

# **Insolvency and Bankruptcy Law in India**

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**Week 12**

**Lecture 57**

Hi, this is the 57th session on the IBC liquidation process. In this session, we are examining another case study to understand how liquidation actually begins and what preconditions led to its initiation.

Let's go straight to the case law. Bajrang Infracon Private Limited, an infrastructure company, requires a substantial amount of capital to undertake large-scale projects involving roads, buildings, townships, and power projects, among others. So, it's something to do with a large amount of money, right? This company would borrow a large amount of money to ensure its continuous operations; however, understandably, the moment it enters into IBC, there is a problem with repayment; therefore, it has entered into an IBC as an NPA. So, who is the applicant who has asked for a resolution process? The applicant is none other than Jalan Sales Corporation, which is an applicant under Section 9. Of course, the moment I mention Jalan Sales Corporation, you definitely understand it's not a financial creditor; it would have supplied equipment to the company. Before failing to repay the money, Jalan Sales Corporation initiated a CIRP process against the company, Bajan Infracon Private Limited. Now, once the CIRP began, the total claims made were approximately Rs. 12,83,36,591, and the total admitted claims were only Rs. 8 crore 30 lakhs against a claim of Rs. 12 crore 83 lakhs. I would say that about 25% of the claims have been rejected, while 75% have been accepted.

This is a situation of CIRP, so if this is a situation of CIRP that requires the smooth completion of CIRP, a very important question arises: once you understand this, you will know how and when the cases will come into liquidation, right? So, when I say the claim amount is 8 crore 30 lakhs, the resolution professional will obviously request a proposal and ask various buyers to submit their resolution plans regarding how they intend to resolve this insolvency scenario.

Now, a resolution plan that either fully meets or nearly meets the admitted claim amount will be a viable resolution plan, as this is the total amount of claims that are admitted. However, perhaps a sum that is slightly shorter than this is also acceptable if the creditors are willing to accept a haircut. Consequently, the resolution plan, which prioritizes payment to claimants to the tune of 8 crore 30 lakhs or a similar amount, will obviously

be a priority. We will approve that resolution plan; that is how it works, provided the COC consents to that. Now, what happened in this case? Let's try to identify some of the creditors involved, including Cholamandalam Investment and Finance Company Limited, Sri Shyam Steel (Operational Creditor), Jalan Sales Corporation (Operational Creditor), and Kamakhya Biofuels Pvt Ltd. The list of claims will obviously include the Financial Creditor, Operational Creditor, and Secured Creditors, who are annexed below. This is a detailed breakdown of the claims, including the number of claims admitted, the total number of claims, the amount accepted, and the amount not accepted. All details come here. If I try to zoom in, you can see unpaid insolvency resolution costs, and then you can see liquidation costs.

After that, secured financial creditors to whom about 4 crore 78 lakhs is the amount claimed, and then you have unsecured financial creditors, where there is 1 crore 83 lakhs. We've always understood the difference between a secured creditor and an unsecured creditor when it comes to financial creditors. A secured creditor has two choices: either take the asset and walk away, and not participate in the resolution process, but he has to intimate the resolution professional that he is a secured creditor, he has his security interest, he is not participating in this resolution process, and he is taking his asset; or the second option is that he can relinquish his security interest and participate in the resolution process. Ideally, we have covered all this in the past, if you remember. However, now that the scenario is before you, it will prompt you to think more critically. Ideally, if you are a secured financial creditor, will you walk away with the asset in hand, or will you relinquish it?

The logic is simple. If the value of the asset secured to me is more than the debt that I have given to the corporate debtor, then I think I will walk away with the asset because my loan is substantially covered by the value of the asset and there is nothing for me to be afraid of; therefore, I will walk away with the asset, sell it off, and recover my money, and if there is any balance, then I will, you know, release the balance to the resolution professional. But where I have a feeling that the value of the asset is substantially lower than the debt that I have lent or the loan that I have given, and the chance of recovering money is better in the resolution process, only then will I be part of the resolution process, and I will relinquish my asset. Here, we are trying to understand whether the financial creditors will relinquish their assets or walk away with them. If you look at the position of secured financial creditors, it is approximately 4 crores, which is the amount of money they have recovered.

Let's address the operational creditors in terms of the fact that you have workmen and employees separately. However, in this case, there were not many claims from the employees or workers, which is not a typical occurrence. I mean whenever a company is going into CIRP, it will not be paying salaries and wages to the workmen, and therefore at the end of a CIRP or a liquidation, a lot of workmen and employees will approach for

their due salaries, but if this is not the case, then it's a different scenario where the company would have paid the salaries and wages to the workmen. Then, regarding government dues, there are some amounts owed to the government as well. In addition to employee and government dues, there are numerous monies owed to parties that are neither employees nor laborers who receive wages from the company, nor the government. All those operational creditors will come here, and they have a substantial amount of money owed to them. And if there is any other category that will come here, in this case, we have unpaid insolvency resolution costs, which are this much; then you have liquidation costs, which are this much; then you have secured financial creditors, unsecured financial creditors, operational workmen, and employees, which are zero, and then other figures are here. This is a summary of the claims made by different parties.

Now, once the claims have been made in response to the public announcement made by the resolution professional, obviously, the matter should now be resolved. The resolution is simple: the resolution professional will actually call for proposals, and whichever proposal comes from an applicant that nearly meets the amount of the claim money is considered an accepted proposal, unless there are multiple proposals that are nearly identical. The resolution professional may choose what will result in the payment of the claimed amount to the claimants; that proposal is definitely viable. But in this case, what happened? The resolution process failed, so why did it fail? Is the question. It failed due to a lack of a viable resolution plan that could satisfy the creditors and revive the company.

Now, I have seen in many cases, also as a lender, that when you have lent massive amounts of money to a borrower, the resolution process often involves recovering a substantial amount of money for you, right? But in a case where a resolution process is not resulting in such a substantial amount of money to you, where let's say even 10% of the money that you lent is not being recovered, there is no resolution plan that is better than that, then in that case, I think the lenders would always prefer to go for liquidation rather than accept a resolution plan that is not viable. A very interesting question is the viability of a resolution plan. If you and I are lenders, let's say for some time you are a lender, and you need to obtain approximately 100 crores from a particular corporate debtor. What kind of plan, a resolution plan, will impress you? What do you think is a viable resolution plan? So, in my mind, I will always think that if I am a financial creditor and have lent about 100 crores of funds, and if there is a resolution plan going on, and if the plan is resulting in me recovering at least 60% of my loan, like 60 crores, then I think it's a viable resolution plan unless the assets or their value have gone up phenomenally. Sometimes, what happens is that the asset value will go up phenomenally, so in such cases, it can be a profitable resolution for you. When the assets are sold, you might get more money than what you've lent; that is the most viable resolution plan. I am not saying that it happens often, but if it is not happening, then the next best resolution

plan is the one that minimizes your loss. However, if your loss is 95% or 90%, then such resolution plans are never acceptable; they are called non-viable resolution plans. If a resolution plan is non-viable, then what is the next thing?

Obviously, the next thing is that we might make another attempt to get a better resolution plan, and if the second attempt also fails to achieve a better resolution plan, then obviously the only next option is to go to liquidation because resolution professionals are bound by the timelines; they cannot keep attempting forever. In this case, the resolution process failed, and therefore, it is now a matter for liquidation. The name of the RP was Ujwal Kumar Kalita, and the liquidation then commenced on 20th December 2024. Now understand this: RP had made his best efforts; he could not resolve it satisfactorily for the claimants. Therefore, the RP has now recommended that it should go into liquidation. Most cases understand that the RP might continue to be a liquidator as long as the RP does not act negligently or propose a plan that is not in compliance with Section 31 & 32 of the Act. As long as these two things are not done, the RP might most naturally continue to be a liquidator. However, in some cases, the adjudicatory authorities may feel satisfied or prefer to change the liquidator; therefore, in the last two cases we have seen, we observed that the resolution professional who could not complete the CIRP successfully was not chosen as a liquidator; this is also the case here.

We are saying that Purushottam Gaggar was chosen as the liquidator against Ujjwal Kumar Kalita, who was actually a resolution professional. However, the liquidation commenced on December 20, 2024. What is the next thing? Now, if you are actively participating in these lectures, I think the first thing you should do from here on is bring that activity chart to mind and know exactly what happens on each date. So, what is the first thing a liquidator should do once they are appointed and a liquidation order is passed? I'm sure you remember. The first thing is that he should make a public announcement and ask for claims; so, within what time should he make it? Five days is the time limit given to him, etc. We have seen  $t + 5$ ,  $t + 30$ ,  $t + 45$ , and so on. What is the trigger point? The trigger point for the activity chart is 20th December 2024. The appointment of the liquidator has already taken place, and therefore, the liquidator should now take over and initiate his actions.

Accordingly, the liquidator made an announcement on 26th December 2024 and published an auction notice on 28th March 2025. Assets constituting the liquidation estate are very important. As we have been discussing in the past, what will the liquidation estate consist of? What will the liquidator sell? And what will he give to the lenders is an important question. We have seen in this case that the claims admitted were 8.5 crores. If the claims admitted were indeed 8.5 crores, the bankers or institutions were not satisfied with the resolution plan; hence, the resolution was not viable, and therefore, we proceeded to liquidation. Now, a very interesting question arises: if your resolution plan was not satisfactory and you chose liquidation, do you think liquidation will yield a

better result? Are you thinking? A resolution plan was paid because there was no viable option; if the resolution plan was not giving you a viable option, do you think liquidation will provide you with a viable option?

Now look at the liquidation estate; there are only two vehicles where the claim is 8.3 crores, which is admitted. If you have two vehicles, I'll provide you with the details of both shortly, whichever vehicles you own. Well, the vehicles will not give you 8.3 crores unless they are, you know, Rolls-Royce or bigger versions of that. So the liquidation estate is small. A public announcement has already been made, and you have received claims. An auction notice was published on March 28, 2025. See, this is an extract from the public announcement that he made. Bajrang InfraCon Private Limited's date of incorporation is 11-06-2013. It was incorporated in 2013 and entered CIRP between 2020 and 2023. Within 10 years of operations, it has reached that stage. The corporate identification number of the company has already been published, and the addresses of the registered office and principal office of the corporate debtor are provided here, which are located in Assam.

The date of closure of the IRP is 10-07-2024, and the liquidation commencement date is 20th December 2024, which falls within 5 months from the closure of the CIRP. The name and registration number of the insolvency professional were Purushottam Gaggar. The address and email of the liquidator, as registered with the board, are as follows: with these details, he has published a public announcement inviting claims from various claimants. The last date for submitting claims is January 19, 2025. When did he publish this advertisement? He published this advertisement on December 26, 2024, and the last date for claims is January 19, 2025. All right, so notice is hereby given that the NCLT Guwahati Bench has ordered the commencement of liquidation of Sri Bajrang InfraCon Private Limited on 20th December 2024, under Section 33 of the Code, and hence it is inviting claims. Otherwise, the question is, who are you to ask for claims? This standard notice is very important so that you are authorized to accept and admit claims.

Then, stakeholders of Shri Bajrang Infracon Pvt Ltd are hereby called upon to submit their claims, which is what he is asking. The financial creditors shall submit proof only by electronic means; however, others may submit it by post, courier, or electronic means, or they may come in person to do so. Submission of false or misleading proof of claims shall attract penalties. And lastly, in the case of a stakeholder who does not submit its claims during the liquidation process, the claims submitted by the stakeholder during the CIRP under the Insolvency and Bankruptcy Code of India of Corporate Persons Regulations 2016 shall be deemed to be submitted under Section 38. So, understand this. Whenever a liquidator asks for a claim, it is always good for you to submit a fresh claim. With all the additions that you want. When you do not make any claim to the liquidator, the liquidator will only consider your claim when you make it under CIRP.

However, remember that CIRP is a distinct process, and liquidation is another. When the liquidator requests it, it is always better for you to submit a new one. If you do not submit whatever you have submitted earlier in terms of CIRP, that will be taken as your final claim, and he will proceed accordingly. So, after he did this, he had to attend an auction; the reserve price for the assets was 31 lakhs 24 thousand. Now, are you understanding what the scenario is? The claim amount is 8 crores and 31 lakhs. The liquidation estate comprises only two assets, which are two vehicles. The reserve price for these vehicles is 31,24,000, which is the minimum price; the person bidding in the auction can quote anything higher than that. Now understand this: when the reserve price is 31,24,000 and I am participating in an auction, will I quote more than that?

Obviously, I might quote more than that when I feel that the vehicles are certainly worth more. If not, I will just quote this and wait. Right. Sale of Assets and Mode of Sale. He said these assets will not be sold by private treaty. They will be sold by e-auction. What is an e-auction? In a typical auction, buyers come in person, participate, and bid prices while the auction is ongoing. In an e-auction, a platform is open, allowing all bidders to join from their own systems and bid on vehicles from their own locations. And online, when we see the bids being displayed, the liquidator might pick up the highest bid by the cut-off time and actually declare this bidder a successful bidder. So, we said the e-auction is a process. The last date for submission of EMD. I am sure that all of you understand that an earnest money deposit is essentially a commitment. If I have to pay 31,24,000 for two vehicles, am I financially capable or not? To demonstrate my financial capability, I will provide a 10% upfront deposit, which is commonly referred to as the earnest money deposit. If I lose the auction, I will get my money back. If I win the auction, this money is adjusted towards the same consideration.

That is how it works. The auction took place on 22nd April 2025, from 10 a.m. to 12 p.m. As of the recording date of the session, the auction has not yet been completed. The auction is scheduled for three days later. Perhaps you can always track what happened after this auction and understand how the liquidation would have occurred. This is an e-auction notice, and please review the particulars of the vehicle. This is a Tata LPT, a BS6 truck, 14-wheeler, with a reserve price of 22 lakhs 54 thousand. The EMD, if you wish to purchase this asset, should be 2 lakhs 25 thousand.

Now, the buyer will have to conduct their own test to determine whether the vehicle is worth this much or not, and then quote anything above this to purchase the vehicle, or at least this much. If you quote less than that, you will not be eligible to win this vehicle. Now, there is one more vehicle, a six-wheeler truck, whose reserve price is 8,70,000, and the EMD, again, is 10%, which is 87,000. Once you deposit this money, you can participate in the e-auction. If you have quoted a better price, there's a chance of you winning; if you don't quote a better price, then you cannot win the auction.

This is what the e-auction notice states. Based on the price bid by the auction participants, we can determine how much each participant should receive. The entire amount received from the sale through the auction will be allocated to the liquidation estate, from which disbursements will be made. We stated that the submission of eligibility documents should occur between 28th March and 10th April 2024, and you wish to increase your bid. I mean, that can happen. Incremental bid value for both lot 50,000 and inspection period when you want to come and see the vehicle, whether it is worth it or not, is between 10th April and 20th April 2025, and the last date for submission of EMD is 20th April 2025, and the date and time of the auction are also mentioned here clearly.

So, this is how auction notices are given, and based on the e-auction's completion, the assets can be sold. I have given you 50% of this case position; now it is your responsibility to track what happened after the auction. Did the company successfully sell these assets? Even if it sells its assets, please note that it will only receive, at best, approximately 32 lakhs against a claim of 8.3 crores. So what is your plan to settle these claimants? What ratio will the claimants get back their money? See, it is approximately 30 rupees each. If I claim 30 rupees, I might get only one rupee. That is how it is looking for now, right? So, anyway, let's see what happens from this, as to how much each payment can recover. Of course, you must remember that the claimant's money will only be paid after the resolution cost and liquidation cost have been set aside.

Therefore, in the end, we don't know what will remain for each of the claimants. That's yet to be seen. Anyway, this is another case study on how CIRP began, how liquidation resulted, and what happens after liquidation is for you to study.

Thank you.