



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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

IBC Case Law Capsule

No.211

(February 17, 2025)

Bhushan Power & Steel Ltd. Vs. Union of India & Anr.

W.P.(CRL) 1261/2024

Date of Delhi High Court's Judgement: January 30, 2025

Facts of the Case

The writ petition was filed by Bhushan power & Steel Ltd. (hereinafter referred as 'Appellant') against Union of India (hereinafter referred as 'Respondent') before the High Court under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., seeking quashing of **ECIR NO. DLZO-I/02/2019** u/s 3 and 4 of PMLA and all related proceedings, including the order dated 17.01.20 passed by the Special Judge-05, CBI (PC Act), Rouse Avenue District Court against Appellant.

The AA admitted an insolvency application against Appellant on 26.07.17, filed by PNB u/s 7 of IBC, 2016. During the CIRP, JSW Steel Ltd. emerged as the successful resolution applicant. On 05.04.19, the CBI registered FIR against Appellant, its Chairman, Directors, and others for alleged offences under Sections 120-B r/w 420, 468, 471 & 477A of IPC and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. Based on this, the ED recorded ECIR on 25.04.19 for suspected money laundering activities.

On 05.09.19, the AA conditionally approved JSW's Resolution Plan u/s 31 of IBC, granting protection from criminal proceedings related to the erstwhile management but not explicitly shielding Appellant from past liabilities. On 10.10.19, the ED issued Provisional Attachment Order (PAO No. 11/2019) u/s 5(1) of PMLA, attaching Appellant's assets as "proceeds of crime," restricting their transfer or disposal. This led to a legal conflict, prompting NCLAT to stay the attachment on 14.10.19, allowing the RP to regain control over Appellant's assets. On 17.01.2020, the ED filed a Prosecution Complaint under PMLA against the Appellant, its former Chairman, Managing Director, and other executives, alleging bank fraud of ₹47,204 crores. On 17.02.20, the NCLAT ruled the ED's asset attachment illegal, citing Section 32A of IBC (introduced via the IBC (Amendment) Ordinance, 2019), which protects CDs from prosecution for past offences if there is a change in management.

The ED challenged this ruling in Civil Appeal No. 3362/2020 before the Supreme Court, which, on 11.12.24, disposed the appeal while affirming the restoration of Appellant's assets to JSW Steel under Section 8(8) of PMLA, subject to ED's ongoing investigation against the erstwhile promoters.



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High Court's observations:

The Hon'ble high Court observed that Section 32A of the IBC provides that a CD's liability for offences committed before CIRP shall cease upon approval of a Resolution Plan provided there is a change in management. It noted that the Resolution Plan for Appellant was approved by the AA on 05.09.19 and by the NCLAT on 17.02.20, thereby protecting the CD from prosecution. However, the erstwhile management, including promoters and key officers, could still be prosecuted under the second proviso to Section 32A (1).

The ED provisionally attached Appellant's assets on 10.10.19, but the high court found this contrary to Section 32A, as it came after the resolution plan's approval. The NCLAT ruled this attachment illegal, and the Supreme Court later affirmed that the assets should be restored to JSW Steel, subject to ongoing investigations against the former management. The Court acknowledged the ED's argument that while Appellant cannot be prosecuted post-resolution, its former directors and promoters remain under investigation for alleged fraudulent transactions. It noted that the ED filed a Prosecution Complaint on 17.01.20, alleging a bank fraud of ₹47,204 crores, but since the Appellant had undergone a successful resolution process, it could not be held liable under Section 32A. Accordingly, the criminal proceedings against the Appellant were set aside, but the ruling would not impact investigations or potential prosecution of its erstwhile management.

The Supreme Court's order dated 11.12.24 directed the restoration of Appellant attached assets to JSW Steel under Section 8(8) of PMLA, while leaving the ED's right to investigate the former promoters intact.

Order/Judgement: In light of these findings, the Hon'ble High court allowed the writ petition to the extent of setting aside criminal proceedings against Appellant but clarified that this decision remains subject to pending appeals challenging the resolution plan before the Supreme Court. It reiterated that these observations would not affect the trial of Appellant's former promoters and key executives.

Case Review: The petition is *disposed of*, along with pending applications if any.