



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

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ARUN KUMAR JAGATRAMKA Vs JINDAL STEEL AND POWER LTD. & ANR.

CIVIL APPEAL NO. 9664 OF 2019 WITH WRIT PETITION (C) NO. 269 OF 2020 AND WITH CIVIL APPEAL NO. 2719 OF 2020

DATE OF JUDGMENT: MARCH 15, 2021

**The purpose of the ineligibility under Section 29A is to achieve a sustainable revival and to ensure that a person who is the cause of the problem either by a design or a default cannot be a part of the process of solution.**

### Facts of the Case:-

The issue for determination in this appeal was that on one hand, Appellant submitted that the ineligibility under Section 29A of the IBC, 2016 attaches to the proceedings under the IBC alone, involving the submission of a resolution plan. On the other hand, Respondent submitted that when an order of liquidation has been passed under and in pursuance of proceedings which were initiated under the IBC, Section 230 of the Companies Act, 2013 expressly contemplates that the liquidator appointed under the IBC may move the AA where a compromise or arrangement is proposed. Hence, the proposal for a compromise or arrangement under Section 230, where a company is in liquidation under the IBC, is in continuation of that liquidation process. Hence, according to respondent, a person who is ineligible under Section 29A of IBC cannot propose a scheme for revival under Section 230 of the Companies Act, 2013.

### Supreme Court's Observations:-

The Supreme court observed that IBC has made a provision for ineligibility under Section 29A which operates during the CIRP. A similar provision is engrafted in Section 35(1)(f) which forms a part of the liquidation provisions contained in Chapter III as well. In the context of the statutory linkage provided by the provisions of Section 230 of the Act of 2013 with Chapter III of the IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be far-fetched to hold that the -



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ineligibilities which attach under Section 35(1)(f) read with Section 29A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed.

The court found no merit in contention by the appellants and the petitioners that attaching the ineligibilities under Section 29A and Section 35(1)(f) of the IBC to a scheme of compromise and arrangement under Section 230 of the Act of 2013 would be violative of Article 14 of the Constitution as the appellant would be “deemed ineligible” to submit a proposal under Section 230 of the Act of 2013.

The Court further explained that the stages of submitting a resolution plan, selling assets of a company in liquidation and selling the company as a going concern during liquidation, all indicate that the promoter or those in the management of the company must not be allowed a back-door entry in the company and are hence, ineligible to participate during these stages. Proposing a scheme of compromise or arrangement under Section 230 of the Companies Act of 2013, while the company is undergoing liquidation under the provisions of the IBC lies in a similar continuum. Thus, the prohibitions that apply in the former situations must naturally also attach to the latter to ensure that like situations are treated equally. It was further stated that the scheme of compromise or arrangement under Section 230 of the Act of 2013 cannot certainly be equated with a withdrawal simpliciter of an application, as is contemplated under Section 12-A of the IBC.

### Order:-

The Supreme Court dismissed the appeal stating that no merit was found in appeal. It further stated that the prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the IBC must also attach itself to a scheme of compromise or arrangement under Section 230 of the Companies Act of 2013, when the company is undergoing liquidation under the auspices of the IBC. As such, Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B(1), is also constitutionally valid.

### Case Review - Appeal Dismissed