

All that you wanted to know about NARCL

Purshotam Agarwal

National Asset Reconstruction Company Limited (NARCL) is the newest member of the Association of ARCs in India.

This article dwells on its objectives and performance so far.

Regulatory framework and acquisition structure

As per the extant regulatory framework, NARCL, as an ARC, is responsible for core activities of acquisition as well as resolution of the stressed assets. NARCL is assisted by India Debt Resolution Company Limited (IDRCL) in the resolution of these assets.

NARCL is permitted to undertake all such activities that any other ARC can do, including submitting an offer as a Resolution Applicant for the acquisition of a Corporate Debtor in CIRP. Stressed assets are acquired primarily under the 15:85 cash cum SR structure.

It is important to note that only 85 percent of the SRs held by selling lenders are guaranteed by the Government of India, which is available for a period of 5 years or till the resolution of the account, whichever is earlier. It can also make full cash offers if there are investors who are interested in subscribing to the SRs issued by the NARCL Trust.

Deepening of distressed assets market

Acquisition of aggregated debt would provide an attractive opportunity for various market participants (both domestic and international) to come forward to make offers for the revival of sticky assets. Further, it would help in the development of a secondary market for the trading of SRs.

Journey so far

During the maiden year of operations, processes have since been streamlined to a large extent. Considering the unique structure of the twin companies for managing the assets, it is natural that it took time to put in place systems and procedures to support the workflow process.

Since inception, lenders have referred 125 accounts with debt exposure of INR 3.5 lac crore for evaluation to NARCL. To date, NARCL, after a due diligence process, has submitted binding offers in 30 accounts with debt exposure of INR 1.70 lac crore (including two accounts with debt exposure of INR 32,000 crore as a resolution applicant).

Furthermore, another 30 accounts with debt exposure of INR 70,000 crore are at different stages of evaluation.



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

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Hari Hara Mishra

The remaining accounts have either been resolved through various resolution mechanisms (IBC / SARFAESI / settlement, etc.) or have been put on hold.

To date, NARCL has acquired four assets, and there are two more assets in the pipeline (where a Letter of Acceptance has been issued to NARCL after the Swiss Challenge process) with aggregated debt exposure of INR 25,000 crore.

Other binding offers are at different stages of evaluation by the lenders. Resolution activities have commenced in all the accounts acquired to date.

NARCL is making all efforts to provide a credible platform to market participants to achieve a meaningful resolution of sticky assets. During FY 2023, RBI allowed ARCs to submit a resolution plan under IBC as a resolution applicant. NARCL's consolidated resolution plan for two NBFCs, with an aggregate exposure of 32,000 crore, has been approved by NCLT and is presently under implementation.

The success of NARCL in the timely resolution of these NBFC accounts would pave the way for the enhanced role of ARCs in the resolution of stressed assets. More collaborative opportunities would emerge for the industry.

Challenges

Despite making binding offers for the acquisition of aggregated debt of INR 1.70 lac crore, the debt acquired to date is only INR 25,000 crore. Key reasons for lower-than-expected conversion include:

- selling lenders' reluctance to accept SRs and wait through the resolution period,
- apprehensions in value mismatch in offers given by NARCL,
- upside sharing not factored in a while comparing NARCL offer with a cash offer,
- time taken in negotiation for value with NARCL before putting up the account under the Swiss Challenge Process,
- inter se lenders security issues,
- delays in lenders granting individual approvals, and
- developments in other resolution strategies undertaken by the lenders (viz regularisation of the account by borrowers, restructuring, settlement with promoters, resolution under IBC, etc.).

Market making and way ahead

NARCL has played a catalytic role in rejuvenating the market for large legacy NPAs. As part of the mandate to clean up the NPAs from the banking system, NARCL is providing binding offers for all types of assets. A sector-agnostic as well as situation-agnostic approach is being followed while evaluating the assets for acquisition.

NARCL has provided an effective alternate platform to the distressed assets market. Acquisition of entire debt through a transparent process has attracted many market participants to come forward and bid for the assets at fair value.

As a result, the assets which earlier had no takers have attracted many strategic as well as financial investors. Once a few assets are resolved, it would enhance the confidence of the market in NARCL's role in the resolution of complex and large NPAs.

Acquisition of assets under the SR structure is more value-accretive for the selling lenders. With capital restructuring at a sustainable level and handholding of the borrower by the ARC to achieve optimum scale of operations, the SR holders are certainly going to realise more value from their sticky assets. We are hopeful that the efforts made by NARCL would provide more opportunities for the ARC industry to acquire NPAs from the lenders under the SR structure.

Purshotam Agarwal is Chief Investment Officer at NARCL.

Legal Decisions

National Company Law Tribunal- Adjudicating Authority

In the matter of **RKG Asset Management LLP Vs. M/s. Today Homes & Infrastructure Pvt. Ltd.** before the Hon'ble National Company Law Tribunal, New Delhi Bench - III [I.A-3593/2021 in CP No. (IB)2130(ND) 2019; DOJ: 01.08.2023]

The Adjudicating Authority held that it is a well-settled proposition of law that the Adjudicating Authority cannot question the commercial wisdom of the CoC. It is up to the CoC to decide certain aspects of the CIRP, subject to the Code and Regulations.

This includes the eligibility of Resolution Applicants. The Code does not mandate specific uniform criteria for the invitation of Resolution Plans, and the CoC is allowed to set its criteria on a case-by-case basis.

High Court

1. In the matter of **P. Pandidurai Vs City Union Bank Ltd** before the Hon'ble Madras High Court [W.P(MD)No.17859 of

2023 and W.M.P(MD)Nos. 14842 and 14943 of 2023, DOJ: 25.07.2023]

The Hon'ble High Court held that, even when the sale is stayed, it does not stop the bank from proceeding under Section 14 of the Act. In this case, even though the borrower obtained an interim stay from DRT against the sale notice, the bank proceeded with Section 14 to seek assistance for taking possession of the mortgaged properties.

2. In the matter of **NTPC Limited Vs TATA Projects Limited** before the Hon'ble High Court of Delhi [OMP (Comm) No. 59 of 2023; DOJ: 31.07.2023]

The Hon'ble High Court of Delhi held that an Arbitrator, being the ultimate master of the Arbitration, can adjudicate the claims in a manner that is on the lines of basic tenets of law and the principles of natural justice and jurisprudence.

As long as the award does not shock the conscience of the Court, it warrants no interference by the Court.

(Courtesy -- Edelweiss ARC)

ARC Performance in Quarter June 2023

Rs in Crores

	Upto the Qr	During the Qr
Acquisitions		
Debt acquired (Total outstanding), of which	771,349	30,937
Retail	105,925	1,829
SME & Mid corporate	68,297	4,432
Corporate	597,127	24,676
Security Receipts issued (Total outstanding), of which	182,371	6,148
Retail	26,583	902
SME & Mid corporate	14,663	2,171
Corporate	141,125	3,075

Based on in-house data collected by the ARC Association

THE CLASSROOM

What is Resolution?

Kanika Maheshwari

How simple it is for kids to say that their parents are engineers, doctors or lawyers. Well, not in my case. My son used to be speechless when asked about his mother's profession, and I get similar responses from candidates in interviews when asked – What is Resolution?

Our conversation around the dinner table revolves around his school but mostly about my work, as he is very interested in listening to stories of borrowers and lenders and how I resolve their issues. On one occasion, I asked him what do you do when you need to go to a particular destination and you don't know the way? His answer was quick - use Google Maps.

So, I explained to him that even in Google Maps, you need to define the current location and final destination. Similarly, for resolution, the final destination is the recovery and resolution of the accounts.

What is the current location?

The current location is understanding the account, analysing what went wrong and what actions have been taken so far to rectify and recover. Once you have these two points defined, finding the right path becomes easy. As you move forward, you may have to tweak and run multiple paths / strategies as there could be bottlenecks along the way, and you take a detour.

So, what strategies do we adopt for resolution?

Following is a broad listing of the strategies involved in the process for resolution wherein the use of one or more strategies may be pursued simultaneously.

Restructuring as per extant guidelines

This broadly involves understanding the cashflows of the borrowers, carving out sustainable debt, conversion of debt

to equity and restructuring the debt payments to match the cashflows of the borrower. This approach will be best suited for companies that are facing a temporary cash crunch and can be revived with a little support from lenders.

One-Time Settlement

The borrower may arrange for funds and can approach settling the account by paying off a lump sum amount. The lender may evaluate the same as per the extant RBI guidelines.

Sale of assets under SARFAESI

Monetising of secured assets through the auction process.

Resolution through the NCLT under the IBC framework

This is a Court-driven process where an independent Resolution Professional is appointed who takes over the existing management and invites expression of interest for submitting resolution plans to maximise the recovery on behalf of all stakeholders.

Other remedies

Various other remedies through DRT, Lok Adalat, mediation, counselling to the retail borrowers, arbitration, Section 138, invoking of personal insolvency provisions, etc.

Resolution is a much larger landscape encompassing an understanding of the financial, technical and legal aspects of a transaction. It is not a ruthless profession but involves empathy and understanding the issues to provide the best solution. The role of resolution is of a service provider to help unclog the credit system so that the economic engine can fire up full throttle.

Kanika Maheshwari is Head, Resolution and legal at Omkara ARC.

We invite topical articles from our colleagues to be published in the Newsletter - Chief Executive Officer

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