

Performance Snapshot

(Amount in INR Crore)

	Mar-23	Sep-23	Growth H1
	A	B	(B-A)
Dues Acquired (Total Cumulative)	7,94,431	8,62,014	67,583
SR issued (Total Cumulative)	2,44,522	2,64,903	20,381
SR Redeemed (Total Cumulative)	1,04,405	1,19,986	15,581
SR Outstanding (SR issued -SR Redeemed)	1,40,117	1,44,917	4,800

Diwali Greeting

The Association of ARCs in India and Publisher of this Newsletter wish all ARCs and their staff members, all the stakeholders and readers of this Newsletter a Happy Diwali and a Prosperous New Year.



Success Story: Maximus ARC Limited

Reviving a Medical College Hospital

ABC Educational Trust was established in 1997 with family members as its trustees. They sought financial assistance of INR 111.30 Cr from two public sector banks to start a medical college in Chennai at an estimated project cost of INR 171.35 Cr. Due to non-compliance with the conditions set forth by the MCI, the college suffered closure, resulting in non-repayment of loans. The loan accounts turned NPA in March 2015.

At the time of acquisition of the debt



After a failed attempt to sell securities by the banks, one of the consortium banks sold 45 percent of the secured debt to Maximus through auction. Subsequently, Maximus acquired the residual debt of the borrower's Trust from the second lender bank. After acquiring the debts, Maximus successfully countered every move of the borrower in various courts viz DRT, DRAT, High Court of Madras and Supreme Court of India.

Taking physical possession of the property

The turning point in the successful resolution, after the aggregation of the debt, was taking over physical possession of the properties. Maximus countered every hostile move of the borrower, and despite the borrower's physical threats to the advocate commissioners and assisting officers, Maximus was successful in taking physical possession.

At the time of taking possession



The promoter trustees then approached the company, beseeching to halt the intended sale of secured assets by DRT and to accept a proposal for a change of the management of the Trust.

Convinced with the reputation and capabilities of the new trustees and with a strong belief that the proposed change in

Our Vision

To harness a common platform for Asset Reconstruction Companies acting in coordination and develop favourable legal and regulatory environment for smooth functioning of ARCs.

Advisory Board

Birendra Kumar

M Narendra

Madhukar R Umarji

Siby Antony

Anil Bhatia

Managing Committee

Chairman

Raj Kumar Bansal

MD & CEO, Edelweiss ARC

Vice Chairman

Pradeep Goel

CMD, Prudent ARC

Secretary

Sanjay Jain

CEO, Aditya Birla ARC

Joint Secretary

Manish Nihalani

COO & CFO, Alchemist ARC

Treasurer

Girish Sinha

MD & CEO, ASREC ARC

Members

Sanjay Tibrewala

CEO, Phoenix ARC

Nanha Ram Devineni

CEO, Maximus ARC

Neeta Mukerji

CEO, ACRE ARC

Pramod Gupta

CFO, ARCIL ARC

Chief Executive Officer

Hari Hara Mishra

management would lead to a successful revival of the colleges, Maximus approved a restructuring plan to the best satisfaction of all the stakeholders. Within 3 months, the new trustees could successfully commission the full-fledged 200-bedded multi-speciality hospital, rendering the best of the medical care to the poor and needy. The Trust has now created direct employment for as many as 600 persons and indirect employment for as many as 300 persons.



From the Classroom

Analysis and Impact of
Revised Regulatory Framework for ARCs

Ajay Walimbe

ARCs play a vital role in the management of distressed financial assets of banks and financial institutions. Therefore, considering ARCs' critical role, it is necessary to review their functioning and operating framework. The Reserve Bank of India had set up a committee to undertake a comprehensive review of the working of ARCs and recommended suitable measures to enable them to function in a more transparent and efficient manner. Based on the committee's recommendations and feedback from the stakeholders, RBI came out with an amended regulatory framework for ARCs effective from October 11, 2022. This regulatory framework is divided into two sections. Section I comprises the 'Corporate Governance Framework' to strengthen transparency in the ARC sector and to improve the corporate governance standards in ARCs, and Section II includes 'Other Measures'. Section I includes inter alia 'Measures to enhance governance of ARCs'. In this article, we are focussing more on the said section through Secretarial Compliance and challenges.

1. Enhancing governance of ARCs

The framework proposes that the Board's Chairman will be an independent director, and in the absence of a chair, the meetings of the Board of Directors will be chaired by an independent director. The quorum for the Board meetings shall be one-third of the total strength of the Board or three directors, whichever is higher, and at least half of the directors attending the meetings of the Board shall be independent directors.

The composition of the Board and quorum of the board meetings specified in the framework differs from the provisions of the Companies Act (the Act). As per Section 174 (1) of the Act, the quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of quorum under this sub-section.

However, as per SEBI LODR regulations 2015, the quorum for the Board meeting of the top 2000 listed entities w.e.f. April 01, 2020 shall be one-third of the total number of directors or three directors, whichever is higher, including at least one independent director. Interestingly, the quorum for the rest of the listed entities is as per the provisions of the Act. It is important to note that none of the ARCs are listed, and most of them are private limited companies. Thus, the framework regulations of RBI are more restrictive than the provisions of the Act, and the Company Secretary of the ARCs has to ensure the requirements of the quorum are fulfilled through the presence of at least half of the independent directors and one of them to be the Chairman of the meeting.

2. Appointment of MD / CEO

In addition to the provisions of the Companies Act, ARCs have to comply with the following conditions for the appointment of MD and CEO of the ARC.

- Prior approval of the Reserve Bank of India is required for the appointment / reappointment of a director or MD / CEO. ARCs shall undertake due diligence to determine the suitability of the person for the post based on track record, integrity and other 'fit and proper' criteria.
- The tenure of a managing director ('MD') / chief executive officer ('CEO') or whole time director ('WTD') is fixed for 5 years at a time and may be extended up to 15 years continuously by reappointment. Thereafter, reappointment may be made after a minimum gap of 3 years.
- The age of the MD / CEO or WTD has been capped at 70 years. Under the Companies Act, the maximum age for appointment as MD / WTD / Manager is 70 (Seventy) years. However, the appointment is subject to the approval of shareholders in the general meeting, and a person can be appointed as MD / WTD / Manager even after reaching the age of 70 years.
- The performance of the MD / CEO or WTD will be reviewed by the Board of Directors annually.
- ARCs are required to obtain necessary information and declarations from the appointed and existing directors, the MD / CEO, in specified formats on an annual basis. The directors will execute a deed of covenant in the specified format to discharge their responsibilities to the best of their abilities. This deed shall be preserved by the ARC and should be made available to the Reserve Bank of India as and when called for

3. Committees of the Board of Directors

It is mandatory for all ARCs to have the Audit Committee and Nomination and Remuneration Committee.

- *Audit Committee:* While prescribing the constitution and functions of the audit committee, the framework directs that ARCs shall constitute an audit committee consisting of non-executive directors only. The audit committee shall meet at least once a quarter with a quorum of three members. The meetings of the audit committee shall be chaired by an independent director who shall not chair any other committee of the Board. Each of the members of the audit committee should have the ability to understand the financial statements as well as the notes / reports attached thereto, and at least one member should have requisite professional expertise / qualification in financial accounting or financial management.

Though the audit committee shall have the same powers, functions and duties as laid down under Section 177 of the Act, additionally, the audit committee shall periodically review and assess the effectiveness of internal control systems, especially with respect to the asset acquisition procedures and asset reconstruction measures followed by the ARC and matters related thereto. The audit committee shall also ensure that the accounting of management fees / incentives / expenses is in compliance with the applicable regulations.

- The Nomination and Remuneration Committee will have the same powers as laid down in Section 178 of the Act. This committee shall ensure the 'fit and proper' status of the proposed and existing directors and sponsors.

4. Transfer of shares

In addition to compliance under the Act and SCRA provisions, ARCs are required to obtain prior approval from the Reserve Bank of India for any change in shareholding on account of the transfer of shares. In addition to these requirements, any change in the sponsor/s of an ARC due to fresh issuance of shares shall also require prior approval of the Reserve Bank of India.

5. Role of a Company Secretary

The Company Secretary plays a vital role in ensuring that the committees are discharging their obligations effectively and are documented properly. They support each committee member with the information and documents they need and other things that the committee need to discharge its duties. The senior

management, including the Board of Directors, relies on the Company Secretary to advise them not only on statutory duties under the law but also on corporate disclosures, exchange filings and RBI compliances. They are also responsible for detailed compliance with corporate governance requirements practices to ensure effective board processes. The revised regulatory framework issued by RBI has prescribed additional compliances

and has enhanced the responsibilities of the Company Secretary. Multiple compliances under various laws, along with various timely filings with RBI, MCA, CERSAI, etc., makes their position more crucial in the ARC industry.

(Author was earlier Head Legal and Company Secretary of Phoenix ARC.)

Legal Decisions

1. The Supreme Court recently upheld the constitutionality of IBC provisions on Personal Guarantors' Insolvency Resolution.

A Bench consisting D Y Chandrachud, Chief Justice of India with Justices J B Pardiwala and Manoj Misra held that IBC provisions on personal guarantors' insolvency process did not suffer from arbitrariness and did not violate Article 14 of the Constitution as contended by petitioners. The latest apex court move is expected to give a fillip to the lenders' efforts to recover dues of corporate debtors from personal guarantors. This apex court move would come as a major relief for lenders whose petitions for insolvency proceedings against personal guarantors were getting stuck in various judicial forums due to the legal challenge of various provisions.

2. In the matter of Devi Trading and Holding Private Limited Vs. Ravi Shankar Devarakonda & Other. before the Hon'ble National Company Law Appellate Tribunal, Chennai [IA Nos. 945 & 946-2023 in Company Appeal (AT) (CH) (Insolvency) No. 308 of 2023; DOJ: 16th October 2023.]

The Hon'ble NCLAT dismissing an appeal challenging the CoC's right to determine the distribution mechanism under the resolution plan held that the distribution / amount to be paid to different classes or sub-classes of Creditors in accordance with the provisions of the Code essentially lies within the domain of the commercial wisdom of the CoC.

Therefore, the question as to whether the proposed Resolution Applicant has suggested the distribution under the plan or whether the CoC has proposed and decided the distribution pattern is of no relevance as far as it is within the four corners

of Section 30 (2) of the Code and is supported by the commercial wisdom of the CoC. The Hon'ble NCLAT further held that a deliberated 'Business Decision' of the CoC includes deliberations on the feasibility and viability of the financial and operational aspects of the Corporate Debtor. As a result, the question of only 'considering' the proposal put forth by the Resolution Applicant cannot be viewed in a 'rigid manner'.

The CoC is a pivotal decision-making body that decides all critical decision-making functions that are essential to the success of the CIRP regarding Resolution Plans, Liquidation, Management, etc. Though the IBC does not have a specific provision that uses the term 'Business Decision' of the CoC, the Code contains several provisions that detail the powers and functions of the CoC, which encompass various decision-making responsibilities relating to the Insolvency Resolution Process, which includes distribution methodology of the Resolution Plan.

3. In the matter of M/s Manavta Tradelink Private Limited Vs. M/s Manikaran Vincom Private Limited before the Hon'ble National Company Law Tribunal, Kolkata [Company Petition (IB) No. 80/KB/2023; DOJ: 16th October 2023]

While allowing the application under Section 7 of the Code, the Adjudicating Authority held that registration of assignment is not mandatory. Further, the Adjudicating Authority held that the Corporate Debtor never disputed the assignment to date. The Corporate Debtor was in correspondence with the applicant, seeking time to repay the loan with interest, and therefore, at this stage, the Corporate Debtor cannot question the validity of the assignment.

(Courtesy: Edelweiss ARC)

For any information, please contact:

Hari Hara Mishra, Chief Executive Officer
Association of ARCs in India
301, Solitaire 1, Opp. Infiniti 2 Mall,
Malad Link Road, Malad (West), Mumbai- 400 064

Phone: 99533 52529

Email: ceo@arcindia.co.in



Website

www.arcindia.co.in