



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

When Does a Director's Disqualification Make a Resolution Applicant Ineligible under Section 29A(e) of the IBC

Simran Singh

ABSTRACT

This article examines when a director's disqualification under Section 164 of the Companies Act, 2013 makes a resolution applicant ineligible under Section 29A(e) of the Insolvency and Bankruptcy Code, 2016. It explains the statutory connection between company-law disqualification and insolvency eligibility, and discusses the approaches in M.K. Rajagopalan and Malharshanti Enterprises. The article distinguishes a company's default from a disqualification that legally attaches to the person whose eligibility is being assessed. It argues that Section 29A(e) calls for a careful inquiry into the nature and legal effect of the disqualification, rather than automatic exclusion based only on an allegation or a company's default.

Introduction

The insolvency process is meant to find a practical solution for a company in financial trouble, but the law does not permit every person to come forward as a resolution applicant. Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC) sets out categories of persons who are not eligible to submit a resolution plan. The idea is to keep persons falling within specified disqualifying circumstances from using the resolution process to regain control of a stressed company.¹

Section 29A(e) is particularly interesting because it connects insolvency law with company law. It says that a person is ineligible if the person is disqualified to act as a director under the Companies Act, 2013. On the face of it, the provision looks simple. If a person is disqualified as a director, that person cannot be a resolution applicant. The difficulty begins when the alleged disqualification is based on the default of another company in which that person was a director. Is the default enough? Does the disqualification arise automatically? Or must it first be legally

¹Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A (India).

established? These questions have assumed importance after the Supreme Court's decision in *M.K. Rajagopalan v. Dr. Periasamy Palani Gounder* and the later decision of the National Company Law Appellate Tribunal (NCLAT) in *Malharshanti Enterprises v. Naresh Sevantilal Shah*.

What Section 29A(e) Actually Requires

Section 29A does not say that a person becomes ineligible merely because there is an allegation against him. Clause (e) uses a specific expression: the person must be disqualified to act as a director under the Companies Act, 2013. The starting point is not the IBC alone. One has to look at the Companies Act and ask whether a statutory disqualification actually exists in relation to that person at the relevant time.²

This distinction matters because the IBC consequence is serious. Under Section 30(1), a resolution applicant has to submit an affidavit stating that the applicant is eligible under Section 29A. If the person is actually ineligible, the resolution plan cannot proceed on the footing that the eligibility requirement has been satisfied.³ The question of disqualification is therefore not a mere technicality. It can determine whether the applicant is allowed to participate in the resolution process in the first place.

Director Disqualification under Section 164 of the Companies Act

Section 164 of the Companies Act lays down different grounds on which a person may be disqualified from appointment as a director. Sub-section (1) covers individual circumstances, such as being an undischarged insolvent or certain convictions. More relevant to Section 29A(e) is Section 164(2) which deals with defaults committed by a company of which the person is or has been a director.³

Under Section 164(2)(a), a person who is or has been a director of a company that has not filed its financial statements or annual returns for a continuous period of three financial years becomes ineligible for re-appointment in that company or appointment in another company for five years from the date on which the defaulting company fails to do so. Section 164(2)(b) deals with failures relating to deposits, interest on deposits, debentures, or declared dividends, where the failure continues for one year or more.⁴

The Companies (Appointment and Qualification of Directors) Rules, 2014 also provide a mechanism for dealing with such disqualification. Rule 14 requires a director to inform the

²Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A(e) (India); Companies Act, 2013, No. 18 of 2013, § 164 (India).

³Companies Act, 2013, No. 18 of 2013, § 164(1)-(2) (India).

⁴Companies Act, 2013, No. 18 of 2013, § 164(2) (India).

company about the disqualification in Form DIR-8. It also requires the company, in the prescribed circumstances to file Form DIR-9 with the Registrar of Companies (ROC), giving details of the directors during the relevant period.⁵ These procedural provisions become important when a party later argues before the insolvency tribunal that a resolution applicant is already disqualified.

The Question of Automatic Disqualification

The real controversy is whether Section 164(2) can be treated as automatically disqualifying a person merely because the underlying company default appears to satisfy the statutory conditions. This issue came directly before the Supreme Court in *M.K. Rajagopalan v. Dr. Periasamy Palani Gounder*.⁶

In that case, an objection was raised against the resolution applicant on the basis of the alleged default of another company in which he was a director. The argument was that the alleged default attracted Section 164(2)(b) which in turn made the resolution applicant ineligible under Section 29A(e). The Supreme Court did not accept this approach. It observed that even if there was a possibility of such disqualification, the matter was one for consideration by the Registrar of Companies. The Court held that unless a categorical finding was recorded by the competent forum regarding the default and a specific order disqualifying the resolution applicant as a director came into existence, the tribunal could not simply assume that the applicant was disqualified. The Court also took note of the fact that the applicant's DIN status was shown as "active compliant".⁷

This part of the judgment is important because it separates two different things: the facts that may eventually lead to disqualification and the legal status of a person as a disqualified director. A company may have committed a default but that does not necessarily mean that every person connected with its board can immediately be treated as disqualified for every legal purpose. For Section 29A(e), the disqualification has to exist in law rather than only as an argument raised during the insolvency proceedings.

NCLAT 2026 Decision: Malharshanti Enterprises

The issue came up again before the NCLAT in *Malharshanti Enterprises v. Naresh Sevantilal Shah* decided on March 20, 2026. The appellant challenged the approval of a resolution plan and argued, among other things that the successful resolution applicant was hit by Section 29A(e) because he was allegedly disqualified under Section 164 of the Companies Act.⁷

⁵Companies (Appointment and Qualification of Directors) Rules, 2014, r. 14 (India).

⁶*M.K. Rajagopalan v. Dr. Periasamy Palani Gounder*, (2024) 1 SCC 42.

⁷*Malharshanti Enters. v. Naresh Sevantilal Shah*, Company Appeal (AT) (Ins.) No. 2032 of 2025, ¶¶ 62-66 (NCLAT Mar. 20, 2026).

The NCLAT rejected the argument on the material placed before it. It explained that Section 29A(e) applies where the person is disqualified to act as a director under the Companies Act and that the disqualification must already exist in law. It cannot simply be presumed or inferred. Since there was no material showing that the resolution applicant had been formally declared disqualified by the competent statutory authority, the Tribunal held that Section 29A(e) could not be invoked on that basis.⁸

The decision is useful because it carries the principle from *M.K. Rajagopalan* into a later Section 29A(e) dispute. It also shows the practical importance of documentary proof. A creditor or another objector cannot rely only on the fact that a company has been in default or that a director was associated with that company. There must be material showing that the person's disqualification under the Companies Act was actually operative when the person's eligibility as a resolution applicant was being considered.

When Does the Disqualification Affect the Resolution Applicant?

The better way to approach Section 29A(e) is therefore through a sequence of questions. First, what is the precise ground of disqualification under Section 164? Second, do the statutory conditions for that ground exist? Third, has the disqualification been legally established and made operative against the individual? Finally, was that disqualification in force at the time the person's eligibility under Section 29A was relevant?

This approach avoids an important problem. Section 29A is intended to screen out ineligible applicants but it should not turn into a process where eligibility is decided on speculation. Insolvency proceedings are time-bound and a resolution applicant has to make a clear statement about eligibility. At the same time, an allegation that the applicant is disqualified cannot by itself be treated as proof of ineligibility.

For example, suppose A is a director of Company X. Company X does not file its annual returns for the period mentioned in Section 164(2)(a). B, who is involved in the insolvency process of another company, argues that A is automatically disqualified and therefore cannot submit a resolution plan. The answer cannot be based only on the default of Company X. The relevant question is whether A is, in fact, under an operative director disqualification recognized under the Companies Act. The reasoning in *M.K. Rajagopalan* and *Malharshanti Enterprises* suggests that the insolvency forum should not create that disqualification by assumption.⁹

⁸Id. ¶¶ 63-66.

⁹*M.K. Rajagopalan*, (2024) 1 SCC 42, ¶ 175; *Malharshanti Enters.*, supra note 9, ¶¶ 63-66.

A Narrow but Important Legal Balance

There is a practical reason for this approach. Section 29A protects the integrity of the insolvency process by preventing specified persons from submitting resolution plans. But eligibility provisions also affect competition among resolution applicants. If a person is excluded on a ground that has not been legally established, the process may lose a genuine applicant without a sufficient legal basis. On the other hand, once a statutory disqualification has actually arisen and is operative, Section 29A(e) gives that disqualification a direct insolvency consequence.

The cases therefore point towards a fairly precise threshold. The issue is not whether there is a company law problem somewhere in the background. The issue is whether the person seeking to submit the resolution plan is actually disqualified to act as a director under the Companies Act. That threshold is important because Section 29A(e) incorporates the company law status of the individual rather than creating a general rule that every past association with a defaulting company is enough to bar participation.

Conclusion

Section 29A(e) sits at the intersection of two statutes. The Companies Act determines whether a person is disqualified to act as a director, while the IBC attaches an insolvency consequence to that disqualification. The connection between the two provisions should therefore be applied carefully.

The Supreme Court in *M.K. Rajagopalan* made it clear that a tribunal cannot simply assume a director disqualification from the alleged default of another company. The NCLAT decision in *Malharshanti Enterprises* has reinforced the same approach in a later Section 29A(e) dispute. The practical lesson is that the existence of a company default and the existence of an operative director disqualification are not necessarily the same thing.¹⁰

Accordingly, a director's disqualification makes a resolution applicant ineligible under Section 29A(e) when that disqualification is legally established and operative under the Companies Act at the relevant time. Mere allegation, association with a defaulting company or an assumption about what the Companies Act might provide is not enough. This distinction may appear narrow but it is central to maintaining both the integrity and fairness of the resolution process.

¹⁰*Malharshanti Enters.*, supra note 9, ¶¶ 63-66.