. Once the resolution plan is approved, it is time for implementation. Therefore, if the resolution plan is not approved, you may proceed with liquidation. Please remember everything we have discussed so far; the detailed procedure must be completed within 90 days. There is a possibility that you can apply for an extension, but it can never exceed 45 days. So, that means a maximum of 90 plus 45. It has to be completed within a period of 135 days. These are all the stages of the fast-track CRP. As we have already discussed, the fast-track resolution process must be completed within 90 days from the insolvency commencement date.

We have already discussed the meaning of the insolvency commencement date. Then, a one-time extension of up to 45 days may be granted by the adjudicating authority, which is the NCLT. However, if you wish to apply for an extension, the resolution professional

must be authorized to request approval from 75 percent of the voting shares in the committee of creditors. Therefore, 75 percent of the votes must be cast in favor of the resolution, which authorizes the resolution professional to apply for the extension, with a maximum of 45 days. Then, no further extension can be granted beyond 45 days; therefore, a maximum of 135 days is allowed. You are expected to complete the process within this 135-day period. This is mandatory. Then what happens if the fast-track CRP is not completed within the stipulated time period? Section 58 provides that the process of CRP and the provisions relating to offenses and penalties under the code shall also apply to the fast-track CRP. Then, to implement the provisions of the CRP, specifically the Fast Track CRP, the board, in the exercise of its regulatory powers, has made separate rules and regulations, namely the IBBA Fast Track Insolvency Resolution Process for Corporate Persons Regulations, 2017. So, you are expected to complete the resolution process within the framework of regulations. If you fail to do that, then what happens is that the company will be liquidated. As we have already discussed in previous classes, if the committee of creditors fails to arrive at a resolution plan within the time limit during the CRP process, the adjudicating authority will issue an order for liquidation. Even in the case of a fast-track CRP, if the committee of creditors is unable to arrive at or approve a resolution plan, the NCLT will issue an order for liquidation.

Now, let's examine the timelines in the fast-track CRP. So, we have already discussed the timelines for regular CRP in another class. Therefore, the timelines discussed under Regulation 40 of the CRP regulations differ from these timelines. The first step is to file the application. So, who will file the application: the Financial Creditor, the Operational Creditor, or the Corporate Debtor? Then admission is within 14 days. Within 14 days of receipt of the application within 14 days, you are expected to admit. This is also common for both CRP and FastTrack CRP. Then there is a public announcement. So, IRP makes a public announcement inviting the claims and providing relevant information within three days. Then submission and verification will differ from here; actually, the time framework will vary in the case of fast-track CRP. Creditors submit their claims, and the IRP verifies them. This process typically occurs within 10 days of submission, following the announcement. Therefore, you are expected to complete it within 10 days of the announcement date. Then, the Constitution of the Committee of Creditors. So, the IRP will constitute the COC based on the verified claims within 7 days of the verification. Then, the first COC meeting will be held within 7 days of the COC's formation.

Then, COC confirms the RP as RP, which is IRP as RP, Interim Resolution Professional as Resolution Professional, or they can appoint another person as a Resolution Professional. So, anything is possible. Then, subsequently, the RP will be there. Once the first meeting of the COC is completed, the Resolution Professional will be there. Then the preparation of the Information Memorandum will begin. The Resolution Professional will prepare the Information Memorandum in consultation with the CoC as soon as

possible after being appointed. The invitation to the resolution plan should typically occur within 21 to 30 days. The RP invites the resolution plan and evaluates it, so the invitation evaluation must be completed within a 30-day period. Then, COC approval of the Resolution Plan Section 30. Therefore, the plan must be approved by at least 66%; the voting percentage is similar in both cases of CRP and this fast-track CRP. By the votes of 66% of the voting shares, the COC shall approve the Resolution Plan. So it needs to be completed within a 90-day period. If you observe regular CRP for each and every activity, separate timelines are provided. Whereas, if you observe the fast track, there is no prescribed exact time limitation within which the resolution plan must be approved within 90 days. Within 90 days of the CRP initiation date, you are expected to complete it. Even there, you are expected to complete the COC within 180 days, so, compared to the timelines under the CRP, it is relatively straightforward. The submission of NCLT is required. The RP submits the approved plan to the NCLT for final approval. This must be done within 90 days. Before 90 days, the COC is expected to approve the plan. You are then expected to submit the plan to the NCLT.

Then, the NCLT may approve it, or it may reject it. The plan is either approved or becomes binding. So, if it is approved, it becomes binding. As we have already discussed, once the resolution plan is approved, it becomes a right; it is a REM. In REM, it acts as a REM. So, what is this REM? It is binding on all shareholders, all creditors, including financial creditors, operational creditors, and other stakeholders. Once it is approved, it becomes binding; if it is rejected, it may lead to liquidation, as we have already discussed in the event that the resolution plan is not approved. In such cases, it may lead to liquidation; however, the NCLT does not have much discretionary power when rejecting. Therefore, the NCLT cannot verify the commercial wisdom, as we discussed in the previous classes. Therefore, the only possibility is that if the resolution plan is not approved by the COC, the NCLT will issue an order for liquidation in such cases. Therefore, all these things must occur within 90 days or 135 days, as the case may be, if the time is extended to 135 days; however, under normal circumstances, it is 90 days.

What is the role of the resolution professional, then? I can say that the role of a resolution professional is similar in both CRP and fast track, except that he is expected to complete it within 90 days, whereas in the case of regular CRP, it is twice that, which is 180 days. That's the only difference, but minor changes are present if you observe the regulations. However, comparatively, the role of the resolution professional is largely similar. An insolvency professional shall be eligible to be appointed as a resolution professional even for the fast-track resolution process. So, what is the condition if he and all partners and directors of the insolvency professional entity, of which he is a partner or director, are independent of the corporate debtor? That means he should be independent; therefore, he is eligible to be appointed as an independent director in any company. Then he is also eligible to be appointed as a resolution professional. Simple logic. If a person is

eligible to be appointed as an independent director, they are also eligible to be appointed as a resolution professional, provided they possess the requisite qualifications. A person is considered independent. When is a person considered to be independent? A person is considered independent of a corporate debtor if they qualify as an independent director, as previously discussed. He qualified to be an independent director under the company's head and is not a related party, nor has he been an employee, proprietor, or partner of any form associated with the company in the past three years. Please remember. That means he is not expected to have any material pecuniary relationship with the company. In such cases, a person can act as a resolution professional.

Then, a resolution professional cannot be appointed as a resolution professional if they or their entity are under restraint by an order of the board. Therefore, if the board has issued an order stating that a particular person is not eligible, then such person or entity cannot be appointed as a resolution professional. They must then make the necessary disclosures during and after their appointment. As we have already discussed, when appointing the IRPRP (Interim Resolution Professional), you are expected to provide your consent, and the resolution professional is expected to make the necessary disclosures. So, even in the case of fast-track CRP, he is also expected to give the disclosures. And he is expected to make the necessary disclosures during and after their appointment and cannot continue if their entity or members represent other stakeholders in the same fast-track process. If they are representing other stakeholders, then you cannot continue.

Let us review what we discussed in this class. Today, we discussed the fast-track resolution process. What is the significance of the fast-track resolution process? The fast-track resolution process helps small-scale industries, as defined under the Companies Act, and startup companies and unlisted companies with an asset value of less than 1 crore rupees to complete the CRP process within the shorter time limitation of 90 days. This process is known as the fast-track resolution process. Then who is eligible? As we have already discussed, small companies and unlisted companies with an asset value of less than 1 crore rupees are eligible for the fast-track resolution process. We then discussed the application for the fast-track resolution process and who is eligible to make an application. So, the fast-track application resolution process can be made. Like, who can initiate the CRP regularly? Here, it can also be made by either the financial creditor, operational creditor, or corporate debtor, as the case may be. We then discussed the stages. The stages in the fast-rate resolution process are similar to those in the regular CRP process, but with one key difference: the entire process must be completed within 90 days. This is the only distinction between regular CRP and fast-track CRP. So, there is a possibility that you can extend the time limitation by 45 days. Then the time frame we have discussed is okay. With this, we have completed the concept of the fast-track resolution process, specifically the fast-track CRP.

Thank you.