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The Doctrine of 'Clean Slate' and the Ineligibility of Promoters: A Study of Section 29A of IBC

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KEYWORDS

IBC; Clean Slate Doctrine; Section 29A; Promoter Ineligibility; Corporate Insolvency.

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) introduced a creditor-led, time-bound resolution framework aimed at value maximization and business revival. Central to its design is the clean slate doctrine, ensuring that resolution applicants acquire debt-free entities insulated from past liabilities. With the 2017 insertion of Section 29A, promoters of defaulting companies were barred from submitting resolution plans to prevent moral hazard and strengthen governance. While upheld in ArcelorMittal, Essar Steel, and Swiss Ribbons, this disqualification has been criticized as overly broad, particularly for promoter-driven sectors and MSMEs, where it often restricts bidder participation and risks liquidation. A comparative analysis with U.S. and U.K. insolvency regimes reveals India's uniquely stringent stance. This article argues for a calibrated approach that targets willful defaulters while allowing flexibility in genuine cases, thereby harmonizing Section 29A with the IBC's objectives of revival, creditor confidence, and economic efficiency,.

1. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to consolidate India's fragmented insolvency framework into a unified and time-bound mechanism. Prior to its introduction, corporate distress was addressed through a patchwork of legislations such as the Sick Industrial Companies Act, the Recovery of Debts Due to Banks and Financial Institutions Act, and the Companies Act, all of which had failed to ensure speedy and effective resolution of insolvency (Bankruptcy Law Reforms Committee, 2015). The IBC thus represented a paradigm shift by placing creditors at the center of the process and mandating strict timelines for resolution (IBC, 2016).

The objectives of the Code are threefold. First, it seeks to provide a time-bound resolution framework to avoid erosion of asset value. Second, it emphasizes maximization of value of the corporate debtor's assets for the benefit of all stakeholders. Third, it seeks to instill creditor confidence in the insolvency system, thereby strengthening India's financial architecture and improving its ease of doing business rankings (Press Information Bureau, 2025; Centre for Banking & Corporate Laws, NLIU, n.d.). These objectives underpin the structural design of the Code and guide its judicial interpretation.

A central principle animating the IBC is the doctrine of the "clean slate." This doctrine provides that a corporate debtor emerging from insolvency resolution should be free from past liabilities and disputes, enabling it to operate under a new and credible management. Indian courts have repeatedly affirmed the necessity of this principle to encourage participation of resolution applicants and ensure certainty in commercial transactions (Committee of Creditors of Essar Steel v. Satish Kumar Gupta, 2019; Ghanashyam Mishra v. Edelweiss ARC, 2021; Metalegal, 2025). By offering a "fresh start," the doctrine safeguards the twin objectives of reviving viable businesses and promoting economic efficiency.

Against this backdrop, the legislative introduction of Section 29A in 2017 brought a contentious dimension to the insolvency regime. The provision disqualifies certain categories of persons, most notably the promoters of defaulting corporate debtors, from submitting resolution plans. The intent was to prevent "backdoor entry" of those who had contributed to the debtor's financial distress (ArcelorMittal v. Satish Kumar Gupta, 2018). However, the breadth of this disqualification has sparked debate. Critics argue that excluding promoters—even in cases of genuine business failure—can reduce the pool of viable

bidders, depress recovery values, and sometimes leave liquidation as the only alternative (Mehra & Sharma, 2018; Bahri, 2021). This raises the central research problem: does the blanket bar on promoters

under Section 29A truly align with the clean slate doctrine, or does it paradoxically undermine the revival objective of the IBC?

The present study addresses this problem through a doctrinal research methodology, examining statutory provisions, parliamentary materials, and judicial pronouncements to trace the evolution and interpretation of Section 29A. It also engages with secondary literature, expert committee reports, and scholarly commentary to assess the policy rationale. In addition, a comparative analysis of insolvency frameworks in the United States and the United Kingdom is undertaken to situate India's approach within a global context. The scope of the study is confined to corporate insolvency under the IBC, with particular focus on the interplay between the clean slate doctrine and promoter ineligibility.

2. THE DOCTRINE OF CLEAN SLATE AND JUDICIAL BASIS

The doctrine of clean slate is a foundational principle underpinning modern insolvency regimes. At its core, it envisages that once a corporate debtor undergoes resolution, the entity should be relieved of its prior financial and legal liabilities, thereby offering it a fresh start under a new management. This principle not only ensures the commercial viability of the reorganized entity but also protects resolution applicants from being deterred by the risk of inheriting historical burdens. In the Indian context, the doctrine has been explicitly recognized by courts as an essential feature of the Insolvency and Bankruptcy Code, 2016 (IBC).

The Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) emphasized that a successful resolution applicant must be allowed to take over the corporate debtor on a "clean slate" basis. The Court held that past claims against the corporate debtor cannot be allowed to survive once a resolution plan is approved, as doing so would undermine the finality of the process and discourage potential bidders. Similarly, in *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Co. Ltd.* (2021), the Court reaffirmed that all claims not incorporated into the approved resolution plan stand extinguished, underscoring that the objective of resolution is revival, not perpetual litigation. These decisions reflect judicial fidelity to the clean slate principle as a mechanism for certainty, efficiency, and value maximization.

Earlier, in *Electro Steel Steels Ltd. v. State of Jharkhand* (2019), the Supreme Court clarified that the State could not continue pursuing statutory dues against the resolution applicant once a resolution plan had been approved. This reinforced the position that the corporate debtor must emerge debt-free for the resolution process to be meaningful. Collectively, these cases establish that the clean slate doctrine operates not merely as a judicially implied norm but as a doctrinal necessity embedded in the IBC's architecture.

The constitutional dimension of the doctrine was addressed in *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019), where the Supreme Court upheld the validity of the IBC in its entirety. The Court noted that the Code was designed not as a recovery mechanism for creditors but as a means of ensuring revival and continuation of the corporate debtor. By distinguishing resolution from liquidation, the judgment implicitly validated the clean slate approach, affirming that resolution must prioritize the survival of the corporate entity free from the weight of its past defaults (Conventus Law, 2019; SCC Online, 2019).

From a comparative perspective, the clean slate doctrine resonates with insolvency practices in other jurisdictions. Under the U.S. Chapter 11 Bankruptcy Code, the "debtor-in-possession" framework allows existing management to continue, but the reorganized company is discharged from most pre-petition debts once a reorganization plan is confirmed (Pathania, 2025). In the U.K., the administration process under the Corporate Insolvency and Governance Act, 2020, while different in structure, also aims to rescue companies by insulating them from enforcement actions during restructuring (Rai & Garg, 2021; UK Government, 2020). Unlike India, however, these jurisdictions do not impose an absolute bar on the participation of existing management, highlighting India's stricter interpretation of the clean slate requirement.

Thus, the doctrine of clean slate in India serves a dual role: it assures resolution applicants that they will not be saddled with legacy claims, and it signals to the market that insolvency resolution under the IBC is a genuine opportunity for revival. At the same time, the Indian approach stands apart in coupling this doctrine with managerial disqualification through Section 29A, a feature that distinguishes it from international insolvency models and has become the focal point of debate in balancing creditor protection with business continuity.

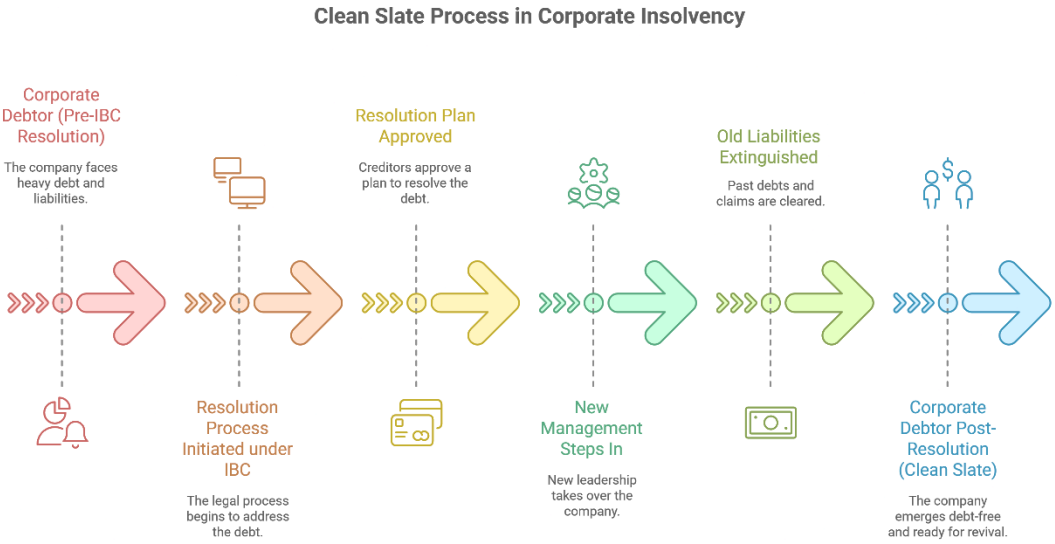

Figure 1: Conceptual Diagram of the "Clean Slate" Model

Note (caption): The Clean Slate doctrine ensures that once a resolution plan is approved under the IBC, the corporate debtor emerges free from historical liabilities, enabling genuine revival and continuity (*Essar Steel, 2019; Ghanashyam Mishra, 2021*).

3. SECTION 29A: LEGISLATIVE EVOLUTION, FRAMEWORK, AND INTENT

Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC), introduced by the Insolvency and Bankruptcy Code (Amendment) Act, 2017, has emerged as one of the most significant and contentious provisions of the Code. Designed to ensure that those responsible for a corporate debtor's insolvency are not permitted to regain control, the provision reflects a legislative choice to prioritize accountability and good governance. However, its scope and application have attracted considerable judicial and scholarly scrutiny.

3.1 Legislative Evolution of Section 29A

The origins of Section 29A can be traced to concerns raised during the early years of the IBC's implementation, when promoters of distressed companies were attempting to reacquire their businesses through the resolution process at substantially discounted values. This practice raised apprehensions of "backdoor entry" and potential abuse of the insolvency framework (Insolvency and Bankruptcy Board of India, 2023).

To address this issue, the 2017 Amendment Act inserted Section 29A, imposing a comprehensive set of disqualifications on persons seeking to submit a resolution plan. The provision has since undergone interpretive refinement by the judiciary, particularly in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2018), where the Supreme Court upheld its validity and clarified that its intent was to ensure that only bona fide applicants with clean financial and governance records could participate in the resolution process.

Table 1: Categories of Ineligibility under Section 29A of the IBC

Clause	Category of Ineligibility	Explanation / Examples
(a)	Undischarged Insolvent	A person who has been declared insolvent and not discharged cannot submit a resolution plan.
(b)	Willful Defaulter	As identified under RBI guidelines; excludes persons who have deliberately defaulted on repayment obligations.
(c)	Promoters/Management of NPAs	Promoters or those in control of corporate debtors with non-performing accounts for ≥ 1 year (unless overdue amounts are paid before submission).
(d)	Conviction for Offences	Persons convicted of offences punishable with ≥ 2 years imprisonment under specified Acts (e.g., SEBI Act, Prevention of Money Laundering Act).

(e)	Disqualified Directors	Individuals disqualified to act as directors under the Companies Act, 2013.
(f)	Prohibited from Securities Markets	Persons prohibited by SEBI from trading or accessing securities markets.
(g)	Fraudulent Transactions	Persons who have been promoters/management of companies that have been involved in fraudulent or preferential transactions.
(h)	Guarantors in Default	Personal guarantors to corporate debtors with outstanding dues invoked but unpaid.
(i)	Connected Persons	Connected parties (holding, subsidiary, associate companies, or related parties) of disqualified applicants.
(j)	Other Prescribed Categories	Any additional categories notified by the Central Government.

Note (caption): Section 29A, introduced by the 2017 Amendment, lays down a broad set of disqualifications aimed at ensuring only bona fide and credible applicants can participate in the resolution process (*ArcelorMittal v. Satish Kumar Gupta*, 2018).

3.2 Structure and Scope of the Provision

Section 29A disqualifies a wide array of persons from acting as resolution applicants. Notably, clause (c) targets promoters or persons in management or control of corporate debtors that have defaulted for a period of one year or more. This clause lies at the heart of the current debate, as it directly impacts the ability of promoters to revive their own enterprises.

Judicial interpretation has consistently affirmed a broad reading of this disqualification. In *Chitra Sharma v. Union of India* (2018), the Supreme Court rejected the argument that homebuyers should be excluded from the ambit of Section 29A, emphasizing that legislative intent was to prevent defaulting promoters from regaining control. Similarly, the Court in *ArcelorMittal* underscored that resolution applicants must pass the eligibility test both at the time of submission and approval of their plan.

Table 2: Timeline of Key Amendments and Judicial Interpretations of Section 29A

Year	Development	Details / Case Law
2017	Insertion of Section 29A	Introduced via Insolvency and Bankruptcy Code (Amendment) Act, 2017, to prevent "backdoor entry" of defaulting promoters and willful defaulters.
2018	*ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*	Supreme Court upheld the constitutional validity of Section 29A and clarified that eligibility must be tested at both the submission and approval stage of resolution plans.
2018	*Chitra Sharma v. Union of India*	SC emphasized that defaulting promoters cannot reclaim their companies, reinforcing the legislative intent of Section 29A.
2019	*Swiss Ribbons Pvt. Ltd. v. Union of India*	SC upheld the overall constitutionality of the IBC, endorsing the rationale behind Section 29A as essential to the Code's integrity.
2019	*Essar Steel India Ltd. v. Satish Kumar Gupta*	SC reaffirmed creditor primacy and the necessity of promoter exclusion, but acknowledged practical difficulties in resolution.
2019	*Standard Chartered Bank v. Satish Kumar Gupta* (NCLAT)	Tribunal reiterated strict application of Section 29A despite reduced bidder participation.
2020	*Harkirat Singh Bedi v. Oriental Bank of Commerce* (NCLAT)	Confirmed that promoter ineligibility under Section 29A applies even during liquidation stages.
2021	*Martin S.K. Golla v. Wig Associates Pvt. Ltd.* (NCLAT)	Dealt with interpretation of promoter ineligibility and reaffirmed legislative intent of preventing misuse.

2023	MSME Carve-out (Section 240A)	Supreme Court and legislative relaxation clarified that promoters of MSMEs are not automatically disqualified, recognizing sectoral dependence on promoters.
2024	NCLT Kolkata Order	Reiterated the scope of Section 29A disqualification, but underscored the balancing act between creditor protection and resolution efficiency.

Note (caption): The timeline illustrates the evolution of Section 29A from its legislative origins in 2017 to subsequent judicial interpretations that have shaped its scope and application.

3.3 Legislative Intent Behind the Provision

The legislative purpose of Section 29A is rooted in three interrelated objectives:

Preventing moral hazard: ensuring that persons responsible for financial mismanagement cannot reclaim assets at discounted prices (*ArcelorMittal*, 2018).

Upholding corporate governance standards: disqualifying willful defaulters, fraudsters, and those convicted of financial offences (Mehra & Sharma, 2018; Kothari, 2019).

Enhancing creditor confidence: signalling that the insolvency regime prioritizes creditor interests and discourages opportunistic behavior (Press Information Bureau, 2025).

However, critics argue that the breadth of Section 29A goes beyond its intended purpose. By encompassing even genuine promoters whose companies failed due to market downturns or extraneous factors, the provision may inadvertently stifle the resolution process (Bahri, 2021; IndiaCorpLaw, 2017).

3.4 Scholarly and Policy Commentary

Scholars have described Section 29A as both a "necessary safeguard" and a "Pandora's box." While some view it as critical for protecting the integrity of the IBC process (Mehra & Sharma, 2018), others argue that its overexpansion risks excluding those best placed to ensure revival, particularly in promoter-driven sectors (Bahri, 2021). Policy critiques suggest that the provision should focus more narrowly on willful defaulters and those guilty of misconduct, rather than imposing a blanket exclusion (Golla & Pathak, 2021; Singh, Ramaiah & Tak, 2023).

4. ARGUMENTS IN FAVOUR OF BARRING PROMOTERS

The disqualification of promoters under Section 29A has been justified as a necessary safeguard to uphold the integrity and credibility of the insolvency framework. Far from being an arbitrary exclusion, it is seen as a deliberate legislative choice to align the Code with its objectives of discipline, accountability, and value maximization. Four key policy rationales can be identified.

First, the provision addresses the problem of moral hazard. Without such a bar, promoters of defaulting companies could re-enter the process by acquiring their companies at significantly discounted values. This would allow them to shed liabilities while retaining control, undermining the very logic of insolvency resolution (*ArcelorMittal v. Satish Kumar Gupta*, 2018). By excluding them, Section 29A prevents the misuse of the Code as a mechanism for asset stripping.

Second, the exclusion of promoters is viewed as a tool for reinforcing corporate governance. By keeping out willful defaulters, fraudsters, and individuals convicted of economic offences, the law strengthens standards of managerial responsibility. Scholars and policy reports emphasize that insolvency resolution is not merely a financial restructuring exercise but also an opportunity to ensure responsible business conduct (Bhatt & Joshi Associates, 2024; Economic Times, 2023).

Third, the provision plays a vital role in enhancing creditor confidence. In the initial years of the IBC, creditor scepticism arose when defaulting promoters sought to return as bidders. Section 29A reassures creditors that the process prioritizes their interests and prevents manipulation, thereby encouraging greater participation in the resolution mechanism (Press Information Bureau, 2025).

Finally, Section 29A is consistent with international practices. Many insolvency regimes impose restrictions on errant or failed management regaining control of distressed entities. While India's approach may be stricter than the U.S. or U.K., it nonetheless reflects a global consensus that insolvency should not be used as a tool for recycling mismanagement (Rai & Garg, 2021; Pathania, 2025).

Taken together, these rationales establish that Section 29A is not an aberration but a cornerstone of the Code's governance design. It operationalizes the clean slate doctrine by ensuring that the corporate debtor emerges not only debt-free but also free from the very individuals whose conduct contributed to insolvency.

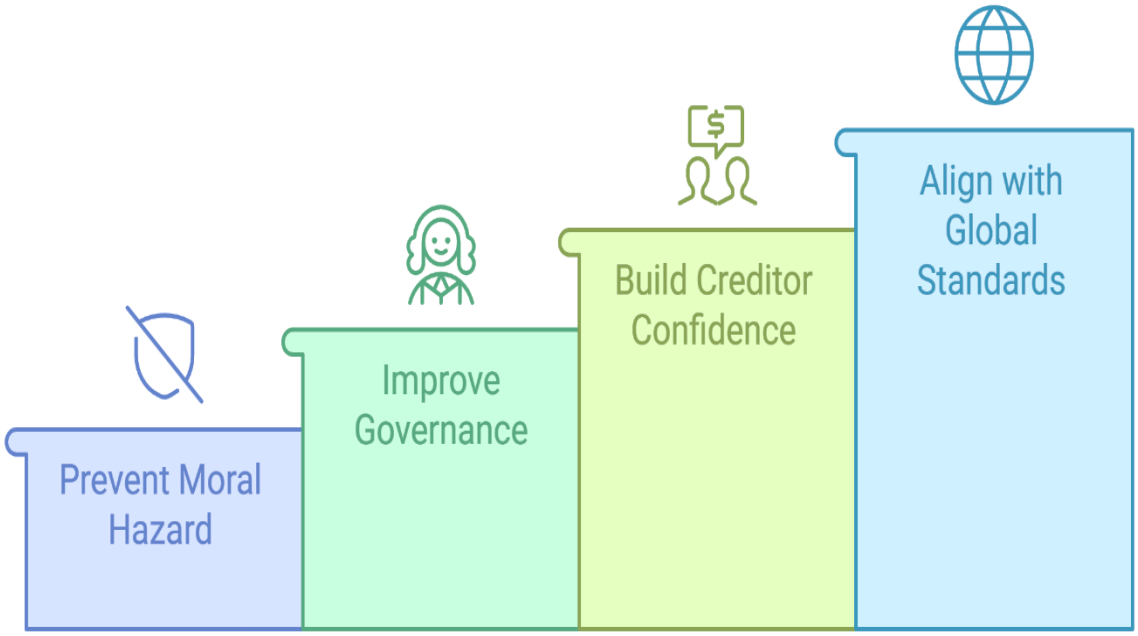

Figure 2: Flowchart – Policy Objectives of Section 29A

Note (caption): Section 29A reflects the IBC's normative design of linking resolution with governance reform by eliminating the risk of misuse, strengthening transparency, and ensuring creditor primacy (*ArcelorMittal, 2018; Press Information Bureau, 2025; Bhatt & Joshi Associates, 2024*).

5. CRITICISMS AND JUDICIAL CHALLENGES OF SECTION 29A

While Section 29A has been upheld as constitutionally valid and policy-sound, its practical application has generated significant criticism. Scholars, practitioners, and courts have expressed concern that the provision, though well-intentioned, may at times undermine the very objectives of the IBC. The major criticisms can be grouped under four themes.

5.1 Overbreadth of the Provision

One of the principal criticisms is that Section 29A casts an excessively wide net. It not only disqualifies willful defaulters and fraudulent promoters but also genuine entrepreneurs whose companies failed due to external factors such as market downturns, regulatory changes, or macroeconomic shocks. Commentators argue that such a blanket exclusion penalizes entrepreneurial risk-taking and stifles business revival (Mehra & Sharma, 2018; Bahri, 2021).

5.2 Adverse Impact on Value Maximization

By excluding promoters, who often possess the deepest knowledge of the business and sectoral expertise, Section 29A may inadvertently reduce the chances of meaningful revival. In several cases, the promoter group has been the most viable bidder, but their exclusion resulted in reduced competition and depressed asset values, sometimes pushing companies into liquidation (Money Control, 2025).

5.3 Resolution Challenges in Practice

The restrictive scope of Section 29A has led to limited bidder participation in many resolution processes, particularly in niche or promoter-driven industries. Judicial forums have repeatedly grappled with situations where the absence of eligible resolution applicants resulted in stalled proceedings. In *Standard Chartered Bank v. Satish Kumar Gupta* (2019), the NCLAT acknowledged these challenges but held that legislative intent must prevail.

Table 3: Pros and Cons of Barring Promoters under Section 29A

Aspect	Arguments in Favour (Pros)	Arguments Against (Cons)

Moral Hazard	Prevents defaulting promoters from regaining assets at a discount; closes "backdoor entry" (*ArcelorMittal, 2018*).	Penalizes even genuine promoters affected by external market factors (Mehra & Sharma, 2018; Bahri, 2021).
Corporate Governance	Strengthens accountability and excludes willful defaulters, fraudsters, and those convicted of offences (Bhatt & Joshi Associates, 2024; Tyagi, 2023).	Creates a blanket exclusion that may stifle entrepreneurial spirit and risk-taking.
Creditor Confidence	Builds trust in insolvency outcomes; reassures lenders that processes cannot be manipulated (Press Information Bureau, 2025).	Overly restrictive application can reduce bidder pool, weakening competition and creditor recovery.
Resolution Efficiency	Brings India in line with international standards of governance (Rai & Garg, 2021; Pathania, 2025).	Often reduces chances of revival in promoter-driven sectors and MSMEs, leading to liquidation (IndiaLaw, 2023; Money Control, 2025).

Note (caption): Section 29A creates a strong governance framework by preventing abuse of the IBC, but its rigidity also poses risks of reduced bidder participation and lower recovery values.

5.4 MSME Carve-out under Section 240A

Recognizing these challenges, Parliament introduced Section 240A to exempt micro, small, and medium enterprises (MSMEs) from certain disqualifications under Section 29A. This legislative relaxation was justified on the ground that MSMEs are often promoter-dependent; excluding promoters in such cases would collapse the possibility of resolution altogether. Judicial confirmation of this carve-out came in *IndiaLaw (2023)* and subsequent NCLT rulings (NCLT, 2024). The MSME exception underscores the need for sector-specific flexibility in applying the provision.

5.5 Judicial Engagement with Criticism

Courts and tribunals have confronted the tensions inherent in Section 29A.

In *Martin S.K. Golla v. Wig Associates Pvt. Ltd.* (2021), the NCLAT dealt with promoter ineligibility in liquidation contexts, highlighting interpretive difficulties.

In *Harkirat Singh Bedi v. Oriental Bank of Commerce* (2020), the NCLAT stressed that Section 29A should be interpreted strictly, even if it reduces bidder participation.

In *Namdev Hindurao Patil v. Virendra Kumar Jain* (NCLAT), the tribunal acknowledged hardships but reiterated legislative supremacy.

These cases reveal a consistent judicial approach of deference to legislative policy, even as courts recognize its practical challenges.

5.6 Case Study: Essar Steel

The debate reached its peak in the high-profile Essar Steel resolution. The exclusion of promoters under Section 29A significantly narrowed the field of bidders, leading to protracted litigation. While the Supreme Court in *Essar Steel* (2019) upheld the bar, the case exemplifies the tension between promoter exclusion and value maximization.

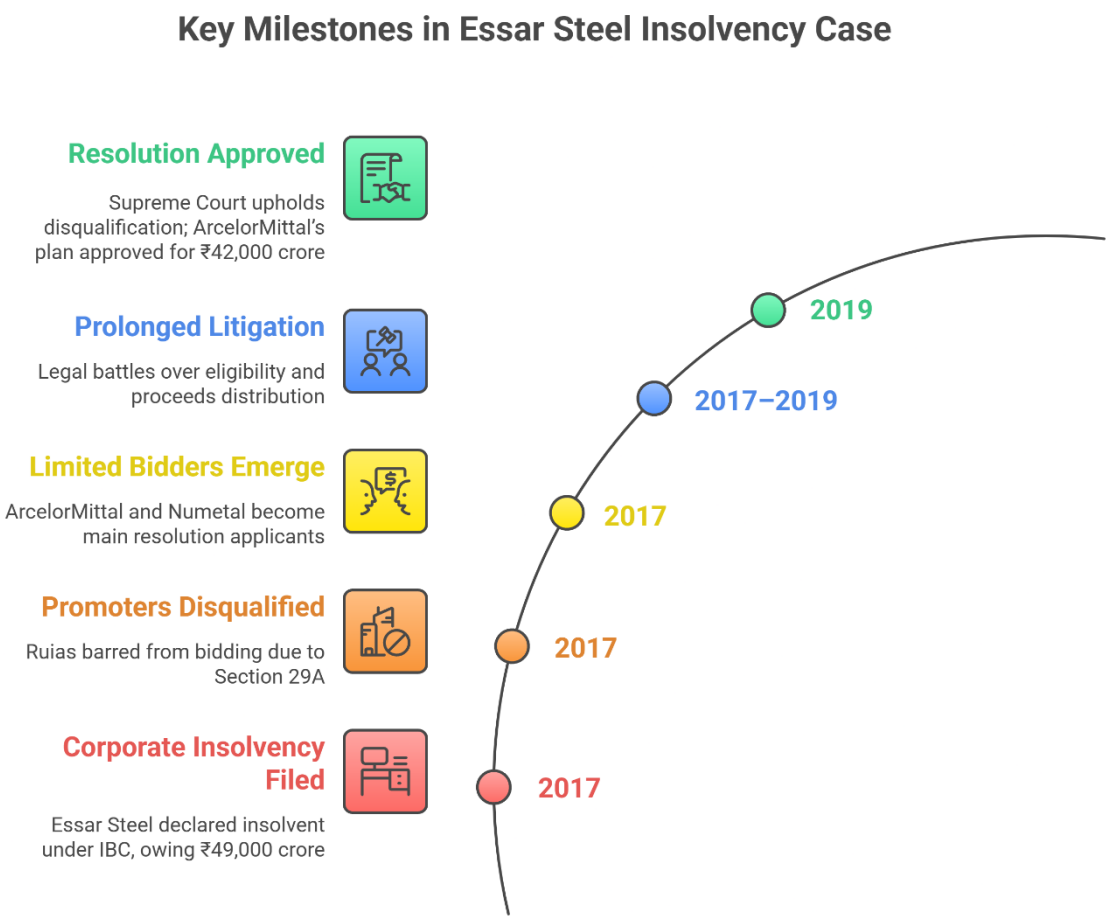

Figure 3: Case Study Flow – Essar Steel

Note (caption): The Essar Steel case illustrates both the effectiveness and challenges of Section 29A: while it prevented promoter re-entry, it also led to reduced competition, prolonged litigation, and highlighted the tension between promoter exclusion and value maximization (*Committee of Creditors of Essar Steel v. Satish Kumar Gupta, 2019; Standard Chartered Bank v. Satish Kumar Gupta, 2019*).

6. CONCLUSION AND SUGGESTIONS

The doctrine of clean slate, as articulated by the Supreme Court in *Essar Steel* (2019) and *Ghanashyam Mishra* (2021), represents the cornerstone of India's insolvency jurisprudence. It ensures that the corporate debtor emerges from resolution unencumbered by past liabilities, enabling genuine revival. Section 29A of the IBC was introduced in 2017 to reinforce this principle by disqualifying promoters and other tainted actors from regaining control of distressed entities. Its legislative intent—to prevent moral hazard, uphold governance standards, and enhance creditor confidence—remains both compelling and constitutionally sound (*Swiss Ribbons v. Union of India*, 2019).

Yet, as the jurisprudence and practice reveal, the rigidity of Section 29A has generated significant challenges. Its overbroad application often excludes genuine promoters who may be the only viable resolution applicants, particularly in promoter-driven sectors. This exclusion has, in some cases, depressed asset values, deterred bidder participation, and pushed firms toward liquidation rather than revival (Bahri, 2021; Money Control, 2025). The MSME carve-out under Section 240A demonstrates legislative recognition of these practical difficulties, underscoring the need for greater nuance in the provision's application.

Comparative analysis further illustrates that India's approach is unusually stringent. Jurisdictions such as the United States (Chapter 11) and the United Kingdom (administration) adopt more flexible models, allowing existing management to participate under judicial supervision (Pathania, 2025; Rai & Garg, 2021). By contrast, India's blanket prohibition risks undermining the Code's primary objective of value maximization.

To reconcile these tensions, this article proposes the following policy suggestions:

Narrower targeting of disqualification: Restrict promoter ineligibility to willful defaulters, fraudulent actors, and those convicted of financial crimes, rather than applying a blanket ban.

Enhanced judicial discretion: Empower adjudicating authorities to evaluate promoter bids on a case-by-case basis, ensuring that the exclusion serves the purpose of governance without frustrating resolution.

Sector-specific flexibility: Extend the logic of the MSME carve-out to other promoter-driven industries where revival may otherwise be unfeasible.

Safeguards for creditor primacy: Maintain the Committee of Creditors' oversight to ensure that any promoter-led resolution aligns with creditor interests.

In conclusion, Section 29A embodies the tension between creditor protection and entrepreneurial rehabilitation. While its objectives are legitimate, its inflexible operation risks undermining the IBC's broader purpose of rescuing viable businesses. A calibrated approach—preserving the spirit of the clean slate while refining the scope of disqualification—would ensure that the Code continues to deliver on its twin promises of value maximization and time-bound resolution.

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