

# **Insolvency and Bankruptcy Law in India**

**Dr. A. Sridhar**

**NALSAR University of Law, Hyderabad**

**Week 11**

**Lecture 55**

Hi, we are about to begin the 55th session on IBC, specifically covering the liquidation process.

Today, we will conduct a deep dive into the various timelines prescribed under the IBC and the IBBI regulations governing the liquidation process. Additionally, we will cover the various forms that the liquidator must file during the liquidation process with the adjudicating authority or other relevant bodies. Before we delve into the timelines and forms, let's briefly recap what we covered in the previous session: regulations 40 to 46a are the topics we have addressed. Regulation 40 tells you how to realize the uncalled and unpaid monies on account of capital by the liquidator.

After that, we decided that all money should be deposited into the bank account and spent from there. Regulation 42 talks about the distribution of monies from this bank account, followed by the return of monies unduly received by any person. 44 discusses the completion of the entire liquidation process within a one-year period. 44A states, 'How do we treat avoidance transactions?' We said all those avoidance transactions should be accounted for, and the asset should be brought into the liquidation estate. After that, we discussed the final report to be filed by the liquidator before dissolution. Following this, there are residual regulations that address the preservation of records, the corporate liquidation account, and, lastly, the exclusion of certain assets from the liquidation estate under Regulation 46A. However, the exclusion of assets we've already read about under the IBC Act itself, as per the provisions of the Act, clearly includes and excludes certain elements that form part of the liquidation estate.

Let's move forward and understand the timelines prescribed by the IBC and IBBI, in reference to the liquidation process of a corporate debtor. These regulations or timelines are outlined in Regulation 47. The heading of Regulation 47 clearly states that it is a model timeline, which presumes that the liquidation process begins on a certain day. You call T, and if it is T, within what date or how many days from T are you going to take different actions? So we are going to take timelines as T plus 2 days, T plus 3 days, T plus 4 days, or T plus 10 days, or whatever it is, to understand how many days after the liquidation commencement, being T, we are going to do different events under the IBC

liquidation process. So, the entire process and the table explain the timeline; let's examine how to understand it. The first column here lists the number of items by serial number. This particular column talks about section or regulation numbers, which give you a timeline, and it specifies what kind of task is assigned under that particular section or regulation and what it is. Therefore, if I examine sections 33 and 34 of the IBC, the tasks specified under sections 33 and 34 are the commencement of liquidation and the appointment of a liquidator.

So, what should be the timeline within which this should be commenced, and when should the liquidators be appointed? Please exercise caution when understanding these concepts. As for liquidation, the process begins only after the order is passed by the NCLT. That is the date of commencement of liquidation, and there is no specific timeline within which the liquidation should commence. Remember that. Therefore, the entire timeline henceforth is based on the preliminary timeline, which commences with the commencement of the liquidation process. So, when does liquidation commence? There is no specific timeline, but once it commences, several actions must occur within the specified timelines. Therefore, as far as the commencement of liquidation and the appointment of a liquidator are concerned, we refer to this as "time zero," which marks the event that initiates the process. Therefore, we are taking the commencement as time zero, at which it begins, or T. From then onwards, we will see within how many days what should be done.

Let's quickly come to section 33 (1)(b)(2) read with regulation 12 sub-regulation 1, 2 & 3. This discusses a public announcement that should be made by the liquidator as soon as they are appointed. You recall that this is the announcement through which he invites claims from various stakeholders against the corporate debtor; hence, this is a very important action that he will take soon after his appointment as a liquidator. But within what time should he actually publish this notice or make a public announcement in the newspapers? We are stating that this should ideally occur within a period of five days from the date of the liquidator's appointment. So if t is a time or date on which the liquidation is commenced, T plus 5 days is when you should have made your public announcement in form B. I hope this is clear.

Anyway, let's proceed to Regulation 35, Sub-regulation 2, which is the third row in the table we are viewing here. So what does it say? It says, "When should I appoint registered valuers?" Once the liquidation is commenced, we said that the appointment of valuers is inevitable and absolutely critical for the valuation of the assets, which will determine the liquidation estate value. Right? So, the appointment of valuers is quintessential for you to complete the process. When should these values be appointed? As you can see, if T is the commencement of liquidation, and 7 days later is when you should have made the appointment of the valuers, you will notice that the first action will only take a little longer. So the liquidator has a five-day breather to act. Once he has

taken the first step of making the public announcement, the next step comes within two days. Therefore, there is no time for the liquidator to sleep comfortably and keep postponing things; he must plan meticulously to execute the liquidation process.

Hence, as soon as the appointment is made, he must first make a public announcement; meanwhile, he should start collecting codes from different valuers to understand who will do the valuation within a reasonable budget, basing it on his estimate of the realizable value of the assets. Accordingly, he will determine who will conduct the valuation and appoint the valuers within 7 days from the commencement of the liquidation process. After this, we move forward to understand the other timelines. So, when should he hold the first meeting of the SCC, as specified under Regulation 31A? The first meeting of the SCC shall be held within seven days of the commencement date of the liquidation. Whenever we refer to LCD here, it is the liquidation commencement date. Within seven days thereafter, the first meeting of the SCC should happen. So, if you recall, there's one action after five days, the next action is on the seventh day, and the third action is again on the same day, which is the seventh day. So, we have seen three actions so far.

Now let's move on to the fourth action. The fourth one states that stakeholders must submit claims or notify the decision on the relinquishment of security interests within 30 days from the commencement date of liquidation. What are the concerned sections and the regulations? We've already seen that Regulation 38(1) of the IBC addresses the submission of claims and the relinquishment of a security interest. Additionally, we've also seen regulations 17, 18, 19, 20, and 21, which address the same subject matters. From here, we can conclude that T plus 30 is the time for submission of claims as well as intimation of the decision on whether you're going to take the security interest with you or relinquish it in favor of the liquidator. Now we come to item number 5, which discusses section 38(5) and addresses the withdrawal or modification of a claim. We have already learned under Section 38(5) that once a claim is made, the claimant may also withdraw the claim or modify it within a 14-day time period thereafter. So, if the claim is made within 30 days of T plus 44, because this 14-day time period commences from the submission of the claim, therefore 30 plus 14 days is what you get to modify your claim, which makes it T plus 44, but for the submission of the claim, you will only have T plus 30 days. I hope it's clear.

Let's move forward now. When we come to serial numbers 6, 7, and 8, these deal with different items. Regulation 30 specifically talks about the verification of claims received under Regulation 12. So, how and when does the liquidator verify the claims that he has received under Regulation 12? We stated that he shall verify these claims within 30 days from the last date for receipt of claims. So, obviously, when I take T as the liquidation commencement date, what is the last date for verifying claims made by stakeholders? We said T plus 60 is the date by which we should verify the claims.

Let's refer to regulation 31A, which discusses the constitution of the SCC. This should occur within 60 days of LCD, which is T+60; again, the same timeline as we've seen here. We then proceed to Item number 8, which addresses Section 40, Subsection 2, discussing the intimation of the decision to accept or reject the claim. We stated that once verification is completed here, the liquidator is obligated to inform the stakeholders of their decision, whether to accept, reject, or partially accept and partially reject your claim. This should occur within 7 days of the admission or rejection of the claim. Remember, T plus 60 is the last date for you to verify. Once you've verified, you will make a decision within the next seven days and communicate it to the stakeholder. Therefore, T plus 67 is a time by which the stakeholder should have received communication from the liquidator regarding whether his claim is accepted or rejected.

Let's go to the next slide. We now have item numbers 9, 10, and 11, which deal with Regulation 31, Section 42, and Regulation 13. Therefore, Regulation 31 stipulates that the list of stakeholders should be filed within 45 days from the last date of receipt of claims. So, what is the last date for receipt of claims? As you may recall, the last date for receiving claims is T plus 30 days. From that date, you must file the list of stakeholders within 45 days. So, when I add T plus 30 plus 45, it becomes T plus 75, which will be the last date for me to actually file the list of stakeholders with the adjudicating authority. Then, when I come to section 42, an appeal by a creditor against the decision of the liquidator, when he is unhappy or aggrieved by the decision of the liquidator to either reject the claim in whole or in part, such a stakeholder whose claim is partly or wholly rejected will naturally have a remedy of going to the adjudicating authority and making an appeal against the decision of the liquidator. While the adjudicating authority is convinced that the decision of the liquidator should be reversed, it may pass an order accordingly, but the stakeholder who is aggrieved shall act within a time frame to actually proceed and file an appeal against the liquidator. What is the timeline for filing such an appeal? This should be 14 days from the receipt of such a decision. So, when should they receive the decision? We said in the previous slide that the decision should be made available within T plus 67.

Now, when I add T plus 67 plus 14 days here, it will become T plus 81. Therefore, the appeal shall be technically filed by the stakeholder within 81 days from the commencement of liquidation with the adjudicating authority, provided that he agrees with the decision. Let's move on to the last item on this slide, which is serial number 11, Regulation 13. It states that the preliminary report to the adjudicating authority shall be filed within 75 days of LCD. Now, this is not connected to any other timeline; remember, the rest of them were connected to other actions, and hence the time limits changed here. But when it comes to the preliminary report, it should be filed within 75 days of the LCD. Hence, the time limit here is straight away T plus 75, within which you should file the preliminary report under Regulation 13 with the adjudicating authority.

Let's move forward. I'm sure you understand the chain of events linked to each particular event and how much time is allocated from that event for the completion of the next event. And which are all ultimately connected to the commencement date of the liquidation, though some of these events are not directly connected to the liquidation commencement date, but are instead interconnected with various steps that we have seen so far. Let's move forward and understand what is in items 12 and 13. Item number 12 addresses Regulation 34, which assigns the task of filing an asset memorandum. So, when should the asset memorandum be prepared and filed? We said that unless the asset memorandum is filed and unless the list of stakeholders is filed, the liquidator shall not distribute the proceeds to any of the stakeholders. If you recall that, then this becomes a crucial precondition for distributing funds to stakeholders. Within what timeframe should you file the asset memorandum? It says you can file it either within T plus 30 days or T plus 75 days, along with the extension accordingly.

Let's proceed to Regulation 13, item number 13, which addresses Regulation 15, its various sub-regulations, and ultimately Regulation 36. So, what is the description of the task here? It states that you must continue to submit progress reports to the adjudicating authority; an asset sale report must be enclosed with every progress report if sales are made. This is a combination. First, you must file a progress report. Along with the progress report, any assets sold during that time should also be attached and filed with it, correct? What are the timelines for filing, and how does the process work? Remember, as far as these quarterly reports are concerned, progress reports are not tied to the commencement date of liquidation. Therefore, it is not T plus something; instead, it is from the end of the quarter. Therefore, watch it carefully. When it comes to the first progress report, it should be filed within 15 days from the end of the first quarter.

So, let's take an example. If liquidation commences on April 1st, the first quarter will end on June 30th. Hence, within 15 days from the end of June 30th, you should find a first progress report. So, when I look at the date, it will be June 30th plus 15 days, which will be July 15th, by which time I will file the first progress report if my liquidation commences on April 1st. Similarly, you will file one progress report every quarter. Therefore, the time is from the completion of the quarters Q1, Q2, Q3, and Q4. As soon as Q1 is completed, within 15 days, you have to submit the first progress report. Q2 is completed, the second progress report. Q3 is completed, the third. Q4 is completed, the fourth progress report. All of them should be submitted within 15 days from the end of the quarter. After that, we come to a critical aspect, which states that at the end of the financial year, audited accounts of liquidators, receipts, and payments for the financial year must be submitted before April 15.

This is an important compliance requirement; remember that it occurs only once annually, but the rest are actually quarterly, including progress reports. Other reports are one-time, based on specific events. Periodic reports are issued on either a quarterly or

annual basis, depending on the duration of your liquidation. As we recall, the entire liquidation process should be completed within a period of 365 days, or one year. Hence, this annual compliance is probably only required once during the lifetime of a particular CD liquidation. Perhaps if the time is extended, a second submission may arise, but otherwise, in one case, I suppose there will only be one such report filed by the liquidator.

Moving forward, let's address items 14, 15, and 16. Item number 14 deals with regulation 15, and the task specified under regulation 15 is to file a progress report in the case of cessation of the liquidator. If the liquidator is no longer occupying the position of a liquidator, whether by way of resignation or the appointment of someone else, then a report shall be filed within 15 days of cessation as liquidator by the liquidator. So, the target is the date of cessation plus 15 days. Therefore, remember that we do not have the concept of T plus 15, but rather the concept of the cessation date plus 15 days for the liquidator to file their report. Then there is Regulation 37, which discusses information that must be provided to secured creditors within 21 days of receiving notification from the secured creditor about their withdrawal of the security interest or renunciation of the security interest. The date of intimation, whatever it is, means that from that date you have 21 days to communicate the matter to all other secured creditors.

Let's come to the next regulation, which is Regulation 42, Sub-regulation 2, regarding the distribution of proceeds to the stakeholders. When should this happen? We've already understood this in Regulation 42 from the previous session, which was session 54. We understood that within three months of receiving the amount, it should be realized, correct? This will be the date of realization plus 90 days. To understand how this timeline works, the distribution of money is connected to the realization of money. Therefore, unless there is realization, there is no distribution between the realization of money and its distribution. Additionally, a timeline is specified that begins from the date of realization, correct? Therefore, if you have realized the assets on December 31st of any year, within the next 90 days, approximately by March 31st, the assets or proceeds must be distributed to the concerned stakeholders. This is how you understand the timeline in terms of distribution to stakeholders.

After that, Regulation 10 discusses the application to the adjudicatory authority for the disclaimer of onerous property. We have already read in Regulation 10 that onerous property can be disclaimed by the liquidator; however, he cannot make a decision; he must obtain permission from the adjudicatory authority. Therefore, the application to the adjudicatory authority must be filed within six months of the date of the LCD. Typically, this particular task is associated with the commencement date of liquidation, and hence it is T plus six months, or 180 days, in terms of days.

Let's proceed to Regulation 10, Sub-regulation 3. Here, it states that an application to the adjudicating authority for the disclaimer of onerous property must be made at least seven days prior to submitting an application to the adjudicatory authority for the disclaimer. That means you should inform the stakeholders' committee that I intend to disclaim the company's assets, and after obtaining their approval, you should submit an application to the adjudicatory authority. Therefore, if you plan to approach the adjudicatory authority after seven days, it is advisable to obtain the approval of the stakeholders at least seven days in advance.

Now we move to Regulation 44, which states that the liquidation of a corporate debtor should be completed within one year; therefore, T, being the commencement date, 365 days should be the conclusion of the liquidation. The last two items specifically address model timelines. Now we are saying that Regulation 46 requires the deposit of the amount of unclaimed dividends or undistributed proceeds. You should know this: when I have a lot of money in my account as a liquidator to be distributed to various stakeholders, I will make every possible effort to identify the stakeholders and distribute this sum of money. However, despite all my efforts, I may still be unable to identify many stakeholders, such as those who have changed their addresses, are not traceable, or, in some cases, the shareholder or stakeholder who has already passed away. In all these cases, the amount of money remains with the liquidator, which is to be distributed to the stakeholders.

That amount is called undistributed proceeds. What do you do with them? We should deposit them; where and when? Before the submission of the application under sub-regulation 3 of regulation 45, regarding the disclosure of the liquidation, you must deposit this undistributed money into a separate bank account and inform the adjudicatory authority. Here, you can see that no timeline is specified because this is before the application is submitted for the conclusion of the liquidation proceedings. Now we come to the last item, which is Schedule 1, serial number 12. We proceed to Schedule 1, which is also related to serial number 12: the time period for the highest bidder to provide the balance of the sale consideration. How much time does he get after bidding for an asset to pay the balance consideration? We all know that he pays a certain advance amount, and after paying the advance amount, he must remit the balance within a specified time to actually own the assets for which he has bid.

What is the timeline within which he should pay the balance? Therefore, we are stating that the timeline precedes the application submission under Regulation 3 of 45, which pertains to the conclusion of the liquidation process and the commencement of dissolution. Hence, remember that the highest bidder should pay the balance of the consideration as soon as possible, but not later than the submission of the liquidation completion report. Next, we will proceed with filing various forms. Regulation 47B of the IBBI liquidation process regulations specifically addresses the filing of certain forms.

Here, we have a table that outlines the type of form, the period it should cover, the event, the scope, and the timeline, which are specifically provided here. So, if I am talking about Liquidation 1, that's the form. Form Liquidation 1 should be filed from the liquidation commencement date until the public announcement; this includes details of the liquidator, corporate debtor, the liquidator's fee, etc., on or before the 10th day of the subsequent month after a public announcement has been made. Remember, once you make a public announcement, right?

Let's say you make a public announcement in April; the whole month is gone. We are saying that before the commencement of the 10th day of the next month, which is May 10th, you must file certain particulars with the adjudicating authority in a certain form, which is LIQ1 or Liquidation 1. So, what details are you filing? You will inform us about the details of the commencement date for the liquidation. Until the public announcement, details such as the liquidator, corporate debtor, liquidator's fee, and other relevant information will be provided here. This form must be filed before the 10th day of the subsequent month in which the liquidation has begun.

Let's go to the next form. The next form deals with liquidation, specifically LIQ 2, which is the form. From the public announcement to the progress report, we all remember that the progress report is filed on a quarterly basis. The first LIQ1 is filed within the 10th day of the subsequent month of the commencement of liquidation, but LIQ2 is filed, which includes details of valuation, sale, litigation avoidance, transactions, meetings of the consultation committee, receipts, and payments, etc.; this should be filed within the 10th day of the subsequent month after each progress report to the adjudicating authority. So, when is the first progress report filed? At the end of the first quarter, you file the first progress report.

Now, after that, in the next month before the 10th day, you should file LIQ 1, 2, etc. Then, if we proceed, LIQ 3 will cover the time frame or events occurring between the final report and the application for dissolution from this date. This includes details of unclaimed proceeds, sale litigations, avoidance transactions, realization, distribution of proceeds, receipts and payments, etc. But when should I file this? This should be filed on or before the 10th day of the subsequent month after the submission of the dissolution or closure application before the adjudicating authority. So, LIQ 1, LIQ 2, and LIQ 3 are all filed on or before the 10th day of the subsequent month following the completion of a certain task. In the case of LIQ1, there is a different task; for LIQ2, there is a different task; and for LIQ3, there is a different task. After the task is completed, the target date for filing the respective forms is the 10th of the following month. The time frame and information to be included in the form will span from the events specified in this column to the events listed on the right.

Let's go to the last of these slides for filing the forms; this is LIQ 4. The information contained in this, or the data, will begin from the application for dissolution to the order of the dissolution, and this includes details of the distribution of proceeds, receipts, and payments. When do you file this? This should be filed on or before the 14th day after the passing of the order for the dissolution of the corporate debtor or the closure of the liquidation process by the adjudicating authority. Here, the event dates are slightly different, and instead of the 10th day, it will be the 14th day. However, this does not apply to the subsequent month; instead, you should file LIQ4 on or before the 14th day of the month following the order of dissolution. So, friends, this brings us to the end of Session 55, where we have discussed model timelines and the filing of forms under Regulation 47b with various bodies by the liquidator.

To summarize what we have discussed today, Regulation 47 addresses timelines, which begin from  $t$ , which is 0, and continue until  $t$  plus 365, marking the closure of liquidation. Then we have seen 47b, which discusses  $q1$  and  $q2$ , which are the liq1, liq2, liq3, and liq4 forms to be filed by the liquidator. In the next session, we will cover certain case studies to gain a practical understanding of how liquidation occurs and the challenges faced by the liquidator.

Thank you.