

Case Snippets

Volume 03, Number 08 (February 19, 2020)

JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors (NCLAT) (17th February, 2020)

Section 32A read with Section 31 & 29A of the Insolvency and Bankruptcy code, 2016

In the present case 'Corporate Insolvency Resolution Process' of 'Bhushan Power & Steel Limited'- ('Corporate Debtor'), the 'Resolution Plan' submitted by 'JSW Steel Limited' ('Resolution Applicant') has been approved by the Adjudicating Authority vide Judgment dated 5th September, 2019 with certain conditions.

On 10th October, 2019, the Directorate of Enforcement of Central Government attached assets of 'Bhushan Power & Steel Limited'- ('Corporate Debtor') under Section 5 of the 'Prevention of Money Laundering Act, 2002'.

Appeal was filed by the Resolution Applicant for setting aside or modify the conditions imposed in the impugned order as well as regarding the jurisdiction of the Directorate of Enforcement to attach the assets of the 'Corporate Debtor' after approval of Resolution Plan.

Issue before NCLAT

Whether after the approval of a 'Resolution Plan' under Section 31 of the Insolvency and Bankruptcy Code, 2016, is it open to the Directorate of Enforcement to attach the assets of the 'Corporate Debtor' on the alleged ground of money laundering by erstwhile Promoters.

Plea taken by the Directorate of Enforcement is that Section 32A introduced w.e.f. 28th December, 2019 is prospective and would not apply to 'Resolution Plan' which has already been approved under Section 31 of the 'I&B Code'. It was submitted that the 'Resolution Plan' was approved on 5th September, 2019 and Section 32A has come into force on 28th December, 2019.





While deciding the issue NCLAT held that Directorate of Enforcement has not been empowered under 'I&B Code' to decide the question. Even if the stand taken by the Directorate of Enforcement is accepted that 'JSW Steel Limited' is a 'related party' of 'M./s. Bhushan Power & Steel Ltd.'- ('Corporate Debtor'), the Directorate of Enforcement cannot decide whether 'JSW Steel Limited' is ineligible under Section 29A or Section 32A(1)(a) which can be determined by the 'Committee of Creditors'/ Adjudicating Authority.

The NCLAT further held that once a Resolution Plan is approved by NCLT, it was binding on Corporate Debtor, its employees, creditors including the Central Government, any State Government or any local authority.

NCLAT said the intent of the 'I&B Code' affected on attachment of the assets of the 'Corporate Debtor' by the Directorate of Enforcement after approval of the 'Resolution Plan'. In this background, the intent and purpose of the insertion of Section 32A is to provide certainty to the 'Resolution Applicant' that the assets of the 'Corporate Debtor' as represented to him and for which he proposes to pay value/ consideration in terms of the 'Resolution Plan', would be available to him in the same manner as at the time of submissions of the 'Resolution Plan'. Mere assertion of the Directorate of Enforcement in its reply, that it needs to further investigate the matter to examine or comment if there has been any abetment or conspiracy by the Appellant establishes that it has no reason to believe on the basis of material in possession of Directorate of Enforcement, as on date, that meets the criteria under Section 32A(1)(b) of the 'I&B Code' for denial of immunity to the Appellant and the 'Corporate Debtor'.

Thus, NCLAT upheld the decision of NCLT and also noted that the Judgment passed by the Adjudicating Authority (National Company Law Tribunal) and this Appellate Tribunal will not come in the way of the Directorate of Enforcement or the 'Serious Fraud Investigation Office' or the 'Central Bureau of Investigation' to proceed with investigation or to take any action in accordance with law against erstwhile promoters, officers and others of the 'Corporate Debtor'.

