

Insolvency and Bankruptcy Law in India

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Lecture 40

Welcome to all.

As part of the course on insolvency and bankruptcy law in India, we will discuss the concept of the pre-packaged insolvency resolution process under the IBC today. Even in the previous class, we also discussed the prepackaged insolvency resolution process. So, half of the concepts we discussed in the previous class will be completed in this session. In the previous class, we discussed what PPIRP is and the pre-packaged insolvency resolution process. Then, who is eligible under the PPIRP? Okay, then, who can be appointed as a resolution professional? While discussing eligibility, we agreed that MSMEs are eligible and that the minimum triggering point, or the minimum default amount, must be a minimum of 10 lakh rupees. Then, who can be appointed as a resolution professional? We have discussed that any person who is eligible should be a qualified resolution insolvency professional. Any qualified insolvency professional who is eligible to be appointed as an independent director and is not a related party to the company can be appointed as a resolution professional in such cases. Then how do you initiate the PPIRP? The PPIRP is initiated by the corporate debtor. Okay, so how to initiate that we discussed in the previous class? Then we discussed the duties and powers of the resolution professional, the formation of the COC, how you are going to form the COC, and the procedures governing the meetings of the COC, which we discussed in the previous class.

Now, let us discuss the subsequent procedure to be followed. So, once the COC is formed, actually, once the resolution professional is appointed, it is the responsibility of the resolution professional to appoint the registered valuer. Why? Once the resolution professional is appointed, they are expected to provide an information memorandum and invite resolution applicants to address all these matters. He is expected to conduct the valuation of the corporate debtor, which is the valuation of the company. So that's why, if you observe Regulation 38, which provides that the resolution professional shall, within three days of his appointment, appoint two registered valuers to determine the fair value and liquidation value. Therefore, once the resolution professional is appointed under these regulations, they are expected to appoint the two registered valuers within three days. These two registered valuers will determine the fair value of the company, which is

the corporate debtor, and its liquidation value. What is this fair value we have discussed, even in the previous classes? Fair value, in simple terms, means that if I were to sell the same assets of the corporate debtor in the open market, what amount I would expect to receive; that is called the fair value market value. Liquidation value means that if I were to close down the company right now, I would sell all assets; therefore, the valuation would obviously be different. So, as it stands, if I am selling the assets, that is referred to as the liquidation value. Therefore, it is the responsibility of the registered valuer to determine the fair value and liquidation value. Therefore, the resolution applicant will provide the resolution plan; however, unless they are aware of the company's valuation, they cannot provide the resolution plan.

Then, provided that the following person shall not be appointed as a registered valuer: a related party, if any person is a related party of the CD or an auditor of the CD during the preceding five financial years, then in such cases, he cannot be appointed as a valuer. A partner or director of an insolvency professional entity of which the resolution professional is a partner or director, and if he is a relative of the above, if he satisfies any one of these conditions, then in such cases he cannot be appointed; or if he satisfies any of the above three conditions, then in such cases a person cannot be appointed as a registered valuer.

Then, as we have already discussed, once the registered valuer is appointed, they are expected to provide the fair value and liquidation value, as specified under Regulation 39. The registered valuer appointed under Regulation 38 shall submit to the resolution professional an estimate of the fair value and the liquidation value, computed in accordance with internationally accepted valuation standards, after physically verifying the inventory and fixed assets of the corporate debtor. Therefore, if you observe Regulation 39, which clearly stipulates that registered valuers, as two valuers, will be appointed, they are expected to provide both fair value and liquidation value. While calculating, they are expected to follow internationally accepted valuation standards. In the previous classes, we discussed, and I provided you with three generally followed standards. So, I have explained the three standards to you. One of them is the standard prescribed by the ICAI, and the central government has also prescribed standards. For the valuation, you may follow any of the standards according to your convenience.

Another important requirement is that whenever the registered valuer conducts the valuation, it is the registered valuer's responsibility to conduct a physical verification of the inventory. Therefore, if a registered valuer sends authorized representatives or any representative to conduct the physical verification, such valuation is not considered valid in these cases. In the previous classes, we have even discussed this with the help of examples and judgments. In various judgments, the NCLT has held that if a registered valuer fails to conduct physical verification, the valuation given by them cannot be taken into consideration. Therefore, he is expected to do the physical verification. Therefore,

physical verification of the corporate debtor's inventory and fixed assets is required. The information memorandum, regulation 40. Therefore, Regulation 40 stipulates that you are required to prepare the information memorandum. What should be included in the information memorandum? According to Regulation 40, the information memorandum should include assets and liabilities with descriptions that are generally necessary for ascertaining their values. So what is this description? Okay, they have used the phrase "such description." What is this "such description"? You are expected to give the value of assets and liabilities, which is the book value. Apart from this, you are also expected to provide the acquisition cost.

When providing the cost of acquisition, you can accordingly determine the cost of acquisition, the current book value, and whether there is any appreciation or depreciation. In the majority of cases, depreciation will be present in the case of assets; however, in the case of land and buildings, there is also a possibility of appreciation. What is the cost of acquisition, and what is the value of the assets according to their book value? Therefore, these necessary details must be provided to determine their values. Actually, then you are expected to give the latest annual financial statements. The audited financial statements of the CD for the last two financial years must be included in the information memorandum. Then you are expected to provide a list of claims, including the names of the creditors, the amounts of their claims, and whether any security interest exists, which means whether the company has created any security in favor of the creditor.

Such details must be given, including particulars of the debts due from or to the corporate debtor with respect to related parties. If a related party has borrowed funds from the company, you must provide details about such borrowings, including whether related parties have made loans to the company (i.e., creditors). These details should include the interest rate and other terms and conditions. Then Regulation 40 provides that, okay, it is a continuation. Regulation 40 provides details of guarantees given by other persons in relation to the corporate debtor's debts, specifying which guarantors are related parties. So, whether a guarantee is given or not, whether the company borrows funds or a related party gives the guarantee, it may not be a related party; it may be a third party. So, whether any third party provided the guarantee for that date, you must provide the details. Then the names and addresses of the members or partners holding at least 1% of the stake in the company.

When preparing the list of shareholders, you are expected to include the addresses and names of the members or partners. In the case of an LLP, the partners will be listed. For those who have at least 1% of the stake, you are expected to provide the details in detail. Then, details of all material litigation are important because the litigation will impact the company. Suppose you fail in the litigation or lose the case; in such cases, you may end up paying huge damages. That's why the details of all material litigation, ongoing investigations, or any proceedings initiated by the government or statutory authorities are

necessary. Perhaps because you are an MSME, the pollution authorities may have initiated an investigation process; in that case, you would have to disclose it. Maybe the labour department has started or the factory inspector. Similarly, if any government authorities have initiated proceedings against the corporate debtor, such proceedings must be disclosed in the information memorandum. Then, the number of workers and employees, as well as the liabilities of the corporate debtor towards them: how many workers are there, how many employees are there, and whether any salary is due. Do you have any salaries due? How much is due? This information must be given. Then, any additional information that the corporate debtor or resolution professional deems necessary can be included. For the purpose of the resolution process, any information deemed necessary can be provided in the information memorandum.

Let us look at the other important provisions. Regulation 41 provides that on or before the 30th day after the commencement date, the PPIRP commencement date. The resolution professional shall form an opinion on whether the corporate debtor has been subject to any preferential transactions. As we have already discussed in the previous class, the resolution professional is expected to receive claims from creditors. Once he receives a claim, these claims must be collected and collated. We have previously discussed the significance of collection and collation. It must be collected and collated by the resolution professionals. Then, subsequently, he must form an opinion on whether any transaction is in the nature of a preferential transaction. In the subsequent lessons, you will discuss PUEF transactions. So there are various transactions that are considered avoidance transactions, including preferential transactions, undervalued transactions, extortionate transactions, and fraudulent transactions. Do you have any preferential transactions? Because if we have any preferential transactions, then such transactions must be excluded, and you must recover the money paid through the transaction. Therefore, you must form an opinion as to whether the corporate debtor has any preferential transactions in its balance sheet.

Then the CD shall submit the base resolution plan. One of the unique aspects of this PPIRP is that the CD will submit the base resolution. Therefore, this base resolution concept is not present in the normal CRP process, or the regular CRP process, as it is commonly referred to. Therefore, the CD shall submit the base resolution plan to the resolution professional within 2 days, as he is the person initiating the process. Therefore, once the resolution professional is appointed within two days of the pre-packaged insolvency commencement date, the CD will submit the base resolution plan to the resolution professional. Then the resolution professional shall present it to the committee of the creditors. So, once he receives a base resolution, it must be presented to the committee of creditors. Then, the committee of creditors may approve the base resolution; this possibility exists. Therefore, it may be submitted to the adjudicating authority. Then the RP shall publish brief particulars of the invitation.

Another important provision is that the RP shall publish brief particulars of the invitation for the resolution plans in Form P11. As we have already discussed, all the forms in these regulations are like P1, P2, and P3. So, P11 must be submitted not later than 21 days from the pre-packaged insolvency commencement date. So, the RP is expected to publish the resolution plans. What should be included in the resolution plan? Please remember that the contents of the resolution plan should be similar to those of the regular resolution plan under the CRP process. So, let us discuss the contents of the resolution plan here. Regulation 44 of the PPIRP regulations outlines the contents of the resolution plan. The resolution plan shall contain the following debtor, which includes the transfer of all or part of the corporate debtor's assets to one or more persons. So are you transferring any assets that belong to the corporate debtor to another person? Please state. Sale of all or any part of the assets, whether subject to any security interest or not. So, are you going to sell any of your assets? Maybe there is a possibility that such assets may be subject to charge or may not be subject to charge. Then, the restructuring of the corporate debtor occurs through merger, amalgamation, and demerger.

We have already discussed this concept in detail, even in previous lessons. Your resolution plan may also include restructuring of the corporate debtor, such as a merger or amalgamation. Now, the question arises as to whether, in the case of a merger, amalgamation, or demerger, you are also expected to follow the procedure under the Companies Act? Because you are having sections from section 230 to 240 of the Companies Act, which provide for the arrangements, various sections are there relating to that. So, are you expected to follow the Companies Act? In the previous lessons, we have discussed the prima facie; you are expected to follow the IBC. First, comply with the IBC provisions. In addition to that, if it is not contradictory to the IBC provisions, you are expected to follow the procedures under the Companies Act as well.

Then, the resolution plan may involve a substantial acquisition of shares, so someone might say that we are going to acquire the company through a substantial acquisition. Then, the cancellation or delisting of any shares of the corporate debtor is possible; you can either cancel or delist the shares if applicable. Then, what are the other contents? Satisfaction or modification of any security interest may involve one of the lending institutions that has given the loan and has already taken a charge. Now, through the resolution plan, you are either satisfying or modifying the security interest. Then, in such cases, even these things can be part of the resolution plan. Then, curing or waiving any breach of the terms of any debt due from the corporate debtor is possible. So, there is a possibility that you can waive it off. So, there is a breach by the corporate debtor. But you are curing or waiving the breaches. That is also possible, then a reduction in the amount payable to the creditor. Generally, this clause will be present in the majority of cases, as we have already discussed, even in previous lessons.

Whenever you propose the resolution plan, I can say that in 80 to 90 percent of the cases, there will be a reduction in the amount payable to creditors. This is also referred to as a haircut because the amount payable to creditors is reduced. That's why we will call it a haircut. In most cases nowadays, we have haircuts. So, is it a good plan or a good scene? Or not, that is a different issue. Haircuts are included in the proposed resolution plan. But one ideology is that when you accept the lesser amount, maybe in the short run, that is not beneficial to the financial creditor, but in the long run, or if you look at the economy as a whole, this money, whatever he is recovering from the corporate debtor, can be reinvested elsewhere; that reinvestment is also possible. That's why it will happen instead of keeping the resources, ideally. If you can recover some deductions, that amount can be reinvested somewhere. Therefore, it will help the economy as a whole. This is the ideology behind accepting the reduction in the amount payable to creditors. Then, the extension of the maturity date. If there is a maturity date, you can extend or change the interest rate. There is a possibility that you can also change the interest rate. Then, the amendment of the corporate debtor's constitutional documents is possible, even as part of the resolution plan; you can also amend the constitutional documents. So what are constitutional documents? Your memorandum of association and articles of association are considered to be constitutional documents, so they are required as and when necessary. Perhaps you could propose amendments to the constitutional documents, as well as suggest alterations to the objective clause of the company.

Additionally, alterations to the capital clause of the company can be proposed, depending on the circumstances. Then, the issuance of corporate securities for cash or property is made in exchange for claims, interest, or other suitable purposes. There is a possibility that you can convert the debt into equity, so for the existing debt, you can issue securities; even if that is also possible, it means you are engaging in debt restructuring. Then change the portfolio of goods or services produced or rendered by the corporate debtor. You can adjust the portfolio of goods and services; for example, if you are providing services and also selling goods, the revenue from these goods and services is currently split 50/50. Now, if you want to concentrate more on services, you can increase the share of services. Therefore, you can increase your manpower, etc., in the provision of services; okay, even that is also possible. And as part of the resolution plan, you may sometimes propose technological changes; for instance, the existing corporate debtor's technology may be outdated. In such cases, you can propose technological changes as well.

Then obtain the necessary approvals from the central government, state government, and other authorities. However, as we have already discussed, you must be very careful with the resolution plan; when proposing it, you are expected to obtain approval from the central government and other relevant authorities. Therefore, this approval process must be completed within one year, okay. Once the resolution plan is approved, from that date onwards, within a period of one year, you are expected to obtain approval from the

central government and other relevant authorities. However, when it comes to the Competition Act, the Competition Commission of India is the authority. In such cases, if approval is required from the CCI, it must be obtained in advance, which means before presenting it to the COC. First, you need to obtain approval from the CCI; subsequently, you can present the resolution plan to the COC, and then it can be approved. So this CC approval is in advance. The remaining can be taken later.

Let us then examine the mandatory contents. Until now, we have discussed the regular general contents; now, let us look at the mandatory contents. The mandatory contents of the resolution plan should include the term of the plan, its implementation schedule, and the management in control of the business. The resolution plan shall demonstrate how it will address the cause of default, followed by its feasibility and viability, and must include a provision for effective implementation. Do you have the necessary provisions for effective implementation? It has provisions for approvals required and their corresponding timelines, so these details must be included. Then, the resolution applicant has the capability to implement it or not, so these factors must be considered when preparing the contents.

These are all mandatory contents. Let us then examine the other important provisions. Therefore, Regulation 46 stipulates the submission of a resolution plan. Once it is approved, you will submit it to the adjudicating authority. Section 54K speaks about the presentation of the resolution plan by the resolution professional to the COC. Once the resolution plans are received from the prospective resolution applicants, the resolution professional is expected to submit or present them to the COC. Then, Regulation 47 provides that the resolution plan received under Regulation 46, which complies with the requirements of the Code and these regulations, shall be evaluated based on the evaluation.

In the previous classes, we also discussed the evaluation matrix. You will develop the evaluation matrix. Based on the evaluation matrix, the COC will review it. Then, the resolution plan that receives the highest score in the evaluation matrix, if any resolution plan achieves the highest score, shall be selected for the competition alongside the base resolution plan. As we already know, under this PPIRP, you will also be required to submit the base resolution plan. This resolution plan, submitted by the third party, and the base resolution plan will be competing with each other. Accordingly, you will decide what to do. Then Regulation 49, if you observe, provides for an application to the adjudicating authority seeking approval of the resolution plan. Once the COC approves the resolution plan, you will submit an application to the adjudicating authority, which is the NCLT. Then, the NCLT will either approve or reject the resolution plan. Section 54L provides that if the adjudicating authority is satisfied that the resolution plan approved by the committee of creditors is feasible, it must not question the commercial wisdom of the committee of creditors when approving the resolution plan. It is only whether they

followed the procedure or not that NCLT can verify, but they cannot verify the commercial wisdom.

Then, if you observe Section 54N, which addresses the termination of the pre-packaged insolvency resolution process, we have provisions relating to termination. Then, you can appeal against the order. If you wish to pursue an appeal, you can do so before the NCLT. Let us then examine the initiation of CRP. Section 54O states that the committee of creditors can be initiated at any point in time after the commencement date of the PPIRP but before the approval of the resolution plan. By a vote of not less than 66 percent, they can initiate the CRP. That means PPIRP is now in progress; once it is, PPIRP will generally continue, and you will close the issue in PPIRP only. But there is a possibility that the committee of creditors is of the opinion that PPIRP is not possible or it is not viable. Then, in such cases, they can initiate the CRP. However, please note that to achieve this, you are expected to reach the majority with a score of 66%. You can then withdraw from the PPIRP and proceed with the regular CRP process. So, with this, we have completed. Once the CRP process is complete, the regular procedure will continue. With this, we have completed the concept of PPIRP.

Let us rewind and recap what we have discussed so far. So, in this lesson, we have discussed the appointment of a registered valuer. Once the resolution professional is appointed, they are expected to appoint two registered valuers. Then we discussed that he is expected to provide the fair value and liquidation value. We then discussed the meanings of fair value and liquidation value. Then, subsequently, the resolution professional is expected to go for the information memorandum. Then we discussed the contents of the resolution plan, including the mandatory requirements. Once the contents are in place, we will proceed with submitting the resolution plan. Once that is submitted, it is to be approved by the resolution plan.

So, it is to be approved; the resolution plan must be approved. Then, once it is approved by the COC, the resolution professional will place the resolution plan before the COC. The COC is going to approve it, and subsequently, you are expected to make an application to the adjudicating authority. The adjudicating authority may accept or reject it. If you have any grievances, you can appeal under the relevant legislation. Then, if there is a failure, that means you are of the opinion that PPIRP cannot be continued. Then, COC, with 66 percent of the vote, may submit an application for the initiation of CRP if it is of the opinion that we cannot proceed under the PPIRP process. Then, in such cases, you can initiate CRP. Then the regular CRP process will start. Then again, other things will happen as we have discussed previously.

Thank you.