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YEARS

THE HORIZON

Vol. 7 | Issue 3

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ERODING THE SHIELD OF SECTION 32A: A CRITICAL ANALYSIS OF THE SUPREME COURT'S VERDICT IN KALYANI TRANSCO.V.BHUSHANPOWER AND STEEL LIMITED

The recent ruling of the Hon'ble Supreme Court in the matter of **Kalyani Transco v. Bhushan Power and Steel Ltd. & Ors. [2025 SCC OnLine SC 1010]**¹ has ignited serious concerns regarding effectiveness and interpretation of Section 32A of the Insolvency and Bankruptcy Code, 2016 ("IBC"). By holding that the National Company Law Tribunal ("NCLT") and National Company Law Appellate Tribunal ("NCLAT"), lack the jurisdiction to interfere with attachment orders passed by the Directorate of Enforcement ("ED") under the Prevention of Money Laundering Act, 2002 ("PMLA") (the same being in domain of Public Law), the Hon'ble Apex Court has in effect rendered Section 32A toothless in practice. The present article critiques that the aforesaid judgment of Hon'ble Supreme Court which not only jeopardizes the clean slate principle enshrined under IBC but also creates an untenable conflict between two statutes, at the expense of the core objective of insolvency resolution.

SECTION 32A: INTENDED AS A CURE, NOT A COMPROMISE

Section 32A was introduced into the IBC in 2020 through a legislative amendment with the clear aim of insulating Successful Resolution Applicants ("SRAs") from civil or criminal liability linked to the prior misdeeds of the Corporate Debtor. It was introduced to ensure that upon approval of the Resolution Plan and a bonafide change in the management, the new acquirer is granted clean slate to revive the business and preserve its economic value. This provision, backed by the overriding effect of Section 238 of the Code is integral to encouraging bids in distressed asset sales by removing the fear of prosecutorial overhang.

The Hon'ble Supreme Court itself in earlier decisions including that in the matter of **Manish Kumar v. Union of India & Ors. Writ Petition (Civil) No. 26 of 2020**² had affirmed that the legislative intent behind the introduction of Section 32A in the IBC, ruling that no action whatsoever can be taken against the properties of the Corporate Debtor once the Resolution Plan is approved by the Ld. NCLT/Adjudicating Authority, provided that the approved Resolution Plan covers the said properties. **Dissecting the Judgment of the Hon'ble Supreme Court in Kalyani Transco (Supra)**

The Hon'ble Supreme Court in the matter of **Kalyani Transco (Supra)** held that the NCLT and NCLAT cannot interfere with the attachment orders passed by the ED under the PMLA. The Hon'ble Apex Court reasoned that such matters fall outside the jurisdiction of the NCLT and NCLAT as the same falls in the domain of Public Law. The Hon'ble Court further relied on its judgment in the matter of **Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors. [(2020) 13 SCC 308]**³ to support the proposition that the NCLT/NCLAT cannot adjudicate disputes arising under statutes other than that of the IBC. The consequences of the said interpretation are far reaching and counterproductive to the resolution framework envisaged under the IBC.

The aforesaid ruling of the Hon'ble Supreme Court in **Kalyani Enterprises (Supra)** effectively means that even after a Resolution Plan is approved and the conditions under Section 32A are fulfilled, the ED can continue to assert its control over the attached assets. This creates enormous uncertainty for Resolution Applicants and defeats the commercial viability of Resolution Plans, as the assets that may be necessary for the functioning of the Corporate Debtor may remain inaccessible due to any proceedings which are part of the domain of "Public Law" which also includes any proceeding pending under the provisions of PMLA, defeating the very purpose of resolution mechanism. Moreover, if the NCLT/NCLAT lacks the power to give effect to Section 32A by directing the release of attached assets, then the statutory protection provided under the IBC practically becomes unenforceable.

THREAT TO COMMERCIAL CERTAINTY AND INVESTOR CONFIDENCE

The fallout of **Kalyani Transco (Supra)** is that it leaves Resolution Applicants vulnerable to future litigation and enforcement actions even after assuming control of the Corporate Debtor through a Court approved Plan. This uncertainty undermines the very purpose of the IBC including Section 32A which is to provide time bound and definitive resolution mechanism. The principle of "value maximisation of assets" cannot be achieved if the very assets are blocked for the utilisation of the SRA. Moreover, such a restrictive interpretation of jurisdiction discourages prospective bidders and compromises the effectiveness of the resolution framework. It also raises paradox where the Resolution Plan is binding all stakeholders including Central Government, State Government or any local authority to whom statutory dues are owed under Section 31(1) of the IBC, but remains unworkable because enforcement agencies retain unchecked powers to attach essential assets.

Further, the judgment of the Hon'ble Supreme Court in the matter of **Kalyani Transco (Supra)** fails to take note of the object and purpose of Section 32A of the IBC. Section 32A of the IBC introduced on 13.03.2020 and w.e.f. 28.12.2019 with the specific purpose of providing certainty to SRAs. This purpose has been completely rendered otiose by the recent ruling.

PATH AHEAD: REVIEW PETITION AND LEGISLATIVE CLARITY

In the present circumstances the reconsideration of the judgment of **Kalyani Transco (Supra)** is warranted to ensure that the objective and purpose of Section 32A is preserved. A review petition in Kalyani Transco (Supra) is already underway, meanwhile the Hon'ble Supreme Court

has ordered a status-quo in the Liquidation of Bhushan Power and Steel till the disposal of review petition to be filed before the Hon'ble Supreme vide its order dated 26.05.2025 in **JSW Steel Ltd v. Sanjay Singhal and Ors. bearing Special Leave Petition (Civil) Nos. 15635-15636 of 2025**⁴. The Hon'ble Apex Court should while considering the review petition shall be required to look into the difficulties and mischief that Section 32A sought to remedy. The immunity and certainty accorded to the SRAs to seek release of attachments from various statutory authorities under the provisions of Section 32A of the IBC was in consonance with the clean slate doctrine and imperative to bolster investor trust. Without this, the resolution process remains incomplete and prone to derailment. In order to ensure that multiple proceedings do not derail the approved Resolution Plan, the legislature may consider to introduce specific provisions under the Companies Act, 2013 and IBC itself to empower the NCLT/NCLAT to issue binding directions to statutory authorities, including enforcement agencies, for effective implementation of Section 32A. The situation shall be clear only once the Hon'ble Supreme Court passes its final order under the pending review petition.

CONCLUSION

The Supreme Court's ruling in **Kalyani Transco (Supra)** significantly departs from the established interpretation of Section 32A, which aims to provide a fresh start for the new management of a distressed company. By excluding the jurisdiction of the NCLT and NCLAT in matters concerning what concerns part of Public Law including that of PMLA, the Hon'ble Apex Court has created a legal vacuum where the protection granted under Section 32A cannot be meaningfully enforced. If the NCLT and the NCLAT are to be effective custodians of the resolution process, they must have the authority to order the release of attached properties in accordance with the statutory regime under Section 32A of the IBC. The forthcoming review petition offers a critical opportunity not only for reconsideration but also to protect and preserve the sanctity of the Resolution Process under IBC.

The IBC has been in force for almost 8 years and with every passing year the legislature and the judiciary have been at the forefront of ironing out all the creases which come in implementation of the provisions of IBC in its true letter and spirit. Till the time the final verdict is pronounced by the Hon'ble Supreme Court, the proposed investors are likely to proceed with caution.

Attracting maximum and most suitable Resolution Applicants lies at the core of the IBC proceedings which over the years has helped in unlocking value out of the stressed assets. The current economic scenario clearly warrants a conducive investment environment and thus pragmatic approach to align the provisions of the IBC with public law enactments such as PMLA.

¹Kalyani Transco v. Bhushan Power and Steel Ltd. & Ors 2025 SCC OnLine SC 1010

²Manish Kumar v. Union of India & Ors. W.P.(Civil) No. 26 of 2020

³Embassy Property Development Pvt. Ltd. v. State of Karnataka & Ors. (2020) 13 SCC 308

⁴JSW Steel Ltd. v. Sanjay Singhal & Ors. SLP(Civil) No. 15635-15636 of 2025

NOTABLE DEALS



DEALS & MORE

Dhir & Dhir Associates acted as legal advisor to Influx Healthtech Limited in connection with its Initial Public Offering (IPO) on NSE Emerge, involving an offering of 11,00,400 equity shares. The team worked diligently towards the filing of the Draft Red Hearing Prospectus with the stock exchange. The transaction was led by our Capital Markets team, spearheaded by Mr. Guranpreet Sarna (Partner), Ms. Arpana Singh and Ms. Harshita Asopa (Senior Associates) and Mr. Suyash Shrivastava (Associate).

ADVISED BY



Guranpreet Singh Sarna
Partner



Arpana Singh
Senior Associate



Harshita Asopa
Senior Associate



Suyash Shrivastava
Associate



DEALS & MORE

Dhir & Dhir Associates acts on InvIT Financing availed by Anzen India Energy Yield Plus Trust

Anzen India Energy Yield Plus Trust ("Trust") has availed financial assistance of ₹5,00.00 Crore from India Infrastructure Finance Company Limited ("IIFCL") for the purpose of acquisition of 100% stake in Renew Sun Waves Private Limited. The firm acted as legal counsel to IIFCL and provided end to end advisory and support including but not limited to drafting, reviewing, negotiation with Trust's counsel and finalization of the financing documents. The team at Dhir & Dhir Associates, comprised Guranpreet Singh Sarna (Partner), Shikha Singh (Associate Partner) and Kavya Jindal (Associate).

ADVISED BY



Guranpreet Singh Sarna
Partner



Shikha Singh
Associate Partner



Kavya Jindal
Associate



DEALS & MORE

Dhir & Dhir advises Power Finance Corporation Limited for granting financial assistance of INR. 170.90 Crores in fast track manner

Dhir & Dhir Associates concluded year 2024 with a successful closure of high priority deal in an expedited timeframe, enabling Power Finance Corporation to release INR. 1709.00 Million to an SPV of Juniper Green Energy within scheduled timelines. Juniper Green Energy is an independent renewable energy power producer and operator of solar, wind and hybrid power projects with significant experience in conceptualizing, building, and developing renewable energy assets. The funds will be used for setting up 50 MW (70 MWp) solar PV power project in District - Bikaner, Rajasthan.

The firm provided end-to-end support for the transaction, including drafting, negotiating, and finalizing the financing documents, conducting due diligence on SPV and the project, issuance of pre-commitment and disbursement compliance reports and completing other related activities.

ADVISED BY



Guranpreet Singh Sarna
Partner



Shikha Singh
Associate Partner



Avlokita Kanwar
Senior Associate



Aekamvyot Singh
Associate

THE PODIUM

Dr. Sonal Verma, Partner (ESG) contributed valuable insights on the theme of **“Data, Cybersecurity & ESG - Navigating India’s Digital Lawscape,”** organized by LexWitness at the 10th Annual Information Technology Legal Summit 2025, held at Shangri-La, Bengaluru.



Mr. Guranpreet Singh Sarna Partner (Corporate) shared actionable insights in the thought-provoking session on **“Funding Unlocked: Brainstorming Risks & Investment Strategies,”** at the 11th Annual Real Estate & Construction Legal Summit 2025 organized by LexWitness held on 23rd May 2025 at Hotel Le Meridien, New Delhi.





Dr. Sonal Verma participated in the International Legal Conference 2025. He shared his views in the session on “Integrating ESG into Business Model”





CHIEF GUEST  SARDAR MANJINDER SINGH SIRSA <small>Minister of Food & Supplies, Industry, Forest & Environment, Government of Delhi - NCT</small>	GUEST OF HONOUR  DR. RAGHAVPAT SINGHANIA <small>Managing Director, JK CEMENT Ltd.</small>	WELCOME ADDRESS  ALOK DHIR <small>Founder & Managing Partner, Dhir & Dhir Associates</small>
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ESTEEMED PANELISTS

 AMBER GUPTA <small>SVP - Head Legal, National Stock Exchange (NSE)</small>	 PANDURANGA ACHARYA <small>General Counsel, Zepto</small>	 STUTI MISHRA <small>Asia Climate Correspondent, The Independent</small>	 CELIA LAMBERT-ALCANTARA <small>Director - Head of ESG Compliance, Crédit Agricole CIB</small>	 SONAL VERMA <small>Partner - ESG Dhir & Dhir Associates</small> MODERATOR
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Connect with the Marathon Mentors
via email: esglab@dhirassociates.com

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<small>Net Zero Partner</small>  Grow Billion Trees	<small>Official Magazine Partner</small>  WITNESS <small>INDIA'S FIRST MAGAZINE ON LEGAL AND CORPORATE AFFAIRS</small>	<small>Get Involved</small> Rutambhara Mishra <small>Rutambhara.mishra@dhirassociates.com 7008208179</small>	<small>Get Involved</small> Deonn Lobo <small>Deonn.lobo@dhirassociates.com 9920998386</small>
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Marking World Environment Day 2025 with a Purpose and Impact! Dhir & Dhir Associates proudly hosted the Inaugural Ceremony of the 5th Edition of India's First Virtual Legal Marathon on ESG – a UN Environment Programme-registered event, held under our Youth Connect Initiative.

The Inaugural Ceremony was attended by prominent ESG leaders from the legal, corporate, and investment ecosystems. Sardar Manjinder Singh Sirsa, Minister of Food & Supplies, Industry, Forest & Environment, Government of Delhi - NCT, graced the event as the Chief Guest.

Dr. Raghavpat Singhania, Managing Director, JK Cement Ltd, was the the Guest of Honour.

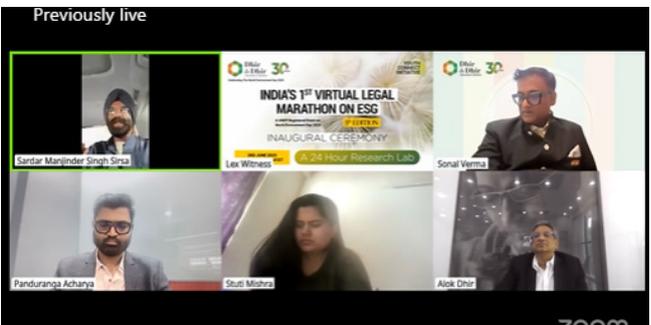
The featured industry panel included;

Mr. Amber Gupta, SVP- Head Legal, National Stock Exchange (NSE)

Mr. Panduranga Acharya, General Counsel, Zepto

Ms. Stuti Mishra, Asia Climate Correspondent, The Independent

Ms. Celia Lambert-Alcantara, Director-Head of ESG Compliance, Crédit Agricole CIB





The closing Ceremony of the event was held on the 5th June 2025 to commemorate the world environment day. The event was widely covered in mainstream media platforms.

INDIA'S 1ST VIRTUAL LEGAL MARATHON ON ESG
 A UNEP Registered Event on World Environment Day 2025
5TH EDITION
5TH JUNE 2025 | A 24 Hour Research Lab

GUESTS OF HONOUR

DR. MANUJ BHARDWAJ
 Founding Faculty Member
 Dhirubhai Ambani University School of Law
 Former International Civil Servant
 Climate Knowledge Partner Lead, C4C -
 World Bank Group

NIDHI SINGH
 Chief Executive Officer
 Grow Billion Trees

VOICE OF THANKS

MANEESHA DHIR
 Managing Partner
 Dhir & Dhir Associates

SONAL VERMA
 Partner - ESG
 Dhir & Dhir Associates
MODERATOR

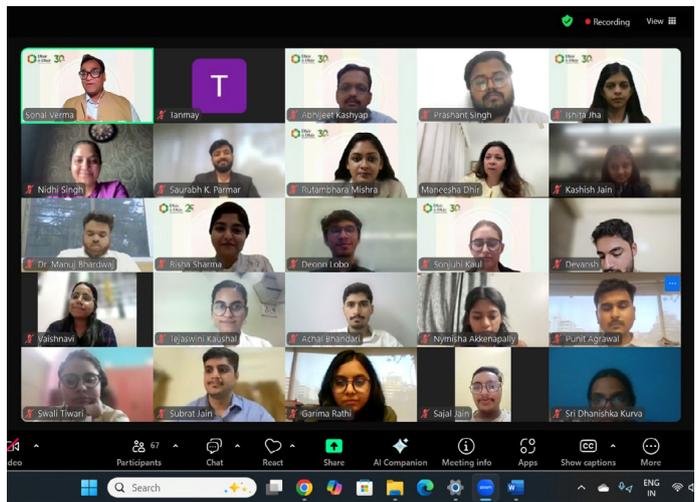
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Dr. Sonal Verma, Partner (ESG) participated in a focused Roundtable hosted by the Council of EU Chambers of Commerce in India with H.E. Shri Manish Manish, Indian High Commissioner to the Republic of Cyprus. He shared key insights on fostering India-Cyprus collaboration across sectors such as Financial Services, Maritime, Digital Innovation, Education, Renewable Energy, Healthcare, and Tourism.



Dr. Sonal Verma, Partner (ESG), participated in a focused roundtable hosted by the Council of EU Chambers of Commerce in India with H.E. Ms. Mateja Vodeb Ghosh, Ambassador of the Republic of Slovenia to India, and Ms. Tea Pirihi, Economic Counsellor from the Embassy of Slovenia. The discussion brought together key stakeholders to explore synergies and collaborative opportunities across critical sectors.



AWARDS & ACCOLADES

Dhir & Dhir Associates was recognised & awarded at the International Legal Conference 2025: “India’s legal and Regulatory Framework: Navigating International Trade Opportunities” **For excellence in ESG & Sustainability Law.**



RANKINGS



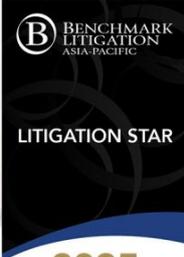
Insolvency
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Commercial and Transactions
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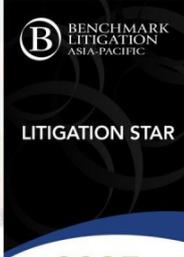
New Delhi
Mumbai
Hyderabad

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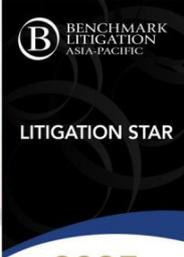
Maneesha Dhir, Managing Partner
Government and Regulatory, India

2025



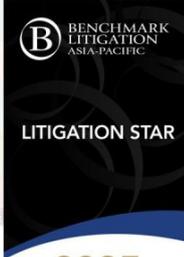
Alok Dhir, Founder & Managing Partner
Insolvency, India

2025



Sachin Gupta, Senior Partner
Commercial and Transactions, India

2025



Varsha Banerjee, Partner
Insolvency, India

2025



Dhir & Dhir Associates is a leading full-service law firm in India serving as a single-window legal and regulatory advisor globally. It has offices in New Delhi and Mumbai. The firm's areas of practice include Restructuring and Insolvency, Corporate/Commercial Advisory and M&A, Real Estate, Banking and Finance, Dispute Resolution, AI and Tech Governance, Capital Markets, Infrastructure & Energy, Environmental, Social & Governance, IPR, Technology, Media & Telecommunications, Employment Law and Consumer Law.

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