ARCLEGAL

ADVOCATES & SOLICITORS | NEW DELHI

Firm *Profile*

Insolvency and restructuring under the Insolvency and Bankruptcy Code, 2016, with writ, commercial, banking and advisory work before the NCLT, the NCLAT, the High Courts and the Supreme Court of India.

THE FIRM

Arclegal at a *glance*

Arclegal is a New Delhi law firm whose practice is centred on insolvency and restructuring under the Insolvency and Bankruptcy Code, 2016, and which also undertakes writ, commercial, banking and advisory work.

The firm advises and represents financial and operational creditors, resolution applicants, resolution professionals and liquidators, personal guarantors, homebuyers and their associations, and corporate debtors and their promoters. It appears regularly before benches of the National Company Law Tribunal across India, the National Company Law Appellate Tribunal at New Delhi and Chennai, and the Supreme Court of India.

Alongside its insolvency practice, the firm appears in writ proceedings before the Supreme Court and the High Courts against the actions of the State, statutory authorities and regulators; conducts commercial suits and recovery proceedings; acts for lenders, borrowers and guarantors before the Debts Recovery Tribunals; represents apartment owners' associations and allottees in stalled real estate projects; conducts domestic arbitrations; and advises on the drafting and vetting of commercial documents.

How we work

- **Partner-led.** Every matter is led personally by the Partner, from the first meeting to the final order, so that the client deals throughout with the person responsible for its conduct.
- **Founded on the record.** Each pleading is built on the documents, with every fact referenced to the page of the record on which it appears, so that the matter can be decided on the documents.
- **The right forum first.** Recovery, enforcement of security, insolvency, arbitration and writ remedies often run side by side. The firm advises at the outset which remedy best serves the client's commercial objective, and why.
- **Clear written advice.** Advice is rendered in clear written form, with the risks stated plainly, so that the client can act on it.

At a glance

Practice areas

- Insolvency & Restructuring
- Writ Petitions
- Commercial Litigation & Recovery
- Banking & Finance
- Real Estate & Homebuyers
- Arbitration
- Corporate Advisory

Forums

- Supreme Court of India
- High Court of Delhi and other High Courts
- NCLAT, New Delhi and Chennai
- NCLT benches across India
- Debts Recovery Tribunals and DRAT
- Commercial Courts
- Consumer Commissions, RERA, Arbitral Tribunals

CORE PRACTICE

Insolvency & *Restructuring*

Insolvency and restructuring under the Code form the core of the firm's practice, from the first default to the final appeal.

The firm has practised before the National Company Law Tribunal and the National Company Law Appellate Tribunal since their constitution in 2016. It acts on both sides of insolvency proceedings, which gives it a working understanding of how each stakeholder approaches the process and where the points of contest lie.

Whom we act for

- **Financial creditors:** banks, NBFCs, asset reconstruction companies and other lenders, from applications under Section 7 to the filing of claims, CoC proceedings and recovery from guarantors.
- **Operational creditors:** demand notices under Section 8 and applications under Section 9.
- **Resolution applicants:** eligibility under Section 29A, due diligence, structuring and drafting of resolution plans, and their approval before the CoC and the Adjudicating Authority.
- **Resolution professionals and liquidators:** applications in the CIRP and in liquidation, avoidance applications, and correspondence with stakeholders.
- **Personal guarantors:** proceedings under Sections 95 to 100 of the Code, and their interface with the corporate insolvency resolution process.
- **Homebuyers and their associations:** claims as financial creditors, representation in the CoC, and project completion.
- **Corporate debtors and promoters:** defence of applications, recall of ex-parte orders, and settlement and withdrawal under Section 12A.

Stages of a matter

01
Default and notice
Demand notices; assessment of debt, default and limitation

02
Admission
Applications under Sections 7, 9 and 10

03
Claims and CoC
Filing and verification of claims; CoC proceedings

04
Resolution plan
Eligibility, due diligence and drafting of the plan

05
Approval or liquidation
Approval under Section 31, or liquidation

06
Appeal
Appeals under Section 61 to the NCLAT and Section 62 to the Supreme Court

Forums: NCLT benches across India, including New Delhi, Allahabad, Ahmedabad, Mumbai and Bengaluru; the NCLAT at New Delhi and Chennai; and the Supreme Court of India.

PRACTICE AREAS

Litigation *and remedies*

Writ Petitions

The firm appears in writ petitions under Article 32 of the Constitution before the Supreme Court and under Article 226 before the High Courts, against orders and actions of the State, statutory authorities, development authorities and regulators. Writ jurisdiction is discretionary, and the availability of an alternative statutory remedy is frequently the first question before the court; the firm therefore assesses at the outset whether a writ is the appropriate remedy.

- Challenges to orders and actions of statutory authorities, development authorities and regulators
- Matters where a statutory remedy is unavailable or inadequate, or where a question of jurisdiction or natural justice arises
- Interim relief and urgent mentioning; special leave petitions and appeals before the Supreme Court

Commercial Litigation & Recovery

The firm acts in commercial suits and recovery proceedings before the Commercial Courts and the High Court of Delhi, often where a creditor must choose between a suit, a petition under the Code and the enforcement of security. Each claim is founded on the contract, the invoices and the correspondence.

- Summary suits under Order XXXVII of the Code of Civil Procedure, 1908
- Commercial suits under the Commercial Courts Act, 2015, including pre-institution mediation under Section 12A
- Interim relief, including injunctions and attachment before judgment; execution of decrees
- Defence of recovery claims and counterclaims

Banking & Finance

The firm acts for lenders, and for borrowers and guarantors, in proceedings arising from stressed accounts, where recovery, enforcement of security and resolution under the Code are considered together.

- Original applications before the Debts Recovery Tribunals and appeals before the Debts Recovery Appellate Tribunal
- Proceedings under the SARFAESI Act, 2002, including applications under Section 17
- Enforcement of guarantees, including proceedings against personal guarantors; one-time settlements and restructuring

PRACTICE AREAS

Advisory, arbitration *and real estate*

Real Estate & Homebuyers

The firm represents apartment owners' associations and allottees in projects where the developer has defaulted or is in insolvency, before the NCLT and the NCLAT, the Real Estate Regulatory Authority, consumer commissions and the writ courts.

- Claims of allottees as financial creditors, and representation through authorised representatives
- Project completion proceedings and resolution plans for real estate companies
- Formation, registration and rights of apartment owners' associations, including the transfer of maintenance
- Complaints before RERA and consumer commissions; writ petitions against development authorities

Arbitration

The firm acts in domestic arbitrations, institutional and ad hoc, arising from commercial, construction and service contracts, and in court proceedings under the Arbitration and Conciliation Act, 1996, preparing each claim with the enforcement of the award in view.

- Invocation of the arbitration agreement and appointment of arbitrators under Section 11
- Interim measures under Sections 9 and 17; conduct of the arbitral proceedings
- Challenges under Section 34, appeals under Section 37 and enforcement under Section 36

Corporate Advisory

The firm's advisory work draws on its litigation experience: documents are drafted and reviewed with regard to how they would be construed by a court or tribunal.

- Commercial and service agreements, leases and licences; legal vetting of agreements for companies and public sector bodies
- Legal due diligence for acquisitions, investments and resolution plans
- Loan, security and guarantee documentation; pre-insolvency advice and restructuring of stressed accounts
- Legal notices and contractual correspondence

REPRESENTATIVE MATTERS

Recent *outcomes*

Parties are not named. The principles stated are those decided in the matters.

NCLAT | HOMEBUYERS | 2026

Statutory transfer of maintenance to the apartment owners' association

On formation of the association of apartment owners under Section 14(5) of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, the management of the common areas and facilities stands transferred from the promoter to the association, and the registration cannot be questioned by the maintenance agency in collateral proceedings.

OUTCOME The maintenance agency appointed by the promoter, then under CIRP, was directed to hand over maintenance to the association within thirty days.

NCLT | ACQUISITION | 2025

Acquisition of a corporate debtor through the resolution process

Once the CoC approves a resolution plan, the scrutiny of the Adjudicating Authority is confined to the requirements of Section 30(2) of the Code; the commercial terms rest in the commercial wisdom of the CoC.

OUTCOME The firm advised a consortium on its acquisition of the corporate debtor, structuring and preparing its proposal and representing it before the NCLT. The Resolution Plan, approved by the CoC with 100% of the voting share, was approved under Section 31.

NCLAT | INSOLVENCY | 2024

Financial debt without a written contract

A written financial contract is not a pre-condition to proving a financial debt. Disbursement against interest and the time value of money may be established from the record, including entries in Form 26AS reflecting TDS deducted on interest.

OUTCOME The appeal of the suspended director was dismissed, and the admission of the corporate debtor into CIRP on the application of the financial creditor was upheld.

NCLAT | INSOLVENCY | 2022

Recall of an ex-parte admission is not a review

An application to set aside an ex-parte order admitting a Section 9 application lies under Rule 49(2) of the NCLT Rules, 2016, as a procedural review where the order suffers from a defect such as want of service.

OUTCOME The ex-parte orders were set aside, ending a CIRP that had continued for over two years; on remand, the Section 9 application was decided in favour of the suspended management.

PARTNER

Aadarsh *Kumar Rai*



Partner, Arclegal

Aadarsh Kumar Rai is the Partner at Arclegal. He has practised regularly before the National Company Law Tribunal and the National Company Law Appellate Tribunal since their constitution in 2016, and appears in insolvency, writ, commercial and appellate matters before the High Courts and the Supreme Court of India.

He leads every matter of the firm personally, from the first meeting to the final order, and is responsible for the strategy, the pleadings and the conduct of each matter before the court or tribunal.

Qualification: LL.M. (Corporate & Finance Law)

Insights

The firm publishes notes on judgments and amendments under the Insolvency and Bankruptcy Code for clients and practitioners, including notes on personal guarantor insolvency, homebuyers as financial creditors, admission under Section 7, and the grounds on which a resolution plan may fail. These are available at www.arclegal.co.in/insights.

MEETINGS	By prior appointment, New Delhi
TELEPHONE	+91 11 2432 0012
EMAIL	team@arclegal.co.in
WEBSITE	www.arclegal.co.in

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