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Addressing the Conundrum around Article 29(A) of the Insolvency and Bankruptcy Code 2016

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Upon obtaining the President's approval, the Insolvency and Bankruptcy Code came into force in 2016. It has developed into a thorough piece of legislation with a swift and precise mechanism for handling the insolvency issue. Ever since there have been numerous ordinances and IBC modifications, and the law has been advancing and developing at the same time. Presenting the corporate debtor, with a resolution plan is one of the code's key goals. Previously, anyone who submitted a resolution plan to the resolution professional qualified as a resolution applicant, and a resolution plan was any proposal made by anyone for the resolution application process. Since there were no clear requirements or qualifications, any party, including the corporate debtor's promoters or any linked party, was free to propose a resolution plan. This strategy received a lot of resentment and retaliation because of the vast scope and gamut that the code authorized, which acted as a vacuum and lacunae and allowed the promoters to acquire access to the corporate debtor's management through a back door. Instead of liquidation, the code advocates for insolvency resolution. The law was created to facilitate fair settlements between opposing parties, speed up and streamline the insolvency and bankruptcy proceedings in India and assist in the fostering of corporate resurrection through the creation of resolution plans. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017,¹ and then the Insolvency and Bankruptcy Code (Amendment) Act, 2018,² which incorporated section 29A into the Code, were enacted by the government to correct and fix this clause.

Keywords: *insolvency, resolution, liquidation, ordinance, ibc.*

¹ Bankruptcy Code (Amendment) Ordinance 2017

² Insolvency and Bankruptcy Code (Amendment) Act 2018

INTRODUCTION

One of the most significant pieces of legislation for establishing Resolution Applicants' eligibility in the Corporate Insolvency Resolution Process is Section 29A of the Insolvency and Bankruptcy Code, 2016.³ In its original conception, the Code did not contain any clauses that would have prevented defaulting promoters from repurchasing the corporate debtor at substantial discounts. Section 29A was introduced with retroactive effect as of November 23, 2017, via a change to the Code. Section 29A of the Code changed part of a second amendment that became law on June 6, 2018. Section 29A was introduced with retroactive effect as of November 23, 2017, via a change to the Code. Section 29A of the Code changed part of a second amendment that became law on June 6, 2018.⁴

Before 29A, regardless of whether he is the primary promoter, director, or someone associated with them directly or indirectly, any entity or body corporate can partake in the competitive bidding of a corporate debtor that is exposed to the corporate insolvency resolution proceedings. Therefore, individuals who, by their malfeasance or unscrupulous intent, aided the Corporate Debtor's default, can take back possession of their company by offering steep discounts as financial institutions such as banks are impacted. Section 29A was added to prohibit people from proposing resolution plans who would adversely affect the overall corporate bankruptcy resolution proceedings. The IBC timescales, which were otherwise being impeded by the manipulation and abuse of the bid process's shortcomings and faults, would also be more easily adhered to because of the provision. Hence, to restrict people who had participated in the corporate debtor's demise or were unfit to manage the company, this provision was added.

EXAMINING SECTION 29A

Due diligence under Section 29A must be undertaken by the Resolution Professional. It is not sufficient for a potential Resolution Applicant to provide an affidavit indicating that they are

³ Insolvency and Bankruptcy Code, 2016, s 29A

⁴ *Ibid*

qualified to submit for a resolution process under Section 29A. To determine disqualification, if any, sufficient due diligence on the potential Resolution Applicants, as well as its linked parties, must be carried out efficiently while adhering to the required time frame. If necessary for carrying out the due diligence, the Resolution Professional should ask the potential Resolution Applicants for explanations or additional details or documents. While accepting or rejecting a resolution plan, the CoC should carefully analyze the due diligence report that the resolution professional produced, which names the people who are ineligible to apply for a resolution.

In the Jaypee Infratech Case, the issues brought up about the implementation and ambit of section 29A have been addressed and resolved. The Supreme Court made this observation when discussing the qualifications of Jaiprakash Associates Limited ('JAL'), the holding organization of Jaypee Infratech Limited when it filed a resolution application under section 29A. JAL and other sponsors are not permitted to publish a resolution plan because they are unsuitable and fall under the purview of section 29A. It has determined that stringent conformity to Section 29A is required and that willful defaulters will not be authorized to engage in the corporate bankruptcy resolution agreement.

To prevent the admittance of superficial applicants, it offers a diligence structure that allows the creditor's committee to accurately determine the solvency, dignity, and legitimacy of a resolution applicant before authorizing a resolution plan, considering the magnitude, depth, validity, and practicability of a resolution plan. Additionally, it seeks to guard against impurities or excesses, which were recently observed in the Synergies Dooray case, where the corporate debtor entity amalgamated with a related party whereas Edelweiss ARC, the creditor, paid an almost 95% reduction on its recoveries. The punishment for breaking the Code is set down in the Ordinance, which will serve to discourage superficial applicants from engaging in the resolution settlement.

The provision also permits the applicant to qualify as a resolution applicant within Section 29A by the rulings of the supreme court if it pays off all its debts. ArcelorMittal and Numetal's bids for Essar Steel were rejected because of the related party clause in the case of Essar Steel. While ArcelorMittal possessed a 29.05% stake in debtor Uttam Galva, Numetal designated Rewant

Ruia, the son of Essar Steel promoter Ravi Ruia, as a benefactor. After paying Uttam Galva's unpaid debt in the amount of Rs 7,000 crore, ArcelorMittal's offer to acquire Essar Steel was approved. Essar Steel's promoters made a settlement agreement to the bankers that was around 25% greater than what the H1 bidder was presenting. The IBC's Section 29A prohibited the promoters from submitting a rival proposal. Essar Steel's promoters requested the CIRP be withdrawn underneath the recently passed Section 12A⁵. The IBC's Section 29A prohibited the promoters from submitting a rival proposal. Essar Steel's promoters requested the CIRP be withdrawn underneath the recently passed Section 12A. The promoters' proposal to stop the CIRP process by Section 12A of the IBC⁶ was rejected by the creditors of Essar Steel in favour of moving on with the H1 bidder. The inclusion of Section 29A filled a few legal loopholes that the Code had, but it also convoluted the insolvency resolution process by giving the resolution professional or liquidator the added duty of vetting the suitability of resolution applicants, which pushed back the time limit for concluding the insolvency proceedings.

The bulk of domestic and international bidders are ineligible to participate in the bidding procedure under the Ordinance because of its strict qualification requirements. Any settlement strategy could become even less financially valuable because of this. A wide range of people falls within the comprehensive definition of "related party" concerning an individual, making them ineligible. In addition, for section 29A, the relatives of a participant's spouse will also be counted when assessing the linked persons of that individual when he or she is wedded.

The definition of "associated party" in the Code does not include "financial entities." As concerns regarding the involvement of third parties in having to submit a resolution plan for the MSMEs were recognized, it also offers for restricted exclusions and protections to the micro, small, and medium-sized enterprises (referred to as "MSMEs") from the proposal of section 29A and permits its promoters to propose a resolution plan if they are not willful defaulters⁷.

⁵ Batra S, *Corporate Insolvency* (EBC 2022) 88

⁶ Insolvency and Bankruptcy Code, 2016, s 12A

⁷ L Viswanathan BD, 'Swiss Ribbons v Union of India - The Foundation for Modern Bankruptcy Law' (*India Corporate Law*, 25 January 2022) <<https://corporate.cyrilamarchandblogs.com/2019/02/swiss-ribbons-v-union-india-foundation-modern-bankruptcy-law/>> accessed 19 January 2023

Ruchi Soya Industries Ltd.'s⁸ bankruptcy procedures serve as a notable illustration of the broad range of disqualifications that can be invoked by other bidders to contest the qualification of the resolution applicants. The creditor's committee determined that Adani Wilmar was the best offer in this matter, and a resolution strategy was being put together. In the meantime, Patanjali Ayurveda, the second-highest bidder, contested Adani Wilmar's legality under Section 29A of the Code and brought a claim of disqualification. The odd thing about this situation is that Adani Wilmar is allegedly unqualified since the spouse of the company's managing director is a promoter who has fallen behind on payments.

By being disqualified from submitting a resolution strategy under the Code, individuals who have played a role in the company debtor's defaults, are unsuitable due to disabilities and impairments as described in the section or are a "related party" to some other principal debtors are prohibited from taking control of the corporate debtor. This clause affirms security for the company's creditors by defending them from dishonest individuals who, despite prior defaults, are seeking to enrich themselves by compromising the entire purpose of the Code and do not wish to aid in the recovery of the corporate debtor.

The creditors will accept payments from the promoters that are greater than those made by the highest bidder. As a result, taking the promoters' offer rather than the highest bid puts the lenders in a stronger position. Due to the limitations imposed by Section 29A, the promoters' higher price is not available to the lenders. The lawmakers must walk a tightrope between upholding creditors' rights and doing them no harm. Any modifications must include stringent qualification requirements to stop shady promoters from taking the power of the corporate debtor and its holdings, but it is also important to consider who is offering the highest price and giving the creditors the best returns.

For example, the related party clause caused considerable ambiguity in the case of the defunct Monnet Ispat. The company had just AION Capital and the JSW consortia consortium as bidders. Sandeep Jajodia, the creator of Monnet Ispat, is the brother-in-law of Sajjan Jindal, the

⁸ *Ruchi Soya Industries Ltd v Union of India* (2021) 9 SCC 657 (India)

promoter of JSW Steel. Before deciding to accept the deal, the creditors had to get legal advice. Sajjan Jindal, who was outraged by this clause, said that it is an infantile condition that prevents the highest offer from resurrecting the business and providing the best yield simply because of specific inadmissibility.

The executive must answer this conundrum and question whether there is a necessity to reevaluate the resolution plan when the creditors are obtaining what they desired, and it complies with all the requirements. Section 29A of the IBC excludes most qualified applicants for resolution, this clause is not accomplishing the law's primary goal of reinvigorating the corporation and preventing liquidation.

CONCLUSION

Section 29A of the Insolvency and Bankruptcy Code, 2016 establishes a complex criterion of exclusion and ineligibility that will bar petitioners from genuine resolutions. The implementation of the clause might also prevent important stakeholders from making a bid for the company's revitalization. To achieve the goals of the Code to the fullest, the courts must use some degree of mercy while deciding cases of exclusion and ineligibility. A compromise that allows promoters to offer for the corporate debtor while guaranteeing there are enough protections in place to assure that the creditors get the most out of the resolution proceedings. This approach might be used as an alternative to the existing limitation.

The IBC and CIRP processes could become much more financially sustainable for the promoters and the creditors by providing a middle road that prevents promoters from becoming resolution applicants while still providing the necessary safeguards such as those mentioned above to safeguard the other interested parties, all without jeopardizing the integrity of the procedures. Additionally, there must be some leniencies in related party transactions to prevent the promoters of viable and capable enterprises from making excessive reimbursements to creditors at the expense of morals.

In the ongoing processes regarding the CIRPs, which are ongoing as I wrap this journal article on a hotly contested matter of dispute for a considerable time, there needs to be some relief as

indicated by the Insolvency Law Committee and its Report on the same dated 26th March 2018. The goal of the policy is to save the business from liquidation, uphold ethical standards and accountability, and avoid repeating the same errors as the old regimes.