

# **Insolvency and Bankruptcy Law in India**

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**Lecture 52**

Hi, welcome to the 52nd session on the liquidation process under IBC. Specifically, we are covering the regulations prescribed by IBBI for the liquidation process.

So, let's quickly recap what we have done in the previous session. In the previous session, we covered regulations 16 to 25, which are mostly focused on how to make claims and the forms related to the claims. After that, the proving of the security interest, which is regulation 21. Then, 22, we have read, deals with bills of exchange and promissory notes. 23 talks about how you substantiate the claims. We have read that 24 talks about the cost of the proof. We stated that the claimant bears the cost of the claim himself, but in the case of verification costs, they will be reimbursed to the liquidator as a liquidation cost. Lastly, Regulation 25 deals with the determination of the quantum of the claim. We stated that whenever parties are aggrieved by the liquidator's decision, they can approach an adjudicatory authority and seek appropriate relief.

So, in today's session, we will focus on the next few regulations and try to understand what the IBBI is saying about certain actions under liquidation. Regulation 26 specifically talks about how to deal with debt in foreign currency. We need to understand the problem. The problem is simple.

In the case of a foreign currency debt, the exchange rate between the Indian rupee and the foreign currency will keep fluctuating on a day-to-day basis, and from the start of the CIRP to the start of the liquidation, there can be an enormous amount of variation in terms of the exchange price. In that case, how do you deal with the exchange rate fluctuations, especially when the debt is actually measured in a foreign currency? So let's see how the regulations deal with this scenario. If a creditor's debt is denominated in a foreign currency, it must be converted to INR using the RBI exchange rate prevailing on the date of the commencement of the liquidation process.

See, if you're taking, for example, an American dollar on the date of the debt, when the corporate debtor borrowed the debt, the exchange rate could be 50 rupees per \$1, whereas at the beginning of the CIRP, the exchange rate could have become 75 rupees per dollar. But now, after the CIRP is concluded and the liquidation process begins on this date, the

exchange rate is 90 rupees per dollar. And maybe by the time the claim is submitted and admitted by the liquidator, it will become 100 rupees per dollar. In that case, what should be the final exchange rate that we apply to determine the debt in Indian currency, since it is denominated in a foreign currency? The date on which the exchange rate should be considered is actually pivotal in this regulation. So accordingly, Regulation 26 says that one should consider only the exchange rate determined by the RBI on the date of commencement of the liquidation process, but not any other date. This is a crystal-clear provision as to how the liquidator should consider the exchange rate.

Then the second paragraph states that the amount of debt in foreign currency, once converted into INR, is considered for determining the quantum of the claim in the liquidation process. So, until it is converted, it is very important to know what the exchange rate is; once it is converted, the debt calculated and denominated in Indian currency will prevail for all future transactions, discussions, and computations. The third paragraph further states that if there are any changes in the exchange rate between the date of liquidation and the date of final distribution, the liquidator may have to adjust the amount accordingly. So, if the exchange rate increases on the actual date of determination, then maybe the liquidator is required to pay a little more to equate or consider that exchange rate fluctuation at the last moment; or, accordingly, if the exchange rate falls, then the liquidator may have to pay less to the creditor.

Okay, let's move to Regulation 27, which speaks about periodical payments. If the liquidation process involves debts that require periodical payments, the liquidator is required to decide on these payments as per the terms of the debt. The liquidator must ensure that such payments are adjusted against the creditors' claim amount and follow the applicable terms and conditions. This is an important provision. So, if a certain debt requires periodic payments such as quarterly payments, half-yearly payments, or monthly payments to be made by the corporate debtor to the creditor, then the liquidator shall consider these payments accordingly. And if there is any amount to be received by the corporate debtor from such creditor, then mutual adjustments should be made, and only the final amount payable by the corporate debtor to the creditor shall be considered and may be paid in such quarterly installments, monthly installments, or can be summed up and paid at the time of distribution of the liquidation proceeds. The next paragraph says that the regulation ensures that any debts requiring periodic payments are managed and distributed correctly by the liquidator during the liquidation process.

Now we move on to Regulation 28, which talks about debt payable at a future time. If a debt is due to be paid at a future date, its present value must be determined for the purpose of liquidation proceedings. Those who have already come from a commerce background and studied a little about financial management will invariably know what the present value of a future earning is. However, for those who are not familiar with this concept, let me explain it to you. There is a present value philosophy in financial

management. What it says is, if I have to pay a hundred rupees to my friend at the end of three years, how much do I arrange today so that I can pay him 100 rupees at the end of three years? So, understand the point that if 100 rupees is the value of my payment at the end of three years, its value can be substantially less today. Only then will it become a certain amount on another day. Similarly, the future value of a present earning can be entirely different. This all depends on the purchasing power of the rupee on a certain date.

Let's say I have 1,000 rupees in my hand today, and I can buy 30 kg of rice with this amount. However, after three years, with the same 1,000 rupees, I can only buy 20 kilos of rice. So, you are seeing that the rupee value is depreciating as time progresses. Therefore, two different concepts are present value of a future earning and future value of a present earning. All this will depend on the purchasing power of the money. So, I have explained that to you. Now, if I have to pay as a liquidator a certain amount of money on behalf of the corporate debtor to a creditor on a future date, I should calculate the present value of that money today so that I will be able to meet the right value at the right moment. So, what is Regulation 28 saying? It says the liquidator is required to discount the debt to its present value using an appropriate method, usually by applying a discount rate that reflects the time value of money.

Depending on the interest rate and appreciation of money, the same rate is applied to discount the present value of future money. So, if I have to see how much my money becomes at the end of three years, I have to keep adding interest to this money for a period of three years. Then the money appreciates at the end of three years. But if I have to do the opposite, if I have to understand the present value of future money, then I have to do the opposite, which is to discount that money with the same interest rate so that I will know what the value of the money is today. This is called the present value concept.

Let's move forward. Regulation 28 also states that the discounted value of such debts is then considered when determining the total quantum of claims for distribution in the liquidation process. We now move to Regulation 29, which discusses mutual credits and set-off. There can be transactions where the corporate debtor has to pay certain amounts of money to a third party. At the same time, the third party also has to pay certain amounts of money to the corporate debtor. So, what we are going to do is adjust these mutual amounts payable, set off one against the other, and only look at what the net amount payable by one party to the other party is, right? Therefore, if the liability of the corporate debtor exceeds the expected income from the third party, then after the set-off, the corporate debtor will still be required to pay more to the third party, which is the creditor.

On the other hand, if the expected income from the third party is more than the expected expenditure to be incurred by the corporate debtor on account of a third party, then the

corporate debtor will receive more from the third party because, after the set-offs, the corporate debtor will not have to pay anything to the other party; so, this is how set-offs work.

Let's read what is given in section regulation 29: if two parties, the corporate debtor and the creditor, owe each other debts, the liquidator considers the mutual credits between them. The liquidator allows for the set-off of the debts, meaning that if there are mutual claims, they can set off against each other; the net amount will be considered for the liquidation process. Moving forward, Regulation 29 has a third paragraph that states that the liquidator will calculate the difference between the mutual claims and only allow the net balance to be admitted as a claim, ensuring fairness in the liquidation process. This we have understood thoroughly.

So, let us proceed forward to Regulation 30. Regulation 30 speaks about the verification of the claims; the liquidator must verify the claims submitted within 30 days from the last date for receipt of the claims. Usually, when a public announcement is made, the liquidator can give a certain time limit within which the claims can be made. After the last date for such claims has expired, the liquidator shall verify these claims and come to a conclusion within the next 30 days. So, what is the conclusion? The conclusion can be either to admit or reject the claim, and this can be either in whole or in part, and we have read this several times, both in CIRP and after that in liquidation.

We have read this in the act and also in the regulations. So, the claims collated during the CIRP but not submitted during the liquidation process must also be verified now, within 30 days from the last date for receipt of claims during the liquidation process, so that we give the creditors a last chance and they do not miss any opportunity to encash their claims. So, the liquidator has a duty not only to look into the claims made during the liquidation process, but also to look into the claims made during the CIRP process so that he can conclude all the claims at one go.

Regulation 30A, the moment I am using letters of the English alphabet along with the section number, like 30A, 31B, 33C, or whatever regulation numbers or section numbers, it is understood that these regulations were originally not in the first set of regulations. These were inserted by way of modification at the very relevant place. So, we can't keep adding regulations at the end of the series of regulations. Therefore, what we do is bring the amendment, pick up the relevant regulations, and add them right behind what is the sensible regulation.

So, when I'm talking about debts, claims, and set-offs, the related procedure for the transfer of debt due to creditors will also be a relevant context; hence, we have added this as 30A instead of maybe a 74 or 75 regulation. So, let's see what 30A says. It allows for the transfer of debt due to creditors from one entity or person to another during

liquidation, subject to certain conditions. Such a transfer must be approved by the liquidator and must align with the principles of the IBC. So, what we are trying to say is that if there are two creditors, C1 and C2, C1 made a claim for 1 crore and C2 made a claim for 1 crore. So, the total amount of money to be paid by the liquidator to C1 and C2 collectively is 2 crores, right? But individually, he should pay 1 crore to each of them.

Let's say C2 owes 1 crore to C1. C2 owes 1 crore to C1, so C2 is saying, "Boss, whatever money I have to pay you, a similar amount of money is to be paid by the liquidator to me, so please collect the whole sum from the liquidator and really relieve me from my liability." In that case, if C1 agrees to collect it from the liquidator, then C2 will transfer its debt to C1, and C1 will collect the entire amount from the liquidator. The liquidator will now pay the entire 2 crores to C1, instead of the earlier arrangement of 1 crore each to C1 and C2. Hope this is very clear. Such a transfer must be approved by the liquidator; remember, this is not a discretionary power of the creditor, but it should be approved by the liquidator because there has to be a lot more documentary evidence, and it might put the liquidator in serious confusion. Therefore, first take it to the liquidator; if he accepts it, only then can your debt be either transferred or aligned.

Let's come to regulation 38, the last paragraph, which says the transfer ensures that the creditors' rights to the debt are preserved, allowing the new party to pursue recovery or deal with the debt as per the liquidation proceedings; hence, there will not be any fresh liability for the same, as liability will now move to a new creditor or an older creditor. We come to Regulation 31, which talks about the list of stakeholders. See, until now, we have spoken about creditors who claim money from the corporate debtor, such as financial creditors, operational creditors, employees, workmen, and other stakeholders.

So now we are going to understand who all these other stakeholders will be. The liquidator has an obligation to prepare a list of these stakeholders. So, Regulation 31 says the liquidator shall prepare and maintain a list of stakeholders, which includes all creditors and any other parties having a claim on the assets of the corporate debtor. The list must categorize stakeholders, including secured creditors, unsecured creditors, and other relevant entities that make a claim. The list must be made available for public inspection, ensuring transparency in liquidation proceedings. This is to ensure that if I am one of the stakeholders, for example, in a dispute with the corporate debtor over a certain property, and I believe the property should be mine as a stakeholder, I am entitled to it. Is my name on the list maintained by the liquidator? I might have this doubt at every moment. Hence, to give me an opportunity to check my name on the list, it is made available for inspection and generally kept at the corporate debtor's office or made available on a certain website. The liquidator is required to update the list periodically to reflect any modifications in the claims, including the admission or rejection of claims or any changes to the status of creditors.

Now we move to Regulation 31A, which talks about the stakeholders' committee or consultation committee. The liquidator may constitute a stakeholders' consultation committee to consult with stakeholders and assist in the liquidation process. The committee may consist of representatives from creditors, employees, workmen, or all other stakeholders deemed appropriate by the liquidator. The committee is established to consult the liquidator or to consult with the liquidator on matters related to liquidation. The liquidator shall consult with the committee on significant decisions in the liquidation process, but retains the ultimate authority to act, which we have read multiple times in the past that the liquidator may consult; but that consultation is not binding on the liquidator; hence, he is free to accept or not accept the advice or recommendations given by the stakeholders committee. Regulation 32, one of the most important regulations, speaks about the sale of assets.

We need to understand why the sale of assets is significant. Firstly, the primary objective of the liquidation is to determine the amount of liability that the company owes to third parties, then sell off these assets and make payments to creditors. If there is any surplus, it will be distributed to the shareholders. This is the whole purpose of the liquidation. While we are doing that, the question is: can it be done arbitrarily? Can the liquidator sell these assets in any manner to any party they know? Perhaps due to bias, or perhaps due to convenience. If he does so, this will defeat the provisions of the IBC. The provisions of the IBC clearly state that this is a process for a speedy recovery. This is a transparent process, and the whole process is aimed at maximizing the value for the creditors. The value of the asset should be maximized. So, how do you sell the assets of the corporate debtor company is an important question under the IBC to ensure transparency and to bring better value? So, the liquidator may choose the appropriate method for asset sale, such as auction, private treaty, or any other method that is in the best interest of the stakeholders, subject to the approval of the committee of creditors or the adjudicating authority.

Before the sale, the assets may be valued by an independent valuer. The evaluation report must be shared with stakeholders to ensure transparency in the sale process, so that we can verify that the machinery, plant, and land, collectively valued at 100 crores, are being sold for a fair price. If you are selling at a lower price, then there is something suspicious, and if you are selling at a higher price, then it is good news for the stakeholders; they are going to recover more money than anticipated. The liquidator shall ensure that the terms and conditions of the sale are transparent, fair, and disclosed to all potential buyers. The liquidator may finalize the sale after ensuring it is in the best interest of the stakeholders. The sale must be confirmed by the committee or the adjudicating authority, if required.

This brings us to the end of this session, where we quickly summarize what we have understood. We understood how to deal with the debts mentioned or denominated in a foreign currency. How do you deal with periodical payments under Regulation 27? How

do you deal with the future debts under Regulation 28, and how do you set off the mutual credits of the parties under Regulation 29? How do you verify claims under Regulation 30? The transfer of debt under Regulation 30A, how to prepare a list of creditors under 31, and 31A speaks about the stakeholder's consultation committee, and Regulation 32 speaks about the sale of assets of the company, which we have read can be either by a private treaty or by a public auction. So, this is a summary of the sessions for the day.

We will meet soon in the next session with more information on IBBI regulations.

Thank you so much.