



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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ANALYSING SECTION 29A OF THE IBC AND ITS IMPLICATIONS ON CORPORATE INSOLVENCY

~ *Shreya Singh*

Section 29A of the Insolvency and Bankruptcy Code (hereinafter referred to as “IBC”), establishes specific eligibility criteria that prevent certain individuals and entities from proposing a resolution plan during the insolvency process. This provision was introduced to ensure that only credible and eligible applicants could participate, thereby increasing the likelihood of a successful and equitable resolution.

The first amendment, which added Section 29A to the Code, excluded promoters and their related parties from the corporate insolvency resolution process (CIRP). In particular, it made specific categories of individuals and entities ineligible to submit a resolution plan. These categories include objective criteria such as undischarged insolvents, wilful defaulters, and individuals convicted of offences. Additionally, it extends to those who control an account classified as a non-performing asset, promoters of a corporate debtor involved in preferential or fraudulent transactions, and individuals who have provided an enforceable guarantee in favour of a creditor of the debtor.

The second amendment, in 2018, brought several significant improvements to the Code, including:

- Defining the terms 'related party' and 'relative' within the context of Section 29A.
- Clarifying the status of creditors who become shareholders of the corporate debtor (CD) under a restructuring plan, excluding them from being considered related parties for the purposes of Section 29A.
- Exempting resolution applicants from the adverse effects of Section 29A if the CD's account they acquired remained an NPA or if avoidable transactions were reported before the approval of the resolution plan.

- Adding Section 240A to exempt micro, small, and medium enterprises (MSMEs) from the application of clauses (c) and (h) of Section 29A.

Section 29A was introduced to impose eligibility restrictions on resolution applicants. It is a restrictive provision that specifically enumerates individuals who are ineligible to be resolution applicants, including both promoters and those related or connected to them. A streamlined version of Section 29A was introduced via a notification in 2020.¹ This is now also applicable to sales during liquidation, sales outside the liquidation process, and participation in schemes of arrangement during liquidation processes.

Section 29A is highly comprehensive and designed to prevent promoters or individuals connected to promoters of the corporate debtor from regaining control of the corporate debtor. According to Section 29A(i), the ineligibility to submit resolution plans applies if a person is subject to any disability specified in Clauses (a) to (h) of Section 29A. Therefore, if a prospective resolution applicant is prohibited from trading in securities by a competent authority in any jurisdiction, they would be ineligible to submit a resolution plan under Clause (f), as this ineligibility is extended by Clause (i). Clause (j) demonstrates the legislature's intent to ensure that only genuine resolution applicants can bid for a company. The term "related party," both in relation to a corporate debtor and a person, has been defined very broadly under the Code.

In the Arcelor Mittal case, the Supreme Court clarified that while the phrase "persons acting in concert" is not specifically defined under the IBC, it should be understood as per the SEBI Takeover Code, based on precedents and existing laws. The Court also interpreted the terms "management" and "control" under Section 29A, stating that "management" refers to the de jure management of the corporate debtor, and "control" includes only positive or proactive control, not negative or reactive control.² Additionally, the Court emphasized that the eligibility of a resolution applicant must be determined at the time of submitting a resolution plan, according to the relevant parameters of Section 29A applicable at that moment.

¹ Notification No. IBBI/2019-20/GN/REG053, dated 6th January, 2020 (w.e.f. 06-01-2020).

² ArcelorMittal India Private Limited v. Satish Kumar Gupta, Civil Appeal Nos. 9402 – 9405 of 2018, decided on October 4, 2018.

In the case of *Chitra Sharma v. Union of India*, the Supreme Court, while discussing the eligibility of a resolution applicant, affirmed that one of the main objectives of Section 29A was to prevent individuals responsible for a corporate debtor's insolvency from participating in the resolution process through a backdoor entry.³ It emphasized the importance of serving the public interest and ensuring effective corporate governance through this provision. Therefore, the Section should be interpreted and applied in a manner that aligns with and advances this purpose.

In *Swiss Ribbons v. Union of India*, the Supreme Court upheld the legislative policy underlying Section 29A, which dictates that individuals unable to service their own debt are unsuitable as resolution applicants.⁴ Additionally, the Court clarified that Section 29A applies only to related parties of individuals ineligible under the Section who are directly involved in the business activities of the ineligible person.

In the case of *RBL Bank Ltd. v. MBL Infrastructures Ltd.*, the National Company Law Tribunal expressed the view that Section 29A(h) is not aimed at universally disqualifying promoters from submitting a resolution plan.⁵ Instead, its purpose is to exclude individuals from offering a resolution plan if their past conduct could potentially undermine the credibility of the processes outlined in the IBC.

However, Section 29A has significantly broadened the scope of disqualification, resulting in a substantial reduction in potential resolution applicants. This is primarily due to the inclusion of generalized criteria for disqualification, which fail to differentiate between genuine applicants and those with questionable backgrounds.

Section 29A was incorporated into the Code primarily to disqualify individuals responsible for a company's poor financial condition from submitting a resolution plan and profiting from their own errors while retaining control over the company. However, the wording of Section 29A cast the net of disqualifications too broadly, encompassing not only promoters and company management but also banks and financial institutions that had no real control over the company's financial performance. Amendments to Section 29A clarified the eligibility criteria

³ *Chitra Sharma v. Union of India*, 2018(9) SCALE 490.

⁴ *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India*, Writ Petition (Civil) No. 99 of 2018. Decision date- 25.01.2019.

⁵ *RBL Bank Limited. v. MBL Infrastructure Limited*, CA (IB) Nos. 238, 270 & 288/KB/2018.

for resolution applicants, preventing promoters of defaulting companies from reacquiring their assets through the insolvency process. These changes aimed to ensure that only credible and eligible parties could participate in the resolution process.