

Insolvency and Bankruptcy Board of India
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16th March 2021

Subject: Judgment¹ dated 15th March, 2021 of the Hon’ble Supreme Court of India in the matter of Arun Kumar Jagatramka. Vs. Jindal Steel and Power Ltd. & Anr. [Civil Appeal No. 9664 of 2019 and other appeals]

The Hon’ble Supreme Court in its order dated 15th March, 2021 in the above case, held that (i) prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the Insolvency and Bankruptcy Code, 2016 (IBC) must also attach itself to a scheme of compromise or arrangement under Section 230 of the Companies Act, 2013 (Act of 2013), when the company is undergoing liquidation under the auspices of the IBC, and (ii) Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 is Constitutionally valid. The Hon’ble SC made some important undernoted observations in the context of insolvency proceedings:

Sl. No.	Theme/Issue	Observation/Ruling	Para/Page No.
1.	Objects of the Code	(a) The IBC is a law which consolidated and amended existing legislation relating to re-organisation and insolvency resolution of corporate persons, partnerships and individuals. (b)The long title to the legislation indicates the specific objects, which it is intended to facilitate. These objects include: (i) A time bound process of re-organization and insolvency resolution; (ii) Maximization of the value of assets; (iii) Promoting entrepreneurship; (iv) Facilitating the availability of credit; and (v) Balancing the interests of all stakeholders.	38/37 38/37

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2.	Shortcomings in the earlier regime	<p>(a) Some of the key drawbacks of the legal regime , as it existed prior to enactment of IBC, were:</p> <ul style="list-style-type: none"> (i) The absence of a single legislation governing insolvency and bankruptcy. (ii) A multiplicity of laws governing insolvency and bankruptcy of corporate entities; (iii) The existence of multiple fora established to deal with the enforcement of diverse legislative provisions; and (iv) The complexity caused by a maze of statutes resulting in inadequate, ineffective and delayed resolutions, occasioned by the (then) existing framework. <p>(b) Interpreting the IBC in a manner which would facilitate the salutary objects which it is intended to achieve requires all stakeholders to shed concepts and notions associated with the earlier legal regime, which was largely a debtor’s paradise.</p>	39/37-38 39/38
3.	Enactment of the Code	<p>(a) The enactment of the IBC has marked a quantum change in corporate governance and the rule of law.</p> <p>(b) The IBC perceives good corporate governance, respect for and adherence to the rule of law as central to the resolution of corporate insolvencies.</p> <p>(c) The IBC perceives corporate insolvency not as an isolated problem faced by an individual business entity but places it in the context of a framework which is founded on public interest in facilitating economic growth by balancing diverse stakeholder interests.</p> <p>(d) The IBC attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that the timely resolution of corporate insolvency is necessary to ensure the growth of credit markets and encourage investment.</p> <p>(e) The IBC ensures that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements.</p> <p>(f) The IBC is a legislation aimed at re-organization and resolution of insolvencies. Liquidation is a matter of last resort. These objectives can be achieved only through a purposive interpretation which</p>	40/39 40/39 40/39 40/39 40/39

		requires courts, while infusing meaning and content to its provisions, to ensure that the problems which beset the earlier regime do not enter through the backdoor through disingenuous stratagems.	
4.	Ineligibility during the resolution process and liquidation	<p>(a) The birth of section 29A is an event attributable to the experience which was gained from the actual working of the provisions of the statute since it was published in the Gazette of India on 28 May 2016.</p> <p>(b) Section 29A has been construed to be a crucial link in ensuring that the objects of the IBC are not defeated by allowing “ineligible persons”, including but not confined to those in the management who have run the company aground, to return in the new <i>avatar</i> of resolution applicants.</p> <p>(c) The values which animate Section 29A continue to provide sustenance to the rationale underlying the exclusion of the same category of persons from the process of liquidation involving the sale of assets, by virtue of the provisions of section 35(1)(f).</p> <p>(d) The purpose of the ineligibility under Section 29A is to achieve a sustainable revival and to ensure that a person who is the cause of the problem either by a design or a default cannot be a part of the process of solution.</p>	<p>37/37</p> <p>52/47</p> <p>52/47</p> <p>53/48</p>
5.	Interplay: IBC liquidations and section 230 of the Act of 2013	<p>(a) Three modes in which a revival is contemplated under the provisions of the IBC. The first of those modes of revival is in the form of the CIRP elucidated in the provisions of Chapter II of the IBC. The second mode is where the corporate debtor or its business is sold as a going concern within the purview of clauses (e) and (f) of Regulation 32. The third is when a revival is contemplated through the modalities provided in Section 230 of the Act of 2013.</p> <p>(b) The statutory scheme underlying the IBC and the legislative history of its linkage with Section 230 of the Act of 2013, in the context of a company which is in liquidation, has important consequences for the outcome of the controversy in the present case.</p> <p>(c) Undoubtedly, Section 230 of the Act of 2013 is wider in its ambit in the sense that it is not confined only to a company in liquidation or to corporate debtor which is being wound up under Chapter III of the IBC. Obviously, therefore, the rigors of the IBC will not apply to proceedings under Section 230 of the Act of 2013 where the scheme of compromise or arrangement proposed is in relation to an entity which is not the subject of a proceeding under the IBC.</p>	<p>67/56</p> <p>68/57</p> <p>68/58</p>

		<p>(d) When, as in the present case, the process of invoking the provisions of Section 230 of the Act of 2013 traces its origin or, as it may be described, the trigger to the liquidation proceedings which have been initiated under the IBC, it becomes necessary to read both sets of provisions in harmony.</p>	68/58
		<p>(e) A harmonious construction between the two statutes would ensure that while on the one hand a scheme of compromise or arrangement under Section 230 is being pursued, this takes place in a manner which is consistent with the underlying principles of the IBC because the scheme is proposed in respect of an entity which is undergoing liquidation under Chapter III of the IBC. As such, the company has to be protected from its management and a corporate death.</p>	68/58-59
		<p>(f) In the context of the statutory linkage provided by the provisions of Section 230 of the Act of 2013 with Chapter III of the IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be far-fetched to hold that the ineligibilities which attach under Section 35(1)(f) read with Section 29A would not apply when Section 230 is sought to be invoked.</p>	69/59
6.	Withdrawal of application under section 12A	<p>(a) An application for withdrawal under Section 12A is not intended to be a culmination of the resolution process. This, as the statutory scheme would indicate, is at the inception of the process.</p>	74/67
		<p>(b) The withdrawal leads to a status quo ante in respect of the liabilities of the corporate debtor. A withdrawal under Section 12A is in the nature of settlement, which has to be distinguished both from a resolution plan which is approved under Section 31 and a scheme which is sanctioned under Section 230 of the Act of 2013.</p>	74/67
		<p>(c) The scheme of compromise or arrangement under Section 230 of the Act of 2013 cannot certainly be equated with a withdrawal simpliciter of an application, as is contemplated under Section 12-A of the IBC.</p>	75/69
7.	Constitutional Validity of Regulation 2B- Liquidation Process Regulations	<p>(a) Even in the absence of the Regulation 2B, a person ineligible under Section 29A read with Section 35(1)(f) is not permitted to propose a scheme for revival under Section 230, in the case of a company which is undergoing a liquidation under the IBC.</p>	84/75
		<p>(b) In the case of a company which is undergoing liquidation pursuant to the provisions of Chapter III of the IBC, a scheme of compromise or arrangement proposed under Section 230 is a facet of the liquidation process.</p>	84/76

		(c) The same rationale which permeates the resolution process under Chapter II (by virtue of the provisions of Section 29A) permeates the liquidation process under Chapter III (by virtue of the provisions of Section 35(1)(f)). That being the position, there can be no manner of doubt that the proviso to Regulation 2B is clarificatory in nature.	84/76
8.	Conclusion	<p>(a) The IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.</p> <p>(b) The Prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the IBC must also attach itself to a scheme of compromise or arrangement under Section 230 of the Act of 2013, when the company is undergoing liquidation under the auspices of the IBC.</p> <p>(c) Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B (1), is also constitutionally valid.</p> <p>The civil appeals and writ petitions were accordingly dismissed.</p>	<p>89/79</p> <p>91/80</p> <p>91/80</p>