FROM DISCLOSURE TO DETERMINATION: IDENTIFYING ULTIMATE CONTROL OF RESOLUTION APPLICANTS UNDER THE IBC

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ABSTRACT

The framework of the IBC has a filter mechanism that is engraved in Section 29A; which also protects Section 32A that provides immunity to the company who is buying the company that is in distress; but despite these provisions—bad-faith promoters try to get in by using and covering themselves with complex corporate structures; so that it is difficult to find them; the Supreme Court in the *ArcelorMittal* case said that we need to look beyond the paperwork to find who has actual control.

IBBI has introduced new disclosure rules to ensure transparency; which are as follows: the December 2025 beneficial ownership forms and the September 2026 circular that places an obligation on RPs to look for negative and bad signs. The main purpose of this paper is to establish whether this new framework solves the problems that the RP faces during the due-diligence process; to test and analyse these frameworks against major cases such as *Numetal* and *Cosmic CRF*, and academic commentary and practitioner analysis; to find the truth about implementation and its effectiveness.

The main finding is that disclosure does not ultimately equate with eligibility; the 2025 framework is very good at making sure that the applicants put their ownership on paper; but does not provide the RP with enough tools to help figure out if someone is secretly controlling the company from behind; and hence places 'form over substance'.

Since the RP is a commercial manager and not a professional detective; this system causes a huge amount of delays; to solve this; the system needs a fast-track path, so that the RP can send the applicants who are suspicious; to the Adjudicating Authority, i.e., the NCLT for quick decisions.

Keywords: Section 29A IBC; Resolution Professional; Beneficial Ownership Disclosure; De Facto Control; Corporate Insolvency.

1. INTRODUCTION

In acquisitions of corporates and big companies, IBC makes sure that substance is prioritised over form: by lifting the corporate veil of a company; to see who actually controls the company and who has the ultimate decision-making power; the purpose of this is to make sure that the buyer cannot use a clean entity as a means to buy back their own bankrupt company; the IBC looks for the actual hands pulling the strings from behind.

To prevent this moral dilemma: IBC brought an amendment in 2018 named as IBC (Amendment) Act, 2018; which is a legal filter that prevents dishonest promoters from establishing and using fake companies to buy-back their own assets at less price.

The Supreme Court in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*[1]; held that Resolution Professionals should lift the corporate veil of the company to find the person; who has actual control over decision making. To enforce this, the IBBI introduced Regulation 38(3A) in December 2025[2]; that made it compulsory for all the applicants to submit a 'Statement of Beneficial Ownership'.

But there is a barrier to this; because it creates a structural bias; that is the discovery of de facto control is left to RPs; that they are not in contravention with Section 29A; but the regulation relies on static and mathematical based formulas like the PMLA laws; this creates a paradox because the RP; who is commanded and in charge of the law but is not given the tools to challenge a perfectly filled form; when hidden control can be suspected.

This paper analyses how efficient the new beneficial ownership disclosure is and how closely it can work parallelly with the Resolution Professional's due-diligence duties when formal control and actual control go in opposite directions.

2. LEGAL ARCHITECTURE: ELIGIBILITY AND CONTROL

2.1 Statutory Framework under Section 29A

The Insolvency framework introduced two sections; namely Section 32A and Section

[1]*ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 S.C.C. 1 (India Oct. 4, 2018) (Civil Appeal Nos. 9402–9405 of 2018).

[2]Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Seventh Amendment) Regulations, 2025, reg. 38(3A) (India Dec. 22, 2025) (amending the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) [hereinafter CIRP Regulations].

29A[3]; these sections serve two purposes but they are in coherence with each other; Section 29A contains a list of all the bad persons who are not allowed to make a bid in the buying of a company; such as promoters who defaulted; persons who defaulted willingly; related parties of the company etc.; which makes it clear that if they contributed to the downfall of the company; then they are by law banned from stepping and participating in a bid; while Section 32A acts as a legal guarantee which says that 'if an applicant wins the bid and buys the company and saves it; previous lawsuits that are against them, or any prosecution or punishment for any crime, fraud and unpaid fines will be dropped which were committed by the old management of the company before.' The Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. v. Union of India*; held that the introduction of Section 29A was to exclude the people who caused the situation; and allow only the good-faith people to bid and buy the company and ensure they are in safe and healthy hands; hence it is not unfair and unconstitutional.[4]

2.2 Connected Persons and Eligibility

Under Section 29A clause (j)[5]; it forces one to look behind the company that is immediately submitting the bid; to find connections or connected persons — such as the parent company; subsidiaries and the people who are behind the bid. In the case of *Numetal Ltd. v. Satish Kumar Gupta and Ors.*[6]; Essar Steel went bankrupt and a new company, Numetal, showed interest in buying it; it was a completely clean company from outside; but it was a group of different companies that came together. The investigation found a company called Aurora Enterprises which was owned by Mr. Rewant Ruia. He was the son of the man who was responsible for the bankruptcy of Essar Steel. So the Supreme Court said that using a clean new company controlled by the defaulting promoter cannot be used to buy back the company and its assets at a discounted price and that is why the RP is by law required to investigate very intelligently to make sure that complex corporate chains do not hide behind.

2.3 Meaning and Scope of Control

For figuring out who is qualified and who is not, we need to find out what control looks

[3]Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, §§ 29A, 32A (India).
[4]*Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17 (India Jan. 25, 2019) (Writ Petition (Civil) No. 99 of 2018).
[5]Insolvency and Bankruptcy Code, *supra* note 3, § 29A(j) & expl. I.
[6]*Numetal Ltd. v. Satish Kumar Gupta*, Company Appeal (AT) (Insolvency) Nos. 169, 171–173, 207 & 209 of 2018 (NCLAT Sept. 7, 2018) (India); *see also ArcelorMittal*, *supra* note 1 (deciding the connected appeals).

like; we look into Section 2(27) of the Companies Act, 2013[7], which provides a checklist based on mathematics because it helps determine who owns the major amount of shares or who has the legal rights to make appointments for the board of directors and who has ultimate control. In the case of *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.*,[8] the Supreme Court ruled that under Section 29A control should be substantive and actual control. What is important is who has the real control; the decision forces us to look for positive control and forces the decision makers to look behind the papers and find out the hidden reality.

2.4 Temporal Assessment of Eligibility

After establishing the meaning of control, we will look at the time at which an applicant is qualified because Section 29A is not a permanent ban. It works in the present moment. In the case of *Cosmic CRF Ltd. v. Myotic Trading Pvt. Ltd. and Ors.*[9]; it was held that a previous connection to a bad person is not necessarily enough to disallow a bid if it was taken and left long before the bid; this increases the workload of the RP because they also have to point out the date along with finding hidden control.

3. THE POST-2025 BENEFICIAL OWNERSHIP DISCLOSURE FRAMEWORK

3.1 Regulation 38(3A) and the December 2025 Circular

To tackle the problems of the huge procedural compliance burden; the Insolvency and Bankruptcy Board of India (IBBI) introduced Regulation 38(3A) and the December 29, 2025 circular[10]; because the resolution professionals were facing problems in figuring out who was behind the companies bidding for bankrupt businesses; the regulation and the circular together are trying to fix this issue with the introduction of a form called Annexure 1 (Statement of Beneficial Ownership); and force every bidder to fill out the form so that it is easy to find if there are any shell companies or foreign holding companies involved.

[7]Companies Act, 2013, No. 18 of 2013, § 2(27) (India).
[8]*ArcelorMittal*, *supra* note 1.
[9]*Cosmic CRF Ltd. v. Myotic Trading Pvt. Ltd.*, Civil Appeal Nos. 4266–4267 of 2026, 2026 INSC 608, ¶¶ 31–41 (India May 14, 2026).
[10]Insolvency & Bankruptcy Bd. of India, Circular No. IBBI/CIRP/90/2025, Format for "Statement of Beneficial Ownership" and Affidavit under Regulation 38(3A) of the CIRP Regulations (Dec. 29, 2025) (India); *see* CIRP Regulations, *supra* note 2, reg. 38(3A).

3.2 Statement of Beneficial Ownership

Then we have also adapted the Rule 9(3) formula of the PMLA (Prevention of Money Laundering Act)[11]. Money launderers are experts at hiding their real identity; hence the IBBI has borrowed this to find out who is the 'beneficial owner'; so Rule 9(3) provides a mathematical test; it says that if a person owns more than a certain percentage of a company's shares (10% or 25%); or if they can make big decisions about the company then they are beneficial owners.

3.3 Relationship with Section 32A

Then we have Section 32A[12], which comes to the help of the applicants and ensures them; that when they buy this company; they will get complete immunity from the cases or charges that were committed by the old management; this is only for completely new buyers; and if someone is a business partner with people from the old management, they do not get this protection.

We also have a form for this, named Annexure 2 of the December 2025 circular; Annexure 2 is a sworn affidavit; the applicant has to sign this document under oath stating that they do not have any connections with the old promoters and they deserve to be included in the Section 32A process of clean slate.

However, filling out the form does not necessarily grant eligibility under Section 29A; it adds a standard and proven factual line, because before this RPs had to do a lot of extensive searching to find it; Annexure 1 is a tool for disclosure of information and does not replace the need for legally determining control.

4. FROM DISCLOSURE TO VERIFICATION: HOW SECTION 29A DUE DILIGENCE OPERATES

4.1 Responsibilities of the Resolution Professional

The IBC has clearly made boundaries distinguishing who is responsible for which work

[11]Prevention of Money-laundering Act, 2002, No. 15 of 2003, § 2(1)(fa) (India); Prevention of Money-laundering (Maintenance of Records) Rules, 2005, r. 9(3) (India).
[12]Insolvency and Bankruptcy Code, *supra* note 3, § 32A.

under Section 30 of the Insolvency and Bankruptcy Code, 2016 and Regulation 39 of the CIRP Regulations[13]; it divides the approval of the buyout plan into three groups; because of which no one has absolute control; they are as follows: the Resolution Professional, who does all the necessary enquiries and checks and makes sure the applicant is legally qualified to bid under Section 29A; then the CoC, i.e., the Committee of Creditors, looks and decides on the plan; to decide whether it is good or not; then the final decision rests on the Adjudicating Authority, i.e., the NCLT, for approval.

But the Resolution Professionals are required to take necessary steps to ensure the bidders are bona fide; the requirements are as follows; the CIRP Regulations 36A(4) and 36A(8)[14]; Regulation 36A(4) says that the RP must include the disqualification rules in the invitation offer itself; while Regulation 36A(8) places an obligation on the RP to conduct strict due-diligence to verify the claims that are being claimed by the applicant. A compliance certificate named Form H[15] should be signed by the RP, which states that the RP has done the checks and to the best of their knowledge the applicants are clean; the IBBI Circular of 18 November 2025[16] also states that the RP must write a 'detailed compliance note' and give it to the CoC; and they are also required to record all the discussions around it.

Similarly, a circular dated 9 September 2026 issued by the IBBI[17] places more responsibility on the RPs to actively look for suspicious activity and malpractices. If the RP finds a trace of misuse, it is required to be reported to the NCLT.

4.2 Verification of Indirect and Substantive Control

But the real test of the Section 29A framework happens when the official paperwork and the reality are completely different; everything looks good and fine on paper; the buyer is eligible; but then a rival bidder comes forward with some information that shows a link between the applicant and the defaulting promoters; this creates a major problem for the RPs; as we saw

[13]Insolvency and Bankruptcy Code, *supra* note 3, § 30; CIRP Regulations, *supra* note 2, reg. 39.
[14]CIRP Regulations, *supra* note 2, regs. 36A(4), 36A(8).
[15]CIRP Regulations, *supra* note 2, reg. 39(4) & sched. I, Form H.
[16]Insolvency & Bankruptcy Bd. of India, Circular No. IBBI/CIRP/88/2025, Strengthening due diligence under Section 29A (Nov. 18, 2025) (India), https://ibbi.gov.in/uploads/whatsnew/ae3618a064edb62e15dc7a7a038b6deb.pdf.
[17]Insolvency & Bankruptcy Bd. of India, Circular No. IBBI/CIRP/105/2026, Due diligence by Insolvency Professionals regarding misuse of IBC framework (Sept. 9, 2026) (India).

in the case of *Numetal Ltd. v. Satish Kumar Gupta and Ors.*;[18] the applicants successfully established the paperwork and hid the person who had control; in this scenario RPs are left with no choice and hence they need to step up and go behind the paperwork to ensure compliance with the framework.

5. CRITICAL EVALUATION AND PROPORTIONATE RECOMMENDATIONS

5.1 Strengths of the Existing Framework

The rules introduced by the IBBI in their circulars; in December 2025 and September 2026, were a great success; particularly in the regulation of December 2025; Annexures 1 and 2 were very efficient in achieving their purpose; but it posed a drawback for verifying the information that is collected from using the above forms and annexures; the verification mechanism should be strengthened to ensure the full utilisation of the rules.

5.2 Evidentiary and Procedural Limitations

The ruling of the Supreme Court in the *ArcelorMittal* case[19]; was an excellent move that separated negative control and positive control. The problem is in the implementation on the ground; the system expects the Resolution Professional to act as a private investigator; but falls short of providing the tools and legal backing. The article written and published by AM Legals; a specialised corporate law firm; titled "Section 29A of the IBC: Who can be a Resolution Applicant?"[20] highlights the point very clearly that corporate lawyers agree on this and state that relying on an affidavit is not enough, and that the RP must conduct comprehensive due diligence on every prospective applicant and place a detailed due diligence report before the CoC.

Various forms use strict math calculations (like the PMLA's 10% or 25% rules) to find the owner; but as we saw in the case of *Numetal*[21]; true owner cannot always be traced through paper. A legal piece published on the blog The Indian Review of Corporate and Commercial Laws (IRCCL) written by Vedant Bharadwaj; titled "Section 29A(c) of the IBC and the

[18] *Numetal*, *supra* note 6.
[19] *ArcelorMittal*, *supra* note 1.
[20] AMLEGALS, *Section 29A of the IBC: Who Can Be a Resolution Applicant?* (Aug. 26, 2025), https://amlegals.com/section-29a-of-the-ibc-who-can-be-a-resolution-applicant/.
[21] *Numetal*, *supra* note 6.

Trouble with Subhkam: A Purposive Reading of Control"[22]; also highlights an approach of 'substance over form', which means that knowing who is the 'actual controller' of the company is the top priority and it can be overridden if we only rely on different types of forms.

The main purpose of the IBC is to save the companies that are going insolvent and bankrupt as fast as possible; so the government cannot give RPs the powers to do intense investigation; if everyone is screened through the criminal lens; then it will cause massive delays; which would defeat the specific purpose of establishing tribunals and acts for Insolvency and Bankruptcy proceedings.

5.3 Recommendations

But we can fix this by having a "Standard of Proof" mechanism. It will work as follows: if the RP spots a red flag (using the circular of September 2026) that is in contradiction with the clean disclosure requirements; the RP should stop the bid and immediately report this to the Adjudicating Authority, i.e., the NCLT; so the judges can handle this case; the CoC focuses on the recovery of money; and the RP is not left in the crosshairs.

6. CONCLUSION

To conclude; the IBBI's December 2025 framework; solved the problem; it forces applicants to disclose their corporate family tree; but it fails to solve the problems that arise in the way of gathering evidence; the rules tell the RPs to collect different types of forms; but do not give them the mechanism for what to do when there is a conflict between the information given in forms and reality. The biggest finding so far is that a bad person who is a promoter can easily submit a flawless, truly transparent and 100% compliant form; but at the same time can still be completely not eligible to participate in the bid in reality. Therefore, the IBC is very important; but until the law provides a clear framework to assess the evidence; and tries to resolve the disputes faster with the NCLT; the burden of due diligence will be on the RP always.

[22]Vedant Bharadwaj, *Section 29A(c) of the IBC and the Trouble with Subhkam: A Purposive Reading of Control*, Indian Rev. Corp. & Com. Laws (July 9, 2026), https://www.irccl.in/post/section-29a-c-of-the-ibc-and-the-trouble-with-subhkam-a-purposive-reading-of-control.