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## A Landmark Ruling Reshaping the IBC Framework

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**By Ashwarya Sharma, Advocate | Co-Founder & Legal Head, RB LawCorp**

**IN** a significant ruling with far-reaching consequences for the corporate insolvency landscape in India, the Supreme Court in **Kalyani Transco v. M/s Bhushan Power and Steel Ltd. & Ors.** (2025 INSC 621; Civil Appeal No. 1808 of 2020) [[2025-TIOLCORP-11-SC-IBC](#)] invoked its extraordinary powers under **Article 142 of the Constitution of India** to set aside a resolution plan that had been concurrently approved by the Committee of Creditors (**CoC**), the National Company Law Tribunal (**NCLT**), and the National Company Law Appellate Tribunal (**NCLAT**) and ordered for the liquidation of the Company which is generally considered as a last resort under the law.

This decision not only derails one of the highest-profile insolvency resolutions under the Insolvency and Bankruptcy Code, 2016 (**IBC**), but also recalibrates the legal and procedural boundaries within which various stakeholders - including resolution professionals, the CoC, and adjudicating authorities - must operate.

### Backdrop of the Dispute: From Dirty Dozen to Supreme Scrutiny

Post the 2017 amendment to the Banking Regulation Act, 1949, the Reserve Bank of India directed banks to initiate insolvency proceedings against twelve large defaulters dubbed the "dirty dozen", including Bhushan Power and Steel Ltd. (**BPSL**), whose insolvency was admitted by the NCLT on July 26, 2017.

Subsequently, JSW Steel emerged as the successful resolution applicant. Its resolution plan was approved by the CoC and received NCLT approval in September 2019, albeit with conditions. However, complications arose when the Directorate of Enforcement (**ED**) attached certain BPSL assets under the Prevention of Money Laundering Act, 2002 (**PMLA**). Despite stay orders from NCLAT and the Supreme Court, the plan remained mired in litigation, eventually reaching the Supreme Court.

### Key Takeaways from the Supreme Court's Judgment

#### A. Role and Failures of the Resolution Professional

The Court found that the Resolution Professional (**RP**) failed in multiple statutory duties:

- Non-submission of **Form H** compliance certificate, mandatory under Regulation 39(4), which confirms eligibility under **Section 29A** and compliance under **Section 30(2)** of IBC.
- The resolution plan did not give priority to operational creditors, contrary to **Regulation 38(1)** (pre-November 2019 amendment).
- No verification of whether the plan contravened existing laws.

This gross procedural non-compliance undermined the very sanctity of the CIRP process.

#### B. Jurisdictional Overreach by NCLAT in PMLA Matters

The Supreme Court categorically held that:

*"NCLT and NCLAT are not vested with powers of judicial review over decisions taken by statutory authorities under public law."*

This followed the precedent set in Embassy Property Developments v. State of Karnataka - [[2019-TIOLCORP-19-SC-IBC-LB](#)], where it was held that matters falling outside IBC's purview - especially under public law - cannot be adjudicated by insolvency forums. NCLAT's ruling on **Section**

**32A** and interference with ED's attachments was thus declared **coram non judice** - made without jurisdiction.

*"Coram non judice" is a Latin term meaning "before a person not a judge". It refers to a legal proceeding that takes place without proper jurisdiction - that is, before a court or tribunal that has no authority to hear and decide the matter. Any decision made in such a case is null and void.*

### C. Questionable Conduct and Commercial Wisdom of CoC

The CoC, despite filing affidavits expressing concerns about JSW's conduct and non-implementation of the plan, inexplicably accepted a **Rs. 19,350 crore** offer at a later stage without protest. The Supreme Court observed:

*"The shifting stance of CoC raises serious doubts about the exercise of its so-called commercial wisdom."*

Commercial wisdom under IBC, the Court reiterated, must be informed, timely, and compliant with statutory mandates - not arbitrary or capricious. Approval of a non-compliant plan reflects a failure to discharge fiduciary duties.

### D. Misconduct by JSW: Delay, Non-Implementation, and Frivolous Litigation

The Court found that JSW Steel:

- Misrepresented its intentions and plan viability.
- Amended its plan post-approval to suit its interests.
- Used litigation as a shield to delay implementation for over 2.5 years, despite no stay on the resolution plan by any forum.

Such conduct, the Court held, constituted a clear abuse of judicial process, prejudicing both financial and operational creditors.

### E. Breach of Timelines and Procedural Mandates under IBC

The insolvency process extended well beyond the maximum 270-day limit under Section 12, and no formal extension was sought. This delay was contrary to the mandatory timelines recognized in *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta*- [\[2019-TIOLCORP-18-SC-IBC-LB\]](#), and not saved by the striking down of the 330-day limit provided in proviso of section 12(3) of the Code in *ESSAR Steel India Ltd Committee of Creditors Vs. Satish Kumar Gupta* (**2020(8) SCC 531**).

Moreover, terms like "Effective Date" as per the resolution plan were not adhered to. Despite the plan requiring implementation within 30 days, no such steps were taken, and the upfront payments remained unpaid even in March 2022.

### Conclusion: A Wake-Up Call for IBC Stakeholders

This judgment is a watershed moment in Indian insolvency jurisprudence. By quashing the resolution plan using **Article 142**, the Supreme Court has:

- Reaffirmed the mandatory nature of procedural compliance including the time limits prescribed under the Code.
- Clarified that judicial review powers are not vested in the NCLT/NCLAT for public law issues.
- Set a high bar for the exercise of commercial wisdom by CoCs.
- Cautioned resolution applicants against misuse of judicial processes to delay or manipulate outcomes to the detriment of other stakeholders.

The ruling serves as a stern warning to all players in the insolvency ecosystem: compliance is not optional, and malafide conduct will not be condoned. The Court's message is unambiguous - the IBC process is not a free pass for strategic default or opportunistic delay. For professionals involved in insolvency proceedings - be it as RP, CoC member, resolution applicant, or legal counsel - this judgment demands introspection, procedural rigor, and above all, ethical fidelity to the objectives of the IBC.

**[The author is a practicing advocate, Co-Founder, and Legal Head of RB LawCorp. He specializes in GST and IBC laws. Suggestions or queries can be directed to [ashsharma@rblawcorp.in](mailto:ashsharma@rblawcorp.in).]**



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