

Supreme Court decodes section 29A of the Insolvency and Bankruptcy Code
written by Mohana Roy | November 19, 2018



Section 29A of IBC

The Hon'ble Supreme Court of India on October 4, 2018 passed its judgement regarding eligibility of resolution applicants under Section 29A of IBC, 2016 ("IBC 2016") in the case of *Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta*^[1].

The Supreme Court in its judgement decoded Clause c of Section 29A of IBC 2016 and held that any person who wishes to submit a resolution plan, acts jointly or in concert with other persons, any of whom may either manage or control or be a promoter of a corporate debtor which has been classified as a non-performing asset ("NPA") should first pay off the debt of the said corporate debtor who has been classified as a NPA only after the payment of debt such a person shall become eligible under Section 29 A of the IBC 2016 . The SC also observed that any such person as mentioned above who has been classified as NPA and has not paid off their debts for a period of at least one year before the commencement of the corporate insolvency resolution process shall become ineligible to submit a resolution plan.

Factual Matrix

Pursuant to the commencement of the Insolvency Resolution Process under IBC 2016 for the corporate debtor, Essar Steel India Limited ("ESIL"), Mr. Satish Gupta, the Respondent was appointed as the resolution professional ("Resolution Professional"). Consequently, the Resolution Professional published an advertisement dated October 6, 2017, seeking expression of interest from potential resolution applicants who wished to submit resolution plans for the revival of ESIL.

In furtherance to this advertisement, Arcelormittal India Private Ltd. ("AMIPL") and Numetal Limited submitted their interest on October 20, 2017. Resolution professional declared January 29, 2018 as the last date for submission of proposal and in consonance to the same AMIPL and Numetal submitted their resolution plan on March 20, 2018. Further, the Resolution Professional declared both AMIPL and Numetal ineligible under Section 29A of the IBC 2016.

The Resolution Professional viewed that one of the shareholder of the Numetal was Rewant Ruia whose father Ravi Ruia is the promoter of the ESIL which was classified as NPA for a period of more than 1 year prior to the commencement of the insolvency resolution process of ESIL and with regards to AMIPL it was

found that ArcelorMittal Netherlands who is the holding company of AMIPL, was one of the promoters of Uttam Galva Steels Pvt. Ltd. and KSS Petron Limited which were classified as NPA.

Hence both were declared disqualified for becoming resolution applicant. Aggrieved by the same both AMIPL and Numetal filed an application before the NCLT who upheld the Resolution Professional's decision. An appeal was filed before the NCLAT against the order of NCLT wherein it concurred with the disqualification of AMIPL but not with that of Numetal.

Therefore, aggrieved by the decision of NCLT and NCLAT, AMIPL knocked the doors of the Supreme Court seeking order against its disqualification.

Findings

The Apex Court for determining the ineligibility of the resolution applicant under section 29 A of the IBC 2016 relied upon two concepts; firstly, the management and control, secondly, lifting of the corporate veil.

On a plain reading of Clause (c) of Section 29A of IBC 2016 it is clear that for the applicability of the provision either of the following elements must be present:

1. The corporate debtor may be under the management of the person mentioned in Section 29A; or
2. under the control of such person; or
3. may be a person of whom such person is a promoter.

Supreme Court on detailed analysis of the terms 'management' and 'control' reached on the conclusion that the term control used in clause (c) of Section 29A of IBC 2016 refers to positive control, it has a restrictive meaning and cannot be interpreted broadly like Section 2(27) of the Companies Act 2013. Further, the Apex Court analysed the principle of lifting the corporate veil and observed that corporate veil can be pierced when a statute itself contemplates the same or to unveil any fraud for the sake of public interest. In the present case the IBC 2016 expressly contemplates implication on people acting jointly or in concert with people disqualified to be resolution professional.

Based upon the above two proposition both AMIPL and Numetal were found ineligible under Section 29A of IBC 2016. However, on conjoint reading of section 29A and second proviso of the Section 30(4) of the IBC 2016, the committee of creditors are given power to allow the resolution applicants with a maximum of thirty days to make payment of the overdue amounts in furtherance to which the resolution applicant becomes eligible. Further, the Apex Court invoked its power of extra ordinary jurisdiction under Article 142 of the Constitution and provided both with an extra period of two weeks to clear all the dues of the concerned debtors regarding the NPA accounts. The Supreme Court also envisaged that providing extra timeline will impact the completion of the insolvency resolution process within the prescribed time period as provided under the IBC 2016. Therefore, when the question is pertaining to a substantive issue the time period of 270 day can be skipped but if the issue is regarding the procedures, 270 day limit should be strictly adhered. The Apex Court also excluded the time which may be taken by NCLT or NCLAT or itself during a litigation regarding a resolution process from the 270 day limit.

Conclusion

Thus, from the above mentioned discussion it is a settled law that the ineligibility under Section 29 A of the IBC 2016 can be removed if the

requisite payment towards the fulfilment of the debt has been made. Second proviso of Section 30(4) of IBC 2016 provides this power to the committee of creditors to allow the resolution applicant with a maximum of thirty days to clear the dues of the respective debtors and become eligible for resolution applicant.

With regards to the time limit Supreme Court held strict adherence to the timeframe of 270 days when issue regarding procedures are raised however, this seems to be in contradiction with its view of excluding the time taken by the adjudicating authority and itself in a litigation taking place during the pendency of the resolution process. Therefore, requires more clarity. Further the Supreme Court has allowed both the resolution applicant with a time period of two weeks to settle all the dues of the respective debtors of which AMIPL has already paid about INR 7000 Crores but with respect to Numetal who has to discharge the debts of ESIL, it shall not be commercially viable thus it will make them ineligible from becoming resolution applicant. And in case if Numetal discharges the dues of the ESIL then it shall no longer remain an insolvent company.

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[1] [MANU/SC/1123/2018](#)

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