

COMPANY NEWSLETTER

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Edition 2



Welcome Note from the Designated Partner

Dear Readers,

Welcome to the second 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.



WHATS NEW IN IBC?

RECENT IMPORTANT JUDGEMENTS

Moratorium Under IBC vs. Public Interest

In a recent order, the National Company Law Tribunal (NCLT), Mumbai Bench - V, ruled on a crucial matter involving Radius & Deserve Land Developers Pvt. Ltd., currently under the Corporate Insolvency Resolution Process (CIRP).

📌 Key Highlights of the Order:

- The Resolution Professional (RP) sought protection under Section 14 of IBC, 2016, arguing that the Corporate Debtor's land cannot be handed over for acquisition due to the moratorium.
- The Government of Maharashtra & MMRDA initiated land acquisition (Survey Nos. 264 & 269) for a four-lane tunnel road connecting Thane to Borivali.
- The Slum Rehabilitation Authority (SRA) directed the RP to submit a No Objection Certificate (NOC) and an affidavit for ownership transfer.

📌 What the Tribunal Held:

- Moratorium protects corporate assets but cannot override public interest. The land acquisition was for a vital infrastructure project, ensuring fair compensation for the Corporate Debtor.
- Legal Precedents reaffirmed that IBC provisions cannot obstruct slum rehabilitation or public projects.
- No violation of due process was found, and the acquisition was deemed lawful.

Outcome:

The RP's application was dismissed. The Tribunal emphasized that insolvency laws should not hinder public infrastructure projects.

This ruling reaffirms the balance between corporate insolvency laws and public interest projects. A significant development in how IBC is interpreted in the context of government-led infrastructure initiatives.



WHATS NEW IN IBC?

RECENT IMPORTANT JUDGEMENTS

IBC vs. PMLA

Mr. Shailendra Singh, RP of Foxdom Technologies Pvt. Ltd. Vs. Directorate of Enforcement & Anr.

Key Issue:

The RP filed an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking the removal of a debit freeze on the Corporate Debtor's bank account by the Directorate of Enforcement (ED), which had been imposed under Section 17(1A) of the Prevention of Money Laundering Act, 2002 (PMLA).

Summary:

The NCLT dismissed the Resolution Professional's (RP) application, ruling that it does not have the jurisdiction to direct the Enforcement Directorate (ED) to unfreeze the Corporate Debtor's bank account. The tribunal emphasized that IBC and PMLA operate independently, and the moratorium under Section 14 of IBC does not extend to proceedings under PMLA. Since the bank account was frozen under money laundering investigations, NCLT cannot interfere with ED's actions.

The tribunal relied on Supreme Court and NCLAT precedents, which establish that IBC does not override PMLA, and matters related to asset attachment and money laundering fall exclusively under the jurisdiction of the PMLA Adjudicating Authority. Accordingly, the RP was directed to seek appropriate relief before the competent forum under PMLA instead of approaching NCLT.





RESOLUTION PLAN APPROVED

ARCK IN ACTION

Corporate Debtor:

Franco Leone Limited

Resolution Professional (RP):

Mr. Anil Kohli

Successful Resolution Applicant:

Mr. Harish Manocha

Resolution Plan Approval:

- The Committee of Creditors (CoC) approved the resolution plan with 100% voting in favor.
- The total resolution plan value is ₹24.60 crore, allocated to different creditors.
- The liquidation value was ₹22.02 crore, while the fair value was ₹31.07 crore.
- The resolution plans submitted were previously rejected by COC, leading to an NCLT liquidation order (March 15, 2023), which was overturned by NCLAT on October 3, 2023.

Thereafter the Resolution Plans were again considered by COC and accordingly application for approval of Resolution Plan of Mr. Harish Manocha was filed before Hon'ble NCLT.





ARCK IN ACTION

RESOLUTION PLAN APPROVED

Corporate Debtor:
GVK Gautami Power Limited
Resolution Professional (RP):
Mr. Anil Kohli
Successful Resolution Applicant:
Radha Smelters Private Limited

Resolution Plan Approval:

- GVK Gautami Power Limited is one of the very few power sector companies to achieve a successful resolution under the IBC framework, setting a benchmark for the industry.
- The Committee of Creditors (CoC) approved the Resolution Plan submitted by M/s Radha Smelters Private Limited with 100% voting in favor, demonstrating strong confidence in the future of the Corporate Debtor.
- All past liabilities and claims not covered in the plan stand extinguished.

With this order, the CIRP process for GVK Gautami Power Limited concludes, and the implementation phase begins under the approved plan.

THANK YOU



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FOR ANY QUERIES
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