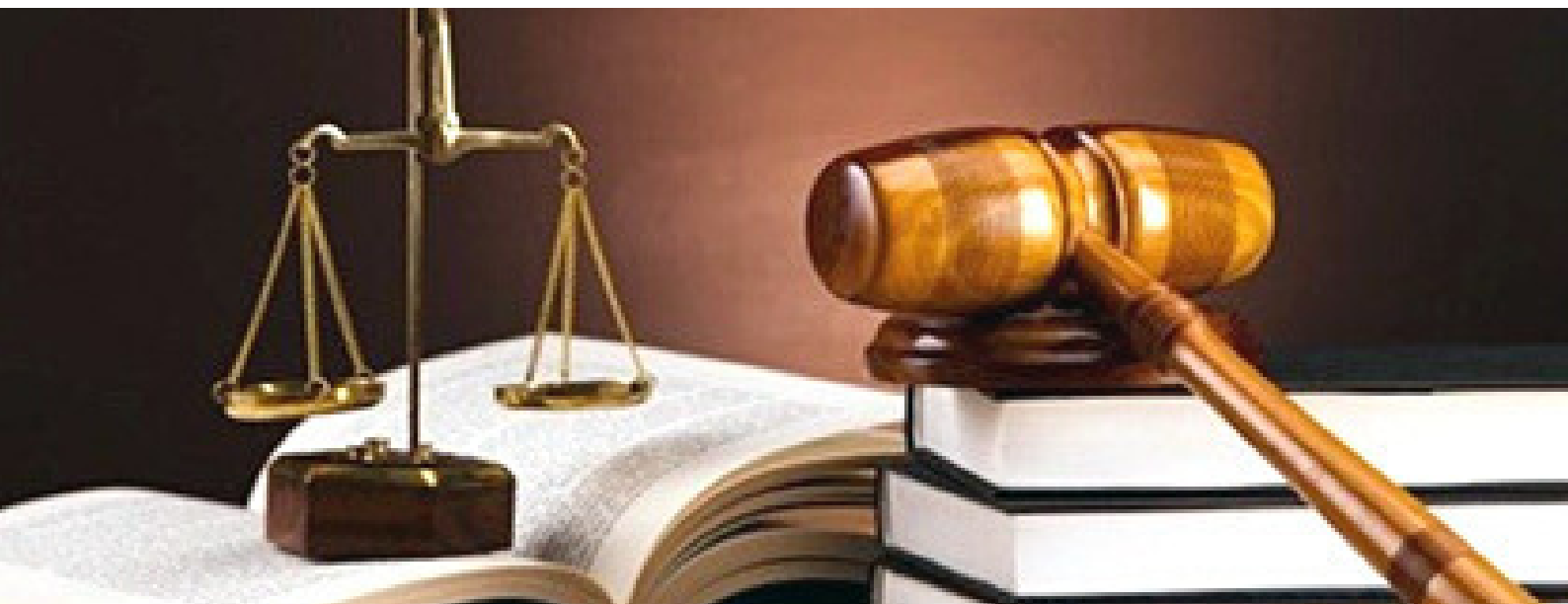


# IBC DOSSIER

A Bulletin on Landmark Judgements under IBC, 2016



## JSW STEEL LTD. VS. MAHENDER KUMAR KHANDELWAL & ORS. COMPANY APPEAL (AT) (INSOLVENCY) NO. 957 OF 2019

### Brief Facts

- Resolution Plan of Bhushan Power & Steel Limited (“Corporate Debtor”) was approved by NCLT, Principal Bench on 5 September 2019 thereby approving JSW Steel Limited (“JSW”) as the successful Resolution Applicant. After the approval of resolution plan when the Implementation and Monitoring Committee of JSW was monitoring the change of management, the Directorate of Enforcement of Central Government attached the assets of Corporate Debtor under Section 5 of the Prevention of Money Laundering Act, 2002. Accordingly, JSW preferred an appeal before NCLAT on the question whether after the approval of a Resolution Plan under Section 31 of the Code, is it open to the Directorate of Enforcement to attach the assets of the Corporate Debtor on the alleged ground of money laundering by erstwhile Promoters.
- NCLAT held that the Directorate of Enforcement has not been empowered under the Code to decide the question. Even if the stand taken by the Directorate of Enforcement is accepted that JSW is a related party of Corporate Debtor, then also Directorate of Enforcement is not under jurisdiction to decide whether JSW is ineligible under Section 29A or Section 32A (1) (a) of the Code.

### Decision

- NCLAT held that Section 32A which was introduced in the Code w.e.f. 28 December 2019 is prospective and would not apply to Resolution Plan which has already been approved under Section 31 of the Code. The resolution plan in this case was approved on 5 September 2019 and hence plea taken by the Directorate of Enforcement is fit to be rejected.



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COMPANY APPEAL (AT) (INSOLVENCY) NO. 957 OF 2019**

Upon a perusal of Section 32A(1) (a) read with the definition of “Related Party” Section 5(24) of the Code, it is an ex facie evident that JSW is not an associate company/ related party of the Corporate Debtor. The Union of India had unequivocally stated that after the completion of the corporate insolvency resolution process, there cannot be any threat of criminal proceedings against the Corporate Debtor or attachment or confiscation of its assets by any investigating agency after approval of the resolution plan. After taking into consideration the submissions, NCLAT stayed the order of attachment passed by the ED and also prohibited it from attaching property of Corporate Debtor without seeking prior approval of the NCLAT. NCLAT also directed the that the property already attached by the ED be realised in favour of the resolution professional immediately.

NCLAT also held that the Judgment passed by the NCLT, Principal Bench and NCLAT will not come in the way of the Directorate of Enforcement or the Serious Fraud Investigation Office or the Central Bureau of Investigation to proceed with investigation or to take any action in accordance with law against erstwhile promoters, officers and others of the Corporate Debtor.

[Link to the Order](https://ibbi.gov.in/uploads/order/21db96b041a8c94300d9c73a89128265.pdf)

<https://ibbi.gov.in/uploads/order/21db96b041a8c94300d9c73a89128265.pdf>

**Thanks & Regards**

**TEAM IPA ICAI**



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