

COMPANY NEWSLETTER

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Edition 5



Welcome Note from the Founder and Designated Partner

Dear Readers,

Welcome to the fifth edition of ARCK Newsletter. Through this platform, we share important updates, industry insights, and success stories from the insolvency and liquidation sector.

Thank you for your continued support.

Mr. Anil Kohli

(Founder and Designated partner)



Member of Bar Council and Qualified Chartered Accountant with more than 30 years of experience in the financial and legal sphere with expertise in banking stressed asset resolution. He, being Co-founder of ARCK group is best known in the banking industry for his practical approach to the complex & unwarranted situations arising in the course of recovery of NPAs.

COMPANY PROFILE



Who we are & What we do

ARCK Resolution Professionals LLP, an Insolvency Professional Entity (IPE) registered with IBBI, has successfully handled or is currently managing over 78 cases under the Insolvency and Bankruptcy Code (IBC), 2016. These cases span diverse industries, including hospitality, aviation, automotive and industrial components, oil and gas, edible oil, alloys, electronic equipment, engineering projects, software, technology and services, consumer products, FMCG, steel and power, infrastructure, renewable energy, financial and business services, healthcare and life sciences, transportation and logistics, travel, hospitality and leisure, media and entertainment, public sector services, and education, among others.



INSOLVENCY & BANKRUPTCY CODE

- Pre-IBC Damage Control & Pre-CIRP Services
- Insolvency Resolution
- Liquidation - Sale of Assets/Going Concern
- Voluntary Liquidation
- Pre-Packaged Insolvency



ENFORCEMENT UNDER SARFAESI

- Auction
- Assistance in enforcement of security interest
- Sale of core and non-core assets.
- One time settlement.
- Recovery
- Scouting for buyers and investors



PROCESS ADVISORY SERVICES

- Steering the entire resolution process along with the RPs
- Scouting for strategic investors and negotiations
- Assistance to FCs in evaluation of bids and vetting of plans
- Assistance in implementation of Resolution Plans

REGULATORY UPDATES

IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025.



The Insolvency and Bankruptcy Board of India has introduced amendments to the Insolvency Resolution Process for Corporate Persons Regulations, 2016, notified through the Fifth Amendment Regulations, 2025, effective from 4th July 2025.

Key Highlights of the Amendments::

1. Enhanced Disclosure in Information Memorandum (IM):

- The Resolution Professional (RP) must mandatorily include details of:
 - Identified avoidance transactions.
 - Cases of fraudulent or wrongful trading.
- The IM must be kept updated and shared periodically with the Committee of Creditors (CoC).

2. Treatment of Disclosed Transactions in Resolution Plans:

- A resolution plan cannot assign avoidance/fraudulent/wrongful transactions unless:
 - These were disclosed in the IM.
 - And intimated to all prospective resolution applicants under Reg. 35A(3A) before the last date for submission of plans.

Objective of the Amendments:

- To enhance transparency and accountability in the CIRP.
- To ensure informed decision-making by CoC and resolution applicants.
- To improve value maximization and price discovery for assets of the corporate debtor.

WHATS NEW IN IBC?

CERSAI Registration Alone Sufficient to Establish Secured Creditor Status under IBC: NCLAT



Bizloan Pvt. Ltd. v. Amit Chandrashekhar Poddar

Key Holding:

The NCLAT held that registration of a security interest with CERSAI alone is sufficient for a creditor to be recognized as a secured financial creditor under the Insolvency and Bankruptcy Code, 2016, even if the charge is not registered with the Registrar of Companies (RoC) under Section 77 of the Companies Act, 2013.

Background:

- Bizloan Pvt. Ltd. extended credit to Autocop (India) Pvt. Ltd., which later entered liquidation.
- The Adjudicating Authority treated Bizloan as an unsecured creditor, due to lack of RoC registration of charge.
- Bizloan appealed, citing registration of its charge with CERSAI.

NCLAT's Rationale:

- Regulation 21 of the Liquidation Regulations allows proof of security interest via:
 - Information utility records,
 - RoC registration, or
 - CERSAI registration.
- The use of "or" confirms that any one form of registration suffices.
- Section 52 of the IBC doesn't mandate RoC registration for realization of security interest.
- Section 238 of IBC gives it overriding effect over conflicting laws like the Companies Act.

WHATS NEW IN IBC?

ED's Attachment of Proceeds of Crime Prevails Over IBC Moratorium: NCLAT



Mr. Anil Kohli Resolution Professional for Dunar Foods Ltd vs. Directorate of Enforcement

Background:

- **Dunar Foods Ltd.** was undergoing insolvency proceedings under the **Insolvency and Bankruptcy Code, 2016 (IBC)**.
- The **Enforcement Directorate (ED)** had attached assets of Dunar Foods under the **Prevention of Money Laundering Act, 2002 (PMLA)**, claiming they were “**proceeds of crime**” linked to PD Agroprocessors Pvt. Ltd.
- The **Resolution Professional (RP)** filed an appeal arguing that this attachment violated the **moratorium under Section 14** of the IBC and sought release of assets for effective insolvency resolution.

Key Issues and Findings:

1. Does the PMLA attachment violate the IBC moratorium?

- No. Since the assets were attached as “proceeds of crime,” they were not considered part of the resolution estate.
- PMLA has its own adjudication process; thus, the attachment does not violate Section 14 of IBC.

2. Does Section 238 of the IBC override PMLA?

- No. The court held both laws operate in distinct domains—IBC deals with insolvency resolution, while PMLA addresses penal action against money laundering.
- The laws are not irreconcilably inconsistent and should be harmonized.

3. Can NCLT/NCLAT interfere with ED’s confirmed attachments?

- No. Following the Supreme Court’s decision in *Kalyani Transco v. Bhushan Power*, it was reaffirmed that NCLT/NCLAT lack jurisdiction over attachments confirmed under PMLA.

Outcomes:

- **All contentions of the Resolution Professional were rejected.**
- **The appeal was dismissed, and the attachment by the ED was upheld.**

WHATS NEW IN IBC?

Liquidation Of CD if Successful Resolution Applicant Cannot Obtain Necessary Approvals Within One Year: NCLAT



Taguda Pte Ltd. Versus State Bank of India & Anr.

Ushdev International Ltd. Resolution Plan and Liquidation Case

In a recent judgement, The Hon'ble **NCLAT** held that if a successful resolution applicant (**SRA**) fails to obtain necessary regulatory approvals within **one year** from the approval of the resolution plan, as required under **Section 31(4)** of the IBC, liquidation of the corporate debtor must follow.

Key Facts:

- CIRP for Ushdev International Ltd. began on 17.05.2018.
- Resolution plan was approved on 03.02.2022, offering ₹227 crore (₹225.14 crore to financial creditors).
- The SRA failed to secure RBI approval, citing it as a precondition for plan implementation.
- SBI, the lead lender, filed for enforcement; later invoked the Performance Bank Guarantee (PBG) on 09.02.2024.
- Despite offering to park funds overseas, the SRA failed to deposit the resolution amount.

Tribunal's Findings:

- Under Clause 3.1 of the RFRP and Section 31(4) of IBC, the SRA had to obtain all approvals within one year of plan approval.
- RBI approval was pending for only ₹2.24 crore, not the full amount.
- The appellant failed to implement the plan even after extended time granted by NCLT (up to 08.02.2024).
- SRA's repeated delays and shifting funding sources reflected lack of readiness and capacity.

Conclusion:

The NCLAT held that since the SRA failed to implement the plan within the statutory timeframe, liquidation must proceed. The appeal of SRA was dismissed.



WHATS NEW IN IBC?

Re-issuing Form G even after a plan is submitted to NCLT for approval is valid: NCLAT



JM Financial ARC v. Mr. Venkatachalam (RP of Raigarh Champa Rail Infrastructure Pvt. Ltd.)

The CoC of Raigarh Champa Rail Infrastructure Pvt. Ltd., after initially approving a resolution plan, sought to issue a fresh Form G to attract new resolution applicants for value maximization. The NCLT rejected this move, suspecting it was intended to favour JSW Energy.

Key Facts:

- The CoC approved a resolution plan by Medha Servo Drives Pvt. Ltd. and submitted it for NCLT approval.
- Before approval, the CoC (with 78.59% voting) chose to initiate a challenge mechanism to attract better bids and withdrew the plan.
- The RP sought NCLT's permission to issue a fresh Form G to invite new Prospective Resolution Applicants (PRAs), including JSW Energy.
- NCLT rejected the RP's application, suspecting bias in favour of JSW and stressing completion of the existing challenge mechanism first.

NCLAT Observations:

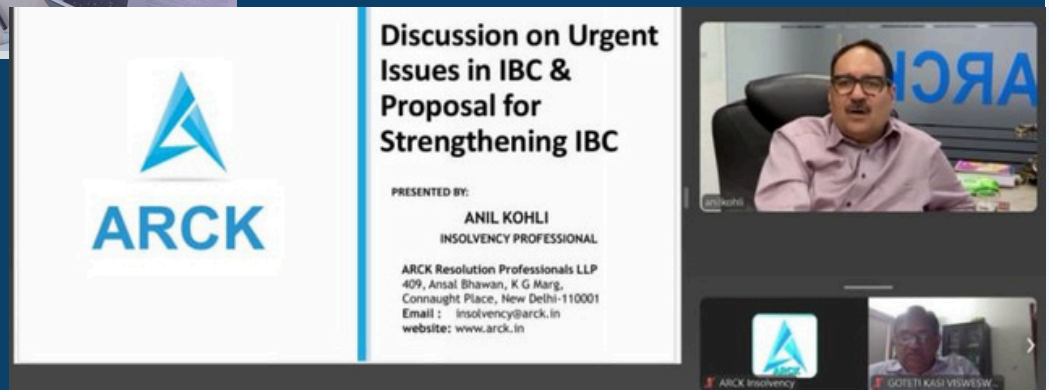
- No absolute bar exists under the IBC or regulations against issuing fresh Form G after resolution plan submission.
- Cited precedents (Vistra ITCL, Ramneek Goel, Ashdan Properties) uphold CoC's commercial wisdom to re-publish Form G for value maximization.
- The proposal to allow new PRAs while retaining existing ones is fair, non-discriminatory, and not solely intended to favour JSW.
- The only concern is timely completion of CIRP, which must be addressed by strict adherence to timelines.

Conclusion:

NCLAT allowed the appeal, quashed the NCLT's order, and permitted the issuance of fresh Form G to invite new EOIs, reinforcing that CoC's commercial wisdom to maximize value cannot be lightly interfered with.

ARCK IN ACTION

Workshop on Discussion on Urgent Issues in IBC & Proposal for Strengthening IBC



Strengthening India's Insolvency Ecosystem: Insights from ARCK

Mr. Anil Kohli, Founder and Designated Partner of **ARCK RESOLUTION PROFESSIONALS LLP**, was invited by ICSI Institute of Insolvency Professionals (ICSI IIP) to speak at their workshop held on 15th July 2025, from 3:00 PM to 6:00 PM on the topic:

“Discussion on Urgent Issues in IBC & Proposal for Strengthening IBC”

During the session, Mr. Kohli highlighted and discussed recent key judicial pronouncements shaping the Insolvency and Bankruptcy Code (IBC) landscape, including:

- State Tax Officer v. Rainbow Papers Ltd.
- Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd. & Ors.
- Mr. Anuj Bajpai v. Employee Provident Fund Organisation & Ors.
- Vidarbha Industries Power Ltd. vs. Axis Bank Ltd.
- Anil Kohli (RP of Dunar Foods Limited) vs. Directorate of ED
- Moser Baer Karamchari Union Vs. Union of India & Ors.
- NSEL vs. Union of India & Ors.
- GNIDA vs. Prabhjit Singh Soni & Anr.
- Kalyani Transco vs. Bhushan Power & Steel Ltd.

Further, possible amendments that may be brought in to strengthen the Code were also discussed upon during the session.





ARCK IN ACTION

Capacity Building Workshop



Interplay between Insolvency & Bankruptcy Code and Income Tax

Mr. Chanchal Dua, Partner at ARCK RESOLUTION PROFESSIONALS LLP, recently addressed the officers of the Office of the Principal Chief Commissioner of Income Tax, New Delhi during a Capacity Building Workshop on IBC – Income Tax issues for the Officers of Income Tax organised by the Insolvency and Bankruptcy Board of India in collaboration with Income Tax Department.

He delivered an insightful session on the topic: “Filing of Claims, Treatment of Income Tax Claims, TDS and Latest Judicial Pronouncements.”

Thanks for reading!



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FOR ANY QUERIES

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