

NEWSLETTER

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Edition 6



Welcome Note from the Founder and Designated Partner

Dear Readers,

Welcome to the sixth 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 over 3 decades 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

STATUTORY UPDATES

Insolvency & Bankruptcy Code (Amendment) Bill 2025.



Key Proposed Amendments in the IBC (Amendment) Bill, 2025

1. Clarifying Priority of Government Dues

Reverses the 2022 Rainbow Papers Supreme Court judgment by narrowing the definition of "security interest" to only include consensual agreements—not statutory provisions. This ensures statutory dues (like GST, VAT) won't be treated as secured debts and prioritized over secured creditors such as banks.

2. Group Insolvency Framework

Introduces coordinated insolvency proceedings for multiple related entities within a corporate group. This may allow shared Committees of Creditors (CoCs), common insolvency professionals, or joint hearings to minimize value erosion and improve efficiency.

3. Cross-Border Insolvency Mechanism

Establishes provisions to recognize and cooperate with foreign insolvency proceedings. The government may notify rules and set up dedicated benches to handle such international cases.

4. Creditor-Initiated / Out-of-Court Insolvency (CIIRP / Pre-pack)

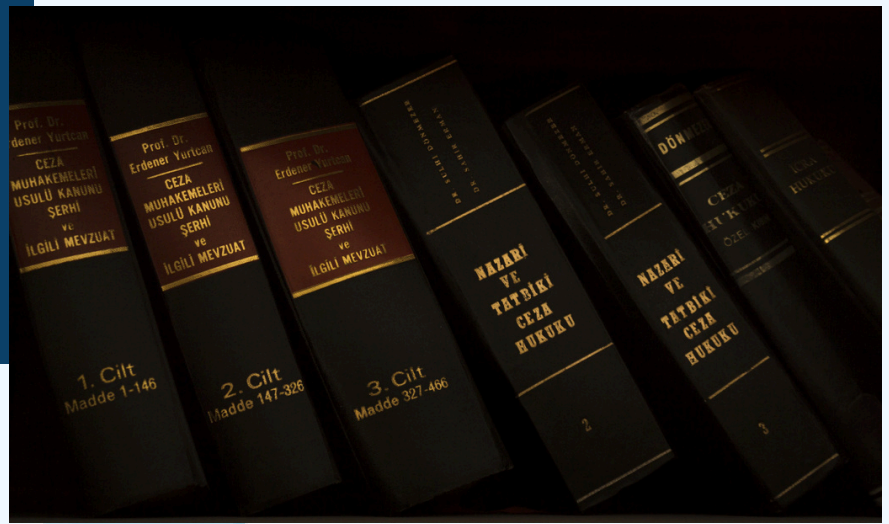
Enables certain financial creditors to initiate an insolvency process outside court (pre-pack or CIIRP), overseen by a resolution professional. If unresolved within 150 days (plus possible 45-day extension), the case may transition into traditional CIRP.

5. Tightening Timelines for Admission

Mandates that the National Company Law Tribunal (NCLT) must accept or reject insolvency applications under Sections 7, 9, and 10 within 14 days.

STATUTORY UPDATES

Insolvency & Bankruptcy Code (Amendment) Bill 2025.



Key Proposed Amendments in the IBC (Amendment) Bill, 2025

6. Protecting Against Dissenting Creditors' Blocking

Amends Section 30 to ensure dissenting creditors receive the lower of (a) liquidation value entitlement, or (b) their share under the approved resolution plan, removing incentives to block viable plans.

7. One-Time Revival of Insolvency Process

Adds provisions under Section 33 to allow restoration of CIRP in suitable cases—with CoC backing (66% vote)—if liquidation hasn't commenced yet. This revival can happen only once per company.

8. Cross-Border Insolvency Mechanism

Establishes provisions to recognize and cooperate with foreign insolvency proceedings. The government may notify rules and set up dedicated benches to handle such international cases.

The IBC Amendment Bill, 2025 is one of the most extensive reforms since the Code's inception in 2016. It strengthens timelines, curbs litigation, introduces group and international structures, and promotes clarity and efficiency across the board. If enacted in its present form, these amendments would significantly improve creditor confidence, enhance recovery rates, and adjudicate insolvency with global best practices in mind.

WHATS NEW IN IBC?

PRIP Process is strictly time-bound. The moratorium is capped at 180 days and cannot be extended



Pankaj Govindlal Khadloya (RP) of Mahesh Manilal Gandhi (Personal Guarantor)

Issue: Whether the period of Personal Insolvency Resolution Process (PIRP) and the moratorium under Section 101 of IBC can be extended beyond 180 days.

Key Findings

1. No Extension of PIRP under IBC

- The Code does not provide for extension of the Insolvency Resolution Process Period in the case of personal guarantors/individuals.
- Section 112, which deals with approval of the repayment plan, does not empower the Adjudicating Authority (AA) to grant extensions.

2. Moratorium under Section 101 is Time-Bound

- Section 101 imposes a moratorium of 180 days from the date of admission of application.
- This period is mandatory and cannot be extended by the NCLT.
- Once 180 days expire, the moratorium automatically lapses, irrespective of pendency of proceedings.

3. Legislative Intent

- Unlike corporate insolvency under Section 12 (which permits extensions of CIRP timelines), the legislature has not provided similar flexibility in personal insolvency proceedings.
- Hence, the AA cannot import such powers into individual insolvency.

Ruling

- The NCLT rejected the RP's request for extension of the Personal Insolvency Resolution Process period.
- It reiterated that the statutory scheme of Part III (personal guarantors / individuals) is distinct from corporate insolvency, and timelines fixed therein are strict and non-extendable.

WHATS NEW IN IBC?

Resolution Professionals are public servants under Section 2(c)(v), (vi), and (viii) of the Prevention of Corruption Act, 1988.



Anil Kumar Ojha v. State Rep. by Inspector of Police, CBI ACB & Ors.

Background:

- The petitioner, former Managing Director of S.L.O. Industries Ltd., alleged massive discrepancies (₹625 crore) in inventory during insolvency proceedings handled by a Resolution Professional (RP), suggesting mismanagement or fraud
- A CBI FIR was registered, but prosecution was stalled because the Insolvency and Bankruptcy Board of India (IBBI) declined to grant sanction, citing uncertainty over whether RPs qualify as “public servants” pending Supreme Court clarification

Key Findings:

1. RP as Public Servant

- The Court held that an RP qualifies as a public servant under Section 2(c) of the PC Act.
- RPs are appointed by the Adjudicating Authority (NCLT), function under its supervision, and perform duties connected with administration of justice.
- Their role has a direct bearing on creditors, debtors, and judicial processes — bringing them within the statutory definition.

2. Requirement of Sanction

- Since RPs are deemed public servants, prosecution under the PC Act cannot proceed without prior sanction from the competent authority.
- This safeguard is necessary to prevent frivolous or malicious prosecution, while ensuring accountability.

3. Directions by Court

- The IBBI (Insolvency and Bankruptcy Board of India) was directed to decide on the request for sanction within 4 weeks.
- If sanction is granted, the CBI must file its report within a further 4 weeks.

4. Significance

- Clarifies the legal status of RPs for corruption law purposes, resolving ambiguity.
- Enhances accountability of insolvency professionals while also protecting them from harassment through unwarranted prosecution.
- Seen as an important precedent until the Supreme Court settles the issue finally.



WHATS NEW IN IBC?

Income tax refunds cannot be adjusted against outstanding tax demands during liquidation proceedings



Konduru Prashanth Raju (Liquidator) v. Assessing Officer & Ors.

Background

- The corporate debtor, Base Corporation Ltd., was under liquidation.
- The Income Tax Department withheld/refused to release income tax refunds payable to the company and instead sought to adjust them against its outstanding tax demands.
- The liquidator challenged this action, arguing that such adjustment is contrary to the Insolvency and Bankruptcy Code, 2016 (IBC).

Issues

1. **Whether the Income Tax Department can unilaterally set off/appropriate income tax refunds against outstanding tax dues during liquidation.**
2. **Whether such tax dues should instead be submitted as claims and settled through the waterfall mechanism under Section 53 IBC.**

Key Findings

- **Supremacy of IBC:** The IBC overrides inconsistent provisions of other laws, including tax statutes.
- **Refunds as Estate Property:** Any refund due to the corporate debtor forms part of the liquidation estate and must come under the control of the liquidator.
- **Statutory Dues under Section 53:** Tax authorities are treated as operational creditors and their claims rank accordingly in the waterfall mechanism.
- **No Preferential Recovery:** Revenue authorities cannot bypass IBC distribution priorities by directly adjusting refunds.

Ruling

- The Tribunal held that the Income Tax Department cannot adjust or retain refunds against pending tax dues.
- Refunds must be credited to the liquidation estate and distributed strictly as per Section 53 of the IBC.
- The tax department, like other creditors, must file its claim with the liquidator and await distribution as per law.

WHATS NEW IN IBC?

Need To Regulate Transfers & Postings In NCLT, There's A Deep Problem: Supreme Court



Background:

The Hon'ble Supreme Court, while hearing a batch of petitions concerning vacancies and appointments in various tribunals, expressed concern over irregularities in the appointment and posting of members to the National Company Law Tribunal (NCLT) benches across India. Particularly, the absence of full-time judicial and technical members at the Indore bench was highlighted. An application filed by the High Court Bar Association, Indore, brought this issue to the Court's attention.

Issues Raised:

- 1. Absence of Full-Time Members at NCLT Indore Bench:** The Indore bench reportedly lacks full-time judicial and technical members, affecting its functioning.
- 2. Lack of Regulatory Framework for Transfers and Postings:** The Court noted the absence of a systematic approach to regulate the transfers and postings of members within the NCLT, leading to irregularities.

Key Findings:

- **Indore Bench's Operational Challenges:** The Bar Association's application highlighted the operational challenges faced by the Indore bench due to the absence of full-time members.
- **Need for a Structured Posting System:** The Supreme Court emphasized the necessity for a structured and transparent system to manage the transfers and postings of NCLT members to ensure consistent and effective functioning.

Ruling and Directions:

- **Immediate Action for Indore Bench:** The Court directed the Union government and the President of the NCLT to explore the immediate posting of at least one judicial and one technical member to the Indore bench and to file a compliance report.
- **Development of a Comprehensive Plan:** The Court called upon the Union government to prepare a comprehensive plan to streamline the postings in NCLT benches across the country, addressing the deep-rooted issues identified.



ARCK IN ACTION

Workshop on Treatment of Pending Tax Liabilities under IBC



Thank You

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ARCK

Mr. Anil Kohli, Founder & Designated Partner at ARCK RESOLUTION PROFESSIONALS LLP, was invited by the ICSI Institute of Insolvency Professionals on 19th August 2025 to deliver a session on the crucial topic “Treatment of Pending Tax Liabilities under IBC.”

The session covered a wide range of important aspects, including:

- Foundational insights of the Insolvency & Bankruptcy Code (IBC)
- Assessments by statutory authorities & the impact of moratorium
- Effect of approval of Resolution Plan on pending tax liabilities
- Waterfall mechanism & treatment of statutory dues (with deliberations on Rainbow Papers, Paschimanchal Vidyut Vitran and other landmark judgments)
- Contempt of Court by statutory authorities
- Clean Slate Principle under IBC
- Provisions of TDS vis-à-vis IBC
- Discussion on the proposed amendments in the latest IBC Bill, 2025





Happy Moments at ARCK



Celebration of the Birthday of two of our partners – Mr. Gian Chand Narang and Mr. Chanchal Dua

We at ARCK Resolution Professionals LLP had the privilege of celebrating the birthdays of two of our esteemed partners, Mr. Gian Chand Narang and Mr. Chanchal Dua in August.

Their leadership, vision, and dedication continue to inspire our team every day. It was wonderful to take a moment to celebrate not just their professional contributions, but also their personal milestones. Here's wishing them a year ahead filled with health, happiness, and continued success!



Thanks for reading!



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FOR ANY QUERIES

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