

# **Insolvency and Bankruptcy Law in India**

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**Week 10**

**Lecture 48**

Hi, welcome to this 48th session on liquidation under the IBC. In the previous session, we discussed PUF transactions in more detail.

In this session, we will provide an overview of the entire liquidation process. But before that, a quick recap of what we have done in the previous session. In the previous sessions, we have understood what PUF transactions mean, which include preferential, undervalued, fraudulent, and extortionate transactions. In the last session, we specifically discussed transactions that defraud creditors, which we refer to as fraudulent transactions under Section 49. Then, we also understood extortionate transactions, and lastly, we examined orders that can be passed wherever there are reported extortionate transactions, either by a resolution professional or a liquidator. After that, we reviewed the case laws in support of our understanding of the entire concept.

Now, moving forward, we will attempt to understand the entire liquidation process at once. In the previous sessions, we have understood liquidation from the provisions of the IBC perspective. We have reviewed sections 33 to 52 of the Act, which outline the various steps that must be taken during liquidation under the IBC. The span of sections is 33 to 52.

Now, we will take a step-by-step look at the entire process in one single snapshot. Let's see how it works. So, this is how the liquidation is actually done. If I have to show you the entire process in one snapshot, let us look at the extreme left corner at the top, which talks about circumstances for liquidation. If you remember, section 33 of the Act provides for circumstances under which liquidation can occur. Accordingly, we know that where the resolution plan is not received, or it is received but not in compliance with the provisions of the Act, or where a resolution plan has been contravened by the acquirer, in all these circumstances, it is a fit case for a liquidation order to be passed by the NCLT. Therefore, we anticipate that the circumstances will be such that liquidation will be necessary or expedient. Number two, once the circumstances have arisen where liquidation is justified or necessary, the COC will have to make a decision because, remember, it is during the CIRP that we realize that liquidation should be pursued. The CIRP is always driven by the committee of creditors, and they will decide the next step.

When the committee of creditors sees that the CIRP is not yielding any results for them, they will make a decision for liquidation under section 34 and so on. But 33 is the one that provides for circumstances.

As the COC recommends, suggests, and advises, the resolution professional is not authorized to liquidate the corporate debtor; instead, this task must be performed by an insolvency professional. Therefore, he will have to apply to the Honourable National Company Law Tribunal of the particular jurisdiction and seek an order for the beginning of the liquidation process. So, I'll show you once again: this is number one, where the cursor is moving; circumstances number two: this is where the COC's decision will be made; number three: then we are looking at the application to be made by RP for liquidation to the NCLT or AA. After that, the NCLT will appoint the liquidator. Now, who will be the liquidator? We have already discussed that, in the majority of cases, the resolution professional himself can be a liquidator.

Alternatively, where the resolution professional is ineligible or has not given their consent, the NCLT may appoint another person as a liquidator. However, in the majority of cases, the RP himself serves as a liquidator. The moment the appointment of the liquidator is done, he will inform the ROC, IBBI, etc., that the company, which is the corporate debtor, will now go into liquidation. He will also make a public announcement. Why should he make a public announcement? Because we have already read that claims under CIRP differ from those under liquidation. Therefore, wherever the company is undergoing liquidation, the liquidator shall again call for claims, and fresh claims can be lodged during the liquidation process. Therefore, the public announcement is very, very important from the liquidator's perspective. After that, the claimants will lodge their claims with the liquidator.

We have already understood that the moment we receive claims, the next step is to verify them, and the verification and valuation of claims is what we have read in the provisions of the act. So the liquidator can either partially accept and partially reject, or totally accept and totally reject the claims at his discretion, depending on the circumstantial evidence. Once he receives the claims, he prepares a preliminary report. After that, he verifies the claims. After verifying the claims, he sends a communication to the respective creditors indicating whether he has accepted the claim or not. If you are aggrieved by the order of the liquidator or by the liquidator's decision not to accept your claims, what is the relief? Relief, if you recall, is that we can go to the Honorable Adjudicatory Authority and request that they accept our claims, and you can actually file a petition against the liquidator's order. That's what we know is here. Right? After that, we will try to realize the assets. How? We read something called a liquidation estate.

All the assets of the corporate debtor, along with inclusions, will actually form part of the liquidation estate, and this liquidation estate will then be disposed of by the liquidator

either on a slump sale basis, going concern basis, or as an individual asset, and these assets are realized once the money is received. You see here the last but one picture. These realized proceeds from the assets shall then be distributed to various stakeholders. How do we distribute? You recall we distribute as per section 53 of the Act, where the waterfall mechanism is clearly defined, and we know that there are secured creditors, workmen, and after that various other creditors standing in queue, and last in the yellow picture are the equity shareholders who will have rights to the sale proceeds at the end.

So, this is how the liquidation process ends, with the distribution of surplus to the equity shareholders, and the last event of the entire liquidation process, as I've been stressing again and again, is that the final report of the liquidation will then be sent to the adjudicatory authority and also to IBBI, and then the adjudicatory authority will finally pass an order of dissolution. And on execution of the order of dissolution, the name of the corporate debtor will be struck off from the register maintained by the ROC; therefore, its existence is permanently wiped out. So, my friends, this is how we can confirm that the entire liquidation process will take place. You can take note that it moves from the left-hand side, meaning the left top corner of your screen, and then it goes to the right, and then again it moves from left to right, and then from right to left. This is where the last step begins, and this is where the next step starts.

Let's move forward to understand the various steps and matters involved in this liquidation process. It's a very, very important thing in IBC. It's called the essence of time. As you may recall, the primary objectives of the IBC are the speedy recovery of the money and the speedy resolution of the entire scenario. Now that we have understood the process of liquidation, we can proceed. Let's move forward to understand the next few things: what is the essence of the entire IBC? The essence of IBC is a time-bound resolution process and the time-bound realization of non-performing assets for the lenders. Therefore, it goes without saying that time is of the essence when it comes to IBC, whether it involves a CIRP process aimed at resolving insolvency or a liquidation process aimed at realizing assets. In both cases, time is of the utmost value. Now, what we are trying to do is understand the liquidation process step by step, keeping the timeframe in mind as specified under various provisions and regulations of the Act. So, if you look at the first step, it involves discussing the commencement of liquidation and the appointment of a liquidator.

So, here, which are the provisions of the law or regulations that are concerned, always remember that sections 33 and 34 of the Act deal with the commencement of liquidation and the appointment of a liquidator; the rights and time limits will always begin from the date of the orders. And here we are, stating that once the liquidation order is passed by the adjudicatory authority, the next steps will commence. Therefore, the time limit for the first step is zero. We consider this as time zero, and then we proceed forward from here.

The next step, which is step two, involves a public announcement to be made in Form B by the liquidator.

This is as per the section we mentioned, Section 33 and Regulation 12 clearly prescribe that a public announcement must be made within due time in Form B. So what is the time? As you can see, the first step occurs on day zero, and within five days, you must make the public announcement in Form B. Therefore, if the order for liquidation is passed on day 0, then the public announcement should be made by day  $t$  plus 5 at the latest. If  $t$  is equal to 0, this will be  $t$  plus 5. So, after five days, the first action triggers.

It is very interesting to see who does what in IBC. See, the order of liquidation is being passed by the adjudicatory authority. There is nothing for the liquidator to do in that regard. However, what you must remember is that the resolution professional will make an application for liquidation, and once the liquidation order is passed, the role of the liquidator will begin. The first task of the liquidator, after being appointed by the NCLT, is to make a public announcement within the first five days, as per Regulation 12.

Then, we proceed to step 3. Step 3 is in accordance with Regulation 35. It discusses the appointment of registered valuers, which is particularly important because, to date, our provisions have not addressed registered valuers. These are provided in the regulations. Why are registered valuers important? The registered valuers profession was newly introduced about 3-4 years ago, and it is a very important aspect of the IBC. Why? Whenever you are going to dispose of the assets of the corporate debtor, whether the assets are in the form of plant machinery, land and buildings, or financial assets, all of them should be disposed of at a reasonable value. But who will understand what a reasonable value is? Who will know what a reasonable value is? Hence, a new profession has been introduced, known as registered valuers, who are knowledgeable in aspects of valuation and trained in performing valuations of various types of assets. Therefore, a liquidator shall first appoint these valuers and attempt to assess the value of the various assets available within the corporate debtor. And when should this happen? This should occur within seven days of the order date. Therefore, if I am taking  $t$  as equal to zero, that is the date of the order, then within  $t$  plus 7 days, we should actually have the appointment of the liquidator.

After that, 3A, that is Regulation 31, states that you must hold the first meeting of the stakeholders' committee. What is the stakeholders' committee? We have already read that the COC will become the stakeholders' committee when it comes to liquidation, and their first meeting should happen within 7 days, that is,  $T$  plus 7. This is regulation 31A. Then we proceed to the next step, which is step 4, derived from section 18 and regulations 17 to 21A, and which stipulates that claims can be submitted with an intimation of the decision regarding the relinquishment of the security interest. We have read in section 52 that the position of secured creditors during this liquidation process is

very, very important. You have two choices as a secured creditor: either you move away with your secured asset and realize it yourself, or you relinquish your security interest and participate in the liquidation process to receive the proceeds from the liquidator.

Therefore, it is the third time for the secured creditor to decide whether to relinquish or take possession of the asset for realization. This decision should be made within 30 days, as indicated by the cursor on the screen, and then inform the liquidator of your decision. Moving forward, you may withdraw your claim or modify your claim as per section 38, subsection 5. We have seen this before while understanding the provisions of the act, and this decision can be made within 14 days after the secured creditor's decision is made. Therefore, remember that T plus 30 is when the secured creditor is making their decision, and after that, 14 days is when they are allowed to either withdraw or modify their claim. Therefore, T plus 44 will be the time limit for Step 5. Then, proceeding to step 6, Regulation 30 prescribes this, stating that verification of claims should be done once they are received from the claimants. This should be done within 30 days from the date of receipt. Hence, T plus 30 plus 30 will make it T plus 60 days, within which the verification should be completed.

After verification, you should now constitute the SCC Stakeholders Committee from the date of this LCD within 60 days. And step number 8, which is section 40, subsection 2, talks about the intimation of accepting or rejecting the claim within 7 days; this becomes T plus 67 days. Maybe most of you are confused about what LCD means; LCD stands for Liquidation Commencement Date. Fine, that is the date of the order made by the NCLT. On step 9, we have Regulation 31, which states that the filing of the list of stakeholders must be done within 45 days; therefore, it will occur within T plus 75 days. Then, serial number 10 states that an appeal by a creditor against the liquidator's decision must be made within 14 days from the date of acceptance or rejection; therefore, it will occur within a total of 81 days.

The preliminary report to the adjudicating authority from the date of liquidation commencement should be done within 75 days; therefore, the total time limit will be T plus 81 days. The asset memorandum is to be filed under Regulation 34 or prepaid; however, this should be done within 30 days. Therefore, it will take T plus 30 or 75 days. Lastly, we are reviewing regulations 15 and 36, which require the submission of reports to the adjudicating authority, and the asset sale report should be submitted within 15 days. Now, most of you may have questions about what these regulations are.

Just to remind you that, as of now, we have only covered the provisions enshrined in the Insolvency and Bankruptcy Code of 2016. However, we have not yet commenced any regulations; hence, once we complete the overview of the liquidation process, I will take you through each of the regulations to clarify what they prescribe in reference to liquidation. Step 14 now discusses the progress report that should be filed within 15 days.

Additionally, creditors must secure information within 21 days. Step number 16 involves the distribution of the proceeds to the credit stakeholders, which would take place within three months.

Remember, wherever it is silent on the time limit, the time limit commences from which date. We should always remember that the time limit always commences from the LCD, which is the liquidation commencement date, as far as our timelines are concerned. So, we come to step number 17, which discusses the application to the adjudicatory authority for the disclaimer of onerous property, which should be made within 6 months. We have come across the term onerous property for the first time. Onerous property is a property whose value is less than the cost of maintaining that property, or where the cost of fighting the legal disputes involved with the property is more than the whole value of the property itself.

So, I'm sure you understand. If I have to put it in an idiom, it's going to be a white elephant. A white elephant is a damn expensive asset that you would not like to maintain. Therefore, if you have such assets within your asset portfolio or liquidation assets, the liquidator can make an application to the adjudicatory authority and obtain permission to relinquish these assets and the rights thereon, so that they will not have to maintain that property. The last of the few steps is to notify the persons interested in the owner's property; after that, the liquidation of the corporate debtor should occur within one year, and then the amount of unclaimed and undistributed dividends should be deposited. What do you mean by that? Now that we are receiving claims, we sell the liquidation estate and generate proceeds; these proceeds should be distributed. Remember one thing when it comes to the distribution of proceeds: sometimes the claimant may not come to claim at all. So I will be handicapped as a liquidator from dispersing the entire value of the proceeds. I may therefore have to retain some money in the account that is not distributed. So, what should I do with that money as a liquidator? You shall deposit this money from unclaimed, undistributed dividends before the submission of the application for dissolution.

Lastly, Schedule 1 stipulates that the highest bidder must pay the balance of consideration within 90 days of the liquidator's request. This is the comprehensive overview of the liquidation process, including timelines where necessary. One important question of law, without which we cannot go forward, is whether the buyer of the corporate debtor may invoke the provisions of section 60, subsection 5 of the IBC, and seek appropriate relief. For this, you need to understand what the question of law is. The question of law is whether somebody understands the time-bound process of liquidation, along with the timelines prescribed in the act and the regulations.

Let's move forward and address an important question of law. Remember, the question of law is not written on the screen. I am telling you what the question of law is: the question

of law is where the buyer of the liquidation asset, who paid the consideration, is prevented by the corporate debtor or any third party from taking possession of the assets that he bought. What is the recourse available in the hands of the liquidator? This is a question of law. So, for that, the simple answer is: The buyer of the corporate debtor or its assets may simply invoke the provisions of section 60, subsection 5 of the IBC and seek appropriate relief. What would be the appropriate relief is to remove the hindrance caused by the corporate debtor, its management, or any other party involved. The adjudicating authority, being satisfied that there should be an order passed, may then pass an appropriate order to give proper relief to the liquidator and also to the party buying the assets from the liquidator. This is the comprehensive overview of the liquidation process, along with some frequently asked questions.

Let's quickly summarize what we have understood today. We've seen the process overview. We've seen the timelines for liquidation. We've seen the question of whether there is a hindrance caused in the position of assets for the buyer of these assets, and what the recourse should be. We said he can move NCLT and invoke the provisions of Section 60, Subsection 5. This concludes our session. In the next session, we will begin discussing the regulations framed by the IBBI for liquidation.

Thank you.