Insolvency and Bankruptcy Law in India

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Week 11

Lecture 51

Welcome to the 51st session on liquidation under IBC. We were covering the IBBI regulations for the liquidation process. We will continue to do that for this session as well. So let us quickly recap what we have done in the previous session.

In the previous sessions, we have covered regulations 9 to 15 of the IBBI Liquidation Process regulations. Accordingly, in regulation 9, we have read that it deals with personnel to extend cooperation to the liquidator, then the disclaimer of onerous property. I have explained to you that certain properties are absolutely difficult to maintain and more expensive than the value of the property itself, so the liquidator may disown these properties, which fall under regulation 10, then extortionate credit transactions, which we've already covered under the Act as well as under the regulations. Now, Regulation 12 speaks about how to make a public announcement by the liquidator for claims. After that, Regulation 12A, which we have discussed, is nothing but an email ID created for the process, and the email ID remains the same even though the RP changes; he can continue with the same email ID. Then, if the RP is so convinced, he can recommend an early dissolution instead of the entire process of liquidation, and lastly, progress reports under regulation 15 are what we understood in the previous session.

So, let's quickly focus on today's activities.

Today, we are starting with Regulation 16. Regulation 16 talks about the submission of claims. We have read in the provisions earlier that operational creditors, financial creditors, and other creditors have different procedures to submit their claims. Similarly, Regulation 16 of the IBBI Regulation also talks about how to submit your claim. Accordingly, a person claiming to be a stakeholder must submit their claim or update an existing claim, if one has already been made, including interest if applicable, before the last date mentioned in the public announcement during the CIRP. Generally, it can take about 30 days for the liquidator to ask for claims, and you must submit your claims within that time frame. The person must prove their debt or dues, including interest, as of the liquidation commencement date. How do you prove it? I said that in the case of a financial creditor, the acknowledgment of the fact in the information utility centers will

be sufficient, but in the case of an operational creditor, they have to provide substantial evidence. So, without this, your claim cannot be admitted.

That's what regulation 16 and regulation 17 specifically talk about: how an operational creditor submits their claim. An operational creditor, if you are looking at the first paragraph here, other than a workman or employee, must submit proof of claim to the liquidator either in person, by post, or electronically. But he must do so in Form C, Schedule 2. The existence of debt can be proven through the records available in the information utility or other relevant documents; once it's proved, your claim can be admitted by the liquidator. When it comes to financial creditors, how they should make a claim and what kind of documentary evidence they should provide is covered in Regulation 18.

So, Regulation 16 is about how to submit your claims, Regulation 17 is about the submission of claims by the operational creditor, and Regulation 18 precisely talks about the submission of claims by the financial creditor. So, in the first paragraph, it says a financial creditor other than a workman or employee must submit proof of claim to the liquidator either in person, by post, or by mail. However, the specific form prescribed here is Form D of Schedule 2. In the case of an operational creditor, it is Form C.

In the case of a financial creditor, it is Form D. Both are specified in Schedule 2 of the Act. The existence of the debt can be proven through records available in the Information Utility or with the help of other relevant documents, as far as financial creditors are concerned. Moving forward to Regulation 19, it discusses claims to be made by workmen and employees. If you just go back to the two previous slides, Regulation 18 shows that this particular regulation deals with claims other than those of workmen or employees, specifically, financial creditors. Going back one slide, this is Regulation 17 that deals with claims by operational creditors, but again, other than a workman or employee. Hence, it is important how workmen or employees make their claims because they are not covered under regulations 17 or 18. Hence, we are moving to Regulation 19 that specifically deals with claims by only workmen and employees. So, what does it say? It says a person claiming to be a workman and employee of the corporate debtor shall submit proof of claim to the liquidator in Form E.

So, we have seen Form C, Form D, and Form E of Schedule 2, which are specific formats to be submitted by the respective creditors, whether they are operational creditors, financial creditors, workmen, or employees; they have specified formats that you should fill out and submit to the liquidator. Where there are due to numerous workmen or employees, one proof of claim shall be sufficient for all such dues. So, let's say in an organization, there are 15,000 employees before it went into liquidation. Now, is it necessary for 15,000 employees to submit 15,000 forms, or is it enough if they submit one form on behalf of all of them? I think it makes sense to actually allow one form to be

submitted on behalf of all of them instead of 15,000 forms, and hence form E can be completed in one if there are a number of employees. The existence of the debt—how do you prove it? It can be proven through records available with the information utility or other relevant documents submitted by the workman or employee.

Now we have seen three classes of claimants: number one is the operational creditor, followed by the financial creditor, and then the workers or employees. Now we are coming to a fourth class, which can be any other stakeholder who is not specified in the previous three classes. In that case, how would he submit his claim? A person claiming to be a stakeholder, other than those mentioned in 17, 18, or 19, that is operational, financial, or employees or workmen, shall submit proof of claim to the liquidator in person in form G. Now observe the difference. Here, we don't have email or any other mode of courier. It has to be in person. The existence of the debt can then be proven through the records available with the information utility or other relevant documents.

Now, regulations 16, 17, 18, 19, and 20, right? These are the five regulations, all of which deal with the submission of claims. First is general, then specifically by each type of creditor, and lastly claimed by other stakeholders. Let's turn to Regulation 21, which addresses proving security interests. What do you mean by security interest, first of all? A security interest is nothing but a party being thoroughly secured of its debt by the creation of a charge or mortgage on the assets of the corporate debtor. The moment a charge is created on the assets of the corporate debtor in favor of a third party to secure their debt, such action is referred to as the creation of a security interest. Now, this security interest, which has already been created, can be modified from time to time or completely satisfied, at which point there will be no further security interest.

So now we are talking about a creditor who is in possession of a security interest; how would he prove the fact that he has a security interest in the assets of the corporate debtor? For that, regulation 21 specifies that the existence of a security interest may be proved by a secured creditor on the basis of, number one, the records available in an information utility or a certificate of registration of charge issued by the ROC. Those who are not coming from a commerce background or those who have not studied much about the Companies Act, let me tell you briefly. A registrar of companies is usually informed that the company registered with him has created a charge on certain assets of the company, right? The moment this information is given to the ROC in certain specified formats, the ROC will register this charge and give a certificate of registration of the charge to the charge holder.

Now, this is substantial evidence in common law that the charge is created in favor of a secured creditor. So, if the information utility does not have any record of such a charge being created, the certificate of charge issued by the ROC is substantial evidence that the corporate debtor has given a security interest to the third party to secure the loans

borrowed from that third party. The last one, in case these two are not available, is a third one that is nothing but a proof of registration of the certificate with the CERSAI, which is a central registry or registration authority for securitization and interest on such securities. Therefore, this central registry will receive several charge documents created by various companies or creditors regarding the charges they hold on the company's assets. So, either the document information available with the information utility centers, the certificate of registration of charge by the ROC, or the latest proof of registration of this charge with CERSAI will also be substantial evidence to support your claim or prove the security interest. Now, we will proceed to Regulation 22, which addresses the production of bills of exchange and promissory notes.

Now, bills of exchange or promissory notes are a completely different kind of asset class. They are called financial assets, but what happens is that the company may have given a certain promissory note to a third party, and the third party wants to claim their money through the promissory note given by the company. So, in this case, this is a liability to the company, right, and an asset to the creditor. How do you prove your debt when bills of exchange or promissory notes are issued by the corporate debtor? We have a specific regulation, Regulation 22; it tells you how to deal with them. If a person seeks to prove a debt related to a bill of exchange, promissory note, or other negotiable instruments or securities for which the corporate debtor is liable, now watch this word carefully.

Wherever the corporate debtor is liable to pay money on account of a bill of exchange, promissory note, or other negotiable instruments, the relevant bill, note, instrument, or security must be produced before the liquidator before the claim is admitted. Now, this is enough evidence for the liquidator to admit the claim because he has now verified the instrument submitted by the creditor, which can be a promissory note, a bill of exchange, or any other negotiable instrument produced before him. If he is convinced that this is in order, it's a legitimate instrument, then he may admit the claim. He will not further require any other evidence to substantiate the claims. On Regulation 23, we deal with the substantiation of claims. The liquidator may call for such other evidence or clarification as he deems fit from a claimant to substantiate the whole or part of their claim. So what we have read till now is that the claimants can make a claim in the respective formats prescribed in Schedule 2 starting with forms C, D, E, F, and G. After going through these forms and the documentary evidence submitted by the respective creditors or stakeholders, if the liquidator feels that there is not sufficient information or that it is not satisfactory for him to accept this claim, then he may ask for further evidence to substantiate the claims of the respective creditors or stakeholders.

Then we come to Regulation 24. As we see that the parties are asked to submit their proof of claims from time to time, one at the time of CIRP and another at the time of liquidation, they are continuously submitting claims and also modifying these claims. It may not be easy, or it may not be actually economical. This may come with a certain cost

to the claimant. Hence, how to spend the money or who should bear the cost of the proof? That's the question. So the answer is given in regulation 24, which says the claimant himself is responsible for bearing the cost of providing his claim, and hence neither the liquidator nor the corporate debtor will be liable to spend any money on account of proving the debt of a creditor. The cost incurred by the liquidator for verifying and determining a claim will be considered part of the liquidation cost. See, there are twofold expenses here. Number one is the cost incurred by the claimant to prove his claim. That's one side. On the other side is the cost incurred by the liquidator to assess the claim, substantiate it, and accept it.

So, these two costs are two different items of importance. Number one, when it comes to costs incurred by the claimant, it should be absolutely his own responsibility and will never be reimbursed to him from any source. But on the other hand, if the liquidator had spent any money, had it cost him to actually substantiate the proof, then such costs incurred by the liquidator will qualify as a cost of liquidation and will be dealt with on priority under section 53 under the waterfall mechanism. He will get back all the money that he spent on, you know, the assessment of the claim. There is one more paragraph about the cost of proof. If a claim is found to be false, the liquidator will attempt to recover the verification and determination costs from the claimant, so what we are saying is that if there is a false claim, then the liquidator is entitled to receive the cost of verification that he incurred from the claimant because the whole claim was false.

Then Regulation 25 speaks about the determination of the quantum of the claim. The liquidator must receive and verify claims from creditors based on supporting documents. The liquidator is required to publish a notice inviting creditors to submit claims within a specified period. Typically, this should be within 30 days from the date of publication, during which time the claim should be submitted to the liquidator. After receiving claims, the liquidator determines their quantum by assessing the evidence provided. If a claim is rejected, the creditor is notified of the reason for rejection, and then they can appeal the decision. We already understand this. When the liquidator actually rejects a claim either on technical grounds, for not being satisfied, or on account of delaying the submission of the claims, in all these cases, the claimant can actually approach the adjudicatory authority and seek an order that will allow the liquidator to admit the claim that he had earlier rejected. Therefore, the determination of the quantum of the claim is the sole authority of the liquidator, which is based on the evidence submitted to him. However, if he rejects any claim or if the claimant is aggrieved by the decision of the liquidator, he may then approach the adjudicating authority for appropriate relief. So, we have covered about 10 regulations, starting with regulation 16 and ending with regulation 25.

So, let's quickly summarize what we have covered. The first one we said, Regulation 16, talks about the submission of claims generally; Regulation 17 talks about the submission of claims by the operational creditor; Regulation 18 talks about the submission of claims

by the financial creditor; Regulation 19 talks about the submission of claims by employees and workmen; and then Regulation 20 talks about the submission of claims by any other stakeholder. After that, we spoke about proving the security interest of the secured creditor under Regulation 21. Then Regulation 22 speaks about bills of exchange and promissory notes. They must be produced before the liquidator so that he can admit them as proof of the claims. After that, we have seen how the substantiation of claims happens under Regulation 23. We said the liquidator may ask for such other information if he is not convinced by the information provided by the claimants. We have also seen that if the cost is incurred by either the claimant or the liquidator for verification, these two will be dealt with in two different formats. Costs incurred by the claimant will be on his own, and nobody will reimburse him, whereas costs incurred by the liquidator will be reimbursed as a priority under section 53 of the Act.

Lastly, it says the determination of the quantum of claims will be the sole authority of the liquidator, and where the parties agree, they may approach an adjudicatory authority for better relief. This brings us to the end of Session 51, and we will soon discuss the other aspects of these regulations in Session 52.

Thank you so much.