

# **Insolvency and Bankruptcy Law in India**

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**Week 11**

**Lecture 53**

Hi, so we are starting session number 53 about the liquidation process under the IBC, with a specific focus on the IBBI regulations.

Quick recap on what we have done in the previous sessions: We covered regulations 26 to 32. where we talked about how we deal with the debt in foreign currency, then how we deal with periodical payments, debt payable at a future time, mutual credits, and set-offs. Then we talked about the verification of claims, the transfer of debts due to the claimants or creditors, the list of stakeholders, how it should be prepared, what should be listed there, and the stakeholder's consultation committee.

Lastly, the sale of assets is what we have dealt with. In the sale of assets, we said there are two types of sale: one is by private treaty, and the other is by public auction or any other mode; in cases where required, adjudicatory authorities' approval shall be taken. This is what we've understood in the previous session. So, going forward, we are trying to understand the balance regulations under IBBI regulations, starting with regulation 32A. So, "Sale as a Going Concern" is regulation 32A's heading. What does it mean? We need to understand that businesses are broadly sold in two methods.

One is where the business is sold as if it is wound up or not on a going concern basis. The business is stopped. The entity is to be liquidated, and then the assets are transferred to the other party. The second mode of transfer is where the assumption is that the entity is continuing its business and the sale is going on as a going concern basis. So the current discussion is whether the liquidator proposes to transfer a concern as a going concern on a continuous basis without seizure of the business or without seizure of the organization; then what one should do is given in regulation 32A.

The liquidator may sell the corporate debtor as a going concern, meaning the entire business, its assets, and liabilities are sold as one operational entity, and the acquirer who buys this entity will continue the operations with the same assets, the same liabilities, and the same business, or he may change some of them later. But the idea is that the company, the corporate debtor, will continue its operations after the sale of the assets is completed. This is what is called the sale as a going concern. The sale as a going concern can be carried out if it is feasible in the best interests of the stakeholders and will

maximize value. What do you mean by "in the best interest of the stakeholders," and is it feasible?

Let's understand this. Number one. So while I, as a liquidator, am proposing to sell the entire entity as a going concern, the buyer may not be willing to buy the entire quantity as a going concern because there can be certain liabilities that are going to actually make the whole business non-viable. Therefore, the buyer would only want to buy those assets that are important to him. So, in this case, if the buyer is only buying the assets, not the liabilities and the company, then it is not a going concern. Therefore, one has to really understand whether it is feasible to sell the entire company as a going concern with the assets and liabilities, and if somebody is willing to buy.

Only then is it possible; otherwise, it is not. Two, will it be in the best interest of the stakeholders? Sometimes what happens is that when I act as a liquidator, I break up the assets into different parts and then sell them; maybe the value that I obtain is substantial in comparison to a going concern basis, where the value may be lesser. So, will it always be in the interest of the stakeholders to sell it on a going concern basis? No, it may not be. Therefore, the liquidator has to check number one: is it feasible? Number two: is it in the best interest of the stakeholders? And number three: am I going to get a better value for the assets of the company? Once he considers all three points, he should make a decision to sell it on a going concern basis. The liquidator may sell the debtor's business in its entirety or in parts, depending on the circumstances.

If necessary, the sale as a going concern requires the approval of the adjudicating authority because, in some cases, the buyer would want certain reliefs that are written in the resolution plan or that are given in the acquisition plan. In that case, those reliefs which are sought by the acquirer cannot be provided by the liquidator. Hence, for those reliefs to be granted, approval should be taken from the adjudicating authority. Only then can the reliefs be given to the buyer. So, therefore, maybe in some cases, adjudicating authorities' approvals are necessary.

Feasibility is to be checked only when everything is in favor of the stakeholders. That's when we sell it as a going concern. Coming to Regulation 32B, how do you conduct the meetings of the consultation committee? We said the consultation committee basically comprises the stakeholders like financial creditors, operational creditors, employees, workmen, and outside stakeholders. So, how are these meetings conducted? They are regulated under Regulation 32 of the IBBI regulations. The first paragraph says the liquidator shall conduct meetings of the stakeholders and consult.