

Insolvency and Bankruptcy Law in India

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Week 12

Lecture 58

Hi, welcome to the 58th session on the IBC liquidation process. We will examine another case study today in this session, which focuses on Ambey Vaishnav Steel Private Limited.

This is Case Study 3, which we are covering; we have already covered two previous case studies. I am sure you have an understanding of what happens during the CIRP, which will result in a liquidation. However, first, what happens before CIRP is that we are very clear that if a company borrows money and fails to repay it, it creates a situation of insolvency, compelling either the financial creditor or the operational creditor to file a case of CIRP at NCIT or NCLT. Upon being satisfied that it is a fit case, the NCLT approves that and appoints a resolution professional. This is what we have understood till now. Therefore, an insolvency scenario will result in the failure of CIRP, which will lead to liquidation. The liquidation process itself will take approximately one year, after which the claimants may eventually receive some compensation. In the other cases we have seen, the claims are substantial, whereas the liquidation estate is less than 10% of the claim amounts.

Let's examine what happened in the case of Ambey Vaishno States Pvt. Ltd. The total amount of claims by creditors is 124 crores, 44 lakhs, 92 thousand, 769. Again, this is a massive loan amount and a massive claim amount, right? However, the total amount of claims accepted is again 124,44,987.69, which means that not even a single rupee of the claim has been rejected by the liquidator or resolution professional at this stage. The total amount of the claim has been accepted. If this is the claim amount, and for a resolution process to be successful or a resolution plan to be viable, what amount of money is expected by the claimants? I am sure the claimants are expecting at least 100 crore rupees so that they can receive a decent amount of money for each sign, making it viable.

However, let's proceed and understand the entire case. Now you can see that we had the State Bank of India as a financial creditor, and then we had the State Tax Department, Government of Maharashtra, as an operational creditor. This question is very important. What about government dues? Government dues will be referred to as a financial creditor, an operational creditor, or other types of creditors. Remember again that the

government dues on what account will determine whether it is a financial creditor, operational creditor, or other creditor. In this case, when you owe tax to a government department, it becomes an operational creditor. Similarly, if I purchase electricity from the government and fail to pay the electricity bills, the government will become my operational creditor, and I will be their debtor. Then, we talk about the income tax department. Again, if I do not pay tax to the income tax department, that becomes an operational creditor to me, and I become their corporate debtor.

Now, the list of claims by OCFC secured creditors is all here for us to understand how it works. But the total amount of claims made is 124 crores 44 lakhs, as we remember. This is a brief summary of the claims. Let's see what the claims are from whom we have unpaid insolvency resolution process costs, which amount to about 20 lakh 78 thousand and 43 rupees. A substantial amount of money is spent or accrued towards liquidation costs. Then, the liquidation cost, also called resolution cost, in the first table, remember, is now approximately 3 lakhs 29,000. When I combine both, I would say that around 25 lakhs is the total amount of money that should be spent on the cost of CIRP and the cost of liquidation.

Now, I am sure you are thinking that, as I am talking simultaneously, you are wondering how much more viable your resolution plan should be, right? So, when I am talking about liquidation, we already know that the resolution plan has failed; only then has it come for liquidation. Now, liquidation costs are also incurred. When liquidation costs are also factored in, which total 25 lakhs altogether, and a claim of 124 crores has already been accepted, we will need approximately 125 crores to settle all creditors in full. Therefore, the liquidation plan is only profitable if it generates more than 125 crores; otherwise, it is not. What do you think? Generally, profitable liquidations in this kind of scenario are impossible to find, right? I will not say impossible at this stage, but it is impracticable. Most of them are always short of the claimed money. Therefore, the claimants will receive their money after we have received the liquidation and the CIRP costs.

Now, let's see who the other creditors are. You have secured a financial creditor. The last sum of money, about 100 crores, I guess, is owed to them. Then, unsecured financial creditors are not present; the rest of the category is also absent. You can see workmen and employees; all of them are nil. Then we come to the last one, which is operational creditors, which are government dues. Again, a very large amount, approximately 23 crores, is allocated to them. Now, 23 crores here, plus 100 crores here, is approximately 123 crores. Adding 23 lakhs for these two costs together will make the total approximately 125 crores. Now your liquidation plan should be able to achieve that.

As we mentioned earlier, this is what the liquidation plan should secure for all claimants: approximately 125 crores. Will the CIRP be attempted? Of course, as I said, it is definitely a prerequisite before the liquidation. Unless you have attempted a CIRP, you

won't know whether the company should go in for liquidation or not. In this case as well, a CIRP was attempted with a claim of 124 crore. But was the CIRP successful? It is not successful. Only then will it come to liquidation. It is very obvious. So why was it not successful? We can see that the resolution plan submitted by the applicant was not optimal in view of the CoC; hence, the CoC rejected the resolution plan, which resulted in the company's liquidation. This is exactly what I am saying: the expectation of COC will be that they will receive 100% of their money, but if they are not getting 100%, they will be satisfied with at least 60 to 70% of the money being recovered. When that is not happening, they might not be satisfied, or in some cases, they might have a different reason for not being happy with their evolution plan. So, who was the resolution professional? The resolution professional was Mr. Manoj Kumar Mishra, who acted as an IRP and managed the resolution process, which yielded little result; therefore, we can say that your CIRP has failed. The moment CIRP fails, the resolution professional will submit an application to the NCLT, stating that it is a suitable time to proceed with liquidation.

Consequently, the NCLT appointed a liquidator and ordered liquidation on September 5, 2024. This is again a very recent case as of the date of recording. The date of passing the liquidation order was 5th September 2024, when the liquidation order was passed. The name of the liquidator is Harish Kant Kaushik. Now, Mr. Harish Kant has a great responsibility on his shoulders to ensure that the liquidation plan is satisfactory to the claimants and the stakeholders' consultation committee. The liquidator appointed immediately made a public announcement on 28 January 2025; however, a different public announcement was made on a date that is not available here. The latest publication he made was an auction notice on January 28, 2025, which is very recent.

Let's see the public announcement made here; you can understand the name of the corporate debtor, Ambey Vaishno Steels Pvt Ltd. The date of incorporation was 2009, which means it survived for approximately 13-14 years before entering CIRP and ultimately being liquidated around 2022. Authority under which the corporate debtor is incorporated is obviously the Registrar of Companies, but in Goa, the Corporate Identification Number is mentioned here. The address of the registered office and principal office is also mentioned here. The date of closure of the CIRP and the beginning of liquidation are the same in this case. Sometimes, it might be different.

In Case Study Number 2, we have seen that in Bajrang's case, liquidation occurred six months after the closure of the CIRP. However, in the current case, liquidation begins on the same date as the CIRP closure. The name and registration number of the insolvency professional appointed as liquidator are also mentioned, along with the liquidator's address and email. He stays in Maharashtra. There are a lot of times these questions are asked. I'm not sure if you are aware of it or not. NCLT usually asks a question. The company is situated in Goa, its assets are located in Goa, and the resolution professional

or liquidator is based in Maharashtra. Can he actually execute the liquidation process smoothly? Most of the cases they considered suggest that proximity between the corporate debtor and the resolution professional is crucial. Although it may not be in the same city or town exactly, if the corporate debtor is within the liquidator's travel zone, then it is absolutely acceptable. Therefore, liquidators and resolution professionals have been appointed from different cities to a corporate debtor in a different city. And then we have an address, an email, and the last date for submission of claims was given as 5th October 2024, and this was made on 5th September 2024. You are aware that the liquidation order was passed on 5th September 2024, and within five days, this notice had to be published.

A public announcement stated that on 10th September, the notice was published, and the last date for submission of claims is 5th October. Ambey Vaishno Steels Pvt. Ltd. is hereby called upon to submit their claims with proof before 5th October. However, financial creditors can do so electronically; they should do so only electronically. The rest of them can do it in person, by electronic form, or in any other mode. If you don't submit your claim now, whatever you have submitted during the CIRP will be taken as your final claim, but it is always advised to submit your final claim before liquidation. Now, what is the liquidation estate? There are two options for selling the liquidation estate.

That's a different story. But let's first try to understand what the liquidation estate is. The liquidation estate has about 4 crores and 5 lakhs. What is the claim amount that you remember, or how much money do we actually need to pay to all the claimants, which is about 125 crores, from which you can recover the cost of CIRP liquidation and pay to all the claimants? But the total liquidation estate itself is about 4 crores and 5 lakhs. Then does it make sense to actually do a CIRP with that? That's why it came to liquidation. Now, when it comes to liquidation, what is the big difference? You're going to get the same money anyway, but the only thing you will ensure is that this company is liquidated and will not borrow any money from any other borrower once again, right? Hence, this will be dissolved totally. However, in a CIRP case, this company will continue to exist and may continue borrowing from other lenders repeatedly. The idea is that a corporate debtor whose financial situation is so dire that even a resolution is unsuccessful should be liquidated. That's why most of the COCs are not in favor of a negligible resolution plan. They are saying that if it's not viable, we are fine; let us just liquidate the company so that there is no further borrowing from anyone else.

However, the creditor will likely be unable to recover the entire sum of money or even a fraction of what they had lent. As you can see, the required amount is 125 crore, and the liquidation estate is only 4 crore 5 lakhs. Do you think we can distribute this amount happily or satisfactorily? No. For every 25 rupees I claim, I am getting 1 rupee. That's a bad scenario. So, however, there is no other option now. You have to settle for whatever comes because you have not made a resolution plan. You have not approved it. You

wanted a liquidation. And in the liquidation, this is what the liquidation estate is. If the liquidation successfully happens at this price, then you might, you know, get at least 4 crore 5 lakhs. If this is also not happening, then God help you save your money, right? That's why lending is a very risky business; one has to be extremely careful at the time of lending regarding the method of recovering that money. Does he have enough security covered for his loan amount? However, most of us cannot ensure all this at the time of lending, and hence we continue to lose money.

Let's understand. Now, when I say that this is the liquidation estate, which comprises land and a building valued at 4 crore 5 lakhs, the challenge is how to sell it. So, the liquidator has identified two options. Number one is that I can sell the whole company as a going concern. The buyer can purchase the company along with its assets and continue the business, or the buyer can completely disregard the company and only acquire the assets on a standalone basis, which is more attractive: buying the whole company as a going concern or just buying the assets. That's why these are very tricky scenarios: you know somebody who's a real estate giant who knows how to play the real estate market might only buy the land and building, but somebody who is very good at turning around insolvent companies and understands how to restructure corporate entities might be interested in buying the whole company as a going concern. This is simply a different perception, different thoughts, and different purposes that drive their actions. Now, since the liquidation estate is valued at 4 crore 5 lakhs, the stakeholders' consultation committee fixes the reserve price at 4 crore 5 lakhs and the EMD at 10% of that, which is 40 lakhs 50 thousand. The auction notice dated 28-01-2025 was subsequently published. The sale of assets is conducted through e-auction. The last day for submission of EMD was February 20, 2025, and the sale may occur on a different date.

You can see that the auction date and time are 24th February 2025; we can also track and see what happened in this auction. Because it's land and a building, which is a very specific nature of an asset, what they've done is provide details of the land and building, right? They stated that the value of the land and building is 4 crore 5 lakhs, the EMD is 40 lakhs 50 thousand, and the incremental bid amount is 5 lakhs if you wish to increase it. Bidding in both options shall be allowed upon submission of the EMD for each option. You can bid either on a standalone basis or on the sale of a going concern. We offer both options, as shown in Option A and Option B. However, please note that you will need to pay an EMD separately for each option.

Then you can bid under both options. Notes on the auction process state that the highest bidder under option A offers a bid value as mentioned in the point above. The H1 bidder under option K shall be declared the successful bidder. Why? Because while we are liquidating, we always prefer somebody who would buy the entire company as a going concern, so that we don't have to do a dissolution. However, if such an option is not available, we may consider a stand-alone sale of the land and building. That's why we

say that wherever there is an option A that meets the requirement, we choose option A on a going concern basis. However, if it is not met, we will then reconsider option B, and the highest bidder in option B will be selected when option A is unavailable. So, if you want to inspect the land and building, they said the last date is 18th February 2025. Before this, the key option will be available on 20th February, and the date and time will be 24th February. This is what was announced. And what happened after the announcement? You can always track that; maybe sooner or later, the total list of claims and realizable value of the liquidation estate will be announced, and then you can see whether the liquidation estate has been successfully distributed among the claimants or not.

You can now check it whenever possible. These case studies help us understand how the resolution process is funded, how the liquidation process is ongoing, and how it is ultimately completed. Please, from your end, try to find out more about the liquidation and disbursement of the amounts at the end. As you are aware, Section 53 of the IBC is the most important section. You need to understand the waterfall mechanism. When you come to explore, you will understand how these funds are distributed under Section 53 at the end of liquidation. Okay.

Thank you so much.