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Supreme Court Restores JSW's Resolution Plan in Bhushan Power Case: A Pragmatic Turn in IBC Jurisprudence

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I. Introduction: From Liquidation to Revival - A Judicial Course Correction

IN a landmark review judgment in *Kalyani Transco v. Bhushan Power and Steel Ltd. & Ors.* - [2025-TIOLCORP-20-SC-IBC-LB](#), the Supreme Court has reversed its earlier verdict which had directed liquidation of Bhushan Power and Steel Ltd. (BPSL), and has now approved the resolution plan submitted by JSW Steel.

This rare judicial reversal marks a decisive reaffirmation of the Insolvency and Bankruptcy Code's (IBC) foundational philosophy - **revival over liquidation**. The judgment stands out not only for its pragmatic balance between procedure and purpose but also for its broader recognition that insolvency law is an economic legislation rooted in commercial realities, not merely a procedural code of default.

By restoring the resolution plan, the Supreme Court has reinforced investor confidence, upheld the finality of the *Committee of Creditors' (CoC)* decisions, and signalled judicial restraint in second-guessing commercial wisdom of the all-powerful CoC - a core tenet of IBC jurisprudence since *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta* - [2020-TIOLCORP-20-HC-MUM-CA](#).

II. The Judicial U-Turn: Balancing Law and Economic Reality

In its original judgment, the Court had annulled the resolution plan invoking Article 142, citing procedural lapses and CoC inconsistencies. However, in review, the Court emphasized that these irregularities were "curable and non-fatal," and liquidation would destroy enterprise value, erode creditor recovery, and jeopardize thousands of jobs.

Reinstating the principle that **"liquidation is the last resort, not the first response"**, the Bench stressed that judicial intervention must not frustrate the Code's objective of asset value maximization through resolution.

III. Sanctity of Commercial Wisdom Reaffirmed

A significant reaffirmation came in the Court's reiteration that the *commercial wisdom* of the CoC remains sacrosanct. Once the CoC exercises its discretion following due procedure, courts cannot replace such commercial decisions with judicial opinions on merits or business rationale.

The review decision restores the sanctity and finality of CoC-approved plans, limiting judicial scrutiny only to cases of fraud, illegality, or manifest contravention of law.

IV. Key Legal Findings in Review

1. Locus of Erstwhile Promoters

The Court held that while erstwhile promoters may not ordinarily qualify as "persons aggrieved," their locus could still be recognized where their rights as guarantors or stakeholders are affected. Yet, their participation cannot be used to reassert control or derail revival - maintaining the Code's intent of delinking past management from the revived entity.

2. Continuation of CoC Post-Approval

The Court clarified that the CoC's role extends beyond plan approval and continues through implementation until completion or liquidation under Section 33. This recognition of *"functional continuity"* reinforces creditor oversight during the monitoring phase.

3. Scope of Appeal

Reiterating settled law, the Court held that appeals before the Supreme Court lie only on *substantial questions of law*. Concurrent findings of lower fora cannot be disturbed unless shown to be arbitrary, illegal, or contrary to mandatory statutory provisions - ensuring judicial discipline and finality under a special statute.

4. Procedural and Substantive Issues

The Court addressed numerous issues - from the legality of implementation extensions and delays (found justified due to litigation and enforcement obstacles) to compliance with CIRP Regulations and treatment of operational creditors. It also upheld the treatment of CCDs as equity instruments and validated CoC's commercial classification of contingent claims such as foreign arbitral awards.

V. Way Ahead: Strengthening Certainty and Finality in IBC

This review judgment is more than a case-specific correction - it is a systemic signal for India's insolvency ecosystem. By prioritizing resolution over liquidation, and economic logic over procedural rigidity, the Supreme Court has restored faith in the IBC's architecture.

Moving forward, it is essential that:

- **Regulatory certainty** be ensured by harmonizing IBBI Regulations with judicial pronouncements to prevent interpretational conflicts.
- **Stakeholder discipline** be strengthened - particularly in adhering to timelines and avoiding frivolous challenges that delay implementation.
- **Commercial finality** be respected, ensuring CoC decisions are not reopened through successive litigation under the guise of "equitable justice."

The judgment also reiterates that judicial pragmatism - not perfectionism - must guide the interpretation of economic legislations.

VI. Key Takeaways from the IBC Perspective

- 1. Revival over Liquidation** - The decision re-establishes that the IBC's ultimate goal is economic revival and preservation of value, not mechanical liquidation.
- 2. Commercial Wisdom Doctrine Reinforced** - CoC's decisions, if procedurally sound, are near-immune from judicial substitution.
- 3. Finality of Resolution Plan or Clean Slate Doctrine** - Once a plan is approved under Section 31, new claims or challenges cannot be entertained to disturb its sanctity.
- 4. Limited Judicial Review** - Appeals to the Supreme Court lie only on substantial questions of law; concurrent factual findings are generally binding.
- 5. Functional Continuity of CoC** - The CoC's role extends through plan implementation, ensuring accountability until resolution completion.

VII. Conclusion: A Pragmatic Recalibration of IBC Jurisprudence

The *Bhushan Power* review verdict marks a judicial recalibration of India's insolvency regime - one that aligns legal interpretation with economic pragmatism. By choosing revival over liquidation, respecting commercial wisdom, and restricting judicial interference to the contours of legality, the Supreme Court has reinforced the IBC's status as a **living, evolving economic code** - one that values enterprise continuity, investor confidence, and finality of process.

The judgment, therefore, not only restores JSW's resolution plan but also restores the larger faith in the IBC framework as a resilient instrument of economic justice.

(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.)



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