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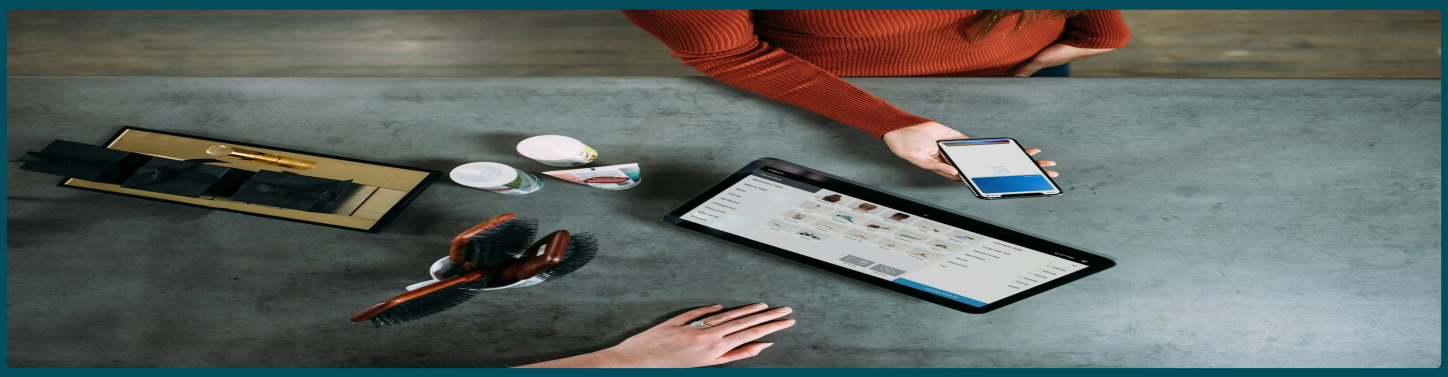

INSOLVENCY & BANKRUPTCY

Biggest Number, Biggest Disappointment: The Supreme Court On Commercial Wisdom And The Myth Of The Best Offer

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First, Let's Understand the Setting: What Is the IBC and Why Does It Matter?

Think of the Insolvency and Bankruptcy Code, 2016 (IBC) as a special law India enacted to fix a long-standing problem: when a company cannot pay its debts, what happens next? Before the IBC, courts were flooded with endless recovery suits, companies remained in zombie-like distress for years, and lenders rarely got their money back.

The IBC introduced a radical idea: **take the decision-making out of courts and give it to the creditors themselves.** The creditors know the most about whether a company is worth saving, what it is worth, and whether a proposed rescue plan is realistic. This body of creditors is called the **Committee of Creditors (CoC)** and is made up of financial creditors, banks and financial institutions, who have lent money to the distressed company.

The law says courts should supervise the process to ensure it is conducted lawfully and fairly, but should not substitute their judgment for the business judgment of the CoC. This idea is called the doctrine of commercial wisdom, the CoC's commercial decisions are theirs to make, not the court's.

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The Characters: Who Is Who?

Party	Who They Are	Role
SKS Power Generation (Chhattisgarh) Ltd	Power company	Corporate Debtor (the company that couldn't pay its debts)
Bank of Baroda	Bank	Financial Creditor who triggered the CIRP
Ashish Arjunkumar Rathi (RP)	Insolvency Professional	Resolution Professional managing the CIRP
CoC	Consortium of lenders	Decision-making body of financial creditors
SEML (Sarda Energy & Minerals Ltd)	Power sector company	Successful Resolution Applicant (chosen buyer)
Torrent Power Ltd	Rival power company	Unsuccessful bidder (Appellant No.1)
Vantage Point Asset Management	Singapore-based fund	Unsuccessful bidder (Appellant No.2)
Jindal Power Ltd	Power company	Unsuccessful bidder (Appellant No.3)

Table 1: Key parties in the Torrent Power judgment

The Story, Step by Step

Step 1: SKS Power Goes Bankrupt

SKS Power could not repay its lenders. Bank of Baroda filed an application under **Section 7 of the IBC** to begin a formal insolvency process, called a **Corporate Insolvency Resolution Process (CIRP)**. The National Company Law Tribunal (NCLT), Mumbai Bench, admitted the application in April 2022 and appointed Mr. Rathi as the Resolution Professional (RP).

Think of the RP like a court-appointed administrator who takes over the management of the company and runs a structured sale process to find someone who will rescue it.

Step 2: The Resolution Plan Process — A Structured Auction

The RP invited **Expressions of Interest (EoIs)** through a public form (Form-G) in July 2022. After receiving EoIs, the RP gave shortlisted parties access to the company's financial data (the Virtual Data Room) and issued a **Request for Resolution Plan (RFRP)**, essentially a detailed instruction manual telling bidders what their rescue plan must contain.

Seven parties submitted resolution plans by the extended deadline of December 2022. These included SEML, Torrent, Vantage and Jindal. After negotiations in January and February 2023, the CoC decided to hold a formal **inter-se bidding process** on 19 April 2023.

A crucial document was issued for this bidding process, the **Process Note dated 13 April 2023**. Think of it as the rulebook for the bidding session. It said that after the bidding session on 19 April 2023, **commercial offers would be frozen**, no bidder could change their offer after that point.

Step 3: The Clarification Emails — The Heart of the Dispute

After the bidding was completed and offers were frozen, the CoC met (in its **29th Meeting on 6 May 2023**) and realized there were certain ambiguities in the plans that needed to be resolved before it could sensibly vote. The CoC **directed the RP** to seek clarifications from **all seven bidders**, not just SEML.

On **8 May 2023**, the RP sent clarification emails to all resolution applicants, including SEML, Torrent, Vantage and Jindal. Each applicant received queries tailored to unclear aspects of their own plan.

SEML's clarification email contained 11 queries. Two of them became the center of this dispute:

1. **Query 1:** A question about how SEML would handle the bank guarantees (BGs) of the company, specifically, the BGs at item nos. 6 and 7 of a list of BGs totaling Rs 180.05 crore, as the plan mentioned replacing only Rs 103.39 crore worth of BGs.
2. **Query 6:** A question about whether SEML's offer of a "discounted amount of Rs 240 crore" as an upfront payment option was actually lower than Rs 240 crore (i.e., whether the word "discounted" meant a further reduction).

SEML replied on **10 May 2023**, clarifying both points. After receiving all clarifications, the CoC voted at its **31st Meeting**, and approved SEML's plan with **100% of votes**.

Step 4: The Losing Bidders Cry Foul

Torrent learnt through newspaper reports that SEML's plan had won even though Torrent claimed its bid offered higher value. Torrent, Vantage and Jindal then filed applications before the NCLT arguing that SEML had been **secretly allowed to improve its bid** after the freeze date, disguising bid improvements as "clarifications."

Their arguments were:

On the BGs: SEML's original plan only committed to infusing Rs 103.39 crore as fresh money for BG replacements. After the freeze, the CoC asked SEML about the remaining Rs 76.61 crore worth of BGs (items 6 and 7). SEML's "clarification" response committed to also providing replacement margin money for those BGs, effectively increasing its commitment from Rs 103.39 crore to Rs 180.05 crore. Torrent called this an impermissible post-bid enhancement.

On the Rs 240 crore component: SEML's plan offered Rs 240 crore as a deferred payment or, at the CoC's option, as an upfront amount described as a "discounted amount of Rs 240 crore." The phrase "discounted amount" confused the CoC, they asked whether it meant a figure lower than Rs 240 crore. SEML clarified it meant Rs 240 crore in full, not something lower. Torrent argued this converted a deferred payment into an upfront payment, improving SEML's offer post-freeze.

The **NCLT rejected both arguments** in August 2024 and approved SEML's plan. The **NCLAT dismissed the appeals** in October 2024, holding there was no modification and the CoC's commercial wisdom could not be interfered with. Torrent, Vantage and Jindal then approached the **Supreme Court**.

The Two Legal Questions Before the Supreme Court

The Supreme Court framed two issues for decision:

1. **Did SEML's responses to the RP's clarification queries amount to an enhancement or modification of SEML's Resolution Plan?**
2. **Since the plan had already been fully implemented and all creditor payments made, could the Court interfere at all at this stage?**

The Supreme Court's Analysis: Breaking It Down

Were the BGs Really Enhanced?

The Court did a careful, clause-by-clause reading of SEML's original plan (Clauses 6.3.13, 6.3.14 and 6.3.15) and Annexure 3 (the list of BGs).

Here is what the Court found in simple terms:

Imagine a company has seven guarantees given to different parties (power utilities, excise department, customs), all backed by Rs 180.05 crore sitting as security deposits with issuing banks. After a takeover:

1. **BGs 1–5 (Rs 103.39 crore):** SEML planned to keep these running, so it would infuse fresh security money to replace the existing deposits (which would be freed up and paid to lenders).
2. **BGs 6–7 (Rs 76.61 crore):** These were excise and customs guarantees. Because SEML planned to extinguish the underlying excise and customs liabilities under the plan, these BGs would be cancelled. Once cancelled, the security deposits backing them would also be released, and paid to lenders.

The key insight: Clause 6.3.14 of SEML's original plan explicitly said **all Rs 180.05 crore of security money** would eventually be returned to the corporate debtor and paid to secured creditors, regardless of whether individual BGs were continued or cancelled.

The CoC's confusion arose because Clause 6.3.15 only mentioned fresh infusion of Rs 103.39 crore, and did not spell out what would happen to the security deposits for BGs 6 and 7 in the interim period before they were cancelled. The clarification simply explained that SEML would provide interim cover for those BGs so banks were not left unsecured, and that upon cancellation the Rs 76.61 crore would also flow to lenders, exactly as Clause 6.3.14 always said.

The Court's conclusion: The total money flowing to lenders was **Rs 180.05 crore before clarification and Rs 180.05 crore after clarification.** Nothing changed. The clarification only addressed the timing and mechanics of securing the issuing banks during the transition, not the quantum received by lenders.

Was the Rs 240 Crore Really an Upgrade?

SEML's plan always offered Rs 240 crore as a deferred payment through Non-Convertible Debentures (NCDs) at 10% interest, aggregating to Rs 301.64 crore over three years. But the plan also gave the CoC an alternative option: instead of taking Rs 301.64 crore over time, the CoC could take Rs 240 crore upfront, which represented the **net present value (NPV)** of the future deferred payments.

In other words, **Rs 240 crore was always an upfront option,** it was just the discounted present value of the deferred stream. The confusing phrase "discounted amount of Rs 240 crore" made the CoC wonder: does "discounted" mean SEML is offering something even lower than Rs 240 crore if taken upfront?

SEML's clarification answered: No. Rs 240 crore is already the discounted figure. If CoC takes it upfront, it gets Rs 240 crore in full, no further reduction.

The Court's conclusion: This was not a conversion of deferred money into upfront money. The upfront option for Rs 240 crore always existed in the plan. All the clarification did was remove a linguistic ambiguity about whether "discounted" meant a further haircut. The NPV of SEML's offer did not change by a single rupee.

The Central Legal Principle: Sections 61 and 62 Are Narrow Gateways

Even before reaching the merits, the Supreme Court stressed something fundamental: **the IBC deliberately restricts when courts can interfere with a resolution plan.**

Under **Section 61(3)**, an appeal against an approved resolution plan can be filed before the NCLAT only on **five specific grounds**:

1. The plan contravenes any law in force.
2. There was a **material irregularity** in the exercise of powers by the RP.
3. Operational creditors' dues were not properly provided for.
4. CIRP costs were not given repayment priority.
5. The plan does not comply with Board-specified criteria.

Under **Section 62**, an appeal to the Supreme Court lies only on a question of law arising out of the NCLAT's order.

The only ground the appellants could realistically argue was ground (2): material irregularity by the RP. But the Court pointed out that the RP had not acted independently at all, every step the RP took (sending the clarification emails, placing SEML's responses before the CoC) was done **on the express instructions of the CoC**.

If the RP merely follows CoC instructions, that is not the RP's irregularity, it is the CoC exercising its commercial role. Allowing appellants to attack the CoC's commercial decision by labelling it as the RP's "material irregularity" would destroy the clear statutory distinction between the RP's procedural role and the CoC's decision-making authority.

Why the Highest Bidder Does Not Always Win

A law student reading this case might ask: Torrent offered Rs 2,000 crore fully upfront. Vantage offered Rs 2,191 crore. Jindal offered even more. How can a lower bid win?

The answer is that the IBC does **not** require the CoC to pick the highest bidder. The RFRP itself contained a clause (4.1.8) that explicitly told all bidders: "The CoC is under no obligation to approve the Resolution Plan which has scored highest as per the Evaluation Criteria and any Resolution Plan shall be approved solely on the basis of the CoC's commercial wisdom."

Bidders accepted these rules when they entered the process. The CoC evaluates **feasibility, viability, going-concern sustainability, and practical implementation capacity**, not just headline bid value. A higher headline number from a financial fund with no operational experience running a power plant may be less attractive to a lender than a slightly lower number from an experienced power sector operator who can actually turn the business around.

Courts confirmed consistently, in **K. Sashidhar (2019), Essar Steel (2020), Pratap Technocrats (2021), Kalyani Transco (2025)** and now in this case, that this commercial judgment belongs exclusively to the CoC and cannot be second-guessed by any tribunal or court.

The Court's Warning Against Strategic Litigation

In a passage with strong policy implications, the Court went beyond the immediate case to address a growing pattern it described as **"the strategic use of the judicial system by unsuccessful resolution applicants."**

The Court explained why this matters:

- **Value destruction:**

Unsuccessful resolution applicants routinely repackage commercial grievances as procedural objections, dragging every commercial decision of the CoC into prolonged litigation. This converts a time-bound resolution process into an adversarial war of attrition, erodes the going-concern value of the corporate debtor, and rewards delay, rent-seeking and strategic obstruction, all of which are fundamentally at odds with the logic and design of the IBC.

- **Chilling effect on future bidders:**

The economic costs of over-review are real and run in both directions. Looking backwards, expanded judicial scrutiny lengthens resolution timelines, inflates transaction costs and destroys the going-concern value that the IBC is designed to preserve, causing tangible economic harm to every stakeholder. Looking forwards, the mere expectation of expansive review distorts bidding incentives: future resolution applicants either discount their offers to price in legal risk or withdraw from the process altogether, weakening competition and reducing creditor recoveries.

- **Abuse of process:**

Worse still, excessive review actively breeds strategic litigation. Parties with little or no genuine economic stake in the outcome exploit the appellate process as a bargaining tool to delay implementation, extract concessions or simply obstruct, converting India's insolvency framework from a value-maximization engine into an adversarial contest. The Court's message is unambiguous: that is not what the IBC was built for, and the courts must not allow it to become so.

The Concurrent Findings Rule: An Added Lock

Apart from the substantive analysis, the Court applied a procedural principle that adds extra protection for implemented plans. When **two statutory adjudicating authorities (NCLT and NCLAT) have both reached the same conclusion on the same facts**, the Supreme Court will not ordinarily re-examine those facts unless:

1. the concurrent view ignored a mandatory statutory provision;
2. was based on irrelevant considerations; or
3. was manifestly arbitrary or perverse.

None of those exceptions applied here. Both NCLT and NCLAT had carefully reviewed the plan, the clarification emails and the arguments of all bidders, and both reached the same conclusions. By the time the matter reached the Supreme Court, SEML had also fully implemented its plan and paid all creditors.

Invoking Swiss Ribbons:

Reaffirming the constitutional validity and purposive design of the IBC as upheld in Swiss Ribbons Pvt Ltd v Union of India (2019) 4 SCC 17, the Court closed with a reminder that the Code exists to serve the larger public interest, the revival of enterprises, the protection of creditors, the preservation of employment and the strengthening of India's credit ecosystem, and that this purpose demands finality, discipline and respect for the commercial wisdom of those best placed to exercise it.

A Simple Summary of the Key Legal Propositions

Legal Principle	What It Means in Practice
Commercial wisdom of CoC is non-justiciable	Courts will not replace the CoC's business judgment with their own
Section 61(3) is an exhaustive list	Only the five listed grounds can be raised in appeal against an approved plan
RP acting on CoC instructions ?? material irregularity by RP	Attacking CoC decisions by labelling them as RP's irregularity will fail
Clarification ?? Modification if NPV is unchanged	Explaining ambiguous terms without changing the financial value of an offer is permissible
Concurrent findings carry strong weight	When NCLT and NCLAT agree, the Supreme Court will not usually re-open the facts
Highest bid does not guarantee selection	CoC can choose on feasibility, viability and other commercial factors
Implemented plans are final	Once a plan is carried out and payments made, interference would cause irreversible damage

Table 2: Key legal principles from the Torrent Power judgment

Why This Judgment Matters Beyond This Case

This decision matters because it sends three clear signals:

First, it draws a principled line between a legitimate clarification (explaining what the plan already says) and an impermissible modification (changing what the plan offers). The test is simple: has the net present value of what the CoC receives changed? If not, it is a clarification. If yes, it is a modification.

Second, it shuts the door firmly on attempts by unsuccessful bidders to dress up commercial complaints as procedural violations. Courts will look past the label to ask whether the substance of the challenge is really about the CoC's business decision, and if it is, they will refuse to intervene.

Third, it reinforces that the IBC's design, speed, finality, creditor authority, must be respected by all participants including the courts themselves. India's insolvency system works only if resolution plans can be implemented without becoming hostages to endless litigation.

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