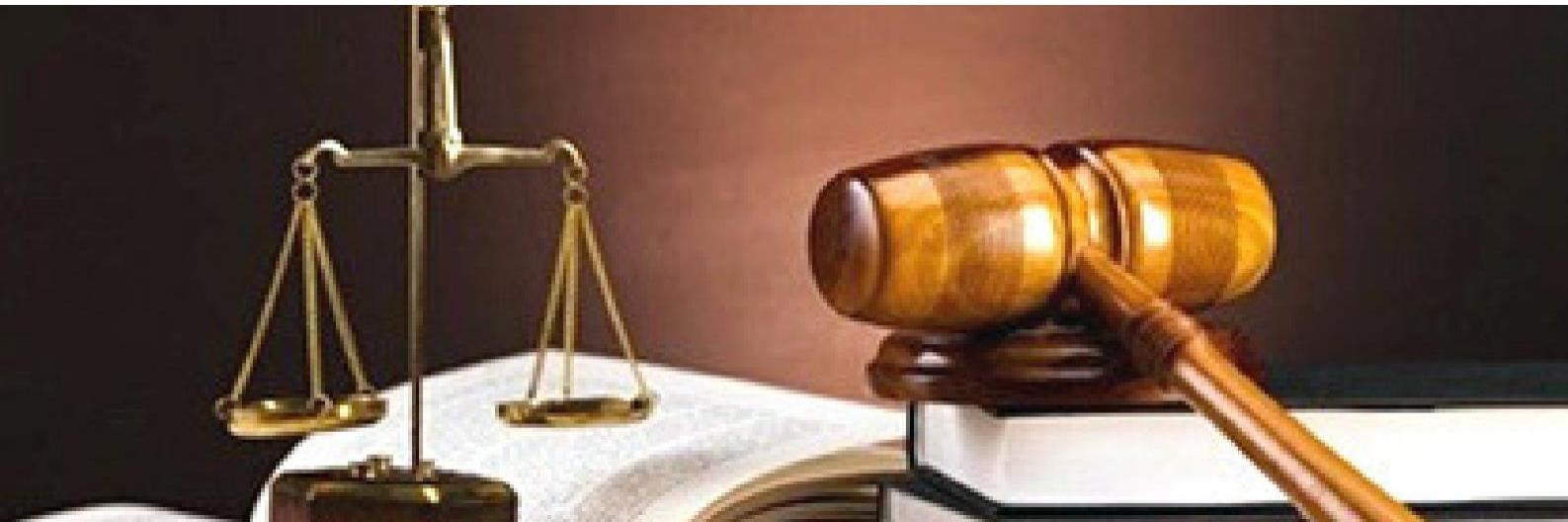


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



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

Brief Facts

By its judgment dated 24 October 2019, the NCLAT held that a person who is ineligible under Section 29A of the Insolvency 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. The judgment was rendered in an appeal filed by Jindal Steel and Power Limited, an unsecured creditor of the corporate debtor, Gujarat NRE Coke Limited.

The appeal was preferred against an order passed by the NCLT in an application under Sections 230 to 232 of the Act of 2013, preferred by Mr Arun Kumar Jagatramka, who is a promoter of GNCL. The NCLT had allowed the application and issued directions for convening a meeting of the shareholders and creditors. In its decision dated 24 October 2019, the NCLAT reversed this decision and allowed the appeal by JSPL. The decision of the NCLAT dated 24 October 2019 is challenged in the appeal to the Supreme Court.

Decision

- A harmonious construction between the two statutes would ensure that while on the one hand a scheme of compromise or arrangement under Section 230 is being pursued, this takes place in a manner which is consistent with the underlying principles of the IBC because the scheme is proposed in respect of an entity which is undergoing liquidation under Chapter III of the IBC. As

such, the company has to be protected from its management and a corporate death. 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 ineligibilities which attach under Section 35(1)(f) read with Section 29A would not apply when Section 230 is sought to be invoked. (**Para 68**)

- The IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC (**Para 89**)
- 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 Act of 2013, when the company is undergoing liquidation under the auspices of the IBC. Further, Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B (1), is also constitutionally valid. (**Para 91**)

Link of the Order

<https://ibbi.gov.in//uploads/order/8b20adae7a37b302f30a02b3aa64ae91.pdf>

