

SECTION 32A OF THE IBC: FROM PRINCIPLES TO PRECEDENTS AND WHAT COMES NEXT

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ABSTRACT

The introduction of Section 32A to the Insolvency and Bankruptcy Code was the legal equivalent of hitting a reset button for corporate debtors. The clean slate theory is not a new concept, and Section 32A reinforces its application by granting immunity from criminal prosecution to corporate debtors post-approval of a resolution plan, provided there is a complete management overhaul. The implementation of this section has faced criticism and raised many questions from critics, scholars and stakeholders about its potential misuse and conflicting nature concerning other legislations, despite this it has been regarded as a bold step by the legislature, displaying an attempt to balance corporate revival and fostering investors' confidence along with ensuring remedy for wrongdoings done by those in the management of corporate debtors. While the Supreme Court upheld the constitutional validity of Section 32A, stressing the need for economic recovery,

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the critics have raised concerns that it might encourage corporate miscreants. This paper aims to foresee and interpret these ramifications and at the same time suggest some possible solutions. The paper also critiques the established insolvency regime in the country by interpreting the interaction between the Code and legislations such as PMLA, Companies Act, and SEBI Act, having overlapping jurisdiction and how the need for a much clearer interpretation from both the legislative and the judicial perspective awaits.

Keywords: *Insolvency, Bankruptcy, Immunity & Management.*

I. INTRODUCTION

The introduction of the Insolvency and Bankruptcy Code, 2016 (“IBC”) has been a breath of fresh air in the Indian insolvency regime. Before this, the scenario in India was a bit *house of cards*. It was a highly fragmented and inefficient system with multiple legislations and bodies governing it,¹ characterised by low amount of recovery rates for the investors, which ultimately affected the economy as India moved further into the global economy.² This led to the introduction of IBC in the year 2016 within the country, which has led to an easier exit of sick entities through liquidation or insolvency and subsequent revival through takeover of the entity. However, the IBC is still in its nascent

¹Aaditya Bhatt, ‘Historic Evolution of IBC’ (*Bhatt and Joshi Associates*, 10 February 2022) <<https://bhattachandjoshiassociates.com/the-insolvency-and-bankruptcy-code-2016/>> accessed 22 July 2024.

²Mukesh Chand, ‘IBC journey so far’ (*Economic Law Practice*, 20 October 2022) <<https://elplaw.in/leadership/ibc-journey-so-far/>> accessed 22 July 2024.

stage when placed in the grand scheme of the age of legislation.³ In this short period, IBC has gone through various amendments to keep pace with the dynamic regime of insolvency practice. One of these amendments is Section 32A of the IBC, which was introduced in the year 2020 by way of an amendment to answer some key questions pertaining to corporate debtors and their past criminal liability.⁴ The paper aims to answer some of the key questions that raised their heads with the introduction of this provision. The paper delves into the inherent purpose and legislative intent behind a key provision of the IBC, emphasizing its pivotal role in reinforcing the Code's core principles. The discussion extends to examine the provision's validity concerning other legislations, particularly those with overlapping jurisdictions, and its potential implications for consistency and conflict resolution within the legal framework. The analysis is framed by critical questions like does the provision raises Constitutional conflicts, what are the primary challenges in its enforcement, and how can they be addressed effectively? These guiding questions structure the inquiry and offer a focused lens through which the provision is evaluated. In addition, the paper reviews various judicial interpretations that have clarified the meaning and scope of the provision, upheld its Constitutionality, and addressed practical challenges arising during its application. These interpretations provide valuable insights into how the provision is operationalized within the broader legal and economic landscape.

The primary reason that this provision is the focus of the paper is due to its non-obstante nature, especially when read with Section 238 of the Code. The meaning of the term 'non-obstante' was defined by the Hon'ble Supreme Court as "*a non obstante clause is a legislative device which is usually employed to give overriding effect to certain*

³Arnav Maru, 'Section 32A of the IBC: Shredding the Independent Corporate Personality?' (2022) 10 (1) NLIU Law Review <<https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-X-Issue-I-17-38.pdf>> accessed 13 January 2025.

⁴The Insolvency and Bankruptcy Code (Amendment) Act, 2020 (1 of 2020).

provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.”⁵

The provision can have serious ramifications when interpreted in its true letters as it could lead to a potential overlap in the jurisdiction of different legislations and their respective government authorities.⁶ Since the introduction of this section, the adjudicating authorities have been continuously evolving laws on this subject, trying to harmonise the implementation of Section 32A. The authors have traced the development of law in this section while also picking up on the questions that still loom large.

II. SECTION 32A OF THE IBC

A. Background of the provision and its scope

The Insolvency Law Committee’s report highlighted the need for Section 32A to alleviate the concerns of resolution applicants who might be dissuaded from proposing resolution plans due to the fear of being held liable for past offences committed by the corporate debtor.⁷ The Committee recommended that while the corporate debtor should be absolved of past criminal liabilities post-resolution, individuals responsible for the debtor’s actions during the commission of the offences should continue to be held accountable.⁸ This distinction ensures that new management is not unfairly penalized for the actions

⁵*Union of India v G.M. Kokil*, (1984) Supp SCC 196.

⁶Pratham Kapoor ‘Clash of Jurisdiction: Analysing The IBC-PMLA Conundrum’ (*Live Law.in*, 22 May 2024) <<https://www.livelaw.in/articles/clash-jurisdiction-analysing-the-ibc-pmla-conundrum-258603?fromIpLogin=97748.49757533119>> accessed 13 January, 2025.

⁷Ministry of Corporate Affairs, *Report of the Insolvency Committee* (20 February 2020).

⁸*ibid* 59.

of the previous management, thus facilitating a smoother and more attractive resolution process.

One of the principles incorporated in drafting Section 32A is the clean slate principle as recognized by the Supreme Court (“SC”) in the *Essar Steel case*⁹ where it was established that once the adjudicating authority approves a resolution plan, all those claims not included in the plan are extinguished and no proceedings can be initiated or continued for claims that predates the resolution process if they are not part of the plan.¹⁰ The adjudicating authorities have been using this principle even before Section 32A and the principle shows its presence in other provisions of the IBC. There are numerous judgments explaining clean slate principle, primarily aimed at shielding the resolution applicant from all claims against the corporate debtor, thereby enabling a fresh start. This increases chances of a successful resolution plan as it provides resolution applicant restitution¹¹ pending claims¹², unclaimed claims¹³, disputed claims, and delayed claims¹⁴, following the Satyam

⁹*Essar Steel India Ltd. (CoC) v Satish Kumar Gupta* (2020) 8 SCC 531.

¹⁰Yogendra Aldak, Pranav Mundra and Balraaj Singh Chhatwal, ‘Clean Slate Doctrine-Wiggle Room for “Uncrystallised Claims”?’ (*SCC Online Blog*, 8 May 2024) <<https://www.scconline.com/blog/post/2024/05/08/clean-slate-doctrine-wiggle-room-for-uncrystallised-claims/>> accessed 11 January 2025.

¹¹*Piramal Capital & Housing Finance Ltd. v Dewan Housing Finance Corpn. Ltd.* (2021) SCC OnLine NCLAT 640; See also *S.A. Pharmachem (P) Ltd. v Alok Industries Ltd.* (2020) SCC OnLine NCLAT 554.

¹²*Jaypee Kensington Boulevard Apartments Welfare Assn. v NBCC (India) Ltd.* (2022) 1 SCC 401.

¹³*Anju Industries v Rishi Ganga Power Corpn. Ltd* (2020) SCC OnLine NCLAT 863.

¹⁴*Commr. v Assam Co. India Ltd.* (2021) SCC OnLine NCLAT 513; Akant Kumar Mittal, ‘The Clean Slate Theory: IBC’s Version of Hermione’s Obliviate Spell’ (*SCC Online Blog*, 2 December 2022) <<https://www.scconline.com/blog/post/2022/12/02/the-clean-slate-theory-ibcs-version-of-hermiones-obliviate-spell/#fn15>> accessed 9 July 2024; *Union of India v Satyam Computer Services Limited and Ors.* (2009) 2 CompLJ 293 (CLB); Shahezad Kazi and Aditi Agarwal, ‘IBC: Supreme Court of India Endorses the Fresh Start on a Clean Slate Principle’ (*SNR Law*, 2021) 5 <<https://www.snrlaw.in/wp-content/uploads/2021/03/SR-Insights-IBC-Supreme-Court-of-India-Endorses-the-Fresh-Start-on-a-Clean-Slate-Principle.pdf>> accessed 12 July 2024.

scam, the Company Law Board allowed the induction of Tech Mahindra Limited as a strategic investor and allowed the protections to the nominated directors of Tech Mahindra and exempted them from any civil and criminal liability of the previous board of directors, in order to promote smooth governance and recovery efforts for the company and hence applying the clean slate/ fresh slate theory. This shows that the clean slate theory was in prevalence even before and without the amendment of 2020 to the IBC, by virtue of Section 29A and Section 31 of the IBC, which now have been codified in the form of Section 32A.

Further, the Hon'ble Supreme Court has clarified the scope and applicability of Section 32A. The Court has unequivocally stated that Section 32A provides protection solely to the corporate debtor and not to its signatories, directors, or other associated individuals.¹⁵ This means that while the corporate entity may be shielded from certain liabilities following the approval of a resolution plan, the individuals who oversaw the corporate debtor's business operations remain subject to prosecution for any offences committed before the initiation of the corporate insolvency resolution process (“CIRP”).

B. A legislative response and subsequent chaos

The primary motivation behind the amendment arose from the NCLAT's judgement in the case of *JSW Steel Ltd v. Mahendra Kumar Khandelwal & Ors.*¹⁶ The case concerns the legality of the attachment of assets by the Directorate of Enforcement (“ED”) when the resolution plan given by JSW had already been approved. NCLAT, while accepting the argument that stakeholders have the right to raise their objections, noted that the same needed to be done before NCLT

¹⁵*Ajay Kumar Radheshyam Goenka v Tourism Finance Corpn. of India Ltd* (2023) 10 SCC 545.

¹⁶*JSW Steel Ltd. v Mahendra Kumar Khandelwal* (2020) SCC OnLine NCLAT 431.

approved of the resolution plan. Once the plan has been approved, no entity, including a government agency, can object to the same. The Tribunal held that the upcoming investors are not and should not be liable for the acts and decisions of the previous management.

However, before the decision of the Hon'ble Supreme Court, the legislative answer to the applicability of Section 32A and its supremacy over other legislations is not clear. Subsequently, the Court has ordered ED to handover the assets of BPSL to JSW on 13th December 2024. The same was implied by the Hon'ble Delhi High Court in the case of *Deputy Director of Enforcement Delhi v. Axis Bank and Others*¹⁷ While noting the interaction between IBC and the Prevention of Money Laundering Act (“PMLA”) the Court held that the latter cannot be said to have precedence over the former. The Court held that the period of moratorium cannot prevent the ED from exercising its statutory authority, including seizure and attachment of property. The Court also sought to protect the rights of a third party and mentioned that in case of an asset not being attached by ED with the motive of not frustrating the PMLA, in such a case the party has the right to seek enforcement and the PMLA provisions would apply to the asset.¹⁸

C. Dissecting the provision

Section 32A (1) provides for immunity to the corporate debtor in case of the debtor being subjected to CIRP. However, it put two conditions for the same. The first is the fact that the resolution process needs to be approved by the adjudicating authority under Section 31 of the Code.¹⁹ The second is the fact that there needs to be a complete overhaul in the management of the debtor.²⁰ The term ‘management’ has not been explained in the Code and, its primary interpretation comes from the

¹⁷*Deputy Director of Enforcement Delhi v Axis Bank* (2019) SCC OnLine Del 7854.

¹⁸*ibid.*

¹⁹The Insolvency and Bankruptcy Code, 2016 (31 of 2016) ss. 32A (1), 31.

²⁰*ibid.*

Companies Act, 2013.²¹ The terms' interpretation was done in the case of *Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Others*.²² The Hon'ble Supreme Court in the judgement noted that according to the company law the term 'management' refers to the *de-jure* management of the company which includes, the Board of Directors, and would also include the definitions of 'manager', 'managing director' and officer as mentioned under the Companies Act.²³ The provision sets out a disjunctive requirement as to what amounts to change. The Court then further explained the meaning of the term 'control' as mentioned in the Companies Act.²⁴ The Court ruled that the definition could be divided into two parts namely the *de jure* control and the *de facto* control.²⁵ The former means the right to appoint the majority of the directors in the company while the latter is to be interpreted as acting in concert to positively influence the management or policy decisions.²⁶ It either includes the change in management or the change in control but not both.²⁷

Furthermore, the second clause of the provision reiterates the condition of approval under Section 31 of the Code as mentioned previously concerning the property of the corporate debtor.²⁸ The provision bars any action against the property of the Corporate Debtor in relation to any offence committed before the CIRP.²⁹ The action includes

²¹The Companies Act, 2013 (18 of 2013).

²²*Arcelor Mittal India Pvt. Ltd. v Satish Kumar Gupta and Others* (2019) 2 SCC 1.

²³The Companies Act, 2013 (18 of 2013) s 2 (53).

²⁴*ibid* s 2 (27).

²⁵*Arcelor Mittal India Pvt. Ltd. v Satish Kumar Gupta and Others* (2019) 2 SCC 1.

²⁶*ibid*.

²⁷The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 32A (1).

²⁸*ibid* s 32A (2).

²⁹IBC laws 'Interpretation of Section 32A in landmark judgment, Manish Kumar v. Union of India and Anr' (2024) <[https://ibclaw.in/interpretation-of-section-32a-of-ibc-in-landmark-judgment-manish-kumar-v-union-of-india-and-anr/#:~:text=Sub%2DSection%20\(2\)%20of%20Section%2032A%20declares%20a%20bar%20against%20taking%20any%20action%20against%20property%20of%20the%20corporate%20debtor](https://ibclaw.in/interpretation-of-section-32a-of-ibc-in-landmark-judgment-manish-kumar-v-union-of-india-and-anr/#:~:text=Sub%2DSection%20(2)%20of%20Section%2032A%20declares%20a%20bar%20against%20taking%20any%20action%20against%20property%20of%20the%20corporate%20debtor)> accessed 10 January 2025.

‘attachment,’ ‘seizure,’ ‘retention’ or ‘confiscation’ of the property.³⁰ Additionally, the provision extends the protection not only to the owner of the property covered under the resolution plan i.e. the corporate debtor but also to the person who is acquiring the said property through CIRP.³¹ The section was the primary reason behind the issue of primacy with the actions of ED in the JSW BPSL case, the same would be discussed later in the following paragraphs.

Lastly, the third clause of the provision mentions the act of assisting investigation for any offence which was committed before the CIRP.³² This implies that the corporate debtor or person shall cause a hindrance to the investigation process regardless, of immunity being provided to them under the section. Another meaning that could be implied from the text of the section is how it in a discerning manner tries to lift the corporate veil by continuing the investigation on persons especially those present in the management of the corporate debtor could still be liable for the offences which were committed during their tenure.

D. Background of the JSW-BPSL Saga

a) Brief on the initiation of the insolvency proceeding against Bhushan Power and Steel Limited (BPSL)

BPSL was once one of the foremost entities in the Steel market of the country. During the period from 2010 to 2014, its profit climbed from 711 crores to 1814 crores.³³ During the said period BPSL also borrowed huge sums of money from various banks including Punjab National Bank (PNB). The bank was the first entity to report the

³⁰ibid expl. (i).

³¹The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 32A (2) Expl. (ii).

³²The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 32A (3).

³³Dep P Samaddar, ‘Understanding the Rise, Fall and Revival of Bhushan Power and Steel’ (*Insider*, 16 Oct. 2020) <<https://insider.finology.in/success-stories/rise-and-fall-of-bhushan-power-and-steel>> accessed 25 July 2024.

fraudulent transactions being conducted by the company. A subsequent fraud of loan exposure amounting to over Rs. 3805 crore was discovered by the bank.³⁴ This and the subsequent non-payment by the company led to the filing of insolvency proceedings against the company.³⁵ Subsequently, after a tedious and lengthy bidding procedure, Jindal Steel Works (JSW) emerged as the front-runner with its bid of Rs. 19,700 crores being the highest and the same being approved by the creditors.³⁶ The bid included upfront cash payment, equity infusion and additional cash infusion to support the operations of BPSL.

b) *The emergence of challenges after the acceptance*

Despite the approval of the Committee of Creditors, the resolution faces several setbacks in the following years. Shortly after the approval of the resolution application by the creditors and subsequently by the adjudicating authority on September 5th, 2019 Enforcement Directorate (ED) attached assets worth Rs.4,025 crores of BPSL relating to a money laundering probe on October 10th, 2019.³⁷ The case was against the previous promoters of BPSL.³⁸ The creditors ultimately had to

³⁴Saloni Shukla, 'PNB reports over Rs 3,805 crore fraud by Bhushan Power & Steel Ltd' *The Economic Times* (Mumbai, 6 July 2019) 1.

³⁵eena Mani, 'PNB & SBI initiate insolvency proceeding against Bhushan Steel, Power' *Business Standard* (New Delhi, 14 July 2017) 1.

³⁶Deccan Chronicle, 'JSW Steel likely winner for Bhushan Power' *Deccan Chronicle* (New Delhi, 16 Oct 2018) 1.

³⁷ZeeBiz WebTeam, 'Money laundering: Big Setback! Rs 4,025 Cr assets of Bhushan Power and Steel attached – investigation revelations' (*Zee Business*, 13 Oct 2019) <<https://www.zeebiz.com/companies/news-money-laundering-big-setback-rs-4025-cr-assets-of-bhushan-power-and-steel-attached-check-investigative-revelations-112378>> accessed 26 July 2024.

³⁸PTI, 'ED attaches Bhushan Steel's assets worth Rs 4,000 crore in connection with money laundering case' (*The Print* 12 Oct 2019) <<https://theprint.in/india/governance/ed-attaches-bhushan-steel-assets-worth-4000-crore-money-laundering-case/305095/>> accessed 26 July 2024.

move to the Supreme Court to stay the attachment of assets.³⁹ This raised serious questions regarding whether now JSW could acquire the assets or not. Furthermore, the threat also loomed over the liability of the JSW in the criminal practices which were done by the previous promoters of BPSL as the Code at the time did not provide for any exemption to the resolution applicant for the conduct of the corporate debtor.⁴⁰

Subsequently, an amendment was made to the Code through the *Insolvency and Bankruptcy Code (Amendment) Act, 2020* that introduced Section 32A. The purpose of the section is to provide immunity to a corporate debtor and its assets from any prosecution, attachment, seizure, or confiscation.⁴¹ The primary motivation for the legislation and its timing very well coincides with the legal issue raised in the matter of JSW's resolution plan for BPSL.

The Hon'ble Supreme Court's judgement in the case of *Manish Kumar v. Union of India and Anr.*⁴² ultimately, put an end to the saga of appeal and counter-appeal in the NCLT and NCLAT. The legislation played a big role in ending the legal battle while at the same time, the Hon'ble Supreme Court cleared the nuances of the application of the section. The interaction between IBC & PMLA and their non-obstante clauses will be discussed in the latter parts of the paper.

The issues arising in the JSW-BPSL saga underscore the critical need for harmonizing laws across various jurisdictions to ensure consistency and efficiency in legal processes. This need becomes particularly

³⁹Samanwaya Rautray, 'Apex court stays ED move to attach assets of BPSL' *The Economic Times* (New Delhi, 21 Dec 2019) 1.

⁴⁰Biman Mukherji, 'Despite IBC changes, JSW may go slow on Bhushan Power and Steel buy' (*Mint* 25 Dec 2019) <<https://www.livemint.com/companies/news/despote-ibc-ordinance-jsw-may-complete-buy-of-bhushan-power-and-steel-only-by-march-end-11577276529075.html>> accessed 26 July 2024.

⁴¹Insolvency and Bankruptcy Code 2016, s. 32A (India).

⁴²*Manish Kumar v Union of India* (2021) 5 SCC 1.

evident in situations where there is a jurisdictional overlap between the ‘non-obstante’ clauses of two legislations, each claiming supremacy over the other. Such overlaps create ambiguity, leading to repeated judicial intervention to resolve conflicts—a process that not only delays justice but also undermines the legislative intent behind the enactments. For the IBC, this issue is even more pronounced, as the core objective of the Code is to facilitate the timely resolution of distressed assets. Any delay caused by conflicts between the IBC and other laws, such as the PMLA, directly impacts its efficacy, potentially eroding stakeholder confidence in the insolvency resolution framework. The time-bound resolution, being the essence of the IBC, is jeopardized when legal ambiguities necessitate prolonged litigation. This case further highlights the importance of legislative clarity in preventing such conflicts. A forward-thinking approach is essential to anticipate areas of potential overlap and to ensure that laws are designed to function harmoniously. This includes providing clear guidance on the precedence of one statute over another in specific contexts and addressing procedural conflicts comprehensively. By fostering alignment and coherence between statutes with overlapping or conflicting jurisdictions, legislative clarity can significantly reduce the need for judicial intervention, ensuring smoother implementation of laws and achieving the legislative intent effectively.

III. CONSTITUTIONAL VALIDITY OF SECTION 32A

Along with its dynamic effects, Section 32A sparked many controversies as well. As much as Section 32A was necessary to promote the smooth restructuring process, it cannot be denied that the provision was criticized and challenged for undermining the accountability of promoters and previous management. Thus, validity of Section 32A rests on the fine balance between a robust insolvency process and legal accountability. This is what made the Hon’ble Supreme Court explore the broader constitutional principles and intent

behind Section 32A in *Manish Kumar v. UOI*⁴³, where the validity of the IBC (Amendment) Act, 2020 was challenged, including Section 10 of the amendment that brought in Section 32A.

The Petitioners in this case argued that Section 32A is problematic as it undermines the interests of creditors, and allottees as by absolving corporate debtors of criminal liabilities, the provision will enable the misappropriation of assets that were acquired through illegal means and they also pointed out the conflict with intent of PMLA. Further, it was contended that Section 32A is unconstitutional as it violated Articles 14, 19 and 300-A of the Indian Constitution by being arbitrary, and ultra vires in nature as it disregards the fundamental rights of creditors and other stakeholders.

In response to the Petitioner's contentions, the Government argued that the rationale and objective behind Section 32A was to safeguard bona fide resolution applicants from penal offences in which they had no involvement. Furthermore, it aimed to incentivize the resolution applicants by ensuring that they are not threatened by the liabilities of the past management's wrongful actions, hence the amendment and the section focuses on value maximization and creditors' recovery.

The Supreme Court dealt with the question of constitutional validity of Section 32A by *firstly*, dealing with the provisions of this section, wherein the Court explained the conditions necessary for absolving liabilities under Section 32A, which include approval of the resolution plan by the adjudicating authority, change in control of the party or replacement of the past management with people not involved in the wrongdoing. Moreover, it was explained that Section 32A (2) bars actions against the property of the corporate debtor covered by a

⁴³ibid.

resolution plan which ensures a change in control to a qualified entity.⁴⁴ The Court emphasised that these provisions are necessary to protect the welfare and interest of the public and to provide for economic measures for a smooth IBC framework, hence should be preserved and be held valid.

Secondly, the Court noted that the legislative wisdom is not open for judicial review and the practicality of the provision depends on balancing the conflicting interests and prioritizing certain interests over others for the greater economic good as well as preventing abuse, which is a pearl of legislative wisdom, hence highlighting the limited judicial review in economic regulations.

Thirdly, the Court went on to note that the provision ensures the fresh start of the resolution applicant without any burden of past criminal liabilities, and the provision does not let the wrongdoers escape the liability as the immunity was conditional upon the change in control of corporate debtor and does not benefit the management and related parties. The Court accepted the Petitioner's argument that the provision grants immunity to the property acquired through illegal means. However, it was observed that this cannot be a ground to overlook the rationale and intent behind the provision. The Hon'ble SC upheld the constitutional validity of Section 32A by prioritizing the goals of IBC and the need for robust changes.

However, the concern raised by the Petitioner regarding the shield provided to the property acquired through illegal means still looms large as the provision is open to misuse by misappropriation of public

⁴⁴IBC laws 'Interpretation of Section 32A in landmark judgment, Manish Kumar v. Union of India and Anr' (2024) <[https://ibclaw.in/interpretation-of-section-32a-of-ibc-in-landmark-judgment-manish-kumar-v-union-of-india-and-anr/#:~:text=Sub%2DSection%20\(2\)%20of%20Section%2032A%20declares%20a%20bar%20against%20taking%20any%20action%20against%20property%20of%20the%20corporate%20debtor](https://ibclaw.in/interpretation-of-section-32a-of-ibc-in-landmark-judgment-manish-kumar-v-union-of-india-and-anr/#:~:text=Sub%2DSection%20(2)%20of%20Section%2032A%20declares%20a%20bar%20against%20taking%20any%20action%20against%20property%20of%20the%20corporate%20debtor)> accessed 10 January 2025.

funds as public money can be diverted by the purchase or creation of assets such as establishing Special Purpose Vehicle (“SPV”) and transferring public money into its account, which results in the separation of the source of funds and assets purchased or created, this in turn can undermine the objects of other legislations such as PMLA and may render the victims without remedy.⁴⁵

IV. SECTION 32A *VIS-A-VIS* OTHER LEGISLATIONS

The overriding effect of the IBC has been discussed by the Hon’ble SC in *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*⁴⁶ Herein, the Court observed that this amendment to IBC has an overriding effect over other laws, such as those governed by SEBI, by citing Section 238 of the IBC, which ensures its supremacy in case of inconsistencies. Additionally, the successful resolution applicants are indemnified against claims by the government post-approval of the resolution plan and are shielded from criminal proceedings related to the actions of previous promoters. In such a scenario, it becomes important to explore the dynamic interplay between IBC, particularly Section 32A, and various other legislations, shedding light on how courts and tribunals have navigated these legal conflicts.

A. Section 32A and Section 14 of the IBC

The interplay between Sections 14 and 32A of the IBC was considered by the Supreme Court in *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*⁴⁷, wherein it was observed that Section 32A is focused on the extinction

⁴⁵Soyaib Qureshi, ‘Section 32A: Unanswered Legal Issues’ (*PSL Chambers*, 2024) <<https://www.pslchambers.com/article/section-32a-unanswered-legal-issues/>> accessed 16 July 2024.

⁴⁶*Ghanashyam Mishra & Sons (P) Ltd. v Edelweiss Asset Reconstruction Co. Ltd.* (2021) 9 SCC 657.

⁴⁷*P. Mohanraj v Shah Bros. Ispat (P) Ltd.* (2021) 6 SCC 258.

of criminal liabilities post CIRP and does not interfere with the moratorium provided under Section 14. A moratorium is established under Section 14 of the IBC while the CIRP is taking place which involves suspension of any legal proceedings whatsoever to create a suitable environment for the corporate debtor's revival while the CIRP is ongoing. It does not clear debts but rather holds off actions till the end of the CIRP.

On the other hand, Section 32A gives permanent relief after the resolution process. The existence of Section 32A does not obliterate the impact of the moratorium under Section 14 as moratorium comes into effect once the CIRP initiation application has been accepted by the adjudicating authority and ceases once the resolution plan is approved by the adjudicating authority, while Section 32A grants immunity against offences committed prior to the commencement of CIRP only to the corporate debtor, not the persons liable, after the plan has been approved. Hence, the criminal proceedings can continue against the persons liable after the approval of resolution plan but not against corporate debtor. Consequently, both provisions must be enforced notwithstanding any clash that may arise between them as such an application ensures that no provision overrides another but that all can coexist harmoniously.

B. Section 32A and Section 29A of the IBC

In the case of *Vikram Puri v. Universal Buildwell (P) Ltd.*,⁴⁸ it was contended that the suspended directors of a corporate debtor should be eligible to submit a resolution plan. The Court clarified that Section 32A does not grant any right to suspended directors to submit a resolution plan. The key issue revolves around Section 29A of the IBC, which explicitly disqualifies certain individuals, including suspended

⁴⁸*Vikram Puri v Universal Buildwell (P) Ltd.* 2022 SCC OnLine NCLAT 3585.

directors, from submitting a resolution plan.⁴⁹ Section 29A⁵⁰ is designed to prevent those who contributed to the debtor's financial distress from regaining control of the company. This disqualification holds regardless of the provisions of Section 32A. It was held that even if Section 32A provides for the cessation of liability for corporate debtor post-approval of a resolution plan, it does not override the disqualifications laid out in Section 29A. Suspended directors are explicitly barred from submitting resolution plans, ensuring that those responsible for the debtor's prior mismanagement cannot regain control.

This interpretation reinforces the separation of corporate debtor liabilities from the accountability of directors and promoters. By upholding the harmonious interpretation, the judgement effectively ensures that the defaulters are not allowed the backdoor entry into the management of the corporate debtor. This approach increases the creditor's confidence and fosters improved standards of corporate governance.

C. Section 32A and PMLA

The tussle between IBC and PMLA emerges from their non-obstante clauses, Section 238⁵¹ and Section 71⁵² respectively. Each of these provisions ensures the prevailing nature of respective legislation in case of inconsistency. As discussed earlier, with the introduction of ⁵³Section 32A, the concerns for misappropriation of illegal funds during CIRP looms as money laundering involves shell companies and

⁴⁹Palash Taing and Mayank Kumar, 'Eligibility of Suspended Director To Submit A Resolution Plan: Revisiting Hari Babu Thota' (*Live Law.in*, 18 September 2024) <<https://www.livelaw.in/articles/eligibility-suspended-director-submit-resolution-plan-revisiting-hari-babu-thota-269958?>> accessed 11 January 2025.

⁵⁰The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 29A.

⁵¹The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 238.

⁵²The Prevention of Money Laundering Act, 2002 (15 of 2003) s 71.

⁵³*ibid.*

complex layers to conceal illicit proceeds, often leaving victims remediless.⁵⁴ For instance, funds collected from the public could be siphoned off to another company to purchase properties, and victims would have claim only against the original company and not the properties acquired, thus enabling the legitimization of illicit gains through the insolvency process.⁵⁵ Therefore, questions have been raised concerning the supremacy of these provisions in such circumstances.

In the case of *Kiran Shah v. Directorate of Enforcement, Kolkata*⁵⁶, it has been observed that Section 32A (2) restricts, actions against a corporate debtor undergoing CIRP, and the claims related to the ‘attachment of property’ by the Government, with a condition precedent that the properties must have been considered and approved in the resolution plan by the adjudicating authority, but this immunity does not cover the properties of guarantors, who can still face actions against their properties. It has been pointed out by the Tribunal that Section 32A (2) can result in undermining the efforts of authorities to dispose of the assets acquired through criminal means as such assets will be legitimized after the completion of the CIRP. Hence, resulting in nullifying the objective of PMLA of penalizing and confiscating the property acquired through criminal means. However, the Tribunal further notes that both IBC and PMLA serve different purposes, and under PMLA the government confiscates proceeds of crime not as a creditor but in the sovereign capacity to enforce the law. The IBC does not grant an all-encompassing power to the NCLT to decide on the matters of facts and law connected with PMLA. Considering this, it

⁵⁴Soayib Qureshi and Parag Rai, ‘Section 32A: Unanswered Legal Issues’ (*PSL Advocates & Solicitors*, 16 April 2024) <<https://www.pslchambers.com/article/section-32a-unanswered-legal-issues/>> accessed 11 January 2025.

⁵⁵*ibid.*

⁵⁶*Kiran Shah v Directorate of Enforcement Kolkata* (2022) SCC OnLine NCLAT 2.

was ruled that PMLA and IBC should be read as serving their respective purpose and not as repugnant to each other.

Recently, the Delhi High Court in *Bhushan Power & Steel Limited*⁵⁷ case, quashed criminal proceedings under the PMLA against BPSL in light of Section 32A,⁵⁸ and it was held that since BPSL had undergone successful resolution under the IBC, it could not be prosecuted for offences committed prior to the commencement of the CIRP. It was emphasized that Section 32A (1) grants immunity to corporate debtor post-resolution while allowing prosecution of its erstwhile promoters and officers responsible for pre-CIRP offences under Section 32A (2). The Court has clarified that role of BPSL under its former management could still be examined during the trial of its erstwhile promoters and directors.

Further, if the property of the corporate debtor is attached under PMLA and the CIRP process is initiated then the properties can be utilised to fulfil the objects of IBC, till the sale of liquidation assets takes place.⁵⁹ This view has been upheld in the *Manoj Kumar*⁶⁰ case as well. However, in such a scenario, the questions concerning siphoning off illegal funds through the creation of shell companies and special purpose acquisition companies in the name of corporate debtors remain unanswered.

⁵⁷*Bhushan Power & Steel Limited v Union of India* W.P. (CRL) 1261/2024.

⁵⁸Sanjana Dadmi 'Delhi High Court Quashes PMLA Proceedings Against BPSL In ₹47,000 Crore Bank Fraud Case Due To Successful CIRP' (*Live Law.in*, 6 February 2025) <<https://www.livelaw.in/high-court/delhi-high-court/pmla-proceedings-bpsl-bank-fraud-corporate-debtor-ibc-insolvency-proceedings-283209>> accessed 15 February 2025.

⁵⁹*Directorate of Enforcement (ED) v Liquidator of M/s. GS Oils Limited* I.A. (IBC) No. 33 of 2023.

⁶⁰*Directorate of Enforcement v Manoj Kumar Agarwal* Company Appeal (AT) (Insolvency) No. 575/2019.

D. Section 32A and SEBI's power of attachment of properties

The immunity under Section 32A (2) against the attachment of property of the corporate debtor stands in the way of the power of SEBI to attach the properties under Section 28A⁶¹ of the SEBI Act, 1992. Under Section 28A of the SEBI Act, the Recovery Officer has the power to recover amounts in cases a person fails to comply with an order of SEBI to pay a penalty, refund monies, or disgorgement order under Section 11B⁶² of the Act. This power to recover amounts allows SEBI to do so by attachment or sale of the person's properties. However, in cases of default by the corporate debtor, this power cannot be exercised by SEBI if the CIRP process has been initiated, and the resolution plan is approved. Further, Section 24⁶³ of the Act makes it an offence if any person contravenes the provisions of the Act or fails to comply with the orders issued by the SEBI board, in the shadow of Section 32A of the IBC this provision is also rendered toothless if there is a failure to comply with the orders of SEBI or contravention of the provisions of the Act by the corporate debtor or directions issued with respect to the properties of the corporate debtor after approval of resolution plan. One of the key motivations for bringing the SEBI Act into force was to regulate the malpractices in the securities market, reading the two legislations in contrast with each other will render the provision of the Act useless.

Further, the statutory dues can be recovered as an operational creditor,⁶⁴ and with regards to the penalties imposed by SEBI, NCLAT in the case of *Maharashtra Seamless Ltd. V. Shri Padmanabhan*

⁶¹The Securities and Exchange Board of India Act, 1992 (15 of 1992) s 28A.

⁶²*ibid* s 11B.

⁶³*ibid* s 24.

⁶⁴*Pr. Director-General of Income Tax (Admn. & TPS) v Synergies Dooray Automotive Ltd.* Company Appeal (AT) (Insolvency) No. 205 of 2017.

*Venkatesh*⁶⁵, has clarified that the penalties imposed by statutory authorities, as under Section 11B of the Act, can be claimed as an operational debt, however, these are not recoverable during CIRP. Moreover, Section 32A is unclear about whether the bar on proceedings against the properties of corporate debtors is concerning civil or criminal proceedings. If it is in respect of both, then the Recovery Officer will not be able to recover the penalty even after the moratorium period.⁶⁶ Hence, in the light of Section 238 of the IBC, through precedents, it has been held that in cases of conflict between Section 14 of the IBC and Section 28A of the Act, the latter will be given preference.⁶⁷ Both Section 32A and 14 of the IBC were brought in to increase the effectiveness of the resolution process, and therefore in cases of conflict, the judiciary has been more inclined to give precedence to these IBC provisions over Section 28A of the Act.

E. IBC and the Companies Act

The nature of Section 32A when read with Section 238 of IBC makes it a non-obstante clause as it provides the Code with preferential implementation over other legislations, the intention for the same being cleared by the legislator.⁶⁸ A statute is termed non- obstante when it has been given the power to override or supersede any other conflicting

⁶⁵*Maharashtra Seamless Ltd. vs. Shri Padmanabhan Venkatesh & Ors Company Appeal (AT) (Insolvency) No. 220 of 2019.*

⁶⁶High Level Committee under the Chairmanship of Justice (Retd.) Anil R. Dave, 'Report on the Measures for Strengthening the Enforcement Mechanism of the Board and Incidental Issues' (2020) 424 <<https://ourgovdotin.wordpress.com/wp-content/uploads/2020/06/report-of-high-level-committee-under-the-chairmanship-of-justice-retd.-anil-r.-dave-on-the-measures-for-strengthening-the-enforcement-mechanism-of-the-board-and-incidental-issues.pdf>> accessed 28 July 2024.

⁶⁷*M/s. Anju Agarwal RP for Shree Bhawani Paper Mills Ltd. v Bombay Stock Exchange & Ors.* (2019) SCC OnLine NCLAT 789.

⁶⁸The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 238.

provision of another statute.⁶⁹The issue arises, however, when two more statutes have non-obstante clauses. The implementation of such a non-obstante clause has seen a dramatic rise in statutes enacted in recent times.⁷⁰

However, non-obstante clauses pertaining to Section 32A are not the only point of contention between IBC and other legislations. Certain procedural irregularities are also present between the Code and other legislations. One of the examples of the same is the lack of clarity and scope with Section 271 of the Companies Act.⁷¹ The provision talks about the circumstances under which a company might wind up by the order of the tribunal. Sub-section (a) of the provision talks about the process of a company winding up after the passing of a special resolution mandating the NCLT to wind up the company. At the same time Section 59 of the Code talks about the process of voluntary liquidation.⁷² At the surface the issue might look simple as the former should be chosen by the company when it needs the procedure to be guided by the NCLT while, the latter is to be utilized when the company has selected voluntary liquidation and wants minimal tribunal intervention.⁷³ However, the cracks start to appear fairly quickly between this harmonious construction of the two laws. Firstly, the Code under Section 59 imposes certain conditions as to the eligibility criteria of a company when applying for voluntary liquidation under the Code

⁶⁹Collins English Dictionary, 'Non-obstante' (*Collins Dictionary*, 2024) <<https://www.collinsdictionary.com/dictionary/english/non-obstante>> accessed on 25 July 2024.

⁷⁰Tarun Jain, 'Circumscribing Non-Obstante Clauses: Tracing the New Jurisprudence' (*SCC Online Blog*, 16 June 2023) <<https://www.sconline.com/blog/post/2023/06/16/circumscribing-non-obstante-clauses-tracing-the-new-jurisprudence/>> accessed on 27 July 2024.

⁷¹The Companies Act, 2013 (18 of 2013) s 271.

⁷²The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 59.

⁷³Anirudh Gotety, 'Winding-up under Section 271(a) of the Companies Act and its Impact on the Insolvency and Bankruptcy Code' (*India Corp Law*, 18 Aug 2017) <<https://indiacorplaw.in/2017/08/winding-companies-act-impact-insolvency-bankruptcy-code.html>> accessed on 27 July 2024.

– the chief among them being the company should not have committed any default.⁷⁴ Apart from the mentioned condition, the board of the applicant company have also been given the power to make procedural rules as they deem fit.⁷⁵ In case the applicant has committed a default it has the route of Section 271 (a) of the Companies Act to price.⁷⁶ However, when the latter is to be utilised the company can do the same only through a special resolution this leaves a very critical issue unanswered which is pertaining to the fact that if the whole legal mind set behind implementing the Code in the year 2016 was to simplify and accelerate the insolvency procedure why is the procedure provided under Section 271 (a) still exist. The position of the law was somewhat clarified by the parliament after the introduction of the Company (Winding Up Rules)⁷⁷ While voluntary winding up and winding up on the ground of instability comes within the purview of the IBC, Section 271 talks about winding up by the tribunal.⁷⁸ The primary feature of the rules is to provide companies with an alternative which is the tribunal-guided insolvency procedure. However, to reduce the burden on the NCLT the rules talk about the ‘summary procedure’ with the Government of India (GOI)⁷⁹ The summary procedure has already been envisaged under Section 361 of the Companies Act.⁸⁰

The story of such ambiguity however does not end here, another provision of the IBC which seems to be at odds with the Companies Act is Section 29A. The provision mandates that the former promoters and management of the Corporate Debtor are not allowed to submit

⁷⁴The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 59 (1).

⁷⁵ibid s 59 (2).

⁷⁶The Companies Act, 2013 (18 of 2013) s 271.

⁷⁷The Companies (Winding Up) Rules 2020 (India).

⁷⁸AZB Partners, ‘Companies (Winding Up) Rules, 2020’ (*AZB & Partners*, 30 March 2020) <<https://www.azbpartners.com/bank/companies-winding-up-rules-2020/>> accessed 27 July 2024.

⁷⁹Ruchika Chitravanshi, ‘Headless NCLT awaits reforms to speed up resolution of pending cases’ *Business Standard* (New Delhi, 25 June 2021) 1.

⁸⁰The Companies Act, 2013 (18 of 2013) s 361.

Resolution Plans. The provision prohibits any possible entry of the previous promoters again into the management of the corporate debtor. However, on the contrary Section 230 of the Companies Act allows for the same.⁸¹ It allows the former management to propose a scheme of arrangement during liquidation under the Act.⁸² The position of the law on the issue was finally clarified by the Hon'ble Supreme Court in the case of *Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.*⁸³ The Apex Court stated that disqualification under Section 230 is also applicable to Section 29A of IBC. This means that when an entity is undergoing insolvency, a person ineligible to submit a resolution plan under IBC is also ineligible to submit a scheme for compromise and arrangement under the Companies Act.

The judgement was welcomed as a landmark ruling in clarifying and resolving the conflict between IBC and the Companies Act. However, it left some glaring gaps in resolving the conflict as it failed to distinguish between the various categories of promoters, and hence prevented promoters of small industries from continuing in the organization. This ultimately defeats the whole purpose of the insolvency law which is to revive and revitalize the organization.⁸⁴

Ultimately, the purpose of IBC is to '*consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment*

⁸¹ibid s 230.

⁸²ibid.

⁸³*Arun Kumar Jagatramka v Jindal Steel & Power Ltd* (2021) 7 SCC 474.

⁸⁴Pratik Datta, 'The proper purpose of insolvency law' (*Mint*, 6 May 2018) <<https://www.livemint.com/Opinion/sSwYmQLzmnpT4MsHV11FpM/The-proper-purpose-of-insolvency-law.html>> accessed 28 July 2024.

*of Government dues.*⁸⁵ Section 29A therefore acts as a hindrance for honest former promoters and directors seeking to take control of the company.

There is however one ray of hope present for the promoters introduced through the Insolvency and Bankruptcy Code (Second Amendment), 2018.⁸⁶ Section 12A of IBC provides a method for the previous promoters to regain control even after the passing of the insolvency application.⁸⁷ The only condition for the same is the fact that the application for withdrawing the insolvency proceeding from the Adjudicating Authority needs to be voted in favour by a minimum of 90% of the members of the Committee of Creditors.⁸⁸ Hence, the criteria for withdrawing the resolution plan is much higher than the criteria for approving the same which is only 66%.⁸⁹ Further, the insertion of Regulation 30A into the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person), 2018 elaborated on the process of withdrawal.⁹⁰ The same made it mandatory that the withdrawal needs to be done before the Expression of Interest under Regulation 36 of the Insolvency Regulations.⁹¹ This means that after the commencement of the bidding procedure under the regulation, an application of withdrawal cannot be made to the Adjudicating Authority.

The introduction of provisions like Section 29A and Section 32A by the legislature aims to enhance the efficiency of insolvency proceedings and promote the overall health of the economy. Section 29A, which bars defaulting promoters from bidding for their own

⁸⁵The Insolvency and Bankruptcy Code, 2016 (31 of 2016) Preamble.

⁸⁶The Insolvency and Bankruptcy Code (Second Amendment) 2018.

⁸⁷The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 12A.

⁸⁸*ibid.*

⁸⁹The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 59 (3) (b).

⁹⁰Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016, IBBI/2016-17, reg 30A.

⁹¹*ibid* reg 36A.

companies during insolvency proceedings, seeks to uphold accountability and deter opportunistic behaviour.⁹² Similarly, Section 32A provides immunity to corporate debtors from prosecution for offences committed before the commencement of insolvency resolution, fostering confidence among prospective bidders.⁹³

While these provisions serve critical objectives, their application may sometimes yield counter-productive outcomes. The blanket approach of Section 29A, for instance, risks excluding promoters with genuine intentions or those whose defaults were caused by external factors beyond their control. Similarly, while Section 32A is designed to encourage resolution, its scope might inadvertently allow certain forms of misconduct to go unpunished.

To address these concerns, the legislature needs to draw a clear distinction between malfeasance and honest business failure. A nuanced approach that evaluates the intent, circumstances, and actions of stakeholders in each case could strike a balance between accountability and encouraging genuine participation in insolvency resolution.⁹⁴ Ultimately, such refinements would help achieve the dual objectives of ensuring justice and fostering economic revival.

V. SUGGESTIONS

While it is necessary to understand the introduction of Section 32A in the IBC as it aids the resolution process and makes it more lucrative for applicants, it would not be entirely wrong to admit that it still has some loose ends. These shortcomings have been recognised by legal scholars and authorities, and attempts have been made to tie these ends. The

⁹²The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 29A.

⁹³The Insolvency and Bankruptcy Code, 2016 (31 of 2016) s 32A.

⁹⁴Ministry of Finance, *The Report of the Bankruptcy Law Reforms Committee, Volume 1: Rationale and Design* (November 2015) 22.

Supreme Court in the case of *Manish Kumar v Union of India*⁹⁵ held that there are enough safeguards provided in Section 32A that do not allow the wrongdoer to get away with the liability. Further, the immunity under this section is contingent upon fulfilling the conditions laid out in the section. SEBI released a report⁹⁶ in 2020 in which it recommended amending Section 32A to ensure that creditors cannot approve a resolution plan that uses illegally siphoned public funds to resolve the company and pay themselves.⁹⁷ It emphasized that the board or enforcement authorities could act in a guardian role to recover the misappropriated funds, as done in Australian courts.⁹⁸ Further, the securities regulator recommends the insertion of a new sub-clause or proviso to clarify that Section 32A will not affect the disgorgement or refund actions under securities law to ensure SEBI could give effect to its deterrent provisions.⁹⁹ These agencies can leverage provisions under the IBC, such as Sections 43 and 45, to reverse preferential or undervalued transactions and recover misappropriated funds. In cases involving cross-border misappropriation, international treaties like the Mutual Legal Assistance Treaty (MLAT) can facilitate asset recovery.

Now, with regard to the siphoning off illegal funds by way of SPACs or SPVs, the application of the *doctrine of substantial consolidation* in such cases under Section 32A may prove beneficial. This doctrine, followed in the US and UK, allows for the merging of assets and liabilities of inter-connected entities into a single pool for a common

⁹⁵*Manish Kumar v Union of India* (2021) 5 SCC 1.

⁹⁶Securities and Exchange Board of India, 'Report of the High-Level Committee under the Chairmanship of Justice (Retd.) Anil R. Dave on the Measures for Strengthening the Enforcement Mechanism of the Board and Incidental Issues' (SEBI, June 2020) <https://www.sebi.gov.in/reports-and-statistics/reports/jun-2020/report-of-high-level-committee-under-the-chairmanship-of-justice-ret-d-anil-r-dave-on-the-measures-for-strengthening-the-enforcement-mechanism-of-the-board-and-incidental-issues_46863.html> accessed 28 July 2024.

⁹⁷*ibid* 407.

⁹⁸*ibid*.

⁹⁹*ibid* 424.

CIRP.¹⁰⁰ In the case of *SBI v. Videocon Industries Ltd.*¹⁰¹, the NCLT consolidated 13 out of a total of 15 Videocon Group Companies and recognised the complex interdependencies and how it would be futile to initiate separate CIRPs. This doctrine ensures that resolution applicants cannot easily separate illegal funds from the purchased assets.

Apart from the enforcement agencies of other legislations, the victims of financial crimes, who do not fall under the definition of operational creditors, also look forward to a legislative recognition of their problem ensuring they have a remedy against the properties acquired through illegal means.¹⁰² This would require an impact assessment involving consultations with stakeholders, including the enforcement agencies. Moreover, if we take a bird's-eye view of Section 32A, it turns out that the Section comes into play once the resolution plan is approved and the conditions set out in the section are met, so the trigger point of Section 32A lies at the approval of the resolution plan. If anything can be done to uphold the sanctity of the Section and harmonious enforcement with other legislations that would be to keep the resolution plan in check, maybe the origin of funds used for acquiring assets could be traced, and on a case-to-case basis involve the concerned authorities, such as ED, Recovery Officer, etc., to work in cooperation in the approval of resolution plan. This would avoid the multiplicity of

¹⁰⁰Ritisha Gupta, 'SBI V. Videocon Case: Doctrine of Substantial Consolidation' (*SCC Online Blog*, 9 January 2021) <<https://www.sconline.com/blog/post/2021/01/09/sbi-v-videocon-case-doctrine-of-substantial-consolidation/>> accessed 23 July 2024.

¹⁰¹*SBI v Videocon Industries Ltd.* 2018 SCC OnLine NCLT 13182.

¹⁰²Soyaib Qureshi, 'Section 32A: Unanswered Legal Issues' (*PSL Chambers*, 2024) <<https://www.pslchambers.com/article/section-32a-unanswered-legal-issues/>> accessed 28 July 2024.

proceedings and require more procedural changes than legislative amendments.¹⁰³

VI. CONCLUSION

Among the various provisions of IBC, Section 32A stands out as a pivotal provision, designed to encourage resolution applicants by providing them with a degree of protection against past liabilities of corporate debtors. So far, it has turned out to be an unavoidable yet controversial provision, as critics have argued that absolving corporate debtors of past criminal liabilities could undermine the interest of creditors and other stakeholders, leading to a situation where misappropriated assets can be shielded from recovery efforts. At the same time, the provision has created a conducive environment for the revival of financially distressed companies by incentivising the resolution applicants by removing the fear of being held accountable for the previous management's actions.

While the introduction of Section 32A was necessary, it requires further clarifications to fully achieve its intended purpose. Amendments and judicial pronouncements will be key to ensuring its alignment with other legislations. Striking a balance between facilitating smooth resolutions and protecting stakeholder interests is crucial for enhancing the efficiency of India's insolvency regime.

To enhance the impact of Section 32A, clearer guidelines on liability protection and mechanisms to prevent misuse must be explored.

¹⁰³Dormaan Jamshid Dalal, 'Commencement of Civil Trials and Amendment of Pleadings' (*SCC Times*, 6 June 2022) IBC laws 'Interpretation of Section 32A in landmark judgment, Manish Kumar v. Union of India and Anr (2024) <[https://ibclaw.in/interpretation-of-section-32a-of-ibc-in-landmark-judgment-manish-kumar-v-union-of-india-and-anr/#:~:text=Sub%2DSection%20\(2\)%20of%20Section%2032A%20declares%20a%20bar%20against%20taking%20any%20action%20against%20property%20of%20the%20corporate%20debtor](https://ibclaw.in/interpretation-of-section-32a-of-ibc-in-landmark-judgment-manish-kumar-v-union-of-india-and-anr/#:~:text=Sub%2DSection%20(2)%20of%20Section%2032A%20declares%20a%20bar%20against%20taking%20any%20action%20against%20property%20of%20the%20corporate%20debtor)> accessed 10 January 2025.

Targeted amendments and consistent judicial interpretation can address ambiguities while safeguarding creditor's rights. Additionally, fostering collaboration between policymakers, judicial bodies, and industry stakeholders can catalyse meaningful reforms.

As the Indian insolvency landscape continues to evolve, some crucial questions still await a response from the judicial authorities; ongoing dialogue and collaboration among stakeholders will be crucial in shaping a legal framework for an efficient, harmonious, and inclusive insolvency process. The lessons learned from the implementation of Section 32A of the IBC surely demand a more informed approach and further developments in this area.