

Liquidation Provisions under Companies Act, 1956

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Week 01

Lecture 04

Welcome to all.

As a part of the course on Insolvency and Bankruptcy Law in India, today we are going to discuss on the concepts Presidency Town Insolvency Act and Provincial Town Insolvency Act. So, before that let us recap what we have discussed in the previous class. In the previous class, we have discussed about insolvency law in UK and USA, and the primary legislations in UK includes Insolvency Act 1986 and Companies Act 2006 which governs the company management, and Enterprises Act 2006 and Corporate Insolvency and Governance Act 2020 for COVID era reforms. Then we have discussed about restructuring plan that is there under part 26A of the Act. Then Bankruptcy Code of US, then corporate insolvency procedure.

So, today we will start the concept of presidency town insolvency act and provincial town insolvency act. Please remember the presidency town insolvency act 1909 and the provincial insolvency act 1920. So, basically during the British period, these two legislations are aiming at the redressing the problems relating to insolvency. So, these two legislations are dealing with the insolvency in India. So, while distinct in their scope and complexity, their shared goal was to provide legal mechanism for debt resolution.

So, please remember the presidency town insolvency act and provincial insolvency act both the legislations the objective of the legislation is the same, but if you observe the provisions there are slight variations are there between the presidency town insolvency act and provincial insolvency act. Okay, but please remember these legislations form the basis for insolvency law in India in subsequent years.

In the next classes, we are going to discuss about Companies Act, then provisions under the Companies Act relating to insolvency. Then we are going to discuss about the SICA, Sick Industrial Companies Act.

So, for all these things, actually, the Presidency Town Insolvency Act and Provincial Insolvency Act, these two legislations acts as a basis for the remaining legislations that were there in the subsequent years, okay. Now, let us discuss Presidency Town Insolvency Act 1909. So if you look at the applicability of this legislation, so this Presidency Town Insolvency Act 1909 is applicable to Presidency Town. So, Presidency

Town means the towns which are directly under the control of Britishers. Okay, whereas provinces, they are not directly under the control of Britishers, but provinces. Okay, so other kings, they were Indian kings, they were ruling and they were under the control of Britishers. So, now the presidency town insolvency act is applicable to the presidency towns only. So, right now it is Kolkata, Mumbai, Chennai. Then it deals with individual residing and carrying on the business within those towns. So, please remember within the scope of Presidency Town Insolvency Act, any person who is dealing with the or who is doing the business in the presidency towns, they are all regulated by Presidency Town Insolvency Act.

What is the basic objective of this legislation? So, the basic objective of this legislation is to consolidate and amend laws relating to insolvency in presidency towns. So, in line with the presidency town insolvency act even we are also having provinces insolvency act to provide legal mechanism for the debtors to enable to pay their debts. So, we are having the legal mechanism for the debtors. whereby Please remember when any person declared to be insolvent, it does not mean that general presumption is that if any person files a insolvency petition, ordinary person thinks that he need not to repay the money. So, that is not the case, Ok.

So, there is a mechanism is there under the presidency of knowledge provincial insolvency act. In both the legislation, there is a mechanism is there whereby the law will ensure that no one is finding a criminal case against the individual who have filed the insolvency petition, then they are going to acquire the receiver the receiver is going to realize all the assets of the individual, then they are going to settle then subsequent to that he is going to if he is earning any any money in the subsequent years he can repay. That's okay, so, there is a mechanism is there. Okay. So, the legal mechanism okay when the debtors are unable to pay the debts okay so to ensure that the criminal cases are not filed against him and to ensure that the assets are realized and they are going to be paid to the creditors okay. so that is the mechanism is provided under this legislation okay. Now let us look at the provincial insolvency act 1920. So, what is the applicability? So, if you look at the applicability of provincial insolvency act so which is applicable to non-presidency towns right now kolkata, Mumbai, chennai, other than these three areas for the remaining areas provincial insolvency act will be applicable.

Then covered individuals residing in or carrying on the business outside presidency towns. and what is the objective? To create unified insolvency law for the provinces outside the presidency towns because for the presidency towns we are having presidency towns act whereas other than the presidency towns provincial insolvency act, okay. To simplify the insolvency proceedings for smaller towns and rural areas so compared with the presidency town the procedure followed under the provincial insolvency act is comparatively easy. Okay, to simplify so because presidency town insolvency act was passed in the year of 1909. So, we have learned some lessons so accordingly in the year

of 1920 we are having provincial insolvency act where the procedure compared to the presidency towns is easy.

Let us discuss important provisions please remember when we are discussing the important provisions under the legislations. In this lesson, we will try to discuss both the legislations parallelly. Because more or less Presidency Town Insolvency Act and Provincial Insolvency Act, both the legislations will have more or less similar provisions. So that's why whenever we are discussing the provisions, we are quoting both the sections. So Section 9 of Presidency Towns. So, if you look at the Section 9 of Presidency Town Insolvency Act, which discusses about the acts of insolvency, whereas similar provision is there under the provincial insolvency act also section 6.

So, that's why, in the slides, I have given both the sections okay so section 9 is our presidency on insolvency act section 6 is from the provincial insolvency act okay so that's why instead of repeating the provisions again and again, we are going to learn both the provisions at a time. I mean provisions under, the... Let us look at the acts of insolvency.

So, what acts are considered to be insolvency? So, if any debtor commits an act of insolvency in each of the following cases. So, what is considered to be insolvency acts? So, if in the states or elsewhere he makes a transfer of all or substantially all of his property to a third person for the benefit of his creditors generally. So, whenever if he is transferring the property to the third party whenever if he is transferring substantial property or else all the property to a third person for the benefit of his creditors then that is considered to be act of insolvency, or if in the states or elsewhere he makes a transfer of his property or any part thereof with the intent to defeat or delay his creditors, so he is transferring some property.

So, why he is transferring the property the main intention behind transferring the property is to defeat the creditors. Suppose, take the example I am having one property having the value of 100 rupees let us take the example, I owe some money to the creditor okay. So, instead of giving this property already I have given this property as security imagine. So, instead of giving the property so, what I am doing is I am trying to sell the property to third person whereby, subsequently the creditor will not have access to this property.

Okay, So, with the intention of defeating or with the intention of delaying the payments if i am transferring any property to opposite person then that is called as insolvency, "acts of insolvency". then if in the states or elsewhere he makes any transfer of his property or of any part thereof which could, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged as an insolvent. Suppose, take the example, I am having one property having the value of 100 rupees. I am selling the property to another party intentionally to avoid the consequences, selling the property for 50 rupees. Okay, so here why I am transferring? I am transferring to avoid the

insolvency or avoid the scenario where if so and so person becomes insolvent, okay, so other person, the third party will not be able to recover the property. So, this is purely fraudulent in nature. Okay, so you are giving the preference to someone to transfer the property. So, this scenario or this act is considered to be insolvent act.

Then if with the intent to defeat or delay his creditors he departs or remains out of the states so, intentionally he is going out or he remains outside or he departs or remains out of this, so he is not coming to his state or he is going somewhere else, so, he is like absconding I can say absconding from the premises. then he departs from his dwelling house or usual place of business or otherwise absent himself so whenever.

So, whenever if he is leaving his house that is dwelling house nothing but where he usually resides is called as dwelling house. let us start, if he departs from his dwelling house a usual place of business or otherwise absent himself, so, intentionally he is absconding from the premises. okay where he generally uses the business or where he generally stays okay, then he secludes himself so as to deprive his creditors of the means of communicating with him. So, he is secluding himself that he is not in touch with anyone. Okay, so, whereby no one can contact him, his creditors cannot contact him so it's like absconding. So, in such cases such acts are considered to be insolvency, "acts of insolvency". If any of his property has been sold or attached for a period of not less than 21 days in execution of decree of court for the payment of money. Suppose, if any of his property is attached for the payment of money by the court of law, he is unable to pay the money and he is unable to clear it. Then in such cases, such act is considered to be act of insolvency. And if he petitions to be adjudged as an insolvent, so he himself is filing a petition, that means voluntarily he himself is filing a petition before the court of law to adjudicate himself or adjudge himself as an insolvent. if he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts so that means if he is giving the notice that I am not going to make the payment or else I am suspending the payment I won't be able to pay ok so if he is giving the notice like that to his creditors. Then such acts are considered to be acts of insolvency. then if he is imprisoned in execution of decree of the court for payment of money.

So, if he failed to make payment to someone, then that other party filed a case against him and he was imprisoned for not making the payment. So, in such cases, such acts are considered to be acts of insolvency.

Then if you observe section 9 sub-section 5 of the presidency town insolvency, so, once if any person served with the insolvency notice may within the period specified therein for its compliance apply to the court to set aside the insolvency notice. Suppose, take the example Mr. X has received the notice from Mr. Y stating that X is supposed to pay the money, then what X is supposed to do as an individual? So let me repeat it once again, Y paid some money to Mr. X, X is supposed to pay money or repay money to Y. Now, Y

issued the notice to X, that means who is liable to make the payment. Then what X is supposed to do now? So that he has a counter claim or set off against the creator which is equal to or in excess of the due. So, X can say that maybe he can go for set off, set off means? i am supposed to pay 100 rupees to Y, okay and Y is supposed to pay 100 rupees to me. So, that's why, so this 100 rupees and that 100 rupees. So, i can set off or else in excess of the amount due. So, suppose take the example, i am supposed to pay 100 rupees to Y, but whereas Y is supposed to pay 150 rupees to me, so i am setting up this 100 rupees, then remaining 50 rupees actually Y is supposed to pay. So, if he is having excess of the money under due okay, then in such cases he can plead that okay, so, prefer in the suit or proceedings in which the decree or order was passed he can plead that fact. Then what are all the other facts that he is entitled to have a decree or order set aside under the law.

So, maybe he is having a legal right where the claim made by the Y can be set aside, that he has made an application before the competent authority under such law for the set aside. So, maybe some other authority is there, some other forum is there, whereby X has asked or X has requested the court of law to set aside the demand made by the Y, then in such cases that can be a ground. The time allowed for the making such application has not expired. Then that the decree or order is not executable under the provisions of any law. Maybe Y gave the notice to X on the ground that Y received a decree.

But X is of the opinion that according to a particular legislation such decree cannot be enforced. In such cases X can raise the point. So, X can raise the point before the court of law. Then, let us discuss another section, section 14, conditions on which debtor may petition. So, this is under the Presidency of Insolvency Act, whereas section 10 of Provincial Insolvency Act also speaks about the same concept.

So, a debtor shall not be entitled to present any insolvency petition and insolvency petition unless his debts amount to 500 rupees. So, what is the triggering point? The triggering point under this legislation is 500 rupees. So, if the debt is more than 500 rupees, then you can file a case. Then he has been arrested or imprisoned in execution of the decree of court for the payment of money. So, if any person is arrested for payment of money, then in such cases, debtor may file a petition.

An order of attachment in execution of such decree has been made. So, maybe the court has given some order to make the payment and parallelly execution order is also given or order of attachment is also given. So, in such cases, debtor may file a petition. Another important provision, conditions on which creditor may file a petition. The creditor should not be entitled to present.

So, here please remember what is the difference between previous section and this section? previous section, ok, so on which debtor may file a petition that is section 14.

Ok, you may be confused why section 9 is repeated as it is not a repetition actually ok section 14 conditions on which debtor may file a petition whereas section 9, ok. so, it is a provincial act actually so conditions on which creditor may file a petition. So, there is a difference between Section 14 and Section 9 of the Provincial Act. So, in other words, I can say Section 10 of the Provincial Act and Section 9 of the Provincial Act. Then a creditor shall not be entitled to present an insolvency petition against the debtor unless, so if any creditor wants to file a case against the debtor, then, the debt owing by the debtor to the creditor or if two or more creditors join the petition, the aggregate amount of the debt owing to such creditor amounts to 500 rupees. So, minimum amount must be 500 rupees both in the case of creditor and even in the case of debtor also, if he himself wants to file a petition.

Then in both the cases the debt amount must be minimum of 500 rupees, okay, the debt is liquidated some payable either immediately or some certain future time okay so that that whatever 500 rupees or additional amount must be liquidated some okay. Then the act of insolvency on which the petition is grounded has occurred within three months okay so before presenting the petition. then section 25 protection under section 31 of the provincial act. Okay. So, section 25 of the presidency towns act whereas section 31 of the provincial insolvency act okay. So, this protection act is similar to the concept of moratorium under the IBC so that we are going to discuss in the next classes about the moratorium section 14 okay. So even under section 25 also we are having similar provisions that is more or less near to the moratorium okay.

Now, let us look at the section 25. Any insolvent who shall have submitted his schedule as aforesaid may apply to the court for protection and the court may on such application make an order for the protection of insolvent from the arrest or detention. So, that means once any insolvents file a petition under the legislation then in such cases the court may give the order that ok, they are going to give the protection. What is the protection? So, during the process, the insolvent person or the person who filed a petition for insolvency cannot be arrested or he cannot be detained by the procedure of law. Okay. Then section 26 speaks about the meetings of creditors.

So, at any time after making an order of adjudication against the insolvent, the court on the application of creditor or the official assignee may direct that a meeting of the creditor shall be held. So, once the order of adjudication is given, the court on an application made by the creditor or official assignee, they will call for meeting of creditor. So, this is more or less similar to the concept of committee of the creditors, but lot of differences are there procedurally. But here also, in case of individual insolvency also, you are going to call for meeting of the creditors. Then, Section 28, submission of proposal and acceptance by the creditors.

So, this is under the Presidency Towns Insolvency Act. So, same provision is there under Section 38 of the Provincial Insolvency Act. Now, let us look at the provision. An insolvent may, at any time, after the making of an order of adjudication, submit a proposal for composition. in satisfaction of his debts, a proposal for a scheme of arrangement of his affairs in the prescribed form and such proposal shall be submitted by the official assignee to the meeting of the creditor.

So, what they are saying under this section, this section is enabling the debtor. So, already someone has filed or X has filed a petition for insolvency, already that is admitted. Now, the adjudication process is going on. So, during the process, okay. so there is a possibility the debtor may propose a scheme whereby he is going to repay all the money maybe he may take some time actually but he is going to repay all the money ok.

So, for the composition in satisfaction of his debts or for a proposal of scheme of arrangement maybe he may propose to pay the debts or else he may propose some other scheme also even that is also possible ok. So, this can be done it is like a resolution plan under the IBC, differences are there I am only giving trying to correlate that is it ok. So, it is like a resolution plan under the IBC so here also you can he can propose the scheme for the settlement of the disputes ok. then another important section section 33 duties of insolvent as to discovery and realization of property. once the insolvent is there that is once if he files a petition for insolvency. Any person who files a petition for insolvency, that is called as insolvent, okay, so he shall give such inventory of his property, such list of his creditors and debtors and of the debts due to or from them respectively.

So once any person files a petition for insolvency, okay, so he is expected to give the details of his entire property, assets and liabilities. In a simple language, I can say assets and liabilities. So, what is the inventory of his property ok list of inventory and creditors data is he entitled to receive money from anyone is he liable to make the payment to someone that is creditors so all these data must be given ok. Then, submit to such examination in respect of his property or his creditors. then wait at such times and places of the official assignee or special manager. So, please remember he is expected to coordinate, cooperate with the official assignee or special manager okay.

Then he may execute such power of attorney for the purpose of transferring instruments why? Because, once the any once any person is admitted to the insolvency then receiver will be appointed okay official assignee will be appointed. So, if the once the official assignee is appointed, he may authorize official assignee to transfer the property why because the official assignee is going to sell the property and he is going to settle the amounts. Then generally, to do all such acts and things in relation to his property and distribution of proceeds among the creditors. So, he can do any such activity, any such

other activity whereby he is, I mean for the purpose of selling the property and distribution of property, he is going to help the receiver.

Then section 35, discharge of insolvency. Okay, this is under the Presidency Towns Act, whereas section 41 of Provincial Insolvency Act provides for discharge of insolvency. Okay, then how to discharge. So, under section 35 we are going to discuss how to discharge. So, once all the debts are cleared, then insolvent person can file an application that is petition before the court of law. Then, the court of law once it is satisfied that he cleared all the debts then they may discharge the insolvent, okay.

Another important provision is avoidance of voluntary transfer, section 55 of presidency towns whereas section 53 of provincial towns okay. So, any transfer of property not being a transfer made before any and in connection in consideration of marriage or in favor of purchaser or Incomprancer, in good faith, or for valuable consideration, shall, if the transfer is adjudicated as an insolvent, within two years, from the date of the transfer, be void against the official assailant.

So, it's a simple logic. So, suppose, take the example, if any person is declared to be insolvent, then in such cases, before declaration of insolvency, will take two years period, that is, before two years will take. Any transfer made, unless it is in good faith, any transfer made to any other person, okay, so, in consideration of marriage or made in favour of purchase whatever it may be. ok. So, please remember such transfer shall be void ok. So, any transfer made will be considered to be void. But, protection of bona fide transactions, under section 57 of the presidency town insolvency act and section 55 of the provincial insolvency act provide the protection for bona fide transactions.

So please remember if you are doing in good faith that means you don't have any guilty intention. okay so, in the normal ordinary course of business you transfer the property okay. So, any payment by the insolvent to any office creditors or any payment of payment or delivery of the insolvent delivered to the insolvent and any transfer by the insolvent for valuable consideration. So, whenever you are doing any beneficial transaction or any transaction with bona fide intention ok so any payment to the creditors so insolvent made payment to the creditors or else any payments are delivered to the insolvent or else any transfer by the insolvent for any property for a valuable consideration ok or any contract or dealing by and with the insolvent for valuable consideration. So, by receiving the consideration if you are doing any transaction with the insolvent person such transactions are exempted from the protection ok. So, such transactions are exempted from the purview of the legislation why because such transactions are valid ok.

Then section 68 speaks about the duty and powers of official assignee as to realization so same provision is there under section 15 of provincial okay. So, the official assignee shall

with all convenience we realize the property of the insolvent okay. So, it is the responsibility of the official assignee to ensure that he is going to realize all the assets of the insolvent okay. then what he can do? He can sell all or any part of the property of the insolvent. Or, else he can give receipts for any money received by him or may by leave of the court to do all or any of the following acts.

So, what he can do? Carry on the business of insolvent. So, there is a possibility the receiver can carry on the business of insolvent. So, for the beneficial winding up scheme. So, these are all the things that can be done by the professional. Then institute, defend or continue any suit. or other legal proceedings and employ the legal practitioner or other agent to take any proceedings.

Suppose, someone file a case then he can engage a legal practitioner and accept as a consideration for the sale of any property of the insolvent a sum of money payable at the future time or fully paid-up shares or debentures debenture stock. So, he can accept any sale of the property okay. then mortgage or pledge any part of the property so he can mortgage the property he can pledge the property belongs to the insolvent. Okay, so for the repayment. Okay, so please remember all these things must be done for the purpose of repayment of the debt.

Okay, then refer any dispute to the arbitration so if any disputes are there, he may refer the matter to the arbitration also and compromise all the debts claims and liabilities even there is also possible and divide in its existing form among the creditors according to its estimation value okay. so even the creditors can also be divided based on the value any property which from its peculiar nature. okay so cannot readily or advantageously sold. okay if you cannot sell the property belongs to the company advantageously then also you can divide them okay into separated.

So, these are all the important provisions, i can say this is not the entire legislation. okay so, these are all the important provisions under the presidency town insolvency act and provincial insolvency act okay. So, I can say the presidency town insolvency act and provincial insolvency act okay they are all landmark legislations okay why? Because These are all framed during the British period and still these legislations are in enforcement.

So, they are able to handle the individual insolvency I can say efficiently. But please remember because as already we have discussed all these legislations were scattered in nature. Why? because for companies other one legislation for individuals one legislation for LLP. So, that's why, now what, we are are doing under the IBC is that we are consolidating all the laws relating to insolvency in india. okay. So, this presidency town insolvency act and provincial insolvency act both will be replaced with the IBC provided when the part three of the IBC was notified okay.

Please remember the provisions relating to individual insolvency are not yet notified in IBC once it is notified then they are going to replace the presidential insolvency act and provincial insolvency act okay. So, that's why to know uh to understand the IBC provisions it is important for us to know presidential and provincial insolvency act because these are these two registrations are basis for individual insolvency.

Let us recap what we have discussed today. So, in today's lesson we have discussed Presidency Towns Insolvency Act and Provincial Insolvency Act. Then, under these two legislations, what acts amounts to insolvency we have discussed, when a creditor can file a petition or when a debtor may can file a petition ok.

Then composition and scheme of arrangement, we have discussed about composition and scheme of arrangement and we have discussed about the discharge from the insolvency, when a person can be discharged from his insolvency and avoidance of voluntary transfer. So, whenever the insolvency petition is filed, then before that two years transactions we are going to verify. if it is not in the benefit if it is not in the good faith then in such cases such transactions are considered to be void. okay. then protection of bona fide transactions so the law is also protecting the bona fide transactions because you cannot say that all the all the sales are or all the transactions are with mala fide intention okay.

So that's why, we are going to protect the bona fide transactions also. Then subsequently we have discussed about duties and powers of the receiver.

Thank you.