
OF LEGAL ILL AND FACTUAL GOOD: APPRECIATING KALYANI TRANSCO AND CASES RELATED THEREWITH

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ABSTRACT

This article aims to analyse the decision of the Supreme Court in *Kalyani Transco v. Bhushan Power and Steel Ltd.*¹, wherein a division bench pronounced a significant point of law respecting Section 32A of IBC², that the NCLAT could not have quashed a provisional attachment order issued by the Directorate of Enforcement of the corporate debtor's assets to enforce a protection provided to it under that section against such attachment orders. For this, the court relied in large part upon the proposition that matters of public law were beyond the NCLAT's competence- itself extracted from an earlier case. The contention made herein is that the said precedent and the principle arising therefrom was inapplicable to the facts of Kalyani, since in Kalyani the NCLAT had enforced a right accruing to the corporate debtor under the IBC itself, rendering the public law doctrine inapplicable. The enforcement of such right therefore ought to have been read into the expression "*arising out of or in relation to the insolvency process*" in section 60(5) accordingly conferring jurisdiction on the NCLT/NCLAT. This central flaw has been explicated along with various collateral inconsistencies in the court's reasoning. That point of law apart, Kalyani's application of the law of timelines in section 12 IBC³ in its particular factual matrix is analysed and welcomed herein for having properly appreciated both the mandatory nature of those timelines and the narrow scope of the exceptions thereto as has already been established by leading judgements. The decision thus is good in fact at least, if not in law. With Kalyani now having been recalled and a decision by a larger bench pending, it is hoped the concerns taken note of here shall too be addressed.

Keywords: Attachment of Corporate Debtor's Assets, Mandatory and Directory Nature of Section 12, Public Law, Section 32A.

¹ *Kalyani Transco v. Bhushan Power & Steel Ltd.*, (2025) SCC OnLine SC 1010 (India).

² Insolvency and Bankruptcy Code, No. 31 of 2016, § 32A.

³ Insolvency and Bankruptcy Code, No. 31 of 2016, § 12.

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 provides for a legal procedure to help a debt ridden corporate to save itself and its employees by way of an appointment of a new beacon of hope : the successful resolution applicant to manage the company's finance and strategise it to function better. The law has fundamentally facilitated for not only justice to be served but has also allowed the development of institutions which create more capital and thereby create an economy of increasing corporates and millionaires. The Insolvency & Bankruptcy Code, 2016 establishes strict limits to ensure compliance and punishment, with an aim to reduce non-performing assets to protect creditors and the larger public alike. That is not the sole object of the IBC, it aims at maximizing the value of the corporate debtor, to heal, provide relief and revitalize companies which are debt ridden, thereby providing hope to all the stakeholders involved. One crucial way of providing relief and maximizing utility is by of absolving all criminal liability off the CD, especially financial frauds committed by its managers. Section 32A of the Insolvency and Bankruptcy Code⁴ was introduced in 2019 with this very aim and acted as a reassurance that the resolution applicants will not inherit the sins of the past when stepping in to revive a distressed company, upholding the intent of an IRP.

Justice Bela M Trivedi in the Kalyani Transco judgement established a controversial stand on IBC proceedings by ousting the validity of setting aside of PMLA attachment orders to protect a fully functional debtor, effectively undoing the earlier position of law. Simultaneously, the judgement pronounced the position of the corporate debtor to *status quo ante*, ordering the liquidation of a fully functional corporate debtor *BPSL* and reversing all the progress on its IRP of the last seven and a half years.

The Kalyani Transco judgement ensued chaos within the legal fraternity and businessmen alike⁵. It raised multiple questions with regards to the position of law in cases pertaining to the code and stakeholders, especially full functional corporate debtors with a dirty past and huge debt. Two major questions arose with the judgement which the authors will like to answer in this paper,

⁴ Insolvency and Bankruptcy Code, No. 31 of 2016, § 32A.

⁵ Vidhi Sharma, Commercial Wisdom vs Judicial Review: The Supreme Court's BPSL Verdict and the Future of IBC, NLIU Law Review (Jul. 6, 2025), <https://nliulawreview.nliu.ac.in/blog/commercial-wisdom-vs-judicial-review-the-supreme-courts-bpsl-verdict-and-the-future-of-ibc/>.

- i) What is the nature, and how flexible is Section 12⁶ of the Insolvency and Bankruptcy Code which provides with a 330 days timeline to conclude the CIRP?
- ii) How stringent are the other procedural aspects pertaining to the IRP process (such as Form H compliances⁷) and what is the scope and validity of Section 32A⁸?

Subsequent to a review petition questioning the validity of the judgement, a recall order⁹ was passed by a bench comprising of CJI BR Gavai and Justices SC Sharma and K Vinod Chandran. They decided to hear the matter afresh, deeming the impugned judgement and order dated 02.05.2025 to have “not correctly consider the legal position laid down by a catena of judgements” and provided 10 cases including the Essar Steel case¹⁰ which were incorrectly analysed.

The final arguments post the recall order were heard over the course of three days and the final order was reserved by the bench. The main contentions of JSW steel were that there was no delay on the part of the SRA as far as the implementation of the plan is concerned, additionally, despite NCLAT’s order setting aside the provisional attachment of properties¹¹, the ED was persistent in prolonging the issue by filing criminal cases. It was also emphasised that only after the Supreme Court’s order in December 2024¹², the promoters’ assets were directed to be instituted with the SRA.

The counsel for JSW also added that the ex-promoters do not have locus in the plan, interestingly the promoter themselves, while against the way JSW executed the plan, submitted that they wished for a fresh insolvency process to happen and were not in favour of liquidating the corporate debtor.

Through the *Kalyani Transco* judgement it is imperative to explore how non-obstante clauses of specialized (Section 32A in this specific context) operate in practice, particularly when

⁶ Insolvency and Bankruptcy Code, No. 31 of 2016, § 12.

⁷ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Form H, Gazette of India, Pt. III, Sec. 4, at 102 (Dec. 30, 2016) (India).

⁸ Insolvency and Bankruptcy Code, No. 31 of 2016, § 32A.

⁹ Punjab National Bank & Anr. v. Kalyani Transco & Ors., Review Petition (C) No. 1432 of 2025 in Civil Appeal No. 1808/2020 (Sup. Ct. India July 31, 2025) (order granting review).

¹⁰ Essar Steel India Ltd. Comm. of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 (India).

¹¹ Bhushan Power & Steel Ltd. v. Union of India, 2025 SCC OnLine Del 651 (India).

¹² Committee of Creditors v. Directorate of Enforcement, Civil Appeal No. 1808/2020 (Sup. Ct. India Dec. 11, 2024).

tested against conflicting statutory regimes such as the Prevention of Money Laundering Act (PMLA)¹³. It is also pertinent to analyse the judiciary's struggle in balancing the text of the IBC with precedents like *Embassy Property*, which constrain the jurisdiction of the NCLT and NCLAT. The decision raises fundamental questions: How far can insolvency law protect a corporate debtor from the misdeeds committed by its erstwhile management? What happens when rigid timelines run contrary to the intent of an IRP? Most importantly, can legal interpretation align with the larger purpose of reviving corporate life?

With a focus on *Embassy Property*, the practical difficulties of Section 12's strict deadlines, and the larger body of Section 32A jurisprudence, the authors aim to analyse and respond to these questions.

IN INSOLVENCY, ABSOLUTION: THE BENEFACTION OF SECTION 32A

It is an unfortunate fate indeed that awaits a corporate debtor from the moment CIRP are initiated against it, having to endure changes in management and stringent turnaround timelines whilst being haunted with the omnipresent possibility of liquidation. Section 32A of the IBC then, is a spot of sunshine on a rainy day. Inserted via an amendment with effect from 28-12-2019¹⁴, it begins rather grandly with a non obstante clause declaring futile any contrary provision in the IBC or any other law for the time being in force; the section providing for the cessation of the corporate debtor's liability for any offence committed by it prior to the commencement of the CIRP, with the corporate debtor not being prosecuted for such offences from the date on which the resolution plan has been approved by the adjudicating authority, i.e. NCLT, subject to the other conditions laid down therein being satisfied.

Where the lines of *Kalyani* and this exonerative provision intersect is more specifically traceable to sub-section (2) of that section. This sub-section extends the shield to any property of the corporate debtor where such property is included in the approved resolution plan against action in relation to an offence committed prior to the commencement of CIRP. Before considering its effect specifically in the facts of *Kalyani*, it is pertinent to advert to the object and intent thereof.

¹³ Prevention of Money Laundering Act, No. 15 of 2003.

¹⁴ Insolvency and Bankruptcy Code (Amendment) Ordinance, No. 16 of 2019, Gazette of India, Extraordinary, pt. II, sec. 1 (Dec. 28, 2019) (India).

The statement of object and reasons of the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019¹⁵, by way of which section 32A came to be, reasoned for its cause as follows:

*A need was felt...in case the company goes into corporate insolvency resolution process or liquidation...to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions.*¹⁶

The *raison d'être* of section 32A however was more aptly set out by the Standing Committee on Finance when, in its report on the second amendment bill¹⁷, it not only explicated the purpose of section 32A but also its perimeter. Notably, at para. 3.9¹⁸ of the report the Secretary, Ministry of Corporate Affairs reflects on the dilemma that arises when a bidder participating in a court-supervised competitive process is left in an insecure state due to actions by the previous management. At para. 3.10¹⁹, the Finance Ministry's comments clarify that this provision would only apply where the CIRP has culminated in a change in control to a completely unconnected resolution applicant given the logical incongruency that results from making a successful resolution applicant responsible for offences committed by the corporate debtor's management as existed in its pre-CIRP state. The entity is, of course, fundamentally different from the one that committed the offence. At para. 3.11²⁰, the Committee presents its own findings lauding the amendment's intent of safeguarding the resolution applicant, and viewing it to be essential in achieving revival or resolution without imposing additional liabilities on the resolution applicant owing to mala fide acts of previous promoters or management.

Lastly, the Insolvency Law Committee's report of February 2020²¹ also expressed itself more particularly with a safeguard for actions against the corporate debtor's property, which is the

¹⁵ Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, Statement of Objects and Reasons, Bill No. 377 of 2019 (India).

¹⁶ Id.

¹⁷ Standing Comm. on Fin., 12th Report on the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, Lok Sabha Secretariat (2020).

¹⁸ Standing Comm. on Fin., 12th Report on the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, ¶ 3.9, Lok Sabha Secretariat (2020) (India).

¹⁹ Id. ¶ 3.10.

²⁰ Id. ¶ 3.11.

²¹ Insolvency Law Comm., Report of the Insolvency Law Committee, Ministry of Corp. Affs., Govt. of India (Feb. 2020).

law embodied in section 32A(2). Perhaps portending the situation in Kalyani, the committee's thoughts go thus

For instance, the property of a corporate debtor may have been at risk of attachment, seizure or confiscation where there was any suspicion that such property was derived out of proceeds of crime in an offence of money laundering. It was felt that taking actions against such property, after it is acquired by a resolution applicant, or a bidder in liquidation, could be contrary to the interest of value-maximisation of the corporate debtor's assets, by substantially reducing the chances of finding a willing resolution applicant or bidder in liquidation, or lowering the price of bids.²²

In Kalyani though, the question to have arisen was one collaterally related to this, it having been whether the NCLAT was vested with the competence of reviewing the ED's provisional attachment order issued under the PMLA. That question was answered in the negative in Kalyani, dependent on two pillars- firstly that the NCLAT could not exercise powers of review in a matter of public law and secondly, the NCLAT could not exercise powers of review outside the purview of the IBC.²³ These twin limbs thus become necessary to be examined. Whereas the first regarding public law is dealt with in a succeeding section, the second is examined herein.

Before the NCLAT, the Directorate of Enforcement had sought to justify its attachment order on the strength of a single point- that JSW Steel, the successful resolution applicant, was a party related to the corporate debtor, and the protection contained in section 32A thus could not be availed of by it, the said section excluding related parties.²⁴ This contention in fact struck at the very root of the CIRP by challenging JSW's ability to submit a bid at all, since as a related party it would be barred from doing so under section 29A²⁵. It is abundantly clear that where the Committee of Creditors had confirmed a resolution plan and the adjudicating authority had subsequently approved it, the question of whether the resolution applicant was a related party was not one which could have been decided by the ED, which is not an authority statutorily empowered to do so under the IBC. The protection of section 32A thus ought to be

²² Id. ¶ 17.9

²³ Id. ¶ 28

²⁴ JSW Steel Ltd. v. Mahender Kumar Khandelwal, Company Appeal (AT) (Insolvency) No. 957 of 2019 at ¶ 58.

²⁵ Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A.

afforded to the resolution applicant. This argument having been negated, the attachment order would be rendered nugatory by section 32A(2)²⁶ and the ED's position would obviously be untenable. The NCLAT thus found itself in an odd spot- while the attachment order was barred in view of section 32A(2), to quash the same would mean assuming jurisdiction in a sphere it was not empowered to act in, the correctness whereof is more specifically discussed in a subsequent section of this paper. Nevertheless, the principal consideration is always one of making the statute effective and workable, which is what seems to have prevailed. For, if the tribunal did not act the only alternate remedy to ensure fulfilment of the mandate of section 32A(2) was perhaps invoking the writ jurisdiction of the High Court or the extraordinary jurisdiction of the Supreme Court, a course of action also adopted by the aggrieved parties. It is relevant to note that that special leave petition in the Supreme Court ended with an order passed in the peculiar facts of the case and did not lay down any law regarding section 32A.

The Court's judgement in Kalyani however did express itself on that point, despite due to the other findings held therein it was not even necessary for it to have done so. Consider that the court expressed serious doubt as to the disqualification under section 29A not being attracted, although the question of whether the SRA was a related party was not pressed into service by the counsel, and therefore left inconclusive by the court. It is unusual that this was not pressed, since the ED had before the NCLAT taken a vociferous stand that the SRA was indeed a related party; indeed, this surprising change in stance ought to have been taken note of by the court terms more questioning than complacent.

The court however did expressly hold that non-compliance with a long list of mandatory requirements had vitiated the entire CIRP and the NCLT had wrongly approved the resolution plan under section 31²⁷. That aspect is examined in greater detail a little later, we may now proceed to the coalface of why the NCLAT's order was dismissed as an arrogation in Kalyani.

AS GOES EMBASSY, SO GOES KALYANI: THE (MIS)APPLICATION OF A GOOD LAW

The Supreme Court's reasoning marches on in Kalyani, that the NCLT or NCLAT had no power judging a matter falling outside the purview of the IBC, and over a decision taken by another statutory authority in the realm of public law. This crucially depends on the ratio laid

²⁶ Insolvency and Bankruptcy Code, No. 31 of 2016, § 31.

²⁷ Insolvency and Bankruptcy Code, No. 31 of 2016, § 32A(2).

down by a 3-judge bench in *Embassy Property Developments (P) Ltd. v. State of Karnataka*²⁸. Before considering the applicability thereof in the facts of Kalyani it thus becomes necessary to examine Embassy at some length.

In Embassy, the court was seized with the issue of the extension of a mining lease of a corporate debtor under relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957²⁹ (“MMDR Act”). The government refused such extension, and the resolution professional then prayed before the NCLT for a direction to the Government of Karnataka that such lease be extended, which was accordingly granted. It was this judgment that was impugned before the High Court of Karnataka and then came up before the Supreme Court herein. In ruling that the NCLT could not have directed the Government of Karnataka to do so, the Supreme Court relied both on the element of public law, as well as the incompetence of a statutory creation to review administrative action.

As regards public law, the court identified the “public interest” as a cornerstone of the MMDR Act, evidenced first by those words being used in section 2³⁰ thereof, as well as in Entry 54 of List II of the Seventh Schedule³¹ whereunder Parliament derives competence to have made the Act. This matter was thus judged to have been in the sphere of public law³². Similarly, while reflecting on musings from an earlier constitutional law case, which predictably declared the Constitution to be the fountainhead of the power of judicial review, the court in Embassy too declared that a statutory creation as the NCLT did not have power of judicial review over administrative action.

Yet, correct as Embassy may have been respecting an administrative inaction under the MMDR Act, it has not been substantiated in Kalyani how the same ratio would be applicable in the facts of that case. The doubt is strengthened since Kalyani was in consideration of an express provision in the IBC barring the action taken against which the NCLAT sat in review. There is no provision in the IBC mandating extension of a lease given to the corporate debtor. In fact, the remedy sought by the resolution professional in Embassy was on the strength of section 8A(6)³³ of the MMDR Act, added by an amendment in 2015, which provided for such

²⁸ Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308

²⁹ The Mines and Minerals (Development and Regulation) Act, No. 67 of 1957.

³⁰ Id. § 2.

³¹ India Const. schedule VII.

³² Supra note 28 at ¶ 29.

³³ Supra note 29 at § 8A(6).

extension. Thus, the right of the corporate debtor claimed in Embassy was not one conferred under the IBC, but under the MMDR Act; and it is of course beyond doubt that the NCLT cannot enforce any right the corporate debtor enjoys under a statute other than the IBC.

An elementary juxtaposition in this view of things is sufficient to reveal the error of Kalyani in having relied on Embassy. In Kalyani, the NCLAT, by setting aside the ED's attachment order, was not reviewing the correctness of the ED's order under PMLA but enforcing a right of the corporate debtor under section 32A of the IBC. In a similar vein, it is well settled that a tribunal's jurisdiction over its domain extends to issues collaterally related, subject that the bar on jurisdiction of other courts would not operate over determinations on those collateral issues. The issue of the attachment order in Kalyani was certainly a collateral issue in need of consideration for enforcing the corporate debtor's right under section 32A. That said, it is obvious that the NCLAT enjoys no power to review such an attachment order on merits but only to the limited extent that it would run counter to section 32A. In Kalyani, that is precisely what the NCLAT had done by limiting itself, in its impugned judgement, only to the touchstone of section 32A.

The position explicated above is only lent an *a fortiori* character when the non obstante clause in section 32A is considered; this right of the corporate debtor clearly overrides any provision contained in any other law which may possibly come into conflict with section 32A. The non-obstante clause must indicate the primacy given to the CIRP over all other proceedings, i.e. primacy to proceedings before the NCLT over all other proceedings. The fact that the intent of section 32A has formulated it in a manner closely connected with the CIRP process has been substantiated previously. It would thus be an odd duality the legislature did not intend on creating if section 32A was to operate in connection with the CIRP but could not be enforced by the NCLT, which is the adjudicating authority for all other matters connected to the CIRP.

Both Embassy and Kalyani held that the matters in issue therein, as decided by the NCLT and NCLAT respectively, were excluded from the broad stroke of section 60(5)³⁴ which provides the NCLT jurisdiction to deal with a host of matters in relation to the corporate debtor, notwithstanding anything to the contrary contained in any other law. Whereas, Embassy may have been justified in denying the NCLT jurisdiction under section 60(5), the basis of the

³⁴ Insolvency and Bankruptcy Code, No. 31 of 2016, § 60(5).

exercise of power therein arising from an enactment other than the IBC, surely section 60(5) does not exclude jurisdiction to enforce a provision of the IBC itself- which is the conclusion that Kalyani leads. What is worse is that the jurisdiction of the High Court stands excluded, and it is thus strange to imagine a corporate debtor approaching it to enforce its right under section 32A. Even if the High Court does so under writ jurisdiction, it would indubitably run afoul of the spirit and purpose of the IBC, which intended to exclude the High Court from these matters.

Here however, we arrive at an uneasy point in our analysis. Consider that an order of attachment cannot in any case issue from a private entity, and must issue from an investigative body, quasi-judicial body or a judicial body. To deprive the NCLT of the power of enforcing the bar under section 32A would render it toothless so far as enforcing section 32A is concerned and would likely see the corporate debtor rushing to the High Court with a writ petition in every such case. And this when the jurisdiction of the High Court from the CIRP stands completely ousted under the IBC. At the same time, it is a deeply conflicted conclusion that the NCLT be vested with power to set aside an order of attachment issuing even from a competent court, when such competent court has perhaps overlooked the bar of section 32A. Indeed, it is well settled that a court empowered to decide may decide wrongly, and such error would be appealable before a higher court; however, the error does not detract its jurisdiction completely.³⁵ This would be an awkward position of law which the arguments in the preceding paragraph may very well lead us to. In any case however, this is an independent and detached proposition since in Kalyani, the court gave the decision on this point relying solely upon Embassy, which for reasons hereinbefore mentioned does not appear to be an applicable precedent. Further, it is also material to consider that the IBC does at other places give the NCLT the power to obstruct any claims, proceedings, orders, decrees or judgements carried on in or issuing from any court of law or tribunal against the corporate debtor, such as for enforcing the moratorium under section 14. Can it then not said to be the statutory intendment that the NCLT should have the power to enforce the bar on proceedings under section 32A when the same is transgressed by any court, tribunal or other administrative authority?

Nevertheless, foregoing the point mentioned above, doubts as regards Kalyani may become

³⁵ Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147; M. L. Sethi v. R. P. Kapur, AIR 1972 SC 2379.

even more pronounced upon taking note of the following paragraph from Embassy:

Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results.³⁶

The above example, specific as it may be, is also revealing of Embassy's conception of the NCLT's jurisdiction under section 60(5). Two critical points may be culled out as follows. *Firstly*, in the given example as also in the facts of the case, Embassy was concerned with the subsistence or continuance of a transaction initiating prior to the corporate debtor's CIRP days, which Kalyani was not. In Kalyani, the attachment order came well after the CIRP had begun. Section 32A had come into operation, accordingly making a good case for granting the NCLT/NCLAT jurisdiction under section 60(5). Indeed, the decision in CIT v. Monnet Ispat & Energy Ltd.³⁷, may be critically adverted to here, which unambiguously held that the provisions of the IBC would prevail over any other law inconsistent therewith, given section 238³⁸ contained therein; claims for income tax dues made after the initiation of CIRP were thus defeated in that case.

Secondly, in the example reproduced above, just as in the facts of Embassy, the question arising was one beyond the purview of the IBC and under some other enactment, which the NCLT of course cannot have jurisdiction over. Yet, the question in Kalyani was one very much within the purview of the IBC, and it therefore ought to have been more seriously considered whether it could be read into the expression "*arising out of or in relation to the insolvency process*" as employed in section 60(5).

For all these reasons, there is indeed good cause to think that Embassy should not have been formulaically applied to the facts of Kalyani. That need not mean the conclusion in Kalyani

³⁶ Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308 at ¶ 37.

³⁷ CIT v. Monnet Ispat & Energy Ltd., (2018) 18 SCC 786.

³⁸ Insolvency and Bankruptcy Code, No. 31 of 2016, § 238.

was to be the opposite, yet it certainly merited a more nuanced discussion than a mere reiteration of Embassy where due to distinctions of both fact and law such reiteration was unwarranted.

330 DAYS WE DO ALLOT THEE FOR PROVISION: ON SECTION 12

Apart from its conception of section 32A, which appears not fully reliable for reasons aforementioned, Kalyani also cited non-compliance with mandatory provisions of law and misuse of the process of law in setting aside the CIRP and ordering liquidation. These grounds are mostly highly rooted in the particular facts of the case and inferences from conduct of parties; failure to observe the timeline prescribed under section 12 is one ground the decision depended on as a major stilt in establishing such non-compliance. Consequently, this paper would be amiss without examining that argument in greater detail.

For convenience, the scheme of section 12 may be recited as follows:

1. CIRP to be completed within 180 days of its initiation
2. The RP, upon being instructed in this behalf by a voting share of 66% of the CoC, will file an application before the adjudicating authority praying for an extension to the timeline of 180 days
3. Upon receiving such an application the adjudicating authority may grant an extension, if it is satisfied that the CIRP cannot be completed in 180 days, for a period not exceeding 90 days.
4. Provided,
 - Firstly, the extension in time limit under this section shall not be granted more than once
 - Secondly, that the total period inclusive of any extension and time taken in legal proceedings in relation to the insolvency shall mandatorily be completed within 330 days from initiation of the insolvency.

The consequence of this period expiring without the receipt of or with the rejection of a resolution plan is in fact specified in section 33, whereunder the corporate debtor may be

liquidated. The usage of the word “shall” at all places in section 12 in relation to the timeline indicates the mandatory nature thereof, a position given an unshakeable standing by the express inclusion of the word “mandatorily” in the second proviso thereto³⁹. This apart, the consequence of a non-adherence to this timeline is also provided under section 33⁴⁰, which is liquidation. The mandatory nature of this timeline has been noted by the Supreme Court in *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta*⁴¹.

This was followed by the Supreme Court partially reconfiguring the above ratio in *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*, (2020) 8 SCC 531, wherein the court was in ponderance over the word “mandatorily” contained in the second proviso to section 12; this proviso having been added by an amendment in 2019. This word was, in that case, read down from the provision as being manifestly arbitrary under article 14⁴² as well as an unreasonable restriction on the litigant’s right to carry business under article 19(1)(g)⁴³. *Essar Steel* propounded that a resolution must in all ordinary circumstances be completed within the maximum permissible limit of 330 days fixed by section 12 but did delineate certain special circumstances which would create an exception thereto.

Let us go over some of these special circumstances as identified in *Essar Steel* before considering its applicability in the facts of *Kalyani*. For instance, if only a short period of the resolution process is left completing which would be in the benefit of stakeholders, then the 330 days’ timeline may be given a brief relaxation rather than compelling the corporate debtor into liquidation. Similarly, a relaxation is also warranted when the CIRP has overshot the timeline due to litigation before the adjudicating authority, the appellate authority or the Supreme Court and such overshooting is traceable to tardiness or laxity on the authority’s part. In *Kalyani*’s case, the resolution took around one and a half years and indeed the question then rightly stands, as it has been asked by the Supreme Court, why a resolution plan far in excess of the prescribed timeline was unquestioningly approved by the adjudicating authority. For even subtracting the duration that connected litigation may have hindered the resolution the threshold would nonetheless stand exceeded; this is notwithstanding that such connected litigation went on with an express direction that it would in no way hinder the resolution

³⁹ *Arcelormittal India (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1, ¶¶ 80–81 (India).

⁴⁰ Insolvency and Bankruptcy Code, No. 31 of 2016, § 33.

⁴¹ *Arcelormittal India (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1.

⁴² India Const. art. 14.

⁴³ India Const. art. 19(1)(g).

process. Even forbearing to consider this serious non-compliance for a moment, a crucial lapse was that the resolution professional had never even approached the NCLT to seek an extension to the initial 180 days' timeline under section 12(2)⁴⁴. Whence did arise the question of approving such a resolution plan, without the resolution professional ever evidencing any exceptional circumstances which caused such a gross omission? The resolution plan was thus at the outset compromised. Surely, the plan being subsequently concurred to by the CoC despite the delay cannot condone the delay, since section 12 is an enjoinder and not a mere direction.

Further, subsequent to *Arcelormittal*, which spoke of the mandatory nature of the requirements laid down in section 12 in failure whereof the consequence of liquidation stands, *Essar Steel* had not diluted the said ratio as much as it had clarified its application in a few extraordinary circumstances. It is apparent that none of the temporal relaxant factors as identified in *Essar Steel* existed to account for the non-compliances in *Kalyani's* case, or any others of a like nature. It may be countered that to send a corporate debtor into liquidation despite a resolution plan having been approved would be tantamount not only to defeating the spirit and purpose of the IBC, which displays a preference for resolution over liquidation, but also cruel to the employees of the corporate debtor. Yet, it cannot be gainsaid that egregious contraventions of a mandatory law cannot be cured first by the CoC's approval, and secondly by the NCLT's seal on the resolution plan. To do so would mean writing off the mandatory character of section 12 entirely; reducing it to an eyewash when the IBC intends it to be at the core of the CIRP. With the consequence too being specified, the question of overlooking the extreme inexpediency does not arise.

On this point, it must be submitted that *Kalyani* has rightly appreciated both *Arcelormittal* and *Essar Steel*, as well as the true import of sections 12 and 33. Though it must be noted that *Kalyani* does not propound a law in deciding thus, but only reiterates it in its particular factual matrix. Accordingly, the issue of section 12 was majorly a question of fact so far as *Kalyani* is concerned.

CONCLUSION

At its core, insolvency law has evolved to provide corporate debtors a chance for revival or depart with dignity. The story of *Bhushan Power and Steel Limited* reveals both the promise

⁴⁴ Insolvency and Bankruptcy Code, No. 31 of 2016, § 12(2).

and the perils of that process. In order to prevent legitimate resolution applicants from becoming collateral victims of a debtor's tarnished past, Section 32A was created as a safeguard. However, the ruling illustrates how courts that apply precedents without taking into account the particular context of the IBC can muddy the statutory purpose. Despite its good intentions, the reliance on Embassy Property in Kalyani ran the risk of making Section 32A a meaningless document by denying the NCLT/NCLAT its inherent authority to enforce it.

At the same time, the decision rightly underscores that insolvency cannot be allowed to meander endlessly. Section 12's mandatory timelines reflect the legislature's insistence that resolution, if it must happen, should happen swiftly. Delays not only erode asset value but also erode trust in the process itself. In that sense, this judgement is a sobering reminder that insolvency law cannot be bent to suit convenience, for every indulgence to one stakeholder comes at the cost of another.

In the end, the case draws attention to a contradiction at the core of the IBC: it seeks to serve as both a compassionate economic rescue mechanism and a technical framework of stringent regulations. When balancing these roles, courts, regulators, and practitioners must exercise caution. The larger understanding that insolvency law is as much about fairness and future-building as it is about compliance and closure may be the lesson to be learned from Kalyani, rather than just the correctness of its conclusion.