

# **Insolvency and Bankruptcy Law in India**

**Dr. A. Sridhar**

**NALSAR University of Law, Hyderabad**

**Week 12**

**Lecture 56**

Hi, welcome to the 56th session on IBC, specifically covering the liquidation aspects.

Today, we will examine and review several case studies of companies currently undergoing liquidation. We will examine various forms and public announcements made by these companies, and also try to analyze how these scenarios changed in these cases.

However, before I delve into the aspects of case studies and explain them clearly, I would like to outline a few basic points about IBC and how it operates in the practical world. Basically, why would a company borrow money from different kinds of creditors? There are two types of creditors as we see them right now: essentially, they are either financial creditors or operational creditors. An operational creditor is an entity that provides services or products to a company to maintain its business operations, whereas a financial creditor is an entity that lends money directly to the corporate debtor. Why is it borrowing this debt? It borrows this debt solely to conduct its business activities. While lenders believe they are lending money for business activities, they often lend to borrowers who may not use the funds to conduct business. That is where the whole problem of NPA, insolvency, or avoidance transactions arises.

Why? Because the funds that have been allocated or disbursed to the corporate debtor by the financial creditors, assuming that they are used for business purposes, are being diverted by the corporate debtor to their personal accounts. It can be personal accounts, or it can be for any other project, or for any other reason, but the funds received from lenders are not being deployed in the business for which they were intended. These funds have been utilized or are being utilized in some other manner, causing severe harm to the company and the lender in terms of financial losses. So, given this scenario, we need to personally observe and understand, analyzing where the money has gone. The money that is borrowed by the corporate debtor for the purpose of business, where exactly has it gone? Is it a genuine business loss because of, you know, PEST factors—political, economic, sociological, and technological factors—that are out of the control of the corporate debtor, or is there any deliberate ploy played by the corporate debtor in actually diverting the funds elsewhere? This is the first study we have conducted while discussing IBC, NPAs, and other related topics. Additionally, it is worth noting that most of the

time, banks, financial institutions, or lenders will not immediately initiate a case under the IBC when a corporate debtor fails to repay the money to them.

So, what they do is wait patiently and give notice to the corporate debtor, saying, “Boss, your repayments are not really up to the mark; you are not paying debts on time, and therefore we might have to report you as an NPA.” Therefore, after repeated failures, banks may classify these corporate debtors as stressed assets, and we have previously learned about categories of stressed assets. Now, after they categorize them as stressed assets, they are referred to as NPAs. Only when they are NPAs will the bankers initiate a case of IBC against such borrowers; until then, they may not initiate it, as it is in their own interest to wait and recover the money in full rather than initiate an action of IBC. So, these are a couple of things that we must keep in mind. Going forward, we also need to understand practically how, as a liquidator or resolution professional, public announcements are made, what kind of information is gathered, and how they are used by the resolution professional or liquidator.

So, with this introduction, I’ll take you to the first case law of today, which is Vantage Machine Tools Pvt. Ltd. To briefly introduce Vantage Machine Tools Pvt. Ltd., it is a company incorporated in Newswede, Vijayawada, Andhra Pradesh. The company was intended to manufacture machine tools in the same location, and it commenced operations with an authorized capital of approximately 10 crores and a paid-up capital of around 8.06 crores. So, why are we providing you with these details? These details are important to understand whether this is a big company or a small company. So what do you think? Is this a big company or a small company? As far as the Act is concerned, small companies are those with a paid-up capital of less than 4 crores and a turnover of approximately 40 crores. If the figures are less than this, such a company can be considered a small company, and if the figures exceed that, such companies can be classified as big companies, as per the Companies Act. But generally speaking, an 8 crore capital is a small company in terms of business sense. Large companies are those that have, you know, 500 crore capital, 1000 crore capital, and have turnovers of thousands of crores, right? But all those companies where the paid-up capital is less than 100 crore, in our sense, we can always call them small companies. Why am I saying that? There is a logic.

Now look at the next line, where the company was involved in the manufacture of machinery for mining, quarrying, and construction. So, with the machinery produced by this company, its customers might excavate earth and enter the quarrying business, right? With this business as the primary objective of the company, it borrowed funds from various bankers. One thing that you must ask, if you are not already aware of the fact, is why they will borrow different amounts of funds from different bankers.

Let's try to understand that every banker has a simple principle. The principle is that the entire loan exposure, suppose I require about 1000 crores, and if one banker lends me 1000 crores, that banker is taking an enormous risk because if my business is not doing well, one banker loses 1000 crores; hence, what they do in this kind of scenario is that they only take partial exposures. They will say that I am going to lend you only a certain percentage of your requirement, and the rest of the percentage you will have to secure from different banks.

Therefore, as borrowers, we might approach different bankers and borrow varying sums of money. On the other hand, sometimes bankers themselves form a consortium and mutually decide who will lend how much, collectively lending the required sum of money to the borrower. In this case, as you can see, the overall borrowings were approximately 200 crores. Now, when you borrow this money with the objective of making machinery, what you do with this money—basically, what the company should do with that money—is ideally install equipment and plant machinery on its own premises to actually produce that kind of machinery which it mentioned, and also spend this money for the payment of salaries, for working capital usage, for buying raw materials, or for whatever relevant expenses are necessary for its business and the active running of the business. Instead, these companies may occasionally use the funds for different purposes. I am not commenting, nor am I saying that it happened in this case. However, I am simply suggesting that a resolution professional or liquidator appointed to oversee the process should initially approach it with the mindset of an inspector or investigator, who is likely to come with a negative perspective. The mindset is simple: if you have borrowed 200 crore from bankers and have not repaid this money, the probability is that you have lost it in business, or perhaps you have diverted it elsewhere. As a resolution professional or liquidator, it is my primary job to examine this and come to a conclusion for myself.

Let's go to the next slide and take a look. So, this company, after borrowing a substantial amount of money from various bankers, had eventually become insolvent. The question is, what is insolvency? If you recall all the sessions we had on IBC, insolvency is a situation where a corporate debtor, having borrowed funds from various financial institutions, banks, or creditors, including operational creditors, is unable to service or repay the debt on time. In that scenario, it's called insolvency or an NPA. One of the financial institutions or creditors may actually file a petition with the NCLT and seek a CIRP; this is what we have learned. Now, after the case has been initiated, either by an operational creditor or a financial creditor, the total claims made by the creditors amount to approximately 77 crores, 9 lakhs, 44 thousand, and 300.

So, is this figure bigger or smaller? Consider whether 77 crores is a small or a large claim. Currently, I am handling a personal insolvency resolution process where a personal guarantor, who stood as a guarantee for a private company, is now under

insolvency resolution because the company was unable to repay the entire loan, and the lenders have initiated proceedings against the personal guarantor to recover the outstanding amount. Now, while we are conducting the PIRP for him, when we invited claims, an unbelievable number of claims were made; it is approximately 3000 crores. A substantial number of claims have been made by various creditors. Now, when you compare those claims of, you know, thousands of crores versus 77 crores, this looks like a reasonable size of claim; however, 77 crores on any day is not a small amount of money—let's realize that.

The total amount of claims made by creditors was approximately 77 crores and 9 lakhs, while the total amount of claims accepted was around 67 crores. I would say that roughly 12 to 13 percent of the total amount claimed has been rejected for whatever reason; however, the good news is that a substantial portion of the claim has been accepted by the resolution professional for payment. Now, what happened then? What you need to understand is that once a resolution professional is appointed, they make a public announcement. He receives a claim, verifies it, and then admits it. Until then, it is not a big deal; it is a regular process.

However, the success of the CIRP will depend on whether you can sell the assets for enough money to pay these debts. That's the real challenge for a resolution professional. Now, although he has admitted claims for 67 crores and 31 lakhs, let's see how much he can repay and what his resolution plan is. To name a few creditors, there were financial creditors such as Canada Bank, Megha Engineering and Infrastructures Limited, and Vantage Spinners Private Limited, in addition to other banks. Additionally, there are financial creditors, including P. Mohanamurli Krishna, Dhanak Lakshmi Rao, and Quality Steels and Wire Products. Some of them are operational creditors, as indicated by the "OC" notation. Some of them are financial creditors. However, ultimately, these are some of the creditors who claimed a sum of approximately 73 crores.

Now, a list of claims was made by OC, FC, and secured creditors, as annexed below. In the first instance, we are attempting to understand the details of the operational creditors involved. In the details of the operational creditors, we can see the details of the claim, right? Date of receipt, amount of the claim. Here are the details of the claims submitted, including the date they were submitted and the amount of the claim. Here, you can determine whether it's a related party or not, as well as the percentage of voting share in the COC; all these details are mentioned in Annexure 3. The amount of a contingent claim means that when we are not certain that the claim is definite, it is called a contingent claim; it is dependent on certain events.

Now, regarding the amount of unsecured debt or any mutual use that may be set off, you can see here that, as a resolution professional, when a claim is received, the kind of details you should gather to actually understand the claim and process it. So, we are

trying to say that we should always have the date of the transaction, when the transaction happened, whether it is a lending or an operational creditor's transaction, when it was submitted with proof, how much the amount of the claim is, and actually what percentage share is likely to be given in the COC to them in terms of voting power. Additionally, if there are any contingent claims after that, can the company set off any amount against such a claimant? So, set off would mean that the claimant owes some money to the company, and the company also owes some money to the claimant. Here, the claimant is coming in and stating that I need to obtain some money from the company; at the same time, the resolution professional is also verifying whether the company should receive some money from the claimant. Then he can usually settle these claims and only pay the balance to the claimant if required, or receive the balance from the claimant if required. These are some of the fields that are created to provide a better understanding of the resolution professional regarding the financial implications of the CIRP, correct? This is one form that outlines the details of operational creditors.

Let's move forward to understand other things as well. Now, in this slide, you can see that we are examining unsecured financial creditors. Financial creditors are of two types, specifically: This does not apply to operational creditors. Financial creditors who lend money can be either secured creditors or unsecured creditors. What do you mean by a secured creditor? A secured creditor is someone who obtains security over the company's assets through a mortgage, lien, or hypothecation; once those assets are under their control, they are referred to as a secured creditor. In contrast, an unsecured creditor is someone who does not have any such protection and is therefore open to exposure. This classification applies very well to a financial creditor who can be termed a secured creditor or an unsecured creditor. So, these are the details about the secured creditor.

Let's review the details we have. We will review the date of receipt of the claim and the amount claimed by the person, which are the details of the claim received. Now this is the details of the claim admitted, so we are stating the amount of the claim admitted, the nature of the claim, the amount covered by the guarantee, how much the original amount was, and then how much the claim amount is, whether the part is a related party, and the percentage of voting share in the COC, as we said before, the amount of contingent liability, and after that, the amount of mutual setoff that is possible. After that, we proceed to total verification, and then confirm whether it is payable or not. This is the entire statement of affairs as far as unsecured financial creditors are concerned for the resolution professional. Now we go to the third one, which is a list of financial creditors who are secured.

Now, in the case of secured financial creditors, let's examine the available information. We will have the name of the creditor, the date of receipt, and the amount claimed. Then again, the amount of the claim admitted, the nature of the claim, and the amount covered by the security interest should be considered, as we are dealing with a secured financial

creditor. We should also know how much of this loan is secured by a security given to them. The amount of the guarantee is how much.

As a personal guarantor, is there any person who's giving you a guarantee to repay your loan? Then, whether such a party is a related party, the percentage voting share in the COC, contingent liabilities, if any, and whether mutual set-off of the funds is possible are all determined. What we are trying to say now is that creditors can be of different types. Firstly, there are financial creditors, which include both unsecured and secured creditors. Next, we have operational creditors, followed by workmen and employees, and finally, other categories that are not covered by these. Therefore, for each category, the RP should receive this kind of information in a systematic format, allowing us to process the list of creditors effectively.

Now, until now, what we've understood is only about claims made, claims admitted, claims rejected, etc. But after admitting the claim, As a resolution professional, your duty is to ensure that you get enough money from the CIRP to pay these claimants according to the admitted ratio. However, in practical life, it may not always be possible to achieve that. Heard about haircuts in the resolution process; if you see a case like Videocon, maybe one of the highest haircuts happened there, and there are lots of other cases as well. Ideally, the bankers, financial institutions, or the lenders are ready to lose up to 20 to 25 percent; this is an average loss, but in some cases, we have seen that the creditors or the lenders have lost ninety-five percent of the amount that they lent, and they could only recover four to five percent of the amount.

These are miserable cases, but possible. In this case, what happened is that our curiosity got the better of us. Right, so did they recover the full money or not? Let's try to understand it first, because we are currently discussing liquidation, and I am showing you a case of CIRP. Why am I showing you a case of CIRP? Always remember that whenever there is an insolvency issue, we first attempt an insolvency resolution process, which aims to revive the company and allow it to continue operating as usual. But when CIRP fails, only then will there be a liquidation, right? So the first question is, did you attempt a CIRP? Was it successful or not? In our case, we are saying yes, CIRP was attempted; it failed due to unresolved disputes and disagreements regarding outstanding dues. When I, as a proposed buyer of the new company, approached this scenario, I would say that I have no fixed, concrete amount of liability at this time.

Everything is actually in a liquid state. So after I buy the company, when I look at my total liabilities, the total liability might run to 1000 crores or 200 crores that I am not aware of because today we don't have a settled list of creditors and a settled amount of credits; therefore, most buyers will back off; they will not buy this kind of company either in the form of an asset or as a company. So, when the CIRP is failing, it obviously has to go to liquidation. The important question is also who the RP was at that time. The

RP was Mr. Imaneni Ishwar Rao, and since the CIRP failed, the RP would naturally recommend liquidation to the adjudicating authority, which passed an order for liquidation on December 20, 2024. Friends, 20th December 2024 is very recent. I am just trying to tell you about this case because it happened a few months ago. Now, if the liquidation commencement date (LCD) is the common terminology that we use, it is the 20th. When should the liquidation be completed? Liquidation should be completed by December 19, 2025. Currently, the scenario can be that the liquidation is still in process.

Let's try to understand what's happening at this moment. The name of the liquidator is very important because the liquidation order was already passed on 20th December 2024. The Honourable National Company Law Tribunal had also appointed a liquidator by the name of Kalva Kolanum Murli Krishna Prasad, and this individual made a public announcement within the timeline we studied; the public announcement under liquidation is required to be made within 5 days. He made a public announcement on December 24, 2024, and the announcement was as follows.

Let's try to understand what information you provide to the public when you are actually making a public announcement. This public announcement, remember, is not for the sale of the assets. This public announcement is simply for receiving claims from various creditors. What information do we provide to the creditors, and how? This is in accordance with Form B public announcement regulation 12 of the IBBI Liquidation Process Regulations, 2016, which states that for the attention of stakeholders of Best Advantage Machine Tools Private Limited, we now have the particulars. What particulars do we have? Number one: name, date of incorporation, authority under which the corporate debtor is incorporated, and then corporate identification number. This is important, as this is the identification number of the corporate. Next, the address of the registered office is provided, followed by the date of closure of the insolvency resolution process.

The commencement of liquidation is the automatic conclusion of the insolvency resolution process; hence, the moment liquidation is commenced, insolvency is also concluded. The name and registration number of the insolvency professional acting as liquidator are required because the public may need to access this information periodically to verify their identity and address. All these details are available on the IBBI's website, and anyone interested can visit the IBBI website to find out about these resolution professionals or liquidators, where they will obtain a fair amount of information. The last one is the address and email of the liquidator as registered with the board.

This is the same man, the liquidator. The address and email are to be used for correspondence with the liquidator. And then lastly, it says the last date for submission is 23-01-2025, and it further states that notice is hereby given that the National Company

Law Tribunal, Amaravati branch, has ordered the commencement of liquidation of Vantage Machine Tools Pvt. Ltd. vide order dated so-and-so; the order copy was uploaded on 21st December 2024.

Now, he says that the stakeholders of Messrs. Vantage Machine Tools Private Limited are hereby called upon to submit their claims, accompanied by proof, on or before January 23, 2025. Therefore, before January 23, 2024, the claim should have been made by various parties, which is 30 days from the date of announcement. Additionally, it states that financial creditors must submit their claims, accompanied by proof, via electronic means only. All other creditors may submit their claims, accompanied by proof, in person, by mail, or via electronic means. The submission of false or misleading proof of claims shall attract legal provisions.

This is how a public announcement is made by the resolution professional, who is commonly referred to as the liquidator. Now, pursuant to this announcement by the liquidator, claims will be made by the parties, and after claims are made by the parties, the claims will be verified; once the claims are verified, they will be admitted, and the respective persons will be informed as to whether the claim is admitted or rejected. Now, once that's done, a stakeholders' consultation committee is formed, and then the matters are presented to the stakeholders' consultation committee. Meanwhile, the liquidator continues to negotiate a liquidation plan and attempts to arrange a valuation. At the same time, the liquidator will also attempt to arrange a public auction to ensure the company's assets receive a better price.

This is one case law that we studied regarding a company. We will also examine other cases to understand what went wrong or right and how these companies are handling their decoration processes.

Thank you.