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ARCELORMITTAL INDIA PVT. LTD. v. SATISH KUMAR GUPTA (2019): JUDICIAL INTERPRETATION OF SECTION 29A AND THE BOUNDARIES OF RESOLUTION APPLICANT ELIGIBILITY UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

~ Anshika Mishra

I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to overhaul India's fragmented corporate insolvency framework, prioritising timely debt resolution and asset value maximisation. However, during its initial years of implementation, a major legislative loophole emerged: defaulting promoters of distressed companies were able to buy back their own assets at heavily discounted prices during the resolution process without settling their prior liabilities. To plug this gap and preserve the moral integrity of the regime, Parliament introduced Section 29A via the Insolvency and Bankruptcy Code (Amendment) Act, 2018.¹

The landmark ruling in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.*, (2019) 2 SCC 1, represents the Supreme Court's definitive interpretation of Section 29A. The judgment established vital jurisprudence regarding the piercing of the corporate veil in insolvency matters, the distinction between positive control and negative control, the strict timelines governing the Corporate Insolvency Resolution Process (CIRP), and the precise separation of powers between the Resolution Professional (RP) and the Committee of Creditors (CoC).²

II. FACTUAL BACKGROUND

Essar Steel India Limited (ESIL) was admitted into CIRP under Section 7 of the IBC due to default in paying its debt obligations.³ The Resolution Professional invited expressions of interest and received resolution plans from two primary bidders:

1. **ArcelorMittal India Pvt. Ltd. (AMIPL):** Disqualified by the RP on the ground that its ultimate parent entities held significant equity stakes in Uttam Galva Steels Ltd. and KSS Petron Private Ltd., both of which had been classified as Non-Performing Assets (NPAs) for over a year. Right before submitting its resolution plan, AMIPL attempted

¹ Insolvency and Bankruptcy Code (Amendment) Act, 2018, No. 26, § 6, Acts of Parliament, 2018 (India).

² *ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 S.C.C. 1 (India).

³ Insolvency and Bankruptcy Code, 2016, No. 31, § 7, Acts of Parliament, 2016 (India); *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶ 2.

to divest its equity holdings in Uttam Galva and transfer KSS Global's stake in KSS Petron to avoid disqualification.⁴

2. **Numetal Limited:** Disqualified by the RP because 37.5% of its equity was held by Aurora Enterprises Limited, an entity managed by a trust whose beneficiary was Rewant Ruia, son of Essar Group promoter Ravi Ruia. Numetal subsequently restructured its shareholding to eliminate Aurora's direct ownership, though Rewant Ruia's economic involvement persisted through earnest money financing.⁵

Both bidders challenged their disqualifications before the Adjudicating Authority (NCLT) and subsequently the NCLAT. The NCLAT permitted both parties to cure their ineligibilities by clearing the NPA overdues of their associated entities. Aggrieved by these directions, cross-appeals were filed before the Supreme Court of India.⁶

III. ISSUES BEFORE THE COURT

1. **Interpretation of Section 29A(c):** What constitutes the relevant stage for determining disqualification under Section 29A(c) of the IBC?
2. **Standard of "Control" and "Persons Acting in Concert":** How should the terms "management," "control," and "person acting in concert" be interpreted for the purpose of piercing the corporate veil under Section 29A?
3. **Role of RP and CoC:** What are the exact statutory boundaries of the Resolution Professional and the Committee of Creditors when evaluating eligibility under Section 29A?
4. **Timelines and Exclusion under Section 12:** Is the CIRP timeline under Section 12 mandatory, and can time spent in judicial proceedings be excluded?

IV. HOLDING AND REASONING

1. Stage of Eligibility under Section 29A(c)

The Supreme Court held that the relevant stage to test a resolution applicant's eligibility under Section 29A(c) is **the date of submission of the resolution plan**. The Court clarified that any attempt to clear NPA over-dues under the proviso to Section 29A(c) or the second proviso to Section 30(4) must occur **strictly before** the submission of the plan.⁷

2. Piercing the Corporate Veil & Definition of "Control"

The Court ruled that Section 29A is a "see-through" provision that mandates lifting the corporate veil to identify the real individuals behind a corporate entity.⁸

- **Positive Control vs. Negative Control:** Drawing upon Section 2(27) of the Companies Act, 2013 and Regulation 2(1)(e) of the SEBI (SAST) Regulations,

⁴ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 110–114.

⁵ *Id.* ¶¶ 87, 99.

⁶ *Id.* ¶¶ 3–6.

⁷ Insolvency and Bankruptcy Code, 2016, No. 31, §§ 29A(c), 30(4), Acts of Parliament, 2016 (India); *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 45–46, 57–60.

⁸ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 32–37.

2011, the Court held that “control” means **positive or de facto control**, the power to positively command management or policy decisions, rather than mere negative or reactive rights (such as blocking special resolutions).⁹

- **Avoidance Devices:** The Court held that last-minute divesting of shares or superficial corporate restructurings undertaken shortly before bidding are “devices of avoidance” and “antecedent facts reasonably proximate” that cannot shield an applicant from disqualification.¹⁰

3. Delimitation of RP and CoC Powers

- **RP’s Role is Administrative:** The Resolution Professional does not possess adjudicatory powers. The RP’s function is confined to examining plans for statutory compliance under Section 30(2) and submitting an administrative opinion to the CoC.¹¹
- **CoC’s Role is Commercial:** The decision to accept, reject, or approve a plan-rests solely on the commercial wisdom of the CoC under Section 30(4).¹²
- **No Direct Pre-Approval Judicial Review:** Neither the RP nor the CoC acts as an adjudicatory body. Resolution applicants cannot approach the NCLT against an RP’s opinion or CoC’s decision until the CoC either rejects a plan or submits an approved plan to the NCLT under Section 31.¹³

4. CIRP Timelines under Section 12 & Legal Maxims

- The Court affirmed that the statutory timelines under Section 12 of the IBC are mandatory to preserve corporate asset value. However, invoking the legal maxim *Actus curiae neminem gravabit* (an act of the court shall prejudice no man), the Court ruled that the time consumed in litigation before the NCLT or NCLAT can be excluded from the computation of the 270-day CIRP period.¹⁴

5. Final Order & Constitutional Powers under Article 142

- While affirming that NPA dues must be paid prior to plan submission, the Court recognised that the early legal ambiguity around Section 29A led to continuous litigation. To balance equity with strict statutory intent, the Court exercised its extraordinary powers under **Article 142 of the Constitution** to grant both AMIPL

⁹ Companies Act, 2013, No. 18, § 2(27), Acts of Parliament, 2013 (India); Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, reg. 2(1)(e) (India); *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 48–53.

¹⁰ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 60, 99, 112–114.

¹¹ Insolvency and Bankruptcy Code, 2016, No. 31, § 30(2), Acts of Parliament, 2016 (India); *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 79–81.

¹² Insolvency and Bankruptcy Code, 2016, No. 31, § 30(4), Acts of Parliament, 2016 (India); *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 82–83.

¹³ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 79–86; Insolvency and Bankruptcy Code, 2016, No. 31, § 31, Acts of Parliament, 2016 (India).

¹⁴ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 73–75, 86; Insolvency and Bankruptcy Code, 2016, No. 31, § 12, Acts of Parliament, 2016 (India).

and Numetal a one-time 2-week window to clear the NPA dues of their associated entities to become eligible for CoC consideration.¹⁵

V. CRITICAL ANALYSIS

The *ArcelorMittal* judgment stands as a monumental landmark that fortified the integrity of the IBC by preventing back-door entry for defaulting promoters.

Strengths and Jurisprudential Impact

- i. **Closing Structural Loopholes:** By establishing the “plan submission date” as the non-negotiable eligibility benchmark and adopting a broad “de facto control” standard, the Court successfully curbed manipulative equity transfers designed to bypass statutory bars.¹⁶
- ii. **Streamlining Insolvency Litigation:** Restricting premature interlocutory appeals against RP administrative opinions prevented litigious applicants from dragging out the insolvency process indefinitely through procedural challenges before CoC evaluation.¹⁷
- iii. **Harmonising Timelines with Natural Justice:** Clarifying that litigation periods can be excluded under Section 12 ensures that procedural delays within judicial forums do not inadvertently push viable corporate debtors into forced liquidation.¹⁸

Potential Concerns and Ongoing Debate

- **Extensive Invocation of Article 142:** While the Court upheld that under Section 29A(c) NPAs must be paid *prior* to plan submission, its reliance on Article 142 to grant a post-hoc curing window created a tension between strict statutory textualism and equitable relief. While necessary to resolve the ESIL impasse, it raised questions regarding whether high-stakes insolvency cases receive softer procedural enforcement relative to standard commercial matters.¹⁹

VI. CONCLUSION

The Supreme Court’s ruling in *ArcelorMittal* successfully reinforced the foundational objectives of the IBC: timely resolution, maximisation of asset values, and high standards of corporate governance. By establishing unambiguous boundaries for corporate veil piercing, defining the administrative scope of the Resolution Professional, and standardising the timeline exclusions under Section 12, the decision remains an enduring pillar of Indian corporate insolvency law.²⁰

¹⁵ INDIA CONST. art. 142; *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶ 114.

¹⁶ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 57–60, 112–114.

¹⁷ *Id.* ¶¶ 79–86.

¹⁸ *Id.* ¶ 86; Insolvency and Bankruptcy Code, 2016, No. 31, § 12, Acts of Parliament, 2016 (India).

¹⁹ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶ 114; INDIA CONST. art. 142.

²⁰ *ArcelorMittal*, (2019) 2 S.C.C. 1, ¶¶ 32–37, 50–53, 79–86.