

THE PROMOTER, IF INELIGIBLE U/S 29A CANNOT MAKE AN APPLICATION FOR COMPROMISE & ARRANGEMENT U/S 230 OF THE COMPANIES ACT, 2013

Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr

📌 Parties involved:

Names	Title
Arun Kumar Jagatramka	Appellant
	Promoter of Gujarat NRE Coke Limited
Jindal Steel and Power Ltd. & Anr (JSPL)	Respondents
	An unsecured creditor of the corporate debtor
Gujarat NRE Coke Limited (GNCL)	Corporate Debtor

📌 Timeline :

Date	Event
07 April 2017	GNCL moved an application under Section 10 of the IBC before the NCLT for initiating the Corporate Insolvency Resolution Process
01 November 2017	Arun submitted a resolution plan for GNCL
	IBC amended its Act with retrospective effect introducing a list of persons who are ineligible to be Resolution applicants
	Due to added amendments, Arun became ineligible to submit a resolution plan
11 January 2018	No resolution plan was approved by CoC, post which NCLT filed an order of liquidation after 270 days
	Arun moved an application under Sections 230 to 232 of the Act of 2013 before the NCLT proposing a scheme for compromise and arrangement between the erstwhile promoters and creditors
15 May 2018	Issued directions for convening a meeting of the shareholders and creditors
	JSPL an appeal against the order of the NCLT before the NCLAT
24 October 2019	NCLAT allowed the appeal and ordered that a person who is ineligible under Section 29A of the Insolvency

Contact Us :

201-206, Shiv Smriti, 2nd Floor, 49A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai – 400 018 |
B: +91 (22) 6611 9696 | D: +91 (22) 6611 9614 | W: www.mehta-mehta.com

	Bankruptcy Code, 2016 to submit a resolution plan, is also barred from proposing a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013
	Arun has challenged the order of NCLAT before the Supreme Court.
15 March 2021	Supreme Court pronounced the order

 **Provisions involved in the case :**

- Section 230 of Companies Act 2013
 - Power to Compromise or Make Arrangements with Creditors and Members
- Section 29A of the Insolvency Bankruptcy Code, 2016
 - Persons not eligible to be resolution applicant
- Section 35 of the Insolvency Bankruptcy Code, 2016
 - Powers and duties of Liquidator
- Regulation 2B of Liquidation Process Regulations
 - Compromise or arrangement

 **Abstract of Appellants contentions:**

- According to the Appellant, a disqualification which is not provided by the legislature cannot be introduced by a judicial determination.
- Here Section 29A does not specifically provides that it extends to Section 230 of Companies Act 2013.
- Allowing the aforesaid, Section 230 is a 'different section in different enactment' to which the ineligibility under Section 29A of the IBC cannot be attracted.

 **Abstract of Respondents contentions:**

- A company in liquidation shall have its scheme of compromise & arrangement in line with provisions of IBC.

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- Such scheme shall be for the Company's revival and the same shall not be proposed by ineligible person.
- An amendment of Section 29A made in IBC is introduced for overcoming legal mischiefs , making an exception for revival will lead to irrationality.
- Section 12A is totally different. It provides for withdrawal at the inception of the CIRP and is not a conclusion of a resolution process.

Judgment of Supreme Court:

- The Supreme Court held that when the company is undergoing liquidation under the umbrellas of IBC, the restrictions imposed under Section 29A & Section 35 of IBC shall tag along Section 230 of Companies Act 2013.
- Also it pronounced that Regulation 2B is constitutionally valid and does not violate Article 14, 19 & 21 of Constitution of India.
- The apex court concluded that there is no merit in the appeals and the writ petition. Hence the appeal is dismissed.

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