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INSOLVENCY & BANKRUPTCY

Supreme Court Clarifies Key Insolvency Issues In Bhushan Power & Steel

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Introduction

In a significant development under the Insolvency and Bankruptcy Code, 2016 ("IBC"), the Supreme Court in *Kalyani Transco v. Bhushan Power & Steel Ltd. & Ors*. (Civil Appeal No. 1808 of 2020, decided on 26 September 2025) dealt in multiple appeals arising out of the Corporate Insolvency Resolution Process ("CIRP") of Bhushan Power and Steel Limited ("BPSL").

The conflict primarily arises out the resolution plan submitted by JSW Steel, the Successful Resolution Applicant of BPSL which had been approved by the Committee of Creditors ("CoC") and subsequently the National Company Law Tribunal ("NCLT"). The implementation of the plan was however met with a number of legal challenges by promoters, operational creditors and other stakeholders raising complex issues on locus, equity infusion, delay in implementation, treatment of profits made by a Corporate Debtor during CIRP (EBITDA), and extinguishment of pre- CIRP claims.

The judgment of the Supreme Court sheds light on these aspects, which endorses the sanctity of resolution plans and the primacy of the creditor decision-making as per the IBC structure.

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Background Of The Case

The iota of this dispute lies back in the year 2017 when the Reserve Bank of India (RBI) vide circular dated 13.06.2017 identified 12 large scale corporate defaulters, with outstanding debts valued at Rs. 5000 Crore and above, now infamously known as the dirty dozen. RBI named BPSL as one of the defaulters. The first step was taken by the financial creditors led by Punjab National Bank ("PNB") by promptly initiating CIRP under the IBC. The resolution professional invited claims from all the creditors and stakeholders. Thereafter, pursuant to an advertisement published by the RP, 13 potential resolution applicants ("PRAs") submitted their resolution plan. That in the 18th meeting of the CoC, Resolution Plans were evaluated by the CoC and the plan submitted by JSW Steel Ltd (SRA) emerged as the highest evaluated plan, paving a way for successful revival of the Corporate Debtor i.e., BPSL.

Thereafter, the RP filed the Company Application No.254 (PB)/2019 in CP No. (IB) -202 (PB) of 2017 on 14.02.2019, with a prayer to accept the Resolution plan submitted by the SRA. On 5th September 2019, the Resolution Plan of the SRA was approved by the NCLT Delhi Principal Bench, subject to certain conditions.

However, the resolution process was quickly faced with regulatory hurdles. On 10th October 2019 the Enforcement Directorate (ED) passed a Provisional Attachment Order (PAO) under the Prevention of Money Laundering Act (PMLA), attaching the assets of BPSL. This placed a huge shadow on the clean and unencumbered transfer of assets to JSW Steel, raising questions whether the SRA would inherit the Corporate Debtor without any past liabilities. Being aggrieved by the PAO the SRA challenged the PAO before the NCLAT by way of separate applications in the pending company appeal. Accordingly, the Hon'ble NCLAT stayed the implementation of the Resolution Plan.

Regardless of these developments, several stakeholders, including the erstwhile promoters of BPSL, operational creditors, including Kalyani Transco, Jaldhi, Medi, and Darcl, and the Enforcement Directorate, appealed to the Supreme Court. That on 2 nd May 2025 upon hearing the appeals, the Hon'ble Supreme Court directed liquidation of BPSL quashing the orders passed by the NCLT and NCLAT.

Being aggrieved, Review Petitions bearing RP (C) No. 1432 of 2025 and connected matters came to be filed by the aggrieved parties, seeking recall of the final judgment and order dated 2nd May 2025. Accordingly, the Supreme Court, heard the Review Petition and kept open all the questions of law, as a result of which all the batch of appeals were listed for hearing on 7th August 2025. The culmination of this protracted legal journey came to an end on 26th September 2025 when the Supreme Court

delivered the current judgment carving a significant milestone in India's insolvency jurisprudence.

Key Issues

1. Whether the erstwhile promoters & other stake holders have any locus to file appeals under Section 61 & 62 of the IBC challenging the resolution plan?
2. Whether CoC cease to exist after approval of resolution plan by the adjudicating authority?
3. What is the legal status of a clause in the resolution plan that permits a CoC to extend implementation period?
4. Whether the SRA did culpable breach by delaying implementation of the resolution plan?
5. Whether issuance of Compulsory Convertible Debentures (CCDs) could be treated as compliance with the requirement of equity infusion?
6. Whether EBITDA generated during CIRP be distributed among the lenders after approval of resolution plan when the plan did not provide for it?

Court's Ruling

The Court accepted that promoters, being personal guarantors, can technically be considered "persons aggrieved" under section 62 of the IBC.[1] It however emphasized that their multiple efforts to postpone proceedings expressed by way of obstructive behaviour of the erstwhile promoters during CIRP.

It clarified that the CoC is not dissolved when a resolution plan has been approved by the NCLT. Rather, it goes on until the plan has been implemented or liquidation has been ordered.[2]

The clause allowing CoC to extend implementation of resolution plan was held to be impermissible, because the clause just allows for granting some extra time and does not completely renegotiate the terms of the plan as was the situation in the case of ***AMTEK Auto Limited through Corporation Bank v. Dinkar T. Venkatasubramanian and Others.[3]***

The Court rejected the argument that the failure to implement the plan promptly would amount to culpable breach by JSW. External factors, especially the ED proceedings, concomitant PMLA proceedings and litigation on how EBITDA were to be treated, significantly made it difficult to implement the plan on time. The record of proceedings didn't show on its face that any mala fide non-performance had been committed by the SRA and as such delay alone did not vitiate the approved plan.[4]

It is further to be noted that both the CoC and the SRA – JSW were jointly making efforts for implementation of the Resolution Plan.

The Court further held that Compulsorily Convertible Debt instruments (CCDs) were instruments of equity and the CoC was merely exercising its commercial wisdom beyond the scope of judicial interference.[5]

The EBITDA wrangle created in the CIRP was resolved by defining that unless the resolution plan specifies otherwise, such earnings will stay with the corporate debtor. The Court clarified that EBITDA is not necessarily to be shared among creditors and it is intended to aid in saving the debtor as going concern.[6]

The Court reiterated the fact that all the previous claims are extinguished upon a resolution plan being passed under the Section 31 of the IBC, unless it is specifically written in the plan. Such dues cannot be revived by informal pledges or book keeping mistakes.[7]

Legal Significance

The case reiterates the underlying policy that the commercial wisdom of the Committee of Creditors (CoC) is critical and in most aspects unreviewed by the courts, other than issues to do with legality. In treating Compulsorily Convertible Debentures (CCDs) as good equity infusion, the Court approved financial flexibility of resolution plans, and the greater participation of resolution applicants.

It is also significant that the Court clarified on the EBITDA created in the process of CIRP that the earnings cannot be automatically asserted by the creditors unless specified in the resolution plan. This maintains the status of a going concern to the debtor and discourages retrospective amendments to approved plans.

The ruling also highlights that the time lost due to extrinsic enforcement action is not a form of opportunistic behaviour by the applicants of the resolution and this protects the applicant of the resolution against the penalty of interest. Moreover, it supports

the fact that pre-CIRP dues are automatically eliminated when the resolution plan is passed under Section 31 of the IBC and the whole process is certain and final.

Author's Take

The most significant outcome of this case is that the Court has been highly in deference to the commercial wisdom of the CoC, which is the main pillar in the IBC framework. Preservation of CCDs as a recognised type of equity infusion, denunciation of delays due to external enforcement measures and by articulating the inapplicability of distribution of the EBITDA unless stated otherwise in the resolution plan, the Court has ensured predictability and stability in the CIRP process.

Meanwhile, the case also gives a subtle warning to promoters and guarantors. Although they might have the locus to approach the appellate forums, but they will always be judged by their course of actions and contribution of pushing the debtor to insolvency. For operational creditors, the judgment reinstates the fact that their priority needs to be fully guarded within the solution program itself because the informal guarantees cannot override the statutory finality of the Section 31 of the IBC.

This decision strengthens creditor confidence, reassure resolution applicants and underlines the legislative intent of the IBC, which is to provide quick and efficient resolution with the minimum judicial intervention.

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[1] Page 45, Para 63.

[2] Page 68, Para 86.

[3] (2021) 4 SCC 457

[4] Page 92, Para 124.

[5] Page 106, Para 152.

[6] Page 118, Para 168 & 169.

Related Practice Areas

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