

# **Insolvency and Bankruptcy Law in India**

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**Lecture 41**

Hi, in this session, we are trying to understand how liquidation is carried out under the Insolvency and Bankruptcy Code. In the previous sessions, we have covered insolvency and provided a quick recap of the key points we have learned. Firstly, regarding insolvency.

Let's provide a quick recap of our past actions: number one, it's a comprehensive law aimed at resolving both insolvency and bankruptcy. This was introduced in 2016, and many difficult cases have been resolved. NPAs have been resolved since the introduction of IBC, as we know. It provides a time-bound process. We remember that there are 180 days within which the insolvency shall be resolved. Otherwise, with the permission of the adjudicating authority, the time can be extended by another 90 days. Overall, we have a 270-day timeframe within which the insolvency shall be resolved under the IBC. We can then see that this entire process is focused on transparent and quick debt recovery, offering a structured framework in which numerous professional bodies are involved.

It is worth noting that the introduction of the IBC has significantly improved the business environment in India. For your information, there is a ranking called the Ease of Doing Business. One hundred forty-three countries do business with each other, and out of these countries, whichever country makes life easy for the other countries will be rated as number one in terms of ease of doing business. In the whole ranking, India stood at 128th rank before the introduction of IBC. However, shortly after the introduction of IBC, India's rank has jumped significantly ahead, and we now stand in 72nd position in terms of ease of doing business.

You are aware of the one law, called the IBC, which has significantly altered the business environment in India. Also, a quick understanding of the five pillars of IBC. The first one is called the Insolvency and Bankruptcy Board of India, which is the regulator that will frame the regulations regarding how liquidation and insolvency should be carried out under the IBC and will also regulate the other three professional bodies that I will show you shortly. Insolvency professional agencies, such as the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, and the Institute of Cost and Management Accountants of India, have their own insolvency professional

agencies, where professional members are admitted upon qualifying as insolvency professionals. Therefore, this body will actually examine the disciplinary aspects of insolvency professionals and attempt to regulate them. This is one Section 8 company, which is a non-profit organization.

Insolvency professionals are individuals who are members of this institute and are responsible for conducting the insolvency resolution process as well as the liquidation process under the IBC; therefore, these professionals are very important pillars of this profession who will efficiently carry out the process, but they are monitored by the Insolvency and Professional Agency and ultimately overseen by the IBBI. Then there's a fourth pillar called the information utility center, which provides information about the borrowers, the NPAs, and the assets that are mortgaged under the Insolvency and Bankruptcy Code. This is an important agency that provides information to creditors about borrowers. Lastly, the most important agency we are all familiar with is called an adjudicatory authority; in other words, the National Company Law Tribunal, along with the Debt Recovery Tribunal, will act as adjudicatory authorities within the provisions of the IBC.

These five pillars, together, will uphold the IBC strictly and carry out the process efficiently. Understanding IBC and its structure. We have covered this in the past, but we have not provided an overview of how this is structured, including the number of sections and chapters. IBC was introduced in 2016, comprising approximately 255 sections organized into five distinct parts. I'll just show you the five different parts. Part one is called "Preliminary," which contains definitions and the scope of the Act, among other basics of the Act. There is not much in that except for definitions and understanding the scope and applicability of the Act. However, the second one is a very important chapter that contains several significant provisions.

Primarily, it discusses the insolvency resolution process, which is referred to as CIRP. It also discusses the liquidation process, which occurs after the failure of a corporate insolvency resolution process. This is Chapter 2, which comprises seven chapters. I will call it Part 2. It contains 7 chapters, spanning from Section 4 to Section 77. Following this, part three begins, covering insolvency resolution for individuals and partnership firms, starting at section 78 and concluding at section 187, comprising seven chapters. Part four deals with the regulation of insolvency professionals, agencies, and information utilities; the other three very important pillars are addressed in part four, and their provisions are enshrined in seven chapters spanning sections 188 to 233.

Lastly, the final part, which may not be as important in understanding the IBC, is Part 5, which covers miscellaneous provisions spanning sections 224 to 255 of the Act, with section 255 being the last. Is IBC a large law firm, or is it a small one? There are legislations in India that span about 60-65 sections, and there are legislations in India that

span about 470 to 500 sections. However, the IBC comprises only 255 sections; although there are multiple chapters within each part, the overall number of sections remains 255. Therefore, I will not call it the biggest legislation. I will not call it the smallest legislation, but this is a reasonable size that comprehensively provides all about insolvency and bankruptcy in one place. Moving forward, we will understand the key features of CIRP that we have already completed while understanding the insolvency resolution process. How many of you are able to recall what we discussed in the past? When I talk about CIRP Part 2 of the Insolvency and Bankruptcy Code, providing for insolvency, bankruptcy, and liquidation, what do you recall in your mind? Quickly try to remember and remind yourself what you have studied.

Let's move forward and understand what we have seen in the past. First, we've understood sections 7, 8, 9, and 10, which discuss how to make an application in the event of insolvency by a corporate debtor, correct? The application can be made by either the financial creditor, the operational creditor, or, lastly, by the corporate debtor itself. Then, in the admission of IRP, we have also seen, under Section 14, how the CIRP will be admitted by courts and what the consequences of such admission are. Once the CIRP is admitted, an RP is appointed, or an IRP, which is referred to as an interim resolution professional, is appointed. Such an interim resolution will publish an advertisement in a newspaper inviting claims from the creditors. Okay, so we begin here.

We understand the key features of CIRP. I've just asked you to recall whatever you remember. I'm sure you made your attempt, but what we have studied in the past is the following few topics. Number one: how to make an application. In the case of insolvency of a corporate debtor, Sections 7, 8, 9, and 10 comprehensively outline who can make an application and how it should be made. It can be made by a financial creditor, an operational creditor, or by the corporate debtor itself. Then how? This CIRP application is admitted by the adjudicating authority, and subsequently, an insolvency resolution professional is appointed. In this case, we refer to him as the interim resolution professional. Once the interim resolution professional is appointed, they will publish an invitation to creditors of the corporate debtor to submit their claims.

Then we verify the claims, and the claims are admitted after the CoC is constituted, which may comprise financial creditors at large; and, if needed, we also have operational creditors, and finally, we also have the corporate debtor within the scenario. The information memorandum is prepared by the resolution professional upon being advised by the COC after it is constituted, and this information memorandum provides substantial information about the assets of the corporate debtor, the business activities of the corporate debtor, and will actually attract various corporates towards the acquisition of this corporate debtor, which is currently insolvent. The primary purpose of the information memorandum is to provide them with the necessary information so that they will actually consider bidding for the acquisition of this company.

Later, the insolvency resolution professional (RP) will also request proposals from each of the shortlisted corporate acquirers who are ready to acquire this corporate debtor. Once the resolution plans are requested by the resolution professional, various parties, known as resolution applicants, who are willing to acquire the corporate debtor, will submit their resolution plans. The resolution plan will essentially contain the contents defined in sections 30 and 31 of the Act, which specify the amount of consideration they are willing to pay to acquire this corporate debtor. Once we receive all these resolution plans, we will evaluate them and then decide which is the best plan. That plan will be presented by the resolution professional to the COC, which is the committee of creditors; this resolution plan is ultimately presented to the adjudicatory authority, which is none other than the National Company Law Tribunal. Once the National Company Law Tribunal approves the resolution plan, it is all about paying money to the various creditors and subsequently implementing the entire resolution plan. My friends, this is what we have discussed in our previous sessions about insolvency. I have made an attempt to summarize and recap all the provisions. From now on, we will move forward to understand the concept of liquidation and various other terms that are used interchangeably. Though they are used interchangeably, there can be a distinction between the two different words that are used here; I will try my best to explain to you how these different terms work.

Today's 41st session will focus on understanding liquidation, a crucial term under the Insolvency and Bankruptcy Code. Let's understand, firstly, two different words. I'm not sure how many of you notice this, but when you look at the title of the Insolvency and Bankruptcy Code, there are two distinct words that are used. On one side, we have insolvency; on the other side, we have bankruptcy. So, what do these two words mean, and how different are they from each other? There are two schools of thought that consider these terms. Firstly, some people argue that insolvency is a scenario where a corporate debtor fails to repay its debts, whereas bankruptcy is a scenario where individuals and partnerships fail to repay their debts; thus, both are different in their views, which is one school of thought. However, the other school of thought suggests that bankruptcy will begin in the scenario where insolvency resolution fails; I will try to explain it to you. Insolvency is a scenario where the corporate debtor is unable to repay its debts due to a financial crisis. To emerge from this financial crisis, an application is submitted to the adjudicating authority for CIRP. If CIRP is successful, the company is revived, and business activity commences as usual. But where this process fails, what is the consequence? The consequence is called a bankruptcy scenario, where the company's assets and liabilities are decided, disposed of, and ultimately, the company is dissolved. This process can be called bankruptcy. So, we are trying to understand these two words.

Let's see how different they are. First, insolvency refers to a situation where debts cannot be repaid. That's why we are saying we are not solvent. The second point is that it may

be resolved through the CIRP process. What we are trying to say is that, just like a medical condition such as fever or viral bacteria within the body of an individual, insolvency is a condition. Can this condition be treated? Yes, it can be treated if you undergo a process called CIRP. If this process is successful, the corporate debtor will be revived, the insolvency position will change, and the corporate debtor will operate in good condition thereafter. Now, is it always guaranteed that the CIRP will be successful? No, it may not be successful. Hence, there is bankruptcy. Bankruptcy refers to a situation in which insolvency cannot be resolved, and therefore, as a last resort, the corporate debtor is liquidated by selling its assets and repaying its liabilities. This process is called liquidation, and the condition is referred to as bankruptcy. So, what are we saying? Bankruptcy is a situation. If you fall into that scenario, the next step is, obviously, liquidation. What is liquidation, and how does it work within IBC? Mark these words that are actually underlined. Liquidation is a process in which the assets of a company or individuals are sold, and the proceeds from the sale are collected. These sale proceeds are used to repay the company's creditors, who have not yet received payment. This is a very good step because the company cannot be revived if the creditors are not repaid.

As a last resort, we sold the company's assets, which generated some funds that are being used to repay creditors. That's step one in the liquidation process. Step two: What we need to understand is that it begins after the CIRP fails or if there is no viable resolution plan approved; liquidation will then commence. Then, we will sell the company's assets. We distribute the sale proceeds to various creditors, and after that, if there is anything left over, we distribute those leftover proceeds to the company's various shareholders under the waterfall mechanism that we've already studied.

Lastly, I would like to emphasize that liquidation is a last resort; it is not a desirable outcome. I don't know how many of you can relate to my example when I tell you that if you look at an individual whose health is deteriorating, the first step we try is treatment by giving medication, pills, etc. After that, if it doesn't work, then we undergo a surgical procedure, which is a medical intervention. After that, if things do not improve, then maybe we try to put the person on artificial life machinery, and if that fails, where the person cannot be revived, then in a hopeless situation, we leave the person to God's grace and pray that He dies peacefully. This is exactly what happens in the case of an insolvency. First, we try to revive it. If it does not revive, then we put it under a liquidation process. We attempt to sell the company's assets and then distribute the proceeds to its creditors; after that, we allow the company to die peacefully, which marks the final stage of liquidation. This happens when it is no longer viable to run the business.

Again, there are two terms: liquidation and dissolution. This can be confusing if you do not understand that those with a corporate law background or a commerce background will be familiar with these two terms. However, for those who do not come from either background, the two terms may be confusing. What is dissolution? These terms are used

frequently within books, on the internet, and among professionals, so let's understand what these two words are and how they differ from each other. First, as I have repeatedly said, liquidation is a process that encompasses many aspects: identifying the company's assets, selling those assets, receiving the sale proceeds, paying them to creditors, and so on. This is a process that involves 10 to 15 different steps. However, the final stage of this process culminates in one event, known as dissolution. So, what is that dissolution? Dissolution refers to the removal of the company's name from the register maintained by the Registrar of Companies. Now, in the registrar's book or register, there is no mention of the company's name; it has been completely erased. This last step is called dissolution; after that, the company no longer exists.

However, remember one thing: as long as the liquidation process is ongoing, the company continues to exist. You can see here on the fourth line that while the liquidation is ongoing, the company continues to exist. However, once liquidation comes to an end, dissolution occurs, which is the termination of the company's existence. These are two key terms: liquidation and dissolution. I'm sure now you can easily identify the difference between them. We also try to understand what the law surrounding liquidation under the IBC is when I use the term 'liquidation'. Where are these provisions? Do I have to read anything more than the IBC? Yes, that's what we are trying to understand.

In part two, we mentioned that it deals with insolvency, as well as bankruptcy and liquidation of corporate persons. In Part 2 of the IBC, Chapter 3 specifically addresses liquidation under the IBC. Regarding the legal framework for liquidation under the IBC, we mentioned that Part 2 of Chapter 3 deals with the liquidation of the corporate debtor, which comprises sections 33 to 54 of the Act. Apart from that, we also have certain regulations framed by the Insolvency and Bankruptcy Board of India in 2016, which we refer to as the IBBI Liquidation Process Regulations 2016.

What is the legal framework for liquidation under the IBC? Which Act, which regulations, what sections, which part, and which chapters deal with insolvency and liquidation? Currently, I'm discussing liquidation. Chapter 3 of Part 2 of the IBC deals with liquidation. And vide Sections 33 to 54 of the Act, enshrine various provisions as to how liquidation should happen. And then these two, along with the regulations framed by IBBI under the name IBBI Liquidation Process Regulations 2016, will provide a comprehensive legal framework for liquidation. Once you follow this, your liquidation can be completed in accordance with the law. However, remember that, despite various provisions in the Act and compliance with the Regulations framed by IBBI, the entire process is overseen by an adjudicatory authority to ensure transparency and efficiency throughout.

As we discussed liquidation under the IBC, the next important concept to understand is whether there is a similar concept to liquidation in any other law that deals with corporate

or corporate debtors. When I refer to corporate debtors, predominantly, they are companies registered under either the Companies Act 1956 or the Companies Act 2013. The moment I use the word 'company', everything related to the company is governed by the Companies Act 2013, including its liquidation. The only thing you need to understand is that, when it comes to the concept of liquidation under the Companies Act 2013, we refer to it as winding up, not liquidation.

Though liquidation and winding up are very similar concepts, they are almost one and the same. They are addressed in two different laws, each in a distinct manner. In the Companies Act 2013, Chapter 20, sections 270 to 365 deal with winding up, and this is also supported by the Companies Winding Up Rules 2020. A very interesting question: What is the difference between regulations and rules? In the previous slide, if I take you back, you can see that there are IBBI liquidation process regulations, 2016. However, in the next slide, as I discuss the Companies Act 2013, I am showing you the Companies Winding Up Rules 2020. So, most of us should naturally ask: what are rules, what are regulations, and what's the difference? For those who are unfamiliar, rules are typically established by the central or state government under the law and form an integral part of the enactment itself. However, whereas regulations are framed by regulators who are specifically entrusted with overseeing certain activities, such as SEBI, IBBI, and RBI, among others, they will formulate regulations.

As far as the company's act is concerned, Chapter 20 and the rules made under this act will deal with winding up. However, regarding liquidation, under the IBC, Part 2, Chapter 3, which also includes sections, deals with liquidation. Let's move forward, and we understand there is one more important concept. Liquidation essentially happens after the failure of a CIRP, in our understanding, and hence, liquidation is a consequence of the failure of a CIRP in most cases. But can a company that is running well, healthy, and has all its financial health in order choose to shut down its business and liquidate itself? Yes, it can. If it chooses to liquidate itself, it is referred to as a voluntary liquidation. You can see the word "voluntary," which is very important. In the second point, I am demonstrating that a financially healthy and viable company that has never become insolvent can also be liquidated. If it chooses to undergo liquidation, such liquidation is referred to as a voluntary liquidation. The beauty of the entire concept is that both liquidation and voluntary liquidation are part of the Insolvency and Bankruptcy Code, not the Companies Act 2013. And therefore, whether you are doing liquidation or whether you are doing a voluntary liquidation, you shall still follow the provisions of the IBC, which are mostly the same for either voluntary liquidation or liquidation. What can be the reasons, in that case, for the liquidation of a healthy company? I will give you examples if you have not been an insolvent company. If you have been a healthy company, then why do you want to shut down your business?

A reason can be that somebody has diversified substantially into other areas of business and has lost interest in the original business; although it is profitable, they may decide to wind up the company. Last but not least, a company is always created with a certain purpose in mind. If that purpose is fulfilled, then we don't need to run the company anymore. Perhaps the promoters and shareholders decide to wind up or liquidate a company that is actually viable and healthy. If you decide that such liquidation is a voluntary liquidation, the process is more or less the same; however, as far as regulations are concerned, the IBBI has introduced a specific set of regulations for voluntary liquidation. Those voluntary liquidations are distinct from a separate set of regulations. However, regarding our subject matter, we aim to understand liquidation, which is a consequence of insolvency resolution failure, and therefore, our discussion will not encompass voluntary liquidation. As I mentioned, voluntary liquidation is governed by the IBBI Voluntary Liquidation Regulations 2017, whereas regular liquidation is addressed under the Liquidation Process Regulations issued by the IBBI. At this point, you might be wondering, Can I ever understand how the liquidation of an insolvent company can occur? So, what I always suggest is that when you're studying a certain subject academically, especially law, there can be a lot of gray areas that are generally not considered or understood. Hence, it is always important to relate what you have learned academically to what is being implemented practically elsewhere. So, if you visit an IBBI website, you will find an enormous number of companies that have gone through CIRP, where CIRP has failed, and hence most of these companies are now pushed into liquidation. I'm just trying to provide you with four or five examples that are currently undergoing liquidation.

If your time permits, please study these cases practically and observe how the law you have studied is applied in various scenarios. This may lead to a deeper understanding of the implementation of liquidation under the IBC, and you may have thousands of questions about its practical application. Okay, one of those companies is called Jeppiar Power Corporation Pvt. Ltd. The other one is Madhav Ginning and Pressing Pvt. Ltd. The next company is Ambe Vaishno or Ambe Vaishno Steels Pvt. Ltd. Then we have Bajrang Infracon Pvt. Ltd. Lastly, we have Vantage Machine Tools Pvt. Ltd. These are the companies that are currently undergoing liquidation. I request that you track these cases so that you can understand how they are being implemented.

Now, at the end of Session 41, I would like to summarize and conclude this session by stating what we have understood so far. First, we have understood two different concepts: what is insolvency, and what is bankruptcy. Insolvency, we said, is when the company is not able to pay its debts; it can undergo a process called CIRP. However, when the CIRP process fails, it essentially leads to bankruptcy, which involves the liquidation of the company. We understand what you mean by liquidation. We said that liquidation is the process of selling a company's assets, paying back its debts, and distributing the

remaining surplus to shareholders. Then, voluntary liquidation is a process in which a healthy company that has never become insolvent voluntarily liquidates itself under the provisions of the IBC. It has a different set of regulations; it can be done, but under a different set of regulations. However, the Act is generally the same for both liquidation and voluntary liquidation. We have understood the concept of winding up under the Companies Act 2013: if it's a voluntary liquidation or the liquidation of an insolvent company, it falls under the IBC; however, other modes of liquidation are referred to as winding up, and they are governed by the Companies Act 2013 under Chapter 20.

Then we've also understood the dissolution. Dissolution, we said, is the final stage of liquidation, where the company's name is removed from the register and its doors are shut forever. So, friends, this is what we have learned in session 41, a topic called liquidation. In the next session, Session 42, we will attempt to understand the legal provisions related to liquidation.

Thank you.