

THE ROLE OF SECTION 230 OF THE COMPANIES ACT IN INSOLVENCY RESOLUTION PROCESS

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INTRODUCTION

Any firm that operates will inevitably make profits and lose money, as long as there is a balance between the two that protects the interests of the stakeholders or creditors and keeps the business in a position to continue operating. In the event that a business experiences financial trouble and is unable to pay its bills, the company looks for ways to protect and restore itself. One of the methods is debt restructuring. A clause that permits a firm to restructure its debt is Section 230 of the Companies Act of 2013.

SECTION 230 OF THE COMPANIES ACT

A mere reading of Section 230 of the Companies Act 2013 reveals that a company may offer plans, arrangements, and compromises to its employees, creditors, or both. It gives businesses a chance to restructure or reorganize their obligations in order to avoid bankruptcy or insolvency while still safeguarding the demands of stakeholders and creditors. Before being submitted to the NCLT for approval, the Corporate Debt Restructuring Scheme requires that at least 75% of the secured creditors' value be approved. Additionally, it must have the approval of 75% of the creditors' or members' total worth before it may be enforced against both parties.

The corporate insolvency resolution procedure, which is described in the 2016 Insolvency and Bankruptcy Code, is one of the strategies to reorganise and restart a company. Such a procedure only transforms into liquidation proceedings if the company violated the resolution plan after it had been approved or if it had not been approved at all. Given that the IBC's main goal is to safeguard corporate debtors from their management and from dying as a result of liquidation, it is important to keep this in mind.

The provisions of the IBC as well as the Companies Act shall apply to the corporate debtor since it is under liquidation. Upon issuance of a liquidation order under section 33 of the Act, the liquidator is also empowered to sell the debtor as a going concern under rule 32 of the

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Indian Insolvency and Bankruptcy Board (Liquidation Process) Regulations, 2016. As a result, liquidators are permitted to enter into any kind of compromise or arrangement under Section 230 of the Companies Act of 2013 and Section 32 of the Liquidation Regulations.

Even though the Insolvency and Bankruptcy Code of 2016 covers every aspect of a company's insolvency and how to resolve it, it is notable that Chapter XV of the Companies Act of 2013 (Sections 230–231), which covers, among other things, compromises and arrangements, has remained in place even after IBC, 2016 has taken effect.

The Insolvency and Bankruptcy Code of 2016 addresses every aspect of corporate insolvency and how to resolve it, including through compromise and arrangement.

The Compromise and Arrangement between a firm and its creditors is likewise comparable to the IBC, 2016's procedure and resolution for this situation.¹

SECTION 230 AND ITS ROLE IN THE INSOLVENCY RESOLUTION PROCESS

Both the IBC and Section 230 of the Companies Act 2013 are relevant laws affecting bankruptcies, reorganizations and other corporate matters.² Both appear to have different aims on paper, but their fundamental natures are nevertheless somewhat similar. As we critically explore the reasoning underpinning this provision, it is crucial to maintain in the forefront that Section 230 of the Companies Act of 2013 is somewhat a voluntary procedure initiated by the firm itself. This clause relates to businesses established under the Act that seek to restructure their debt by discussions and agreements with their creditors or members, which must be approved by the aforementioned majority of those parties. The IBC, on the other hand, provides a legal framework that enables the appointment of an expert in the resolution process, the formulation and acceptance of a strategy for resolution, and the successful execution of such a plan to promptly clear the financial obligations for individuals, partnership firms, and businesses. Unlike the law, which only allows creditors that fall under section 5(7) of the law to become part of the Committee of Creditors and participate in voting and drafting a resolution strategy for the corporate debtor. According to Section 230 of the Companies Act of 2013, any

¹ (Winding up of companies under companies act, 2013 & insolvency)
<<https://www.ipaicmai.in/IPANEW/UploadFiles/Articles/WindingupofCompaniesunderCompaniesAct,2013&Insolvency&bankruptcyCode,2016.pdf>> accessed 17 August 2023

² Indian Journal of Law and Legal Research, 'Interplay of IBC with Other Relevant Laws' (*IJLLR*, 27 September 2022) <<https://www.ijllr.com/post/interplay-of-ibc-with-other-relevant-laws>> accessed 15 August 2023

creditor—secured or unsecured—may submit a plan for restructuring, compromise, composition, or arrangement. At the point when the IBC was presented it didn't have explicit arrangements to manage people who were endeavoring to exploit the IBC.

In order for the application for a reorganisation plan to be approved by the Tribunal, it is required under the Companies Act to only explain the basis for classifying each group of members and creditors. This means that Section 230 can also encompass and grant voting rights to trade creditors, who are frequently unsecured creditors. This may contradict both the, I&B Code's dual approach to creditors and the concept of the continuous enterprise principle for which the, I&B Code was written.

The 29A section of the IBC was included in 2018 to bar willful defaulters and anybody connected to assets that are not performing from taking part in the settlement process. The position or contradiction between this and Section 230's omission of any eligibility restrictions was made clear by several court rulings.

UNDERSTANDING THROUGH JUDGMENTS

The question of whether section 29A of the Insolvency and Bankruptcy Code, 2016 will, at least temporarily, apply to schemes under section 230 of the Companies Act, 2013, has been settled by a recent ruling of the National Company Law Appellate Tribunal.

The NCLAT ruled in *Jindal Steel and Power Limited v. Arun Kumar Jagatramka* that a scheme under section 230 is maintainable for corporations under the Code that are in liquidation, but it is not maintainable at the instance of a person who is ineligible under section 29A of the Code.³ In other words, people who are deemed ineligible by the IBC are not allowed to propose resolutions under section 230, that section 230 should be understood in relation to the core purpose or aim of the IBC, despite the fact that such a rule wasn't in force at the time and that the provisions should be read consistently.

The NCLAT highlighted the Hon'ble Apex Court's statement that the legislation's fundamental purpose is to safeguard the resurrection and continuing of the corporate debtor by protecting it

³ *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd*, (2021) 7 SCC 474

from its management and a corporate death by liquidation in *Swiss Ribbons Pvt. Ltd. v. Union of India & Ors*⁴

The NCLAT also said in *Shivram Prasad v. S. Dhanapal & Ors.*⁵, that because the liquidation was undertaken under the "I&B Code," the structure of the scheme needed to be in line with its purpose and tenets.

Even though the inconsistency was resolved, it raised concerns because small businesses and entrepreneurs who suffered losses due to outside factors were also included in the NCLT's ban imposed through the code on regulations of the Companies Act in addition to unethical directors and promoters.

However, the contrary view was taken by the NCLT in the case *Anil Bafna v. Madhu Desikan & Others*⁶, here tribunal determined that if the NCLT issues a liquidation order, the Act's provisions under Section 230 are open to abuse by the enterprises' promoters. The NCLAT also ruled in *Rasiklal S. Mardia v. Amar Dye Chem Limited*,⁷ that only the promoter may make an application for a scheme of arrangement and that the liquidator is an extra party who may submit an application under Section 230 of the 2013 Companies Act. As a result, it is unclear whether the promoters may seek a settlement under Section 230 of the Act.

The notion of Section 230 of the Companies Act, 2013, which currently exists independently and may be utilised by the parties depending on the circumstance and circumstances, is not required to be included in the settlement procedure under the IBC.⁸

In the case of *Jaypee Kensington Boulevard Apartments Welfare Association V. NBCC (India) Ltd & Ors.*,⁹ the Supreme Court of India has clarified several issues. Wherein the court explained that, aside from the COC (Committee of Creditors), no other organisations are authorised to handle and approve the proposal for the procedure of insolvency resolution, and where Corporate Debtors aren't given any active role or participation in the insolvency resolution process even after they are indebted. The Court made additional observations by citing Section 230 of the Companies Act of 2013, which addresses reaching a settlement or

⁴ WP No. 99 of 2018,

⁵ Company Appeal (AT) (Insolvency) No. 224 of 2018

⁶ *Anil Bafna v. Madhu Desikan & Ors.*, Company Appeal (AT) (Insolvency) No. 757 of 2018

⁷ *Rasiklal S. Mardia v. Amar Dye Chem Limited*, Company Appeal (AT) No.337 of 2018

⁸ Sethi P, 'Opportunity for Public Equity Shareholders to Acquire Shares after CIRP - a Measure for Protection or an Instance of Myopia' [2023] SSRN Electronic Journal

⁹ *Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd.*, (2022) 1 SCC 401

making agreements. Because no such measures for compromise or agreements were being thought of, any attempt to reach a compromise or reach an agreement with creditors or members would be improper in the circumstances of the current case. As a consequence of the Committee of Creditors and the adjudicating authority accepting the settlement plan, the CIRP proceedings for the present case have proceeded under the Code.

In the well-known case of *ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta*,¹⁰ the Hon'ble Court observed that in the end, all parties' interests are safeguarded since the corporate debtor receives advantages from the resolution scheme—employees when they receive payment, creditors will eventually receive full repayment, shareholders and investors can increase their investment, and so on.

CONCEPT OF APPLICATION WITHDRAWAL

A request for withdrawing under the provisions of 12A is not expected to be the way the process of resolution is supposed to end. According to the legal framework, this marks the start of the procedure. As far as the corporate debtor's liabilities are concerned, the withdrawal results in the status quo ante. A distinction must be made as a withdrawal under section 12A takes the form of a settlement, unlike plans of settlement approved under section 31 of the Act 2013 and plans approved under section 230. It is difficult to compare a compromise or agreement made pursuant to Section 230 of the Act of 2013 with a simple withdrawal of an application made pursuant to Section 12-A of the IBC.¹¹

CONCLUSION

Promoting the rescue culture in India and making it simpler for corporate debtors to be reorganised, restored, and resolved rather than liquidated are the key objectives of the 2016 Insolvency and Bankruptcy Code. However, for corporate debtors that have started the insolvency resolution procedure, liquidation has been the most frequent result thus far. Although the Act's suspension of new claims does prevent creditors from exercising their rights, such rights are not permanently lost. Alternative remedies provided for in Section 230 of the Companies Act 2013 are always available. The other provisions of the Code are unaffected by the suspension of provisions 7, 9, and 10. This law was created to promote the

¹⁰ *ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1

¹¹ (110001 16th March 2021 Subject)

<<https://ibbi.gov.in/uploads/legalframework/4693a13e80846ec467eae52311923a64.pdf>>

notion that businesses with debt can keep operating without restructuring their obligations. In the event of an offered compromise or agreement, the Liquidator must seek approval from the NCLT under the Act. Subsequently, the Liquidator must proceed in accordance with the NCLT's authorization under the Act. When evaluating an agreement or compromise under Section 230 of the Act, it must be utilized initially. Only if it proves unsuccessful should liquidation under the Code be initiated.

