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REASSESSING CLEAN SLATE DOCTRINE POST-KALYANI TRANSCO VS M/S BHUSHAN POWER AND STEEL

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ABSTRACT

This paper examines the evolving scope of the Clean Slate Doctrine under the Insolvency and Bankruptcy Code, 2016 (IBC). The doctrine, reflected in Sections 31 and 32A of the IBC, was designed to ensure that a successful resolution applicant acquires the corporate debtor free from past liabilities, thereby encouraging investment in distressed assets and facilitating corporate revival. However, the recent Supreme Court decision in *Kalyani Transco v Bhushan Power and Steel Ltd* has raised concerns regarding the certainty and breadth of this protection. While the Court did not directly reinterpret Section 32A, its refusal to restrain enforcement actions under public law statutes such as the Prevention of Money Laundering Act (PMLA) suggests a narrowing of the practical protection offered by the Clean Slate Doctrine. It studies the role of disqualification provisions under Section 29A of the IBC and their interaction with the Clean Slate Doctrine. The paper concludes that while the IBC aims to promote certainty and asset revival, recent judicial developments risk undermining investor confidence unless clearer boundaries are established between insolvency protections and parallel public law enforcement actions.

Keywords- Clean Slate Doctrine, Insolvency and Bankruptcy Code, Distressed M&A, Section 32A IBC, Resolution Applicant, Corporate Insolvency Resolution Process, Section 29A, PMLA, Judicial Review, Investor Confidence.

Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) introduced a time-bound and creditor-driven framework for resolving distressed assets of a distressed company. One of the key mechanisms facilitated under the Code is distressed mergers and acquisitions (M&A), wherein a resolution applicant submits a resolution plan under Section 5(26) to revive the corporate debtor as a going concern.¹¹⁶⁴ The Explanation to this provision clarifies that such plans may include restructuring strategies like mergers, demergers, and amalgamations. Additionally, Section 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that such a plan may

include mergers, amalgamations, demergers, or the substantial acquisition of shares to revive the debtor and maximize asset value.¹¹⁶⁵

What enabled investor confidence in acquiring high-risk distressed assets was the assurance provided by the Clean Slate Doctrine, embedded in Section 31(1)¹¹⁶⁶ and Section 32A¹¹⁶⁷ of the IBC. The purpose of Clean Slate Doctrine is to ensure that the Successful Resolution Applicant (SRA) should not face unforeseen claims. Once a resolution plan is approved, all claims incorporated within it become binding, while those excluded are permanently

¹¹⁶⁴ Insolvency and Bankruptcy Code, 2016, §5(26) No. 31, Acts of Parliament, 2016 (India).

¹¹⁶⁵ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, § 37 No. 4, regulation of Insolvency and Bankruptcy Board of India, 2016 (India).

¹¹⁶⁶ Insolvency and Bankruptcy Code, 2016, §31(1) No. 31, Acts of Parliament, 2016 (India).

¹¹⁶⁷ Insolvency and Bankruptcy Code, 2016, §32(A) No. 31, Acts of Parliament, 2016 (India).

extinguished. Consequently, no legal proceedings can be pursued against the corporate debtor for pre-CIRP liabilities not addressed in the plan. The rationale is that for a resolution to be truly effective, it must not only focus on recovery of dues for creditors but also enable the corporate debtor's operational revival.¹¹⁶⁸

This article argues and explores how the recent verdict on *Kalyani Transco vs M/S Bhushan Power And Steel*,¹¹⁶⁹ has narrowed the application of Clean Slate Doctrine. **Part-I** of the article delves into the development of Clean Slate Doctrine through recent judgements. **Part-II** examines the factual background of the *Kalyani Transco vs M/S Bhushan Power And Steel* case (hereinafter referred to as the "JSW BPSL case") and analyse how the doctrine of Clean Slate has been limited by this judgement. **Part-III** explores the disqualification criteria under Section 29A of the Insolvency and Bankruptcy Code (IBC) and its impact on Clean Slate Doctrine.

I. Clean Slate Doctrine

Section 32A provides that once a resolution plan is approved under Section 31, and control/management changes, the corporate debtor (CD) will not be prosecuted for offences committed before the CIRP began, provided that the new owner was not a promoter, in control, or a related party of the CD nor has been found by authorities to have abetted or conspired in the offence, based on material evidence.¹¹⁷⁰ Immunity for the property of CD has also been provided for in the section. Without the protection provided for in Section 32A, few investors would risk acquiring a distressed company if they might end up facing prosecution or asset

seizures for the acts, they haven't committed.

One of the leading cases elucidating the Clean Slate Doctrine is *Ghanashyam Mishra and Sons Private Ltd. v. Edelweiss Asset Reconstruction Company Private Limited*, where the SC held that "once the Adjudicating Authority grant its approval to the resolution plan, it becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan."¹¹⁷¹ The Court emphasized that the legislative intent is to "freeze all claims" to ensure that the resolution applicant is not burdened with unexpected liabilities after taking over the company. Allowing such claims, the Court noted, would disrupt the commercial calculations underlying the resolution plan and render it unviable. This rationale of ensuring certainty also informs the interpretation of Section 32A of the IBC. It is with the certainty of not being criminally liable for the acts of management, promoters or other involved parties that the resolution applicant takes the risk of investing in the Corporate Debtor.

In *Bhushan Power and Steel Ltd. v. Union of India*,¹¹⁷² the Delhi High Court reaffirmed the clean slate principle in the context of Section 32A. While CIRP was ongoing against BPSL and JSW Steel had emerged as the successful resolution applicant, the CBI registered an FIR against the erstwhile promoters and directors of BPSL for serious offences, including fraud, forgery, and corruption. Subsequently, the Enforcement Directorate initiated proceedings under the Prevention of Money Laundering Act (PMLA) and attached assets of BPSL resulting the present petition.

The Court here held that once a resolution plan is approved and the conditions under

¹¹⁶⁸ Shreya Manchanda, *Debt Detox: Clean Slate, New Fate?*, MONDAQ (May 27, 2025, 9:29 AM), <https://www.mondaq.com/india/insolvencybankruptcy/1518668/debt-detox-clean-slate-new-fate>.

¹¹⁶⁹ *Kalyani Transco vs M/S Bhushan Power And Steel Ltd. & Ors.*, 2025 INSC 621.

¹¹⁷⁰ Insolvency and Bankruptcy Code, 2016, §32(A) No. 31, Acts of Parliament, 2016 (India).

¹¹⁷¹ *Ghanashyam Mishra and Sons Private Ltd. v. Edelweiss Asset Reconstruction Company Private Limited*, 2021 SCC Online SC 313.

¹¹⁷² *Bhushan Power and Steel Ltd. v. Union of India*, 2025 SCC OnLine Del 651.

Section 32A are satisfied, the corporate debtor cannot be prosecuted for offences committed by its erstwhile promoters or directors prior to the commencement of the CIRP. However, the Court clarified that Section 32A does not grant immunity to individuals who were in charge of, or responsible for, the conduct of the corporate debtor's business or associated with the Corporate Debtor in any manner or who was directly or indirectly involved in the commission of such offence prior to the commencement of CIRP.

II. **Analysis of Kalyani Transco v. Bhushan Power and Steel Ltd. and Ors**

To appreciate the nuances of analysis the facts are hereby briefly stated. Bhushan Power & Steel Limited (BPSL) was among the 12 large non-performing asset (NPA) accounts identified by the Reserve Bank of India (RBI) in June 2017 for immediate resolution under the Insolvency and Bankruptcy Code (IBC), 2016. JSW Steel submitted a resolution plan to take over BPSL, which was approved by the Committee of Creditors (CoC) and subsequently by the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). Later on, Kalyani Transco, an operational creditor of BPSL, filed a civil appeal challenging the approval of JSW Steel's plan.

The Supreme Court ruled that JSW Steel's resolution plan, which had been approved by the Committee of Creditors and confirmed by the NCLT back in 2019, was actually illegal for two reasons. First, the plan included a combination of equity shares and optionally convertible debentures (OCDs), but the court clarified that under the IBC, only equity shares are allowed. Second, the court found that the plan's execution did not follow the strict timelines set by the Insolvency and Bankruptcy Code. Because of these two violations, the court declared the resolution plan invalid even though the

deal had already been completed and the assets were already part of JSW's business.

The Supreme Court did not engage in the interpretation of S 32A of IBC and its interplay with PMLA. It only ruled on jurisdiction and held that NCLAT had exceeded its jurisdiction while declaring the attachment by the ED as illegal as PMLA is public law, and NCLAT lacked the jurisdiction to review statutory authority decisions.¹¹⁷³ The Court allowed the Resolution Applicant (JSW Steel) to take control of attached assets temporarily "without prejudice" to the ED's rights to investigate and take action under the PMLA. The Supreme Court's reliance on PMLA restitution here due to jurisdictional aspect, rather than a firm pronouncement on Section 32A. This signals a narrowing of the doctrine of clean slate, clarifying that protections under Section 32A do not extend to proceedings under public law statutes such as the PMLA. It is to be stressed that erstwhile promoters/directors/officers are still liable as provided under Section 32A of IBC.

The Court did not narrow the 'clean slate' principle in a substantively but limited itself to jurisdictional issues. However, practically as the Court permitted ED's continued investigation and enforcement action under PMLA, it indicates that immunity under Section 32A may not shield against public law proceedings narrowing the ambit of 'clean slate' doctrine.

III. **Clean Slate Doctrine and related party**

It is also interestingly to be noted that ED attachment has caused a delay of over 2 years in the case of implementation of JSWs Resolution Plan. Legislative efforts need to be exercised in order to deal with such circumstances. If an exception to such strict mandatory timeline under IBC is not allowed, it might result in hampering

¹¹⁷³ Kalyani Transco vs M/S Bhushan Power And Steel Ltd. & Ors., 2025 INSC 621.

investor confidence resulting in the futility of IBC which was enacted to revive distressed companies than to lead them to a path of death.

From a commercial standpoint, a Successful Resolution Applicant should not be denied the protection of the clean slate doctrine in distressed M&A, unless it is later discovered that a connected person or a person acting in concert with them under Section 29 A has engaged in misconduct to circumvent the insolvency process.

Section 29A of IBC ensures that the resolution process remains fair and that the chosen applicant has a clean slate to start with. The clean slate principle, in turn, allows the successful resolution applicant to take over the business without being burdened by past liabilities, enabling them to revive the company and start afresh.

In the case of JSW Steel, an undisclosed Joint Venture Agreement was entered into by the JSW, BPSL and Jai Balaji on 2008 pursuant to an order of Government of India, in the matter of joint allocation of Rohne Coking Coal block.¹¹⁷⁴ To examine whether a Joint Venture (JV) is considered a disqualification for a Resolution Applicant, we need to look into Section 29A (x).¹¹⁷⁵

A "connected person," as defined in Section 29A(x), includes individuals or entities closely associated with the resolution applicant or the corporate debtor. This includes any person who is in management or control of either the resolution applicant or the corporate debtor after the resolution plan is implemented and it also includes the holding company, subsidiary, associate company, or any related party of such individuals.

In the case of *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.* (2019) 2 SCC

51,¹¹⁷⁶ the definition of control from the case of *Subhkam Ventures Ltd. v. SEBI* has been taken to define "management or control" in Section 29A.¹¹⁷⁷ "Control", in Section 29A(c), hence denotes only positive control, which means that the mere power to block special resolutions of a company cannot amount to control.

Section 5(24) of the IBC, which defines a "related party," indicates that a joint venture may qualify as a "venturer" or "investing company" and thus be considered a related party if it holds a sufficient stake of 20% or more to render the company an associate company, or if it exercises control over the composition of the board.¹¹⁷⁸

A Joint Venture is typically formed to pursue specific projects or objectives and does not confer control over the participating entities in most cases. As such, unless the JV agreement explicitly grants affirmative powers or results in de facto control over the corporate debtor's operations, it is unlikely to meet the threshold of "control" required for disqualification under Section 29A of the IBC. Moreover, for a JV to render one party a "related party" under Section 5(24) by being a "venturer" or "investing company," it would generally require a minimum of 20% shareholding or control over the composition of the board. These are conditions that are rarely seen in JV structures.

In the context of JSW Steel, while the existence of a 2008 JV agreement with BPSL is seen, this alone appears insufficient to establish control or related party relationship envisioned in Section 29A. But other Resolution Applicant might find ways to circumvent the doctrine of Clean Slate for their own benefit.

¹¹⁷⁴ Kalyani Transco vs M/S Bhushan Power And Steel Ltd. & Ors., 2025 INSC 621.

¹¹⁷⁵ Insolvency and Bankruptcy Code, 2016, §29A(x) No. 31, Acts of Parliament, 2016 (India).

¹¹⁷⁶ *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.*, (2019) 2 SCC 51.

¹¹⁷⁷ *Subhkam Ventures (p) Ltd. v. SEBI*, [2010] 99 SCL 159 (SAT).

¹¹⁷⁸ Insolvency and Bankruptcy Code, 2016, §5(24) No. 31, Acts of Parliament, 2016 (India).

Conclusion

In the case of *Kalyani Transco v. Bhushan Power and Steel Ltd.*, the Court did not overtly reinterpret Section 32A, yet its refusal to restrain public law enforcement proceedings under the PMLA after resolution plans approval shows a significant narrowing of the doctrine's protective ambit. The judgment opens door for uncertainty into the distressed M&A ecosystem and diminishes the promise that a successful resolution applicant would acquire the corporate debtor free of past liabilities.¹¹⁷⁹

While JSW would in most cases, get back its refund of bid of ₹19,300 crore, the interest money would be lost. Its time and energy into reviving the assets is also lost. The ruling also opens up a Pandora's box of judicial reviews, making even long-closed insolvency resolutions to be vulnerable if procedural errors are discovered by courts at a later stage.

Foreign financial investors who have shown interest in acquiring stakes in stressed assets who is already suspicious due to the slow-moving legal system, may altogether drop the thought of investing after such judgement that brings questions into the finality of the IBC procedure.¹¹⁸⁰ Investors can possibly protect themselves from such rulings by executing an undertaking related to interest for the money provided.

¹¹⁷⁹ Krishna Merchant, *Shock ruling raises India risk: IFR*, ZAWYA, (May 27, 2025, 9:29 AM), <https://www.zawya.com/en/business/m-a/shock-ruling-raises-india-risk-ifr-ikdrclpf>.

¹¹⁸⁰ Shilpy Sinha, *In absence of legal certainty, foreign investors may shun stressed assets*, ECONOMIC TIMES, (May 27, 2025, 9:29 AM) https://m.economictimes.com/markets/stocks/news/in-absence-of-legal-certainty-foreign-investors-may-shun-stressed-assets/amp_articleshow/120839138.cms.