COMPANY NEWSLETTER

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ARCK

Edition 4

Welcome Note from the Designated Partner

Dear Readers,

Welcome to the 4th 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

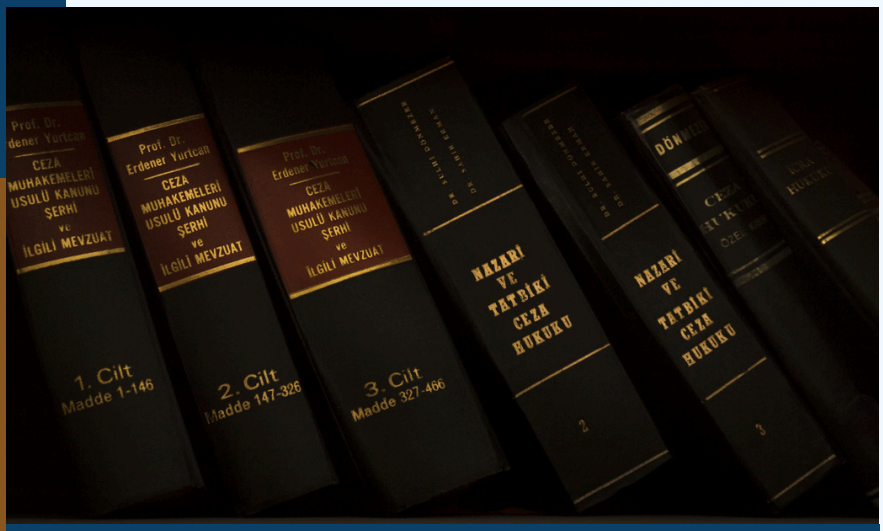
Auction
Assistance in enforcement of security interest
- Sale of core and non-core assets.
One time settlement.
Recovery
Scouting for buyers and investors

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) – Fourth Amendment Regulations, 2025



Key Amendments:

1. **Interim Finance Observers (Reg. 18(5))**
   - The Committee of Creditors (CoC) may now invite interim finance providers to attend CoC meetings as observers (without voting rights).

2. **Flexibility in Inviting Resolution Plans (Reg. 36A(1A))**
   - The Resolution Professional (RP), with CoC approval, may now invite Expressions of Interest (EOIs) for:
     - Resolution of the corporate debtor as a whole,
     - Sale of one or more assets, or
     - A combination of both.

3. **Omission of Reg. 36B(6A)**
   - The sub-regulation 36B(6A), which likely pertained to previous procedural constraints, has been omitted, indicating simplification of plan submission procedures.

4. **Priority Payment Clause (Reg. 38(1) Proviso)**
   In case of stage-wise payments under a resolution plan:
     - Dissenting financial creditors (who voted against the plan) must be paid at least pro-rata and with priority over those who voted in favor —at every stage.

5. **Modifications to Evaluation and Compliance References (Reg. 39):**
   - Clarifies that non-compliant resolution plans must be disclosed alongside compliant ones.
   - Removes redundancy by eliminating repeated references to compliance verification, improving drafting clarity.

REGULATORY UPDATES

Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2025

These guidelines provide the procedure for preparing panel of Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees.

Eligibility of IPs

IP's must:
- Have no pending disciplinary actions.
- Have no convictions in the past 3 years.
- Submit an Expression of Interest (EOI) with consent to act.
- Hold a valid Authorisation for Assignment (AFA) for the panel period.

Expression of Interest (EOI)
- Invited via Form A; must be submitted by June 22, 2025.
- Submission is treated as unconditional consent to act in any capacity._
- IPs must indicate sectors they are experienced in.

Panel of IPs
- A six-month panel will be prepared and shared with NCLT/DRT.
- It will be organized zone-wise and bench-wise, based on the IP's registered address.
- AA (Adjudicating Authority) can appoint any IP from the panel.

Sorting Criteria
- Based on volume of ongoing assignments.
- In case of a tie, earlier registration date will determine placement.

Conditions for IPs
- Inclusion in panel means acceptance to act when appointed.
- Withdrawal or refusal without valid reason can lead to a 6-month removal from the panel.
- IPs are discouraged from surrendering registration or AFA during the panel's validity.
- AA has discretion to appoint IPs from or outside the panel.

WHATS NEW IN IBC?

Status Quo On Liquidation Of Bhushan Power & Steel Ltd To Allow JSW To File Review Petition

On May 26, 2025, the Supreme Court ordered status quo on the liquidation proceedings of Bhushan Power & Steel Ltd (BPSL), after hearing a petition by JSW Steel, whose ₹19,700 crore resolution plan had been rejected by the Court earlier on May 2 for not complying with Sections 30(2) and 31(2) of the Insolvency and Bankruptcy Code (IBC).

A bench comprising Justices BV Nagarathna and Satish Sharma held that liquidation at this stage could jeopardize JSW's right to seek a review, as the limitation period for filing it had not yet expired (deadline: June 2). The Court thus ordered a status quo on proceedings before the National Company Law Tribunal (NCLT).

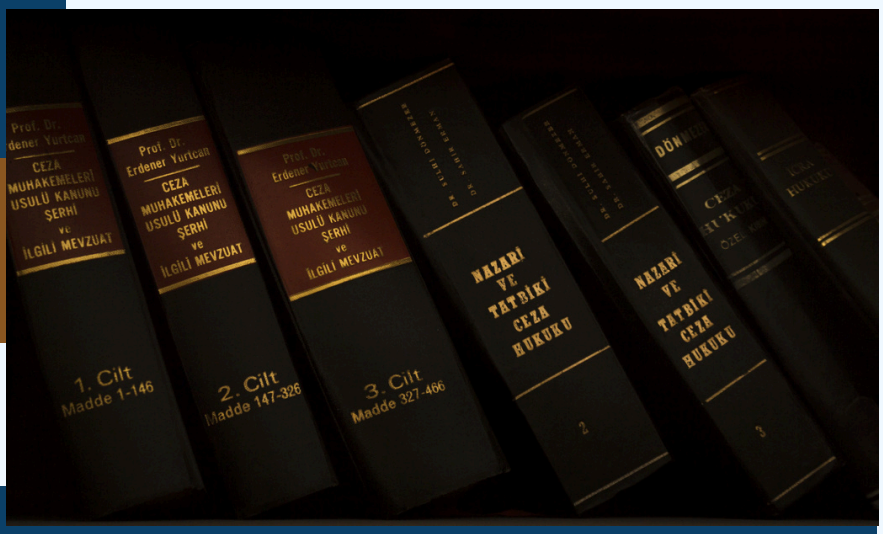
Senior Advocate Neeraj Kishan Kaul, for JSW, argued that prematurely appointing a liquidator could cause irreparable harm, particularly since BPSL is a profitable entity, and the resolution plan was filed four years ago. Solicitor General Tushar Mehta, representing the Committee of Creditors (CoC), suggested deferring the matter before the NCLT to June 10, to protect all stakeholders' interests.

Meanwhile, Sanjay Singal, the former promoter of BPSL (under ED investigation), urged the NCLT to proceed with liquidation in line with the Supreme Court's May 2 judgment. His standing in the matter was strongly opposed by JSW and the Solicitor General, who noted his lack of locus standi and ongoing legal issues.

The Supreme Court made clear that the status quo order was issued only to preserve the judicial process and avoid complications. It did not express any opinion on the merits of JSW's review petition, which JSW undertook to file within the statutory timeframe.

WHATS NEW IN IBC?

Interplay Between IBC and MPID Act



In the case of National Spot Exchange Limited v. Union of India & Ors., the Supreme Court ruled on May 15, 2025, that the moratorium imposed under the Insolvency and Bankruptcy Code (IBC) does not prohibit the attachment of properties under the Maharashtra Protection of Interest of Depositors (MPID) Act.

Key Rulings:

- The IBC and MPID Act operate in separate, non-conflicting domains.
- The MPID Act, enacted by the Maharashtra government under the State List, aims to protect depositors and recover funds from financial fraudsters by attaching and vesting their assets.
- The Court clarified that Section 14 of the IBC (moratorium) does not override Section 4 of the MPID Act, which allows for asset attachment in the public interest.
- Once a property vests with the State under the MPID Act, such vesting cannot be blocked by citing the IBC moratorium.

Background:

The ruling stems from the 2013 ₹5,600 crore NSEL scam, where the Supreme Court had earlier constituted a Special Committee under Article 142 to execute decrees and distribute recovered amounts to over 13,000 affected traders. The NSEL had challenged the continued attachment of properties under MPID during the IBC moratorium.

Conclusion:

- The IBC's overriding clause (Section 238) does not apply, as no inconsistency exists between the two laws.
- Properties attached under the MPID Act remain available for enforcement and sale, even during IBC moratorium.
- The judgment reinforces that public interest recoveries under state laws can proceed unaffected by insolvency proceedings.

WHATS NEW IN IBC?

No provision under IBC which necessitates the valuation report of the Corporate Debtor to be shared with Suspended Management of Corporate Debtor

The National Company Law Appellate Tribunal (NCLAT) dismissed the appeal filed by Dr. Arabinda Kumar Rath, suspended director of Medirad Tech India Ltd., against the approval of a resolution plan submitted by Asian Institute of Oncology Pvt. Ltd. (AIOPL).

Key Legal Highlights:

- **Valuation Reports Not Required to Be Shared with Suspended Management**

"There is no provision under IBC which necessitates the valuation report of the Corporate Debtor to be shared with the Suspended Management of the Corporate Debtor."

- **Primacy of CoC's Commercial Wisdom**

"It is the commercial wisdom of the requisite majority of the CoC which is to negotiate and accept a resolution plan."
"The settlement offer was duly placed before the CoC, and its rejection falls within the exclusive domain of commercial wisdom."

- **RP's Limited Role in Settlements**

"The RP's jurisdiction is restricted only to presenting any settlement offer before the CoC and it strictly lies on the commercial wisdom of the CoC to accept or reject the aforesaid offer."

Outcome:
The NCLAT held that the resolution plan had been duly approved, implemented, and complied with all legal provisions. The appeal was dismissed, affirming the sanctity of the CoC's commercial decision-making and the limited role of the RP and judiciary in such matters.

Appointment of ARCK Resolution Professionals LLP as Liquidator of Ekdant Buildtech Private Limited

Hon'ble NCLT, New Delhi Bench Court-IV vide its Order dated 08.05.2025 in IA/497/ND/2025 of C.P. IB/1144/ND/2019 appointed ARCK Resolution Professionals LLP through its authorized Signatory Mr. Anil Kohli as the Liquidator in the open Court.

Initiation of Bankruptcy Process against the Personal Guarantors of Corporate Debtor Multiwal Pulp and Boards Mills Pvt. Ltd. - Ms. Nazuk Jahan and Mr. Sameer Ahmad Khan (Personal Guarantors)

The Hon'ble NCLT, New Delhi, vide order dated 21.05.2025, appointed Mr. Anil Kohli, the Founder and Designated Partner of ARCK Resolution Professionals LLP - as Bankruptcy Trustee and directed him to carry out the bankruptcy process in accordance with provisions of the code.

Initiation of Bankruptcy Process against the Personal Guarantors Corporate Debtor Saga Automotive India Limited - MRS. KANAK BIYANI, MR. RAM SWAROOP BIYANI AND MR. SANJAY MAHESHWARI

The Hon'ble NCLT, Jaipur, vide order dated 26.05.2025, appointed Mr. Sandeep Mahajan, the Partner of ARCK Resolution Professionals LLP - as Bankruptcy Trustee and directed him to carry out the bankruptcy process in accordance with provisions of the code.

Thanks for reading!

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FOR ANY QUERIES

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