

Government of India  
Ministry of Commerce and Industry  
Directorate General of Foreign Trade  
Udyog Bhawan, New Delhi-110011

Dated: 20<sup>th</sup>, March 2020

ECA Circular No. 32/2015-20

To

All Regional Authorities/SEZs

**Subject:** Institution and/or continuation of proceedings under Foreign Trade (Development & Regulation) Act, 1992 and Rules thereunder against companies/firms against whom proceedings have been instituted in the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016

References have been received from Regional Authorities regarding institution and continuation of proceedings against companies/firms which are in the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016.

2. In this regard attention is invited to:

(i) Section 33(5) of IBC Code, 2016 which, inter alia, states that 'subject to Section 52, when a liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceedings may be instituted by the liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority'.

(ii) Section 35(1)(k) which states that

35.(1) "Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:-

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor".


3. The matter was taken up with the Department of Legal Affairs who opined that:

*Unless there are specific directions by the National Company Law Tribunal (NCLT) prohibiting proceedings under the FT(D&R) Act/Rules, the Adjudicating*

*Authority can proceed under the FT (D&R) Act/Rules. However, the liquidator shall be added as one of the respondent along with the parties.*

It may be noted that the Adjudicating Authority as mentioned in Section 35(1)(k) above refers to the NCLT.

4. The RAs may take action accordingly.
5. This issues with the approval of the competent authority.

  
(Abhijit Bakshi)

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