



**NOVA**  
**IRON & STEEL LTD.**

CIN : L02710CT1989 PLC010052

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New Delhi-110019 INDIA Tel.: +91-11-30451000 Fax: +91-11-23712737  
Email : raj\_nisl2007@yahoo.com, www.novaironsteel.com

**THROUGH ONLINE PORTAL**

Ref:NISL/LISTING/2020-21  
Dated 02/04/2021

The Secretary  
Bombay Stock Exchange Limited  
Phiroze Jeejeebhoy Towers,  
25th Floor, Dalal Street,  
Mumbai-400001

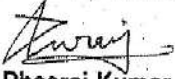
Ref: Regulation 31(A), of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015

Sir,

Pursuant to the provisions of Regulation 31(A), of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015, it is informed that Company has received a letter number JSWSL:SECT:MUM:SE:2020-21 dated 31/03/2021 through email dated 31/03/2021 from M/s JSW Steel Limited regarding Acquisition of Bhushan Power & Steel Limited, one of the promoter of the Company and Declassification of Bhushan Power & Steel Limited as Promoter/part of promoter group of the Company as 'Public' shareholders of the Company as per the terms of approved Resolution plan and the Plan approved by the Hon'ble National Company Law Tribunal, New Delhi (NCLT) on 05/09/2019 and the Hon'ble National Company Law Appellate Tribunal (NCLAT) vide its order dated 17/02/2020 .

The copy of the same is being sending you for your record. Kindly take note of the above and also update your website for the information of our shareholders and investors.

Yours faithfully,  
For Nova Iron & Steel Limited

  
Dheeraj Kumar  
(Company Secretary)



Encl: as above



Declassification of Bhushan Power & Steel Limited as a 'promoter / 'part of promoter group' of Nova Iron and Steel Ltd.

From: Lancy Varghese (lancy.varghese@jsw.in)  
To: rai\_nisl2007@yahoo.com  
Cc: secretarial@bpsl.net; corp.relations@bseindia.com; alokkumar.mishra@jsw.in  
Date: Wednesday, 31 March, 2021, 05:42 pm IST

Dear Sir,

**Sub: Acquisition of Bhushan Power & Steel Limited and Declassification of Bhushan Power & Steel Limited as a 'promoter / 'part of promoter group' of Nova Iron and Steel Ltd.**

This is to inform you that JSW Steel Limited ("**JSW / Resolution Applicant**") had submitted a resolution plan ("**Resolution Plan**") for acquiring Bhushan Power & Steel Limited ("**BPSL**") which has been approved by the Hon'ble National Company Law Tribunal, New Delhi Bench ("**NCLT**") vide its order dated September 5, 2019 and the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") vide its order dated February 17, 2020 (collectively referred to as the "**Plan Approval Orders**"). JSW, being the successful resolution applicant, has thereafter implemented the Resolution Plan and acquired BPSL on March 26, 2021.

As per the terms of the approved Resolution Plan, the Resolution Applicant is required to file a report with the stock exchange where the shares of Nova Iron and Steel Ltd. ("**NISL**") are listed within four (4) working days from the date of acquisition.


Also As per the Resolution Plan and the Plan Approval Orders, on approval of the Resolution Plan, BPSL shall be declassified as a promoter/promoter group of NISL without the requirement of following any separate procedure for reclassification of BPSL as 'public shareholders' of NISL. Accordingly, BPSL shall be reclassified as 'public shareholder' of NISL and shall not be required to follow any separate procedure for such reclassification.

In compliance thereto, intimation is being provided regarding acquisition of BPSL pursuant to the implementation of the Resolution Plan for necessary action at your end.

Regards,

Lancy Varghese

Company Secretary  
JSW Steel Limited  
"JSW Centre", Bandra Kurla Complex,  
Bandra East,  
Mumbai 400 051  
☎ : +91 22 4286 5112 | M: +91 9821509455  
[www.jsw.in](http://www.jsw.in) | [lancy.varghese@jsw.in](mailto:lancy.varghese@jsw.in)

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JSWSL letter to Nova.pdf  
3.8MB



**JSW Steel Limited**

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Bandra Kurla Complex,  
Bandra (East), Mumbai - 400 051  
CIN: L27102MH1994PLC152925  
Phone : +91 22 4286 1000  
Fax : +91 22 4286 3000  
Website : www.jsw.in

JSWSL: SECT: MUM: SE: 2020-21  
March 31, 2021

To,

Nova Iron and Steel Ltd.  
Village-Dagori, Tehsil Belha,  
Bilaspur, Chhattisgarh - 495 224  
Email - rai\_nisl2007@yahoo.com

Cc:

1. Bhushan Power and Steel Ltd.  
NTH Complex, 4<sup>th</sup> Floor, A-2,  
Shaheed Jeet Singh Marg,  
Qutub Institutional Area, New Delhi - 110 067
2. Bombay Stock Exchange,  
Phiroze Jeejeebhoy Towers,  
Dalal Street, Mumbai - 400 001

**Sub: Acquisition of Bhushan Power & Steel Limited and Declassification of Bhushan Power & Steel Limited as a 'promoter / 'part of promoter group' of Nova Iron and Steel Ltd.**

This is to inform you that JSW Steel Limited ("**JSW / Resolution Applicant**") had submitted a resolution plan ("**Resolution Plan**") for acquiring Bhushan Power & Steel Limited ("**BPSL**") which has been approved by the Hon'ble National Company Law Tribunal, New Delhi Bench ("**NCLT**") vide its order dated September 5, 2019 and the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") vide its order dated February 17, 2020 (collectively referred to as the "**Plan Approval Orders**"). JSW, being the successful resolution applicant, has thereafter implemented the Resolution Plan and acquired BPSL on March 26, 2021.

As per the terms of the approved Resolution Plan, the Resolution Applicant is required to file a report with the stock exchange where the shares of Nova Iron and Steel Ltd. ("**NISL**") are listed within four (4) working days from the date of acquisition. In compliance thereto, intimation is being provided regarding acquisition of BPSL pursuant to the implementation of the Resolution Plan.

As per the Resolution Plan and the Plan Approval Orders, on approval of the Resolution Plan, BPSL shall be declassified as a promoter/promoter group of NISL without the requirement of following any separate procedure for reclassification of BPSL as 'public shareholders' of NISL. Accordingly, BPSL shall be reclassified as 'public shareholder' of NISL and shall not be required to follow any separate procedure for such reclassification.

Pursuant thereto, and given that NISL is required to make relevant applications under the applicable law before the stock exchange informing them of the declassification, we request you to please initiate necessary action to ensure compliance with the Resolution Plan as well as the applicable law. Please refer to Paragraph 147 of the order of the Hon'ble NCLAT approving the Resolution Plan attached herein for reference along with the extract of the Resolution Plan.





This is for your information, records and necessary compliance.

Thanking You,

Yours faithfully,  
For **JSW Steel Limited**

**Lancy Varghese**  
**Company Secretary**

Encl.: As above



# *Resolution Plan in respect of Bhushan Power & Steel Limited*

Submitted by **JSW STEEL LIMITED** (under the provisions of the Insolvency and Bankruptcy Code, 2016)

8<sup>th</sup> February, 2018

(along with all the clarifications provided from time to time)

## RELEVANT EXTRACT OF RESOLUTION PLAN

### (iii) Existing exemptions under applicable law

#### (a) SEBI SAST Regulations

Regulations 3, 4 and 5 of the SEBI SAST Regulations inter alia, require an acquirer to make an open offer for acquisition of shares of a listed company if (i) an acquirer acquires shares or voting rights in a listed company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such listed company, entitle them to exercise 25% or more of the voting rights in such listed company; or (ii) irrespective of acquisition or holding of shares or voting rights in a listed company, an acquirer acquires, directly or indirectly, control over such listed company; or (iii) the acquirer acquires shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a listed company, the acquisition of which would otherwise attract the obligation to make an open offer.

SEBI vide notification dated August 14, 2017 (the "SAST Amendment Notification") amended the SEBI SAST Regulation providing exemption from the open offer obligations under the SEBI SAST Regulations to the acquisition of equity shares pursuant to a resolution plan approved by the NCLT under section 31 of the IBC.

Accordingly upon approval of this Resolution Plan by NCLT, the indirect acquisition of Nova Iron & Steel Limited by the Resolution Applicant, pursuant to the implementation of the Resolution Plan shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 in accordance with Regulation 10(1)(da) of SEBI SAST Regulations. It is hereby confirmed that there are no other documents in relation to the indirect acquisition of Nova Iron & Steel Limited by the Resolution Applicant other

than the terms contained in this Resolution Plan. Any agreement between the Company and any other shareholder of Nova Iron & Steel Limited shall stand terminated without any further deed or action upon approval of this Resolution Plan by NCLT. The Resolution Applicant shall file a report with the stock exchanges where the shares of the Nova Iron & Steel Company are listed, in such form as may be specified not later than four working days from the acquisition.



**Specific Orders to be obtained from the NCLT for Reliefs Concessions and Entitlements**

The Resolution Professional shall, in its application for seeking approval of this Resolution Plan (in the event of approval of the same by the COC), also seek the following specific orders from the NCLT:

- (i) the indirect acquisition of Nova Iron & Steel Limited by the Resolution Applicant, pursuant to the implementation of the Resolution Plan shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 in accordance with Regulation 10(1) of SEBI SAST Regulations; and
- (ii) Since the new shareholders of the Company did not intend to acquire Nova Iron & Steel Limited and have no relationship with the other promoters/promoter group of Nova Iron & Steel Limited, the Company should be declassified as a promoter/promoter group of Nova Iron & Steel Limited and should not be required to follow any separate procedure for reclassification of the Company as 'public shareholders' of Nova Iron & Steel Limited.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 957 of 2019

IN THE MATTER OF:

JSW Steel Ltd.

...Appellant

Vs.

Mahender Kumar Khandelwal & Ors.

...Respondents

**Present:** For Appellant: - Mr. Kapil Sibal, Mr. Arun Kathpalia and Mr. Neeraj Kishan Kaul, Senior Advocates with Mr. Manmeet Singh, Mr. Anugrah Robin Frey, Ms. Nishtha Chaturvedi, Ms. Kauser Husain, Ms. Diksha, Mr. Deepak Joshi and Ms. Abhilasha Khanna, Advocates.

For Respondents: - Mr. Abhinav Vasisht, Senior Advocate with Mr. Saurav Panda, Mr. Shantanu Chaturvedi, Ms. Charu Bansal, Ms. Mahima Sareen, Ms. Priya Singh and Mr. Shreyas Gupta, Advocates for 'Resolution Professional'

Mr. Ramji Srinivasan, Senior Advocate with Mr. Spandan Biswal, Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Mr. Prafful and Ms. Sylona, Advocates for CoC.

Mr. Zoheb Hossain and Mr. Agni Sen, Advocates for ED. Mr. Sanjay Shorey, Director and Mr. P. Atchuta Ramaiah, Joint Director and Mr. Chandrashekhar (SPP) CBI.

Company Appeal (AT) (Insolvency) No. 1034 of 2019

IN THE MATTER OF:

Sanjay Singal & Anr.

...Appellants

Vs.

Punjab National Bank & Ors.

...Respondents



**Present:** For Appellants: - Mr. Harin Raval, Senior Advocate with Mr. Arvind Kumar Gupta, Ms. Henna George, Mr. Kartikey Kanojiya and Ms. Sukanya Singh, Advocates.

For Respondents: - Mr. Kapil Sihal, Mr. Arun Kathpalia and Mr. Neeraj Kishan Kaul, Senior Advocates with Mr. Manmeet Singh, Mr. Anugrah Robin Frey, Ms. Nishtha Chaturvedi, Ms. Kauser Husain, Ms. Diksha, Mr. Deepak Joshi and Ms. Abhilasha Khanna, Advocates.

Mr. Abhinav Vasisht, Senior Advocate with Mr. Saurav Panda, Mr. Shantanu Chaturvedi, Ms. Charu Bansal, Ms. Mahima Sareen, Ms. Priya Singh and Mr. Shreyas Gupta, Advocates for 'Resolution Professional'

Mr. Ramji Srinivasan, Senior Advocate with Mr. Spandan Biswal, Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Mr. Praful and Ms. Sylona, Advocates for CoC.

Company Appeal (AT) (Insolvency) No. 1035 of 2019

IN THE MATTER OF:

Kalyani Transco

...Appellant

Vs.

Bhushan Power & Steel Ltd.

Through Resolution Professional & Ors.

...Respondents

**Present:** For Appellant: - Mr. Rajiv Ranjan, Senior Advocate with Mr. Nikhil Falli, Ms. Allya Durafshan, Advocates

For Respondents: - Mr. Abhinav Vasisht, Senior Advocate with Mr. Shantanu Chaturvedi, Ms. Charu Bansal, Ms. Mahima Sareen, Ms. Priya Singh and Mr. Shreyas Gupta, Advocates for 'Resolution Professional'

Mr. Ramji Srinivasan, Senior Advocate with Mr. Spandan Biswal, Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Mr. Praful and Ms. Sylona, Advocates for CoC.

Mr. Arvind K. Gupta, Advocate for Mr. Sanjay Singal



Mr. Kapil Sibal, Mr. Arun Kathpalia and Mr. Neeraj Kishan Kaul, Senior Advocates with Mr. Manmeet Singh, Mr. Anugrah Robin Frey, Ms. Nishtha Chaturvedi, Ms. Kauser Husain, Ms. Diksha, Mr. Deepak Joshi and Ms. Abhilasha Khanna, Advocates.

Company Appeal (AT) (Insolvency) No. 1055 of 2019

IN THE MATTER OF:

Jaldhi Overseas Pte. Ltd. ...Appellant

Vs.

Bhushan Power Steel Ltd. & Ors. ...Respondents

Present: For Appellant: - Mr. Dhruv Mehta, Senior Advocate with Mr. Kumar Shashank Shekhar, Mr. Diwakar Maheshwari and Ms. Pratiksha Mishra, Advocates.

For Respondents: - Mr. Kapil Sibal, Mr. Arun Kathpalia and Mr. Neeraj Kishan Kaul, Senior Advocates with Mr. Manmeet Singh, Mr. Anugrah Robin Frey, Ms. Nishtha Chaturvedi, Ms. Kauser Husain, Ms. Diksha, Mr. Deepak Joshi and Ms. Abhilasha Khanna, Advocates.

Mr. Abhinav Vasisht, Senior Advocate with Mr. Shantanu Chaturvedi, Ms. Charu Bansal, Ms. Mahima Sareen, Ms. Priya Singh and Mr. Shreyas Gupta, Advocates for 'Resolution Professional'

Mr. Ramji Srinivasan, Senior Advocate with Mr. Spandan Biswal, Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Mr. Praful and Ms. Sylona, Advocates for CoC.

Company Appeal (AT) (Insolvency) No. 1074 of 2019

IN THE MATTER OF:

Medi Carrier Pvt. Ltd.

...Appellant



Vs.

**Mahendra Kumar Khandelwal,  
Resolution Professional of Bhushan Power  
and Steel Ltd. & Anr.**

...Respondents

**Present: For Appellant: - Mr. Abhijeet Sinha, Mr. Sidhartha  
Sharma, Mr. Arjun Asthana and Ms. Sreenita Ghosh,  
Advocates.**

**For Respondents: - Mr. Kapil Sibal, Mr. Arun Kathpalia  
and Mr. Neeraj Kishan Kaul, Senior Advocates with Mr.  
Manmeet Singh, Mr. Anugrah Robin Frey, Ms. Nishtha  
Chaturvedi, Ms. Kauser Husain, Ms. Diksha, Mr. Deepak  
Joshi and Ms. Abhilasha Khanna, Advocates.**

**Mr. Abhinav Vasisht, Senior Advocate with Mr. Shantanu  
Chaturvedi, Ms. Charu Bansal, Ms. Mahima Sareen, Ms.  
Priya Singh and Mr. Shreyas Gupta, Advocates for  
'Resolution Professional'**

**Mr. Ramji Srinivasan, Senior Advocate with Mr. Spandan  
Biswal, Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya,  
Mr. Praful and Ms. Sylona, Advocates for CoC.**

**Company Appeal (AT) (Insolvency) No. 1126 of 2019**

**IN THE MATTER OF:**

**CJ Darel Logistics Ltd.**

...Appellant

Vs.

**Mahender Kumar Khandelwal  
Resolution Professional of Bhushan  
Power & Steel Ltd.**

...Respondent

**Present: For Appellant: - Mr. Manu Beri, and Mr. Varun Varma,  
Advocates.**

**For Respondents: - Mr. Ramji Srinivasan, Senior  
Advocate with Mr. Spandan Biswal, Mr. Bishwajit Dubey,  
Ms. Srideepa, Advocates for CoC.**



Company Appeal (AT) (Insolvency) No. 1461 of 2019

IN THE MATTER OF:

State of Odisha & Ors.

...Appellants

Vs.

Bhushan Power & Steel Ltd. & Anr.

...Respondents

Present: For Appellants: - Mr. Rana Mukherjee, Senior Advocate with Ms. Kirti Mishra, Ms. Kanika Sharma and Ms. Apurva Upmanyu, Advocates.

For Respondents: - Mr. Kapil Sibal, Mr. Arun Kathpalia and Mr. Neeraj Kishan Kaul, Senior Advocates with Mr. Manmeet Singh, Mr. Anugrah Robin Frey, Ms. Nishtha Chaturvedi, Ms. Kauser Husain, Ms. Diksha, Mr. Deepak Joshi and Ms. Abhilasha Khanna, Advocates.

Mr. Ranji Srinivasan, Senior Advocate with Mr. Spandan Biswal, Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya, Mr. Praful and Ms. Sylona, Advocates for CoC.  
Dr. Sukant Vats, Public Prosecutor, CBI, BS & FC

Mr. Sanjay Shorey, Director (Legal & Prosecution) and Mr. Pasumarty Atchuta Ramaiah, Joint Director (in all the appeals)

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the 'Corporate Insolvency Resolution Process' of 'Bhushan Power & Steel Limited'-'(Corporate Debtor)', the 'Resolution Plan' submitted by 'JSW Steel Limited' ('Resolution Applicant') has been approved by the



Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned Judgment dated 5<sup>th</sup> September, 2019 with certain conditions.

After the approval of plan when Monitoring Committee was monitoring the change of management, on 10<sup>th</sup> October, 2019, the Directorate of Enforcement of Central Government attached assets of 'Bhushan Power & Steel Limited'- ('Corporate Debtor') under Section 5 of the 'Prevention of Money Laundering Act, 2002'.

2. 'JSW Steel Limited' is 'Successful Resolution Applicant', in its appeal has sought for setting aside/ modification of conditions imposed in paragraph 128 sub paras (e), (f), (g), (i), (j), (k) of the impugned order dated 5<sup>th</sup> September, 2019. It has also raised objection and challenged the jurisdiction of Directorate of Enforcement to attach the properties of the 'Bhushan Power & Steel Limited'- ('Corporate Debtor'), after change of hands.

3. In view of such development, one of the questions raised is whether after approval of a 'Resolution Plan' under Section 31 of the Insolvency and Bankruptcy Code, 2016, 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.



4. One of the appeals has been filed by the Promoters- 'Mr. Sanjay Singhal and Anr.' and some other appeals have been preferred by 'Operational Creditors', as discussed below.

**JSW Steel Limited**

5. The Appellant- 'JSW Steel Limited' has sought for setting aside/ modification of conditions imposed in paragraph 128 sub paras (e), (f), (g), (i), (j), (k) of the impugned order dated 5<sup>th</sup> September, 2019, relevant of which are:

*"128. As a sequel of the above discussion, CA No- 254(PB)/ 2019 is allowed and the resolution plan of JSW-H1 Resolution Plan Applicant is accepted. The objections raised by the Ex-Directors cum Promoters of the Corporate Debtor and Operational Creditors are hereby over-ruled. However, the acceptance and approval of the resolution plan shall be subject to the following:*

xxx

xxx

xxx

*(e) We also approve the appointment of Monitoring Agency from the date of this order until the closing date. Accordingly, the CoC and the RP would continue as Monitoring Agency.*





(f) The power of the Board of Directors of the Corporate Debtor shall remain suspended until the closing date.

(g) Various reliefs sought from the statutory authorities under the Income Tax Act, 1961, Ministry of Corporate Affairs, Department of Registration and Stamps, Reserve Bank of India and others are also disposed of. We do not feel persuaded to accept the prayer made in the resolution plan yet the resolution plan applicant may file appropriate applications before the competent authorities which would be considered in accordance with law because it would not be competent for the Adjudicating Authority-NCLT to enter into any such area for granting relaxation, concession or waiver is wholly within the domain of competent authorities.

xxx

xxx

xxx

(i) The criminal proceedings initiated against the erstwhile Members of the Board of Directors and others shall not effect the JSW-H1 Resolution Plan Applicant or the implementation of the resolution plan by the Monitoring Agency comprising of CoC



and RP. We leave it open to the Members of the CoC to file appropriate applications if criminal proceedings result in recovery of money which has been siphoned of or on account of tainted transactions or fabrication as contemplated under the provisions of the Code or any other law. Those applications shall be considered in accordance with the prevalent law.

- (j) The RP is directed to redistribute the profits earned by running the Corporate Debtor during the Corporate Insolvency Resolution Process in accordance with the judgment of the Hon'ble NCLAT rendered in the case of **Standard Chartered Bank v. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors.**, Company Appeal (AT) (Ins.) No. 242 of 2019 decided on 04.07.2019 and the action to be taken by the RP is evident from the reading of para 211 of the said judgment.
- (k) The case in which the Adjudicating Authority or the Appellate Authority could not decide the claim on merit, all such Applicants may raise the issue before an appropriate forum in terms of Section 60(6) of the Code. The other Financial Creditors/



*Operational Creditors' would not be entitled any remedy under Section 60(6) of the Code."*

6. On 14<sup>th</sup> October, 2019, when the appeal preferred by 'JSW Steel Limited' was taken up, learned counsel for the parties brought to our notice that the Deputy Director of the Directorate of Enforcement, New Delhi by order dated 10<sup>th</sup> October, 2019 attached part of the assets of the 'Corporate Debtor' (Bhushan Power & Steel Limited).

7. The Union of India through Ministry of Corporate Affairs was asked to clear its stand in view of the stand taken by the Directorate of Enforcement that it has power to seize assets of the 'Corporate Debtor' even after approval of the 'Resolution Plan' under the 'I&B Code'. The stand of the Union of India was recorded on 14<sup>th</sup> October, 2019 as follows:-

*"6. In the reply-affidavit filed by Union of India through Ministry of Corporate Affairs in consultation with Department of Financial Services and the Banks, the following statement has been made in support of stand taken by Union of India:*

*"3) That pursuant to the captioned notice, the Ministry had called for meeting of the officials of Department of Financial Services and the*



*Banks who were members of the Committee of Creditors on October 3<sup>rd</sup>, 2019 to ascertain their views and formalize the response of this Ministry, in view of rippling effects it would have in this case as well as other cases as well. In the meeting, it was unanimously recognized that the rights of Secured Financial Creditors are to be protected in the resolution of the Corporate Debtor and the incumbent resolution applicant is bona fide investor who acquires and takes over the Non-performing Assets (NPA) company as a going concern and facilitates maximization of the value of assets of the corporate debtor, revival of a failing company and realization of dues of creditors to the extent possible under an open, transparent National Company Law Tribunal (NCLT) supervised process.*

- 4) *It is submitted that under the process envisaged under the Insolvency & Bankruptcy Code, 2016 ("IBC"), once a Resolution Plan is approved by the Ld. Adjudicating Authority, it is binding on all stakeholders. Before*



approving the Resolution Plan, objections are heard by the Ld. Adjudicating Authority and once hearing on the Resolution Plan and objections is completed before the Ld. Adjudicating Authority and the Resolution Plan is approved, such approved Resolution Plan is binding on all stakeholders, including all government agencies. The provision of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 by which Section 31(1) was amended, makes it amply clear that a resolution plan is binding on Central Government and all statutory authorities.

- 5) It is submitted that if any Corporate Debtor is undergoing investigation by the Central Bureau of Investigation ("CBI"), Serious Fraud Investigation Office ("SFIO") and/ or the Directorate of Enforcement ("ED"), such investigations are separate and independent of the Corporate Insolvency Resolution Process ("CIR Process") under the IBC and both can



run simultaneously and independent of each other. It is further submitted that the erstwhile management of a company would be held responsible for the crimes, if any, committed under their regime and the new management taking over the company after going through the IBC process cannot be held responsible for the acts of omission and commission of the previous management. In other words, no criminal liability can be fixed on the successful Resolution Applicant or its officials.

- 6) In so far as the corporate debtor or its assets are concerned, after the completion of the CIR Process, i.e. a statutory process under the IBC, there cannot be any attachment or confiscation of the assets of the Corporate Debtor by any enforcement agencies after approval of the Resolution Plan. The CIR Process is an open and transparent statutory process wherein under Resolution Plans are invited from bona fide



*Prospective applicants who are not hit or disqualified under Section 29A of the IBC.*

- 7) *Resolution Plan submitted by the interested Resolution Applicants are duly examined and validated by the Resolution Professional and the Committee of Creditors ("CoC"). Once the Resolution Plan is voted upon and approved by the CoC, it is submitted to the Ld. Adjudicating Authority for its approval. The Ld. Adjudicating Authority after hearing the objections, if any, and being satisfied that the Resolution Plan is in compliance with the provisions of the law, approves the Plan. The CIR Process is desired to ensure that undesirable persons do not take control of the Corporate Debtor by virtue of Section 29A of the IBC. The purpose and scheme of the CIR process is to hand over the company of the corporate debtor to a bona fide new resolution applicant. Any threat of attachment of the assets of the corporate debtor or subjecting the corporate debtor to proceedings by investigating agencies for wrong doing of*



*the previous management will defeat the very purpose and scheme of CIR process, which inter-alia includes resolution of insolvency and revival of the company, and the efforts of the bank to realise dues from their NPAs would get derailed.*

*Otherwise too, the money realised by way of resolution plan is invariably recovered by the banks and public financial institutions and other creditors who have lent money to the erstwhile promoters to recover their dues which they have lent to the erstwhile management for creation of moveable or immovable assets of the corporate debtor in question and therefore, to attach such an asset in the hands of new promoters or resolution applicant would only negate the very purpose of IBC and eventually destroy the value of assets.*

*8) In light of the above, it is respectfully submitted that the ED while conducting investigation under PMLA is free to deal with or attach the personal assets of the erstwhile promoters and other accused*





*persons, acquired through crime proceeds and not the assets of the Corporate Debtor which have been financed by creditors and acquired by a bona fide third party Resolution Applicant through the statutory process supervised and approved by the Adjudicating Authority under the IBC. In so far as a Resolution Applicant is concerned, they would not be in wrongful enjoyment of any proceeds of crime after acquisition of the Corporate Debtor and its assets, as a Resolution Applicant would be a bona fide assets acquired through a legal process. Therefore, upon an acquisition under a CIR Process by a Resolution Applicant, the Corporate Debtor and its assets are not derived or obtained through proceeds of crime under the Prevention of Money Laundering Act, 2002 ("PMLA) and need not be subject to attachment by the ED after approval of Resolution Plan by the Adjudicating Authorities."*



8. Taking into consideration the fact that the 'Directorate of Enforcement', has taken stand contrary to the stand taken by the Government of India, this Appellate Tribunal stayed the order of attachment dated 10<sup>th</sup> October, 2019 passed by the Deputy Director, 'Directorate of Enforcement' with regard to part property of the 'Corporate Debtor' (Bhushan Power & Steel Limited). Further, direction was issued not to give effect to the 'Resolution Plan' and impugned order dated 5<sup>th</sup> September, 2019, so far it relates to the payment of the creditors, was stayed.

9. On 25<sup>th</sup> October, 2019, this Appellate Tribunal taking into consideration the conflicting stand, passed following order:

*"25.10.2019-- Before deciding the case on merit, it is desirable if the two wings/ Departments of the Central Government sit together and settle the issue.*

*Prima facie, we are of the view that if the assets are seized by the Enforcement Directorate and finally hold that the assets were purchased out of the 'proceeds of crime', in such case, the amount as may be generated out of the assets will come within the meaning of 'Operational Debt' payable to*



*the Enforcement Directorate for which it may file claim in terms of the Insolvency and Bankruptcy Code, 2016.*

*To give an opportunity to the different wings/ Departments of the Central Government, we adjourn the matter.*

*Post these appeals 'for orders' on 18<sup>th</sup> November, 2019 at 2.00 p.m. on the top of the list.*

*In the meantime, the Respondents may file their respective reply affidavit within 10 days and rejoinder, if any, be filed within a week thereof."*

10. The matter was adjourned and finally the Hon<sup>ble</sup> the President of India promulgated an Ordinance making further amendment in the 'Insolvency and Bankruptcy Code, 2016', published in the Gazette of India extraordinary Part II- Section 1, dated 28<sup>th</sup> December, 2019, to resolve the issue.

11. The preamble of Ordinance making further amendment in the 'Insolvency and Bankruptcy Code, 2016' reads as follows:

*"WHEREAS a need was felt to give the highest priority in repayment to last mile funding to*



corporate debtors to present insolvency in case the company goes into corporate insolvency resolution process or liquidation, to provide immunity against prosecution of the corporate debtor, to prevent action against the property of such corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions and to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016;

AND WHEREAS the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 has been introduced in the House of the People on the 12<sup>th</sup> day of December, 2019;

AND WHEREAS the aforesaid Bill could not be taken up for consideration and passing in the House of the People;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;.....”



12. After Section 32 of the Principal Act, the following section has been inserted which came into force at once:

*"32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-*

*(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*

*(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted*



or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted



and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not-

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted



or filed a report or a complaint to the relevant statutory authority or Court.

*Explanation.—* For the purpose of this sub-section, it is hereby clarified that,—

- (i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;
- (ii) nothing in this sub-section shall be construed to bare an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the





*immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."*

13. On 13<sup>th</sup> January, 2020, this Appellate Tribunal issued notice to 'Directorate of Enforcement' and the Central Government through the Secretary, Ministry of Corporate Affairs, *inter alia*, directed:

*"The Directorate of Enforcement and the Central Government through the Secretary, Ministry of Corporate Affairs on behalf of the Serious Fraud Investigation Office and the Central Bureau of Investigation are allowed to file additional reply affidavit by 20<sup>th</sup> January, 2020 stating therein as to whether 'JSW Steel Limited', whose plan has been approved, are covered by the newly inserted Section 32A of the Insolvency and Bankruptcy Code, 2016. In case, the answer is in negative, they*



*will enclose the evidence in support of their stand after serving a copy of the same on the learned counsel for 'JSW Steel Limited' and other Appellants."*

14. The Union of India through Regional Director, Northern Region, Ministry of Corporate Affairs, has taken specific plea that 'JSW Steel Limited' (Resolution Applicant) does satisfy the conditions prescribed under Section 32A and cannot be held to be ineligible in terms of Section 32A (2) (i) as quoted hereunder:

*"7) That in light of the aforementioned provisions of the IBC, the Code does not envisage any role of the Central Government to check that the Resolution Plan submitted during the course of a corporate insolvency resolution process, satisfies the conditions as set forth in Section 29A, 30, 31 and 32A. Specifically with respect to Section 32A, the onus has been placed by the Code on the Adjudicating Authority and the Investigating Authorities to ensure that conditions prescribed under 32A are met, before approval is granted for any resolution plan.*



8) *The instant Affidavit is made bona fide, clarifying the stance of Respondent No.03 on the notice dated 13/01/2020, passed by the Hon'ble Appellate Tribunal. This Affidavit is filed without the stand of the Central Bureau of Investigation ("CBI"), which is an independent investigating authority. The order dated 13/01/2020 of the Hon'ble Appellate Tribunal has been forwarded to the CBI on 16/01/2020 by the answering respondent with a request to take appropriate action on this order."*

15. The Central Bureau of Investigation has appeared, which is making investigation, has not alleged any act of money laundering or other acts against 'JSW Steel Limited' or its management.

16. The Serious Fraud Investigation Office is under the control of the Ministry of Corporate Affairs has also not pleaded anything against 'JSW Steel Limited' or its management.

17. Mr. Sanjay Shorey, Director (Legal and Prosecution), Ministry of Corporate Affairs, appearing on behalf of 'Union of India' submitted that 'JSW Steel Limited' has not been held to be 'related party' by the 'Resolution Professional' or the 'Committee of Creditors' or the 'Adjudicating Authority'.



18. However, in spite of issuance of the Ordinance dated 28<sup>th</sup> December, 2019 and insertion of Section 32A, a contradictory stand has been taken by the Directorate of Enforcement.

19. According to Directorate of Enforcement, it is incumbent on the 'Successful Resolution Applicant' to make a self-declaration that whether the benefit of sub-sections (1) & (2) of Section 32A would be available to it upon fulfilment of the conditions laid down therein; and whether the 'Successful Resolution Applicant' was a promoter or in the management or in the control of the 'Corporate Debtor' or a related party. Therefore, this Appellate Tribunal should call for such a declaration by way of an affidavit from the 'Resolution Applicant' i.e. 'JSW Steel Limited'.

20. Aforesaid stand taken by the Directorate of Enforcement cannot be accepted, in absence of any mandate under Section 32A that the 'Successful Resolution Applicant' after approval of the plan is required to give any such declaration as to whether the benefit of Section 32A will be applicable to them or not. Only the competent authority can decide such issue if any such allegation is levelled.

21. The next plea taken by the Directorate of Enforcement is that Section 32A introduced w.e.f. 28<sup>th</sup> December, 2019 is prospective and would not apply to 'Resolution Plan' which has already been approved under Section 31 of the 'I&B Code'. It was submitted that the 'Resolution



Plan' was approved on 5<sup>th</sup> September, 2019 and Section 32A has come into force on 28<sup>th</sup> December, 2019.

22. The plea taken by the Directorate of Enforcement is fit to be rejected for the following reasons.

23. Section 31(1) of the 'I&B Code' reads as follows:

*"31. Approval of resolution plan.— (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan:*

*PROVIDED that the Adjudicating Authority shall, before passing the order for approval of*



*resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."*

24. The 'Resolution Plan' having approved by impugned order dated 5<sup>th</sup> September, 2019, is binding on 'Corporate Debtor' (Successful Resolution Applicant herein), its employees, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force.

25. Attachment of assets of the 'Corporate Debtor' which is under change of the hands whose order of attachment was passed on 10<sup>th</sup> October, 2019 i.e. after one month seven days under Section 5 of the 'Prevention of Money Laundering Act, 2002'.

26. As contradictory plea was taken by two Departments of the Central Government, time was allowed to resolve the issue. Only thereafter, after deliberation by the Central Government, the Ordinance has been issued on 28<sup>th</sup> December, 2019 inserting Section 32A. The preamble suggests that a need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency in case the company goes into corporate insolvency resolution process or liquidation, to provide immunity against prosecution of the corporate debtor, to prevent



action against the property of such corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions and to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.

27. After the approval of the 'Resolution Plan', as the attachment order was passed by the Deputy Directorate of Enforcement, we left the matter to the Central Government to decide as to whether to provide immunity against the prosecution to the 'Corporate Debtor' or to take action against the 'Corporate Debtor' and the 'Successful Resolution Applicant'. The Ordinance having issued pursuant to direction of this Appellate Tribunal to the Central Government which on deliberation resulted into issuance of Ordinance, we hold that Section 32A will be applicable to the present case- 'JSW Steel Limited'.

28. Learned counsel for the 'Directorate of Enforcement' submitted that 'JSW Steel Limited' ('Successful Resolution Applicant') is a 'related party' and, therefore, even if Section 32A is applied in the present case, related party including associate company of the Promoter/ Corporate Debtor is not eligible.

29. Reliance has been placed on the definition of 'related party' as defined under Section 5(24), as follows: 1.



*"5. Definitions.—.....(24) "related party", in relation to a corporate debtor, means—*

*(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;*

*(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;*

*(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;*

*(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;*

*(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;*

*(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or*





*instructions of a director, partner or manager of the corporate debtor;*

*(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;*

*(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;*

*(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;*

*(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;*

*(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;*

*(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;*



*(m) any person who is associated with the corporate debtor on account of—*

*(i) participation in policy making processes of the corporate debtor; or*

*(ii) having more than two directors in common between the corporate debtor and such person;*

*or*

*(iii) interchange of managerial personnel between the corporate debtor and such person;*

*or*

*(iv) provision of essential technical information to, or from, the corporate debtor”*

30. The definition of “associate company” under the Companies Act, 2013, as defined under Section 2(6), has also been highlighted to suggest that a Company in which other Company has significant influence may not be a subsidiary company but includes a joint venture company:-

**“2. Definitions.—** (6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.



*Explanation.—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;*

31. It was submitted that the expression “significant influence” is also defined in the *explanation* to Section 2(6) of the Companies Act, 2013 and it includes control of or participation in business decisions under an agreement. It also relied on Section 2(27) which relates to “control” includes controlling the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, as under:

*“2. Definitions.— .....(27) “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.”*

32. It is stated that during the course of PMLA investigation, it has come to notice that M/s. ‘Bhushan Power & Steel Limited’- (‘Corporate



Debtor) and 'M/s. JSW Steel Limited' are associated as shareholders holding 24.09% and 49% equity respectively in a Joint venture company namely 'M/s. Rohne Coal Company Private Limited'. The composition of the equity shareholding as per annual return filed with Ministry of Corporate Affairs is as follows:

S. No.	Name of the Company	CIN/FCRN	Holding/ Subsidiary/ Associate/ Joint Venture	% of shares held
1	JSW Steel Ltd.	L2710MH1994PLC152925	Joint Venture	49.00
2	BPSL	U27100DL1999PLC108350	Joint Venture	24.09
3	Everbest Consultancy Services Ltd.	U74999MH2016PTC287605	Joint Venture	20.01
4	Jai Balaji Industries Ltd.	L27102WB1999PLC089755	Joint Venture	6.90

33. Further, as per the updated information filed with Ministry of Corporate Affairs in Annual Return 2018-19, the company was formed in 2008 and is still in operation.

34. In the light of the above, it was submitted that under Section 32A (1), the liability of the 'Corporate Debtor' shall not cease for the impugned offences under 'Prevention of Money Laundering Act, 2002' as the 'Resolution Plan' approved by the Adjudicating Authority is not resulting in change in management or control of the 'Corporate Debtor' to a person who was not a related party of the 'Corporate Debtor', for the reason the 'JSW Steel Limited' is a 'Related Party' of the 'Corporate Debtor', being an Associate Company which has formed a joint venture company.



35. It was submitted that the benefit of the provisions of Section 32A (2) is not available to the properties attached of the 'Corporate Debtor' vide PAO dated 10<sup>th</sup> October, 2019.

36. Reliance has been placed on different decisions of this Appellate Tribunal and also the Hon'ble Supreme Court, but it is not required to refer to the same for the reasons below.

37. A person is not eligible to submit a resolution plan, if such a person, or any other person acting jointly or in concert with such person is ineligible in terms of clauses (a) to (j) of Section 29A, as follows:

***"29A. Persons not eligible to be resolution applicant.— A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—***

*(a) is an undischarged insolvent;*

*(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);*



*(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor;*

*Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:*

*Provided further that nothing in this clause shall apply to a resolution applicant where such*



*applicant is a financial entity and is not a related party to the corporate debtor.*

*Explanation I.- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.*

*Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such*



resolution plan by the Adjudicating Authority under this Code;

(d) has been convicted for any offence punishable with imprisonment –

(i) for two years or more under any Act specified under the Twelfth Schedule;

or

(ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;





*(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;*

*(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:*

*Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such*



resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation I. — For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or



(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor: Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as



may be prescribed], prior to the insolvency commencement date;

*Explanation II*—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of



*the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);*

*(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;*

*(f) such categories of persons as may be notified by the Central Government."*

38. A person cannot be held to be ineligible till it is shown that it comes within any of the disqualifications under clauses (a) to (j) of Section 29A.

39. It is not the case that 'JSW Steel Limited' filed plan in concert with any person who is ineligible in terms of any of the clauses (a) to (j) of Section 29A. It is only alleged that 'JSW Steel Limited' is a 'related party' of erstwhile Promoter of the 'Corporate Debtor'.

40. In this regard, Section 5(24) of the 'I&B Code' provides that:



"5. *Definitions.*— .....(24) "related party", in relation to a corporate debtor, means-

xxx

xxx

xxx

(i) a body corporate which is a holding, subsidiary or any associate company of the corporate debtor, or a subsidiary of a holding company to which a corporate debtor is a subsidiary....."

41. Upon a perusal of Section 32A (1) (a) of the 'I&B Code' read with the aforesaid definition, it is *ex facie* evident that the 'JSW Steel Limited' is not an associate company/ related party of the 'Corporate Debtor'. While 'Rohne Coal Company Private Limited' is an 'associate company' of the 'Corporate Debtor' as well as of the 'JSW Steel Limited', but by virtue of both having investment in such downstream joint venture company i.e. 'Rohne Coal Company Private Limited', the 'JSW Steel Limited' and the 'Corporate Debtor' do not become related parties of each other.

42. The Directorate of Enforcement is interpretation that Section 32A of the 'I&B Code' is prospective in nature and the benefit of such provision cannot be claimed by the Appellant is wrong and misplaced.

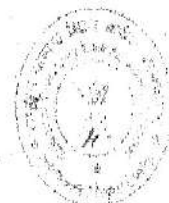
43. A plain reading of Section 32A(1) and (2) clearly suggests that the Directorate of Enforcement/ other investigating agencies do not have the powers to attach assets of a 'Corporate Debtor', once the 'Resolution Plan'



stands approved and the criminal investigations against the 'Corporate Debtor' stands abated. Section 32A of the 'I&B Code' does not in any manner suggest that the benefit provided thereunder is only for such resolution plans which are yet to be approved. Further, there is no basis to make distinction between a resolution applicant whose plan has been approved post or prior to the promulgation of the Ordinance.

44. Further, even prior to the passing of the Ordinance, the 3<sup>rd</sup> Respondent i.e. Union of India through Ministry of Corporate Affairs in its 'Affidavit in Reply' dated 10<sup>th</sup> October, 2019, had categorically stated that:

*"5) It is submitted that if any Corporate Debtor is undergoing investigation by the Central Bureau of Investigation ("CBI"), Serious Fraud Investigation Office ("SFIO") and/ or the Directorate of Enforcement ("ED"), such investigations are separate and independent of the Corporate Insolvency Resolution Process ("CIR Process") under the IBC and both can run simultaneously and independent of each other. It is further submitted that the erstwhile management of a company would be held responsible for the crimes, if any, committed under their regime and the new*



management taking over the company after going through the IBC process cannot be held responsible for the acts of omission and commission of the previous management. In other words, no criminal liability can be fixed on the successful resolution applicant or its officials.

6) In so far as the corporate debtor or its assets are concerned, after the completion of the CIR Process, i.e. a statutory process under the IBC, there cannot be any attachment or confiscation of the assets of the Corporate Debtor by any enforcement agencies after approval of the Resolution Plan.

7). Resolution Plan submitted by the interested Resolution Applicants are duly examined and validated by the Resolution Professional and the Committee of Creditors ("CoC"). Once the Resolution Plan is voted upon and approved by the CoC, it is submitted to the Ld. Adjudicating Authority for its approval. The Ld. Adjudicating Authority after hearing the objections, if any, and being satisfied that the Resolution Plan is in compliance with the provisions of the law, approved the Plan. The CIR Process is desired to



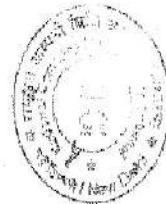


ensure that undesirable persons do not take control of the Corporate Debtor by virtue of Section 29A of the IBC. The purpose and scheme of the CIR Process is to hand over the company of the corporate debtor to a bona fide new resolution applicant. Any threat of attachment of the assets of the corporate debtor or subjecting the corporate debtor to proceedings by investigating agencies for wrong doing of the previous management will defeat the very purpose and scheme of CIR Process, which inter-alia includes resolution of insolvency and revival of the company, and the efforts of the bank to realise dues from their NPAs would get derailed. Otherwise too, the money realised by way of resolution plan is invariably recovered by the banks and public financial institutions and other creditors who have lent money to the erstwhile promoters to recover their dues which they have lent to the erstwhile management for creation of moveable or immovable assets of the corporate debtor in question and therefore, to attach such an asset in the hands of new promoters of resolution applicant



would only negate the very purpose of IBC and eventually destroy the value of assets.

8). In light of the above, the ED while conducting investigation under PMLA is free to deal with or attach the personal assets of the erstwhile promoters and other accused persons, acquired through crime proceeds and not the assets of the Corporate Debtor which have been financed by creditors and acquired by a bona fide third party Resolution Applicant through the statutory process supervised and approved by the Adjudicating Authority under the IBC. In so far as a Resolution Applicant is concerned, they would not be in wrongful enjoyment of any proceeds of crime after acquisition of the Corporate Debtor and its assets, as a Resolution Applicant would be a bona fide assets acquired through a legal process. Therefore, upon an acquisition under a CIR Process by a Resolution Applicant, the Corporate Debtor and its assets are not derived or obtained through proceeds of



*crime under the Prevention of Money Laundering Act, 2002 ("PMLA") and need not be subject to attachment by the ED after approval of Resolution Plan by the Adjudicating Authorities."*

*(Emphasis supplied)*

45. 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'. In any event, by virtue of Section 238 of the 'I&B Code', the 'I&B Code' has an overriding effect over anything inconsistent therewith in any other law. Accordingly, it is clear that subsequent promulgation of the Ordinance is merely a clarification in this respect. Therefore, it is *ex facie* evident that the Ordinance being clarificatory in nature, must be made applicable retrospectively.

46. It is not the case of the Directorate of Enforcement that 'JSW Steel Limited' comes within clause (a) of Section 5(24) as a director or partner of the said 'Corporate Debtor'- 'Bhushan Power and Steel Limited' or a relative of a director or partner of the 'Corporate Debtor'. It is not holding



position as a key managerial personnel of the 'Corporate Debtor' or a relative of a key managerial personnel of the 'Corporate Debtor'.

47. There is nothing on the record to suggest that there is a limited liability partnership or a partnership firm in which 'JSW Steel Limited' is a partner of the 'Bhushan Power and Steel Limited'.

48. It is not the case of the Directorate of Enforcement that in a private company in which a director, partner or manager of the 'Bhushan Power and Steel Limited' was a director and 'JSW Steel Limited' holds more than two per cent of its share capital.

49. The allegation is not that 'JSW Steel Limited' a public company of which a director, partner or manager of the 'Corporate Debtor' is a director and holds along with relatives, more than two per cent of its paid-up share capital.

50. The allegation is that in a joint venture Company namely— 'M/s. Rohne Coal Company Private Limited', 'Bhushan Power and Steel Limited' and 'JSW Steel Limited' are holding 24.09% and 49% equity respectively.

51. 'JSW Steel Limited' has taken specific plea that it is not a 'related party' of erstwhile 'Bhushan Power and Steel Limited'- ('Corporate Debtor') and placed on record the following facts:



**"II. The Appellant is not related party of the Corporate Debtor**

10. The basis of ED's submissions that the Appellant is a related party of the Corporate Debtor is the existence of a company namely Rohne Coal Company Private Limited ("RCCPL") which was incorporated in 2008 as a joint venture amongst (i) JSW Steel Ltd. (Appellant); (ii) Bhushan Power and Steel Ltd. (Corporate Debtor) and (iii) Jai Balaji Industries Ltd. In this regard, Appellant seeks to place on record the following facts:

(i) The Appellant had individually applied to the Government of India for allocation of a Coking Coal Block. Such application was not made jointly with any entity. However, by letter of intent ("LoI") dated 9<sup>th</sup> April, 2017, the Government of India, through Ministry of Coal, proposed joint allocation of Rohne Coking Coal Block amongst the aforesaid three companies, including the Appellant and the Corporate Debtor herein, with their respective proportionate share of coal reserve.

(ii) At the behest of the Ministry of Coal, a joint venture agreement dated 05.03.2008 was executed



by and amongst the Appellant, Corporate Debtor and Jai Balaji Industries Ltd., pursuant to which RCCPL came to be incorporated.

(iii) Vide the Lol and the proportionate share of coal reserve allotted to each Allocattee specified thereunder, the Appellant was entitled to 69.01% of coal reserve. Further, as per the JVA, the Appellant was entitled to subscribe to 69.01% of the share capital of RCCPL together with its affiliate company/s. Therefore, the Appellant had directly subscribed to 49% of the share capital in RCCPL and one of its affiliate, Everbest Consultancy Services Pvt. Ltd. had subscribed to the remaining 20.01% of share capital.

(iv) While the Coal Block was under development, the Hon'ble Supreme Court of India vide its order dated 24.09.2014 passed in *Manohar Lal Sharma v. The Principal Secretary & Others. W.P. (Criminal) 120/2012*, cancelled the allocation of the coal blocks by the Government of India (to States and private sector industries). Consequently, the allocation of Coal Block to RCCPL stood cancelled and the operations of RCCPL have been inactive since the



*said cancellation. Further, post the cancellation, the Coal Block has been allotted to National Mineral Development Corporation (NMDC).*

*(v) While the operations of RCCPL have been inactive since the cancelation of the Coal Block, the joint venture has not been dissolved as on date, on account of a pending litigation with respect to the Coal Block before the Hon'ble Delhi High Court in Rohne Coal Co. Ltd. vs Union of India and Ors. WP (C) 11551/2015 and the resolution of issues with respect to reimbursement of costs incurred by RCCPL for development of the mine until it was cancelled."*

52. The Appellant- 'JSW Steel Limited' had fully disclosed its association with 'Rohne Coal Company Private Limited' in the 'Resolution Plan'. It has also disclosed the association of the 'Corporate Debtor' with 'Rohne Coal Company Private Limited'.

53. After taking into account the disclosures made by 'JSW Steel Limited', the 'Resolution Professional' had confirmed that the Appellant- 'JSW Steel Limited' is not disqualified under Section 29A of the I&B Code' to submit its 'Resolution Plan', which was also accepted by the 'Committee of Creditors' who approved the plan. The Adjudicating



Authority also had gone into the question of ineligibility and approved the plan.

54. The Notification of Government of India through Ministry of Coal dated 9<sup>th</sup> April, 2017 shows that 'JSW Steel Limited' in its individual capacity applied for allocation of 'Rohne Coking Coal Block' in its favour. However, there being more applicants, the Central Government contemplated to make joint allocation of Rohne coking coal block in favour of 'M/s. JSW Steel Ltd.', 'M/s. Bhushan Power & Steel Ltd.' and 'M/s. Jai Balaji Sponge Ltd.' for meeting their proportionate share of requirement of coal, as extracted below:

**MINISTRY OF COAL**

Government of India

Ministry of Coal

1. M/s. JSW Steel Ltd.,  
12, Birla House, Connaught Place,  
New Delhi - 110 022.


2. M/s. Bhushan Power & Steel Ltd.,  
40, Group, Tatyasaheb Kore,  
Vadodra, Gujarat,  
Pin - 390 001.

3. M/s. Jai Balaji Sponge Ltd.,  
2, Bhambhani Road,  
1st Floor,  
Bhilai - 490 001.

I have directed to influence the Government of India, Ministry of Coal, New Delhi, to make joint allocation of Rohne Coking Coal Block in favour of M/s. JSW Steel Ltd., M/s. Bhushan Power & Steel Ltd., and M/s. Jai Balaji Sponge Ltd. for meeting their proportionate share of requirement of coal, as extracted below:

Sl. No.	Applicant Name	Share (%)	Requirement (Tons)	Allocation (Tons)	Remarks	Sl. No.	Applicant Name	Share (%)	Requirement (Tons)	Allocation (Tons)	Remarks
1	M/s. JSW Steel Ltd.	33.33	10000	3333	33.33% of 10000 Tons	1	M/s. JSW Steel Ltd.	33.33	10000	3333	33.33% of 10000 Tons
2	M/s. Bhushan Power & Steel Ltd.	33.33	10000	3333	33.33% of 10000 Tons	2	M/s. Bhushan Power & Steel Ltd.	33.33	10000	3333	33.33% of 10000 Tons
3	M/s. Jai Balaji Sponge Ltd.	33.33	10000	3333	33.33% of 10000 Tons	3	M/s. Jai Balaji Sponge Ltd.	33.33	10000	3333	33.33% of 10000 Tons

**TRUE COPY**





2. In the case of joint allocation, the block can be mined by the joint allottees under any of the three options as given below :-

Option-I: The mining to be carried out in consortium of two or more allottees in any given block by constituting a joint venture/associated purpose vehicle company. All the shares would be equity stake and management participation from all the consortium partners. The production from the mine could be distributed among the consortium partners in proportion to their assessed requirement at the time of allocation, net of royalties, if any. The equity shares should be held in proportion to the assessed requirement of all the consortium partners.

Option-II: In this option, one allottee company would be designated as the leader for the block and a few other allottees would be designated as the associates for that block. The allocation would be made to the leader and the associates but the mining lease will be granted to the leader. All investments will be made by the leader, all mining operations will be conducted by the leader and the production from the mine will be shared between the leader and the associates in the ratio of their respective assessed requirement at the time of allocation. The price to be paid for the coal will be given to the associates would be determined by the Central Government/its agency and would be called the 'transfer price'.

Option-III: In this option, for each block one allottee would be chosen as the leader. The allocation will be made to the group of leader and associates jointly but the mining lease of each block would be given to the designated leader who would make the investment and carry out the mining operations. The production from the mine will be shared between the leader and the associates in proportion to their actual requirement/assessed requirement at the time of allocation, whichever is less. In this option, the local CIL subsidiary company will have a role to play. They would arrange the transfer of coal from the leader to the associates as per the ratio determined at the time of allocation, at a price to be determined by the Central Government/its agency. The CIL subsidiary would be permitted to charge some minimal service charges.

3. In accordance with the three options as indicated above, the joint allottees may discuss the modalities mutually acceptable to them and finalise a legally binding and enforceable agreement, opting for any one of the above mentioned three arrangements. The agreement should be in conformity with the provisions of the Coal Mines (Nationalisation) Act, 1973 and the guidelines issued in this regard. The agreement may cover, inter-alia, issues such as share in equity, production sharing, rights and liabilities, penalties etc. In case Option III is preferred, then a tripartite agreement between the leader, associates and the local Coal India subsidiary such that no liability devolves on the local CIL subsidiary in any case including in cases of no or less production by the leader or no or less output by the associates, and CIL subsidiary is fully indemnified against any liability, has to be entered into.

4. You are requested to exercise the requisite option and to submit an agreement, duly signed by all the parties concerned and legally sound, to this Ministry within 30 days from the date of issue of this letter. In case no response is received within the stipulated time, the Government reserves the right to reconsider allocation of block to the contemplated allottees.

Yours faithfully,

*(Signature)*  
(V.S. Rana)

Under Secretary to the Govt. of India.

*23/1*

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55. All the three options suggest that either two or more of them had to make a consortium or one of them will be designated as 'leader' of the block and others as 'associates' of the block. The third option was that in each block, one allocatee will be made to the group of leader and associates jointly.

56. There was a compulsion on the part of 'JSW Steel Limited' for allocation of Rohne Coking Coal Block though it applied for individual allotment, because of mandate of the Central Government. They had to share jointly with the two others including 'M/s. Bhushan Power & Steel Ltd.' and 'M/s. Jai Balaji Sponge Ltd.' for meeting their proportionate share of requirement of coal.

57. We hold that where a party for the purpose of its business, if mandated by the Central Government to join hands together and are forced to form a consortium or as joint associate, such person ('Resolution Applicant') cannot be held ineligible in terms of Section 32A (1) (a) on the ground of 'related party'.

58. In fact, the contention of the Directorate of Enforcement that the Appellant- 'JSW Steel Limited' is a 'related party' of the 'Corporate Debtor' as per Section 5(24) is based upon a complete misconception and misinterpretation of Section 32A (1) (a) and Section 5(24) of the I&B



Code'. To fall within the ambit of Section 32A (1) (a), a 'Resolution Applicant' has to be either:

- (i) A promoter of the Corporate Debtor; or
- (ii) In the management or control of the Corporate Debtor; or
- (iii) A related party of the Corporate Debtor.

In the context of the present case, the 'Resolution Applicant' i.e. 'JSW Steel Limited' does not fall in any of the aforesaid categories.

59. Section 5(24) provides 'related party' in relation to the 'Corporate Debtor' means a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which a corporate debtor is a subsidiary.

60. Upon a perusal of Section 32A(1) (a) read with the aforesaid definition, it is *ex facie* evident that the Appellant- 'JSW Steel Limited' is not an associate company/ related party of the 'Corporate Debtor'. While 'Rohne Coal Company Private Limited' is an associate company of the 'Corporate Debtor' as well as of the 'JSW Steel Limited', but by virtue of both having investment in such downstream joint venture company, the 'JSW Steel Limited' and the 'Corporate Debtor' do not become related parties of each other.

61. The 'Resolution Professional' and the 'Committee of Creditors' vide their joint additional reply dated 22<sup>nd</sup> January, 2020 filed before this



Appellate Tribunal, have yet again certified that the Appellant- 'JSW Steel Limited' and the 'Corporate Debtor' are not related parties.

62. The question arises as to who are the Competent Authorities to decide ineligibility of the 'Resolution Applicant' under Section 29A or 32A (1) (a) and to find out whether it comes within the meaning of 'related party' for the purpose of ineligibility.

63. As per Section 30(1), the 'Resolution Applicant' while submitting 'Resolution Plan' has to file an Affidavit stating clearly that he is eligible or not eligible under Section 29A.

64. As per Section 30(3), the 'Resolution Professional' shall present to the 'Committee of Creditors for its approval such 'Resolution Plans' which confirm the conditions referred to in sub-section (2). It is only thereafter the 'Committee of Creditors' is empowered to find out whether the 'Resolution Applicant' is ineligible under Section 29A:

*"30. Submission of resolution plan.—(1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A) to the resolution professional prepared on the basis of the information memorandum.*



xxx

xxx

xxx

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

((4) The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, 4 [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution



plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection):

[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

