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# SECTION 42 OF THE IBC AND THE DOCTRINE OF CONSTRUCTIVE NOTICE: EXAMINING THE BINDING NATURE OF PUBLIC LIQUIDATION RECORDS ON CREDITORS

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Manglam Kumar Singh, School of Legal Studies, CMR University  
Ashlesha Pradhan, School of Legal Studies, CMR University

## ABSTRACT

The liquidators in insolvency proceedings have the power to approve and disapprove the claims of the stakeholders. In a state where the law is supreme, checks and balances are an essential tool to review the decisions of any authority. This paper is going to explore the doctrine of constructive notice and Section 42 of the IBC, 2016. Section 42 of the IBC deals with the right of creditors to appeal to the Adjudicating Authority. Furthermore, the paper is going to analyse whether the notice published under Regulations 13 and 31 of the IBBI(Liquidation Process)Regulations are valid notice to all the stakeholders. Through doctrinal and case law analysis, the research reveals that courts generally uphold public disclosures as sufficient notice, thereby triggering limitation periods. However, the paper argues that while constructive notice ensures procedural efficiency, it may disadvantage creditors who lack actual or reasonable access to such publications, particularly small or rural stakeholders.

The precedents regarding constructive notices support the publication procedure only where due process is followed; however, it should not be ignored by the deciding authority when the creditor has a reasonable explanation of the absence of actual notice or ineffective notice. The paper will further discuss the legislative and procedural reforms that could ensure a fair balance between efficiency and justice. It further supports the concept of publication of notices in local languages and granting the deciding authorities the power to condone the delays after proper explanation by the parties. In summary, the paper highlights the critical need to align legal assumptions with the practical challenges faced by the stakeholders during the process of liquidation.

**Keywords:** Liquidator, Constructive notice, adjudicating authority, stakeholders' right.

## **Introduction**

The Insolvency and Bankruptcy Code (IBC), 2016 represents a pivotal move in the Indian bankruptcy and insolvency industry, replacing the old, fragmented, cumbersome law of Insolvency and passing a single legislation. This legislation was enacted by the GOI to curb the rising number of <sup>1</sup>unresolved matters regarding the insolvency, non-performing assets, and ineffective debt recovery mechanisms. The IBC, 2016, smoothens the process with time-bound restrictions over the parties regarding filing and appeal. Additionally, the rule not only adjudicates the conflict between the creditor and borrowers, however it also deals with companies, partnerships, and individuals. The main crux behind the enactment of this provision is to get the maximum value of the asset owned by the insolvent entities, supporting entrepreneurship, having a balance of interest among the stakeholders considering fairness, and creating a healthy environment for the credit system by ensuring unbiased financial rules for both sides, i.e., Borrowers and lenders. Furthermore, the regulation addresses the strife not only between the Creditors and borrowers, however it also resolves disputes among the companies, Partnerships firms and individuals. Its broader purpose is to maximize the value of assets to insolvent entities, Encouraging entrepreneurship and unbiased rights for both the parties. Rights of stakeholders among themselves are unbiased and lastly advocates for the healthier market for the creditors by providing equal financial rights and regulation for both borrowers and creditors. The main characteristic of the IBC is its straight forward procedure for the liquidation of the companies that are going for resolution. When a corporate debtor proceeds to liquidation, the appointed liquidator is charged with various works such as aggregating, verifying, and adjudicating the claims of creditors against the company's residual assets. This is where section 42 comes into picture, sec 42 grants any creditors whose claims has been admitted, rejected, or otherwise decided upon by the liquidators <sup>2</sup>the right to appeal before the adjudicating authority, which is National company law tribunal(NCLT) within 14 days from the date of receipt of the such decision regarding acceptance or rejection of the claim. The objective of this section is to practice fairness in the procedure by ensuring that creditors have recourse against potentially erroneous or biased determinations by the liquidators. It acts as an essential check, providing judicial oversight in the proper distribution of the assets of the borrower and facilitating the liquidation process. The operation of Section 42 is practically linked with the IBBI(Liquidation process) REGULATION, which states that Public disclosure of admitted and rejected claims is a

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<sup>1</sup> India Code – IBC 2016 official bare act and objectives.

<sup>2</sup> IBC Bare Act and structure, including Section 42.

mandatory procedure. The underlying question here is whether the mere publication of this information is sufficient to inform and bind creditors, including those who may not have received actual communication regarding the status of their claims.

This is where the concept of<sup>3</sup> constructive notice comes into play. Under the doctrine, the parties are presumed by the law to have knowledge of the information that is publicly available, even if they have not personally received or accessed it. This concept originally comes from constructive company law, where the statutory filings are deemed constructive notice to all concerned. This doctrine under IBC faces clear evaluation within the framework. The central issue is whether publication alone meets the demands of fairness and legal certainty in insolvency proceedings, or whether actual, individualised notice to creditors is required to trigger the rights under section 42 of the code.

**Research Objective:**

To examine whether constructive notice through public records is legally sufficient to bind creditors who fail to file an appeal under Section 42 of the IBC.

**Research Questions**

1. Does publication of the list of stakeholders and claims under Regulations 13 and 31 of the Liquidation Regulations amount to valid constructive notice?
2. Can a creditor's failure to appeal within the 14-day limitation under Section 42 be excused if no actual notice was received?
3. What is the judicial approach to constructive notice in the context of IBC liquidation proceedings?

**Legal Framework****A. Section 42 of the Insolvency and Bankruptcy Code (IBC), 2016**

<sup>4</sup>Right of Appeal: Section 42 of the IBC, 2016, provides that any creditor, whose claim against the corporate debtor has been either accepted or rejected by the liquidator, has the statutory right to appeal such a decision to the Adjudicating Authority, which is the National Company Law

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<sup>3</sup> Kotla Venkataswamy v. Chinta Ramamurthy, AIR 1934 Mad 579

<sup>4</sup> Sec 42, IBC, 2016

Tribunal (NCLT). The appeal must be filed within fourteen days of the creditor receiving the liquidator's decision

Role of the Adjudicating Authority (NCLT): The NCLT is empowered to entertain and decide appeals under Section 42. It acts as the supervisory judicial body, reviewing the correctness, propriety, and legality of the liquidator's determinations.<sup>5</sup> The tribunal ensures that the liquidator's decisions conform to the law and that the rights of creditors are not adversely affected by any error or procedural unfairness in the admission or rejection of claims

## **B. IBBI (Liquidation Process) Regulations, 2016**

### Regulation 13: Consolidation of Claims and Preparation of List of Stakeholders

The liquidator is required to receive, verify, and consolidate all creditor claims. After verification, the liquidator must prepare a definitive "List of Stakeholders," classifying admitted and rejected claims by type and amount. This process creates transparency and ensures all stakeholders have an accurate record of the claims admitted to the liquidation estate.

### Regulation 31: Preparation of Asset Memorandum and Public Disclosures

The liquidator must also prepare an "Asset Memorandum," detailing the assets of the corporate debtor, including their value, and disclose this information for public inspection in a prescribed manner.

Importantly, the regulations direct the liquidator to make public disclosures, including publication of the stakeholder list and asset memorandum, typically on the IBBI website or other designated platforms. This ensures stakeholders can access and verify the disposition of claims and assets, supporting both transparency and creditor oversight.

Duty to Publish: The requirement to publish these details on the IBBI website (or as otherwise specified) is a cornerstone of the IBBI regulations, aimed at enabling all stakeholders—regardless of whether they have received direct communication—to have access to the current status of the liquidation process.

## **Content**

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<sup>5</sup>Company Appeal (AT) (Insolvency) No. 102 of 2020,

Regulation 13 of the IBBI (Liquidation process) regulation, 2016 states that the liquidator is duty bound to cross check and verify all the claims received by the stakeholders under section 38 to 40 of the IBC Act, 2016 and its not discretionary procedure however its a mandatory procedure from the side the Liquidator. <sup>6</sup>After verification, the liquidator is supposed to prepare a list of stakeholders, declaring the names of creditors, the amount they have claimed and the amount the liquidator admitted. After fulfilling Regulation 13, the liquidator must follow the provisions of Regulation 31, which outlines the procedure for preparing the asset memorandum to be filed with the Insolvency and Bankruptcy Board of India (IBBI) and the Adjudicating Authority. This procedure makes sure that the financial interest of the corporate debtors is correctly admitted and comes to knowledge of the other creditors.

As per <sup>7</sup>Regulation 13(2), the list of stakeholders which the liquidator makes regarding the amount admitted should be publicly available, the disclosure could be done through the website of the IBBI and the website of the corporate debtor. Here the disclosure made by the liquidators reflects the doctrine of constructive notice by providing information about the claims of the stakeholders over the company. The concept of Constructive Notice means that once information is disseminated via authorized and legally mandated channels, all the parties concerned are considered to have the knowledge of such information even when there is no actual notice to them. The doctrine is very important for upholding the procedural integrity, fairness and time bound participation in the insolvency resolution process.

The principle of Constructive notice operates on the principle of presumption of knowledge, assuring that stakeholders cannot alter claims that they did not receive any notice where the publication has been duly published as per the procedure mentioned in the act. The judiciary through various judgments affirmed the principle of constructive notice stating that completion of procedure requirements regarding publication is sufficient for constructive notice.

A great example of the aforementioned contention is <sup>8</sup>Commissioner of Income Tax (TDS-1), Mumbai v. Sundaresh Bhat (RP of JBF Petrochemicals Ltd.), in this case the NCLAT held that the list of creditors regarding acceptance and rejection of claims published on the IBBI portal,

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<sup>6</sup> S. Som, S. Dasgupta & S. Tiwari, “‘Quasi-judicial’ Role of Liquidators in Treating Disputed Claims Under the IBC,” *Dispute Resolution* (Cyril Amarchand Mangaldas Blog) (Jan. 18, 2024). <sup>7</sup> *Supra*

<sup>8</sup> Company Appeal (AT)(Ins.) No. 575 of 2023

constitutes valid constructive notice to all the creditors and stakeholders. Furthermore , the tribunal opined that if the creditors after publication of the list fail to apply under Sec 42 regarding the rejection or acceptance after the prescribed period then they lose the right to appeal. This reinforces that public disclosure via the designated regulatory mechanisms is deemed sufficient notice under the Code.

<sup>9</sup>Jindal Steel and Power Ltd. v. Arun Kumar Jagatramka & Ors. The tribunal held that publishing the list of creditors and claims on the website constitutes constructive notice to all stakeholders. The information once published through the procedure established by the code, the stakeholders are presumed to have knowledge of the list and failure to file appeal before the authority during the prescribed time could amount to loss of the right to appeal later.

Indeed, the shared reading of Regulation 13 and 31 of the IBBI (Liquidation Process) Regulation confirms that constructive notice via proper procedure as per the act constitutes a valid constructive notice to the stakeholders. This mechanism as per the statute is decisioned to ensure transparency, public awareness and any party fails to appeal under Sec 42 within the prescribed period that is 14 days, that party is precluded from raising any objection later. By incorporating this doctrine regarding presumed knowledge, the IBC upholds the value of procedural unbiasedness, efficiency, speedy disposal and finality which are the crux of its legislative objective.

As we know that one of the objectives of IBC, 2016 is speedy disposal of cases and how limitation acts come into play. The limitation period as per the limitation act starts from the time the aggrieved party gets the air of the cause of action or more formally from the time it comes to the knowledge of the party . In the context of IBC, 2016 in liquidation proceedings, the publication of a list containing approval/rejection of claims and the list of the stakeholders as per Regulation 13 and 31 of the IBBI regulation triggers the limitation period for filing the appeal under Section 42 of the act. However, it is vital to comprehend that the doctrine of constructive notice is not an absolute presumption. It is a contestable doctrine, meaning that it can be questioned if the creditor furnishes reliable evidence that they neither received actual notice nor could reasonably have known about the publication. For instance, if a stakeholder/creditor proves that the publication was defective, inadequately circulated, or otherwise inaccessible or if the

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<sup>9</sup> Jindal Steel and Power Ltd. v. Arun Kumar Jagatramka & Ors (2021) 7 SCC 474

liquidator failed to notify them while having knowledge of their claim then court may exercise discretion to condone the delay in filing the appeal.

In the case of <sup>10</sup>Sesh Nath Singh v. Baidyabati Sheoraphuli Cooperative Bank Ltd the apex court held that section 14 of the limitation act applies to the IBC, 2016 proceedings, thereby allowing courts to condone delay in case where the aggrieved party has acted in good faith and without negligence.

Furthermore, in the case of Swiss Ribbons Pvt. Ltd. v. Union of India, it held that the rules and regulation regarding IBC should not be applied in mechanically rigid manner, however in the manner that supports substantive justice. This approach was quoted by the Supreme court to ensure that the objectives of unbiasedness, equitable stakeholder participation and inclusiveness of both the parties should not be faded away by the procedural technicalities.

Moreover, in the case of <sup>11</sup>Uttar Pradesh State Power Sector Employees Trust v. Dewan Housing Finance Corporation Limited Through its Administrator, the NCLAT put reliance on the importance of procedural compliance, especially regarding notice publication under the IBC. Though this judgement does not explicitly quote the term “constructive notice”, it does strengthen the importance of the procedural step such as publication of the list of stakeholders. These procedures are vital in ensuring that all parties are duly informed. The integrity of the process and the effect of the enforceability of the outcomes are cornerstone of the legislation and failure to comply with the same could defeat the purpose of the whole enactment.

Section 42 of the IBC, 2016 should be interpreted in the light of fairness and reasonableness. It provides a 14-day window to the aggrieved party to file an appeal against the liquidator’s decision. The IBC code does not clarify through its sections about the exact period since the day of limitation would start. It could be the date of the decision or from the date of actual knowledge; however, the judicial interpretation regarding this supports the just approach, acknowledging the procedural lapses may prevent timely knowledge. It should also be noted that courts at various instances condoned the delay regarding appeals and opines that if creditors while acting diligently, with bona fide intent and without wilful neglect, then the delay could be condoned.

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<sup>10</sup> Sesh Nath Singh v. Baidyabati Sheoraphuli Cooperative Bank Ltd AIR 2021 SC2637

<sup>11</sup> Company Appeal (AT) (Insolvency) No.759 of 2021

Punjab National Bank v. Kiran Shah<sup>12</sup>, the NCLAT reiterated that publication under Regulation 13 of the IBBI Regulation constitutes that when the procedural requirements are fulfilled then only the notice is construed as constructive notice and it includes the accessibility of the notice to the stakeholders. The tribunal through this decision made it clear that mere publication is not sufficient for considering that notice is duly served if the mean through which the notice is served is inaccessible or if the regulatory compliance are not strictly followed. This reinforces the judicial understanding that constructive notice is conditional upon compliance with the procedural safeguards.

Lastly, the jurisprudence behind constructive notice under the IBC showcases a nuanced balance. The courts incorporated the principle to uphold transparency and expedite the liquidation process; they simultaneously accept the possibility of procedural mistakes. Hence, constructive notice under regulations 13 and 31 is treated as a presumption that can be challenged, depending on the procedural lapses in a manner that is accessible to all, and full compliance leads to completion of the procedure.

### **Challenges and Concerns**

- Stakeholder Illiteracy and Digital Divide

The most important challenge in relying solely on constructive notice via digital mode is that the publication (such as on the IBBI or liquidator's website) creates a digital divide among the stakeholders who have low financial literacy, especially those who are from rural areas. Many of the stakeholders may not possess the resource, awareness, and digital literacy required to check the official website every now and then for updates. This limitation puts a serious question on the adequacy of such digital publication as a reliable procedural mandate and raises critical concerns regarding access to justice, especially for those who are from marginalized or resource-constrained.

- Potential Unfairness in Binding Creditors Without Actual Service

Binding creditors to a 14-day limitation period under Section 42 of the IBC, without

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<sup>12</sup> Company Appeal (AT) (Insolvency) No. 102 of 2020,

proof of actual service or intimation, may lead to unintended disenfranchisement. Courts have acknowledged that constructive notice cannot substitute for actual or reasonable communication where the affected party is unaware due to no fault of their own. The principle of natural justice, which mandates fair opportunity to be heard, may be compromised when publication is presumed sufficient, regardless of whether the creditor was actually informed.

- **Procedural Inequality: Prejudice to Small Creditors**

Big financial institutions and institutional creditors are well-versed with the legal development and monitor liquidation proceedings through a specific team tasked to keep a check on the liquidation procedure. In contrast, the small operational creditors, MSMEs and individuals claimant often face problems because of a lack of legal awareness and in case of any issue, they lack in terms of representation. Furthermore, a lack of information could lead to non-filing of the appeal as per the time limit and later, loss of the right to appeal. This procedural bias may result in exclusion from the liquidation proceedings, particularly from the distribution of the assets. These problems go against the objective of the IBC, which states no discrimination among the stakeholders, pointing out the need for more inclusive and accessible procedural mechanisms.

## **Analysis**

The interpretation of constructive notice by the courts under the Insolvency and Bankruptcy Code, 2016 specifically in terms of Liquidation proceedings, shows an effort by the legislators to balance the procedural efficiency with the principle of natural justice. While the publication of stakeholders lists and claims under the relevant IBBI regulation is a valid form of constructive notice, courts at various levels accepted this as a reasonable and effective. However, the legal presumption that information available in the public domain, whether through websites or newspapers, is not absolute. Courts have not shown a rigid approach while interpreting, especially while dealing with the 14-days period mentioned under Section 42 of the IBC. Where a party can show that it did not receive actual notice and could not reasonably access or understand the published information, tribunals have been condoning delays. This is particularly relevant in cases where the stakeholders are small creditors, MSMES or rural stakeholders,

where factors such as illiteracy, lack of digital knowledge or defective publication hinder meaningful access. In such cases, the judiciary, through precedents, has put great emphasis on substantive fairness and access to justice over rigid procedural compliance allowing delayed claims or appeals when there is a genuine lack of proper notice is proved.

## **Conclusion**

Efficiency and fairness were the motto behind the enactment of the IBC in the liquidation proceedings and constructive notice in reference to liquidation proceedings upheld the pillars of the act. Through judicial precedents, tribunals and Courts have interpreted and upheld the importance of public disclosure in the context of liquidation proceedings. Public disclosure, as per precedents, contains stakeholder lists, decisions regarding acceptance or rejection of claims, and lastly, the time period for appeal under sec 42. The interpretation aligns with the goals or objectives of the code by providing a time-bound and final resolution of insolvency processes, while reducing the burden on the deciding authority to serve individual notices to all stakeholders.

While constructive notice promotes procedural discipline, it should not undermine substantive fairness. Creditors who are small, unrepresented, or technologically challenged may remain unaware of public announcements, leading to procedural disadvantage or the forfeiture of valid claims. Acknowledging this risk, courts have at times been willing to condone delay when procedural fairness is in question. To embed such fairness into the system, legislative safeguards are needed, like requiring individualised communication to vulnerable creditors in terms of digital communication, publishing notices in local language and media and clearly defining the circumstances in which judicial precedents may be used to condone delays.