**Insolvency and Bankruptcy Law in India**

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**Week 12**

**Lecture 60**

Hi, welcome to the 60th and final session on IBC, where we will discuss the liquidation process.

This session, along with the previous one, will provide you with a clear understanding of how to successfully liquidate corporate debtors when the resolution plan fails. In the previous session, session number 59, we addressed a specific case of SR Foils and Papers, stating that due to a severe financial crisis, it had to undergo a CIRP. The CIRP failed for multiple reasons, and subsequently, a liquidation order was issued. While the liquidation was ongoing, the company's assets were suddenly taken back by RIICO after the cancellation of the lease. They claimed to have an order for eviction from a competent authority, but the order was not produced. Hence, the liquidator submitted a petition to the adjudicating authority, with two major prayers. The first priority was to set aside the cancellation of the lease order, or at least to stay the cancellation of the lease order, and the second priority was to actually cancel the eviction order issued by the competent court. When these two prayers were sought by the liquidator from the adjudicating authority, what did the adjudicating authority say, what happened afterward, and what other challenges did the liquidator face are what we will understand in this session.

So, while he prayed for two reliefs, what happened? Meanwhile, the term of the tenure of the president of the Hon'ble NCLT Principal Bench, New Delhi, came to an end, considering the urgency of the matter. The moment the term comes to an end, you understand as law students, lawyers, or various people that the case was understood by a particular judicial member of the, you know, bench; he had a fair understanding. Suddenly, as he retires and a new member on the bench comes and takes up the matter, it will be absolutely a fresh matter for him, and therefore it will take an enormous amount of time to reach any logical conclusion. Therefore, the liquidator in this case, looking at the retirement of the president, sought certain other relief. What was that? The liquidator filed a writ petition under Section 226 of the Constitution of India before the Honorable High Court on August 8, 2020, seeking the issuance of a writ of mandamus or any other appropriate writ. That writ was listed before the Hon'ble High Court of Delhi, wherein the Hon'ble High Court, whilst noting the fact that the term of the acting president of the Honorable NCLT has been extended by a period of one month with specific effect from

August 5, 2020, accordingly requested the Honorable NCLT to consider the request for an early hearing of the application filed by the liquidator.

Here, we see that when we filed a red petition seeking a writ of mandamus instead of actually issuing a writ to the NCLT members, the High Court merely requested that the term be extended for you by a period of one month. Please consider the liquidator's request and take up the matter if it is convenient for you. So, we are seeing a lot of things at the same time. We are also seeing inter-judiciary correspondence. You know, the high courts generally do not write writs like this to tribunals. In this case, they made only a request instead of issuing a writ. In view of the aforesaid order passed by the Honorable High Court, an application was filed before the NCLT on August 1, 2020. Again, the cancellation order passed by RIICO was scheduled for a listed hearing on August 17, 2020. On the date of the hearing held on August 17, 2020, no one appeared on behalf of RIICO. See, the liquidator made a request.

The Honorable NCLT has scheduled a date for the hearing of this matter. On the date specified by the NCLT, no one appeared on behalf of RIICO. And the Honorable AA passed an order, directing Riico not to take possession of the properties of the CD, based on the cancellation order dated June 11. That means you can understand what is happening here. The liquidator prayed for a stay on the cancellation order. The NCLT posted the matter. None appeared from Rico to oppose the matter, and therefore, the NCLT passed an order directing RIICO not to act on such order and not to cancel the lease granted to the SR coils and paper. What happened next? As you can see, there is almost a logical resolution to the first major challenge faced by the liquidator: the assets and their leases were cancelled, and he had a major threat to face, namely that the assets would revert to RIICO. Now he has secured one order from the NCLT, which has given him assurance that the assets will not be returned to RIICO; therefore, the NCLT has ordered RIICO not to take possession of these assets. Now, while the dispute is still pending, it is essential to understand this case. This pertains to Regulation 37A of the IBBI Regulations regarding liquidation.

We have covered these regulations in the previous sessions, and we understand what Regulation 37A is. To tell you what Regulation 37A is, it states that wherever the assets cannot be immediately disposed of, they are not readily realizable. Perhaps the liquidator could consider assigning these assets, pending the outcome of any other judicial proceedings. In an assignment, the rights are transferred. What kind of rights are these? These rights are not ownership rights nor lease rights. These rights include the right to make a legal representation and fight the battle, which are transferred by way of an assignment. The assignee will then fight the matter on behalf of the liquidator in the future. If the matters are settled in favor of the assignee, then they will obtain possession of the property or ownership, whatever is prayed for.

So, this is Regulation 37A, which was newly inserted into the liquidation process regulations. Why was it inserted? We need to understand the logical background. Previously, until Regulation 37A was inserted into the liquidation process regulations, there were only two options: you could sell as a going concern, sell an asset on a standalone basis, or disown the asset. However, there was no provision for assigning the asset earlier, and this seemed to be the need of the hour. So, what the regulator had done was to amend the regulations and add a new regulation that allowed the assignment of the assets that would form part of the liquidation estate. Fine.

So, this is the background. Let's see what happened and how the liquidator capitalized on this. Why should he capitalize? The logical reason is that the lease was canceled. Prospective buyers of these properties will be hesitant to purchase. He will always feel that if I invest a lot of money in these assets now, in the future, if the cancellation order is upheld by the higher courts, I will have no recourse, and after investing a significant amount, the properties will revert to the recoup. This is the challenge that the liquidator is facing. Therefore, when he looks at the assignment, it looks like a boon to him. I cannot sell the asset because the buyer is unwilling to purchase it. However, at least I can assign the assets, which will be subject to the outcome of future court decisions. And perhaps this will be attractive to buyers, encouraging them to purchase the asset or at least obtain the assignment in their favor.

So, let's see what happened. It was discussed that since the underlying assets are not readily realizable and the initiation of the sale process under regulations 32-33 of the liquidation regulations is also subject to the outcome of the application filed before the Hon'ble NCLT, it was decided to explore the opportunity to dispose of this asset by way of publication of a sale notice under regulation 37A of the liquidation regulations, pertaining to the assignment of not readily realizable assets to solicit offers from the investors, as I said. However, there was no clear legal position on whether these properties could be assigned or not. Understanding the new regulation that allows for assignment, the liquidator wanted to be extremely cautious in avoiding a legal trap; therefore, he followed the best practices advised by the IBBI. So, what were the best practices that he had to follow? He had to always keep the following principles in mind.

Number one, act in the best interest of the liquidation interest; whatever assignment you're doing, if you think it is in the best interest of the liquidation, yes, please proceed. You must seek maximum consideration for the assignment, so the whole objective of the IBC process is to maximize the value of the assets; therefore, you should pursue that. You must always act in consultation with the stakeholders' consultation committee and take their advice. Then, assign through an auction, or if an auction is not possible, at least do the assignment on an arm 's-length basis without any bias or personal conflict of interest in the matter. Then, the last two assignments shall be subject to Section 29(a) of

the Code, and lastly, they shall be liquidated to be reasonable, fair, and acted upon in good faith.

These are the six principles that the liquidator should follow, according to the IBBI; therefore, he followed these regulations and attempted to release an auction notice. What is he auctioning? He is auctioning those two plots that were earlier threatened to be taken over by the RIICO. Now that he has NCLT support, he is trying to sell these assets subject to assignment by way of a fresh auction notice. Although four parties have expressed interest in the property after receiving this notice, they have not deposited the EMD amount, and hence their attempts have failed. So, firstly, we went into CIRP.

CIRP failed. We went into liquidation. In liquidation, we faced multiple challenges. Some challenges were resolved, and then, fortunately, a new section, Regulation 37A, allowed the liquidator to assign; therefore, he published the auction notice under 37A, which also failed. Desperately, he made a final attempt so you can understand the fate of the liquidator and the fate of the corporate debtor. After the final attempt was made, the liquidator received a final offer from a prospective buyer for a price of 14 crore. Now, as I mentioned earlier, at the time of CIRP, the price offered by the resolution applicant was 32 crores, and the financial creditors of the COC were not satisfied; therefore, they considered liquidation. Now, under the liquidation, a desperate attempt was made to auction under Section 37A, and you now have an offer of 14 crore.

So now think of wisdom. I am not trying to say whether this was wise or not, but at least a decision to go into liquidation was made by the CoC, maybe in anticipation of better payment or maybe for technical reasons. But in the liquidation, the offer they received is less than 50% of the offer they got in the resolution process. This is purely an observation I made. Therefore, you can always understand cases from different perspectives, such as this one. Now, what happened after that was while a 14crore offer was made, they planned to assign the assets to the bidder in the auction. While this was happening, Rico filed an application with the adjudicating authority against the liquidator, stating that he had already cancelled the lease against which these guys had applied in a court of law and that the matter was already sub judice. While the matter is sub judice in a court of law, the assets that are part of the subject matter are now being sold by the liquidator; therefore, they immediately sought a stay on the sale process.

Now look at the entire scenario. The liquidator is attempting to resolve the matter, acting in the best interest of the corporate debtor and also serving the SCC. Third parties outside are posing more challenges to him by trying to litigate the matter. Meanwhile, as this is being done, the liquidators' team is attempting to mitigate the matter by explaining the scenario to the judges. Now you can see. However, the liquidators' council informed the adjudicating authority that the liquidator is only assigning the rights to the property, not actually selling them. Now, although the adjudicating authority did not restrain the

liquidator from assigning the property, it decided to keep the process on hold as a matter of fair practice, as a dispute had already been created; therefore, it could not proceed with the assignment. He thought that, as a liquidator, it would be better for me to refrain from the assignment of this particular asset. Observe how cautiously the liquidator is proceeding with the entire matter. He is taking legal advice. He is sticking to the principles. He is sticking to the principles of natural justice. He is also looking at what is expected of him as a liquidator and how he can maximize the value of the assets. While he is doing that, the external forces are throwing more challenges at him, and he is getting trapped again and again.

Now, let's see how we will overcome this scenario. As per the advice of SCC, an application was made to the adjudicating authority. It provided clarification that the nature of the transaction is only an assignment and not a sale, further clarifying that the transaction is in the best interest of the CD and SCC. Now, see what we are doing is that the earlier adjudicating authority neither expressly allowed the assignment nor expressly rejected it. It put the liquidator in a difficult position, and then the liquidator made the ethical decision not to proceed with the assignment. When he communicated this to the SCC, the SCC said, "Yes, we understand your fix, but let's do one thing: let's approach the NCLT and take specific permission to assign the properties to an auction bidder." Now see what happened upon being convinced by the arguments of the council of the liquidator; the adjudicating authority passed an order to immediately proceed with a fresh public announcement for the expression of interest for assignments of the rights in the properties.

Now, the liquidator is free to actually go with the public announcement for the auction. Now he started a fresh trading process. It was decided that this should be done online, and therefore, an online bidding process was conducted. They started a fresh bidding process and fixed the reserve price at 14.5 crore. Remember, the offer made in the bidding process was 14 crore; they increased the reserve price to 14.5 crores this time and initiated a fresh bidding process, which was supposed to be an online bidding process, as per the instructions of the NCLT. The liquidator received three pieces of good news, and the highest bid was for 14.5 crores; no one crossed the reserve price.

Now, when nobody crosses the reserve price and all three bids are nearing the same price, it is a tie. So, we are almost having a Super Bowl scenario in this bidding process. So how will you break the tie between the bidders? They thought of multiple options. How should they break the tie, and how should they actually get a revised price? As all the bids were nearly equal, there was no clear winner; hence, an inter-say bid for the bidders was to be conducted. An application was made to AA, and the same was approved on 7th October 2022. So, what happened is that now when I start a fresh bid, I will not allow everyone else to participate; only the three bidders who have given the highest bids so far will participate in this bid, and one of them will emerge as the winner, who will actually

give the highest bid. Therefore, all of them will have to come back with a revised bid to secure the win. Eventually, an offer of 21.21 crores was received, and it was approved by SCC and allowed by AA. Now we say that the lapse of time can act like a poison. However, sometimes the passage of time can actually work in the best interest of the CD.

Additionally, the earlier offer given by the bidder under liquidation was 14 crore, while the reserve price was 14.5 crore. All of them submit a bid of approximately 14.5 crores; however, in a revised inter-se bidding process, the highest bid is 21.21 crores, which is almost 50% more than the current bid, representing great news for SCC.

Hence, SCC approved, and it was also allowed by the adjudicating authority. Everything seems picture-perfect right now, and we believe this will be the conclusion of the entire liquidation process. However, there are some additional things that have happened since then. What happened then? While this was going on, the liquidator discovered the company had some registered trademarks which he thought could be sold for a value. Hence, he published a notice for the sale of trademarks by e-auction.

The trademarks were successfully sold in the e-auction. However, the bidder failed to deposit the balance of the sale consideration. He only deposited 25%, and the balance did not come. The 25% advance was forfeited, and the sale was canceled. Eventually, they were sold in the fourth e-auction attempt, specifically, only the trademarks. They were sold, but that is not the end of the story. After the trademarks were sold, it came to the liquidator's attention that numerous similar trademarks had been registered by third parties. Now, when I am discussing trademarks, you need to understand that once a trademark of a certain nature in a specific class is registered, a similar trademark cannot be issued. However, a similar trademark can be registered by a trademark authority, provided the original trademark owner gives a no-objection certificate.

Now, when the liquidator investigated, he found that the CD himself had given a NOC to the registrar to register various other trademarks that are similar in nature. Now you see what we are doing. On one side, the liquidator is struggling to bring some meaningful conclusion to the story, while everybody is trying to throw challenges, and the corporate debtor has primarily created a major challenge in the process of selling the trademarks. So, he has created similar trademarks in favor of third parties; now the buyer of the trademark will come back and say, "Boss, if there are multiple trademarks of the same nature, why am I paying you money? I am not interested in paying you money, so the trademarks cannot be sold now." This is a new problem faced by the liquidator in this scenario. Then what happened? The liquidator took various initiatives to cancel the trademarks that were registered by the registrars. So, he went back to the registrar and said, "Boss, see, while the liquidation is on, I am the boss of the scenario.

If there is any NOC to be given, I should give the NOC. The corporate debtor has no right to give the NOC." Although you obtained the NOC and registered the trademarks, you now need to cancel all these trademarks because I have not provided the NOC. Then he said there are some trademarks that are still pending registration. I have a strong objection; please do not register these trademarks. Then, the registrar acted on the liquidator's request and cancelled all similar trademarks, and also noted the liquidator's objection to similar trademarks pending registration. Now, this action by the liquidator, taken in a timely manner, I would say, paved the way for the resolution of the trademark dispute and the successful bidder's purchase of the asset at the fourth auction. However, the main bid for the lands is still pending, which was for 21.21 crores; we will see what happens eventually. Meanwhile, as this was happening, the liquidator discovered that CD had filed certain charge-related documents with the ROC and that they had some assets that had already been sold. While I am appointed as a liquidator, I am going through the process of liquidation.

However, someone has sold a property belonging to the company without informing the liquidator or even notifying them a day in advance, which is in the nature of an avoidance transaction. So, the liquidator digs deep and asks, "Where was this asset? Why was there a mortgage or hypothecation created on this asset?" When he dug deeper into the scenario, he was informed that a financial institution had lent a sum of 10 crores to a lender and had taken charge of specific properties of the company. The lending was 10 crores, and the property was charged to the lender. Then, the corporate debtor offered repayment, and the lender accepted 3.5 crores as repayment, releasing the property against a loan worth 10 crores. These properties were eventually sold by the corporate debtor. So now the point is, can I inspect this transaction? Will this be an avoidance transaction if he has to prove that it's an avoidance? There are four principles that you know: PUFE. Now, when he dug deep into this transaction, he found that it was an undervalued transaction. The assets were actually worth 7 crore, but the company sold them for 3.5 crore. Therefore, he thought this was an undervalued transaction. He approached the adjudicatory authority and asked the liquidator to seek an expert opinion because he is not an authority to decide the value of the asset. That should be decided by a third party, and the third party's decision should be binding on everybody. That's what the adjudicatory authority said.

Now, what did experts say? Experts said that, yes, the value of the property sold is worth 7 crore, but the sale consideration is only 3.5 crore; hence, it is a clearly undervalued transaction. Therefore, the liquidator now has the right to claim the balance of ₹ 3.5 crores from the property buyer. This is another issue that the liquidator has resolved during the liquidation process. Then there is another scenario, another challenge that is faced. The liquidator has determined that the trademarks of the companies were already assigned to third parties, and these third parties are currently using the trademarks.

When third parties use the trademarks without paying any royalties to the company, it results in a significant financial loss. Therefore, what he did was send a notice to these users saying that, you know, because these trademarks belong to the corporate debtor for which I am the liquidator, you shall urgently pay a 2% royalty on the value of the trademarks to me for the period that you have used these trademarks. The user did not pay, nor did he respond. Hence, an application was moved to the Adjudicating Authority for the grant of royalty. The Adjudicating Authority ordered the user to pay an annual royalty of Rs. 56 lakhs for the continuous use of the trademark from 2019. However, the user did not pay any amount, despite an adjudicator's order to pay 56 lakhs per annum. Now, therefore, a case of contempt has been filed against the user, which is still pending. We will see what the outcome of that case will be eventually. But, see, this is almost the fifth or sixth challenge posed against the liquidator.

This is on one side. Now there is one more challenge. What is that challenge? The challenge was that the liquidator had discovered that the company had made fixed deposits with the State Bank of India (SBI), and the SBI was required to return these deposits. So, he went and asked the State Bank of India boss, "Do you have some fixed deposits with you? These fixed deposits are actually part of the liquidation estate; therefore, I request you to release them." Now the State Bank of India very clearly told them, "Boss, these fixed deposits are under lien because I have issued bank guarantees to the customs department against this fixed deposit. Therefore, unless the customs department gives me the original bank guarantee documents, I cannot release your fixed deposits." Now, he wrote multiple times to the customs department to request the return of the originals.

The customs department did not heed his request, while SBI kept telling him that unless he got the original documents, he could not resolve the matter. Hence, he made a fresh application to the adjudicating authority and sought an order directing cooperation from both SBI and the customs department. Now see what the adjudicatory authority did. The adjudicatory authority said, "I have no idea whether, you know, the bank guarantee is invoked or if it is currently pending; therefore, first I need to have clarity from both the SBI and the customs department that the bank guarantees are not yet invoked and are currently valid." That's when I'll issue an appropriate order; therefore, it requests the liquidator to obtain confirmation from both parties.

In spite of such an order from the adjudicating authority to cooperate with the liquidator and confirm the matter, there is still no response from the Customs Department. However, luckily for the liquidator, SBI has come forward to remit the amount, and we hope that the matter will be resolved soon. So, what are the learnings from this case, and what did you find out from this lengthy case study, which spanned sessions 59 and 60? We have seen that, despite all the challenges, the liquidator ultimately succeeded in obtaining a proposal of 21 crores for the company's assets. He had sold the trademark

separately. He could successfully force the users of the trademark to pay some royalties. He had pressed a case against SBI for a refund of the deposits and had taken various steps during the liquidation process to maximize the value of the SCC. He had also taken multiple actions in the best interest of the CD rights. While this is all fact, what lessons can we learn from this case? As I said, value maximization comes first, followed by fairness and transparency.

He consulted SCC every time. He stuck to the principles. He acted fairly. He adhered to the principles of natural justice and the ethical guidelines. He efficiently handled complex situations and always sought legal help. He returned to SCC. He went back to the adjudicatory authority.

He took proper measures and relief at the appropriate time. We then understand the importance and methods of tracking the assets of the cooperator, including intangible assets such as trademarks, and the maximization of their value. This is what we learned from this case study. And finally, you must ask me what the great value added by the liquidator to the liquidation estate and to the SCC is, how this whole case concluded, and who got how much money. This explains who received how much money. Due to the assignment of the two properties leased out by RIICO, he received 21.21 lakhs, out of which the liquidation cost was set aside, and the balance was actually distributed. Then, from avoidance transactions, he recovered approximately 2 crores and 85 lakhs. Against this, he spent 9,35,000 in liquidation costs, which were subsequently recovered, and the balance was distributed.

Now you see 9, almost 20 crores from assignment, 2.75 crores from avoidance transactions, and the brand's royalty is estimated at 2 crores 72 lakhs. So, he got some money from there. Then, from the sale of other assets, including interest thereon, he received 66 lakhs, which was then distributed again. The total realization is here. The net amount of distribution is as follows: forfeiture of EMDs against successful bidders who paid the advance but failed to pay the balance. He received 54 lakhs, and all other realizations totaled 68 lakhs. And now, finally, he has secured 27.34 crores for the SCC, while the bid in the liquidation was 21.21 crores. All these factors combined, the SCC could achieve a total realization of 27.34 crores, and the liquidation was eventually successfully completed. This is one of the tremendous success stories, and it has taught many lessons to insolvency professionals, whether as resolution professionals or liquidators, about how to stay calm, apply their minds, and find ways to maximize value for the SCC.

So, friends, this brings us to the end of this 60-hour marathon on IBC, which consisted of 60 sessions, and this was the final session.

Thank you so much for your patience, everyone. Have a great time.