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Section 29A – Under the Ambiguity Lens?

■ Varsha Banerjee & Pragya Khaitan



The introduction of the Insolvency & Bankruptcy Code, 2016 ("IBC"), has led to multi-faceted litigation by applicants seeking resolution with respect to companies

which have defaulted in repayment of debt. Despite being a relatively new legislation, IBC has already undergone several amendments within a short span of time in a bid to eradicate any loopholes and/or ambiguities that hamper the smooth and efficient functioning of the Code.

THE NEED FOR SECTION 29A

The Insolvency & Bankruptcy Code (Amendment) Act, 2018 brought about one such fundamental and critical amendment to IBC by the inclusion of Section 29A with retrospective effect from November 23, 2017. Prior to this amendment, there was no bar on the eligibility of the resolution applicant and any person could be a resolution applicant. This led to open ended platform for even defaulters to bid for the assets of a company undergoing CIR Process subsequently leading to an undue advantage of the provision,

which would defeat the very purpose of IBC. Thus, in order to curtail the same, Section 29A was introduced. Section 29A being a restrictive provision, specifically lists down the persons who are not eligible to be resolution applicants. Section 29A in its entirety not only restricts promoters but also the people related/connected with the promoters. It is obvious that the intention behind inserting Section 29A is to restrict those persons from submitting a resolution plan who could have an adverse effect on the entire corporate insolvency resolution process. This would also aid in adhering to the timelines outlined under IBC which were otherwise being hampered due to the exploitation of the loopholes in the bidding process.

However, recently the NCLT, Mumbai Bench, in a matter of Wig Associates Private Limited gave a ruling that completely disregarded the wordings of Section 29A by allowing the resolution plan offered by an applicant who was related to the director(s) the company of Wig Associates which had filed an application under Section 10 of IBC, triggering CIR Process against itself in August 2017. It appeared, at that time that Bank of Baroda,



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being the sole financial creditor and Wig Associates reached a one time settlement with Mr. Mahindra Wig for settlement of outstanding amounts. In order to comply with the provisions of IBC, Mahindra Wig offered a resolution plan which was approved by Bank of Baroda, which was later submitted following an Expression of Interest (EOI) floated in April 2018, after the IBC Amendment Act, 2018/Ordinance was passed.

The question that arose before the single bench of NCLT, Mumbai, was whether resolution plan of a resolution applicant who is connected to the director(s) of the corporate debtor can be entertained pursuant to the insertion of Section 29A of IBC.

In order to arrive at the decision, the NCLT, Mumbai, considered various issues and also dove into interpreting the applicability of amendments based on the rules of the interpretation of statutes. Mr. Mahendra Wig was a 'connected person' as per the provisions of Section 29A of IBC, which made him ineligible to submit a plan as a resolution applicant under the IBC Amendment Act, 2018. The bench however, observed that since corporate insolvency resolution processes are continuous in nature, which commence from the time of admission and ends only when an order is passed, either allowing a resolution plan or initiating liquidation against the corporate debtor. Thus, corporate insolvency resolution process cannot be halted, altered or changed once commenced till its finalisation. The bench relied upon various recent Supreme Court cases such as *Zile Singh v. The State of Haryana* and *Videocon International Ltd v. SEBI*, wherein it was held that a statute which has affected the substantive/legal rights of an individual is presumed to be prospective in operation unless expressly and/or impliedly made retrospective. In light of the abovementioned case, the bench decided that since the petition was

admitted on August 24, 2017 and the insolvency proceedings under IBC are continuous in nature, the provisions of the amendment act will not apply to the present situation and therefore the resolution plan submitted by the resolution applicant (Mahendra Wig), despite being related to the promoter directors of Wig Associates may be accepted and approved, even after the insertion of Section 29A.

It is evident that the decision of the bench is a complete digression from the amendment inserting Section 29A to IBC as the intention of the amendment has been completely ignored in the ruling. It is ironic that the provisions of Section 30(4) also inserted by the amendment act which clearly states that "Provided that the committee of creditors shall not approve a resolution plan submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment Ordinance) 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it" has also been ignored by the ruling.

In conclusion, the ruling may cause confusion as to the applicability of Section 29A since several petitions which were admitted before November 23, 2017 are currently pending before various NCLTs and the promoters and/or connected persons may place reliance on the ruling as a tool to have their resolution plans considered. However, since the view of the NCLT is subject to judicial review by the appellate forum as well as the Hon'ble Supreme Court, the said issue will be finally adjudicated by the Hon'ble Supreme Court in appropriate proceedings. Till the time the position of law is appropriately decided by the Hon'ble Appellate Court and/or Supreme Court, the said ruling will be open to judicial interpretation by various Benches of the NCLTs. [W](#)



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