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SC reaffirms CoC's commercial wisdom; warns against strategic litigation by unsuccessful resolution applicants

ASHWARYA SHARMA

Advocate, Co-Founder & Legal Head, RB LawCorp

1. Introduction

Ten years ago, India did something it had never quite managed before: it buried its dead. The Sick Industrial Companies Act, the BIFR, the endless adjournments, the promoter-friendly revival schemes that revived nothing all of it was swept aside by the **Insolvency and Bankruptcy Code, 2016**, a legislation that announced, with rare statutory bluntness, that a company which cannot pay its debts has no presumptive right to survive. The shift was not merely procedural. It was jurisprudential. The IBC marked a fundamental departure from India's court-centric insolvency model and installed in its place a creditor-driven process one built on a single, radical premise: that the people who stand to lose the most are best placed to decide what happens next.

At the core of that premise lies what has come to be called the **doctrine of commercial wisdom** a conscious legislative choice to vest decisive authority in the **Committee of Creditors**, comprising financial creditors who bear the full economic consequence of a debtor's failure. The CoC is, by design, an instrument of financial ruthlessness, and that is precisely its genius. No resolution plan moves without its approval. No compromise binds without its consent. And in a line of decisions now hardened into settled law, the Supreme Court has repeatedly drawn a bright line: **the commercial wisdom of the CoC is not a matter for tribunals or courts to second-guess.** The NCLT may supervise. The NCLAT may review. But neither may substitute its judgment for that of the creditors who bear the actual risk. In a legal system not historically known for restraint, that is a remarkable concession and it is worth asking, ten years in, whether it has held.

It is in this background the Hon'ble Supreme Court has delivered yet another judgment to fortify the above stand in the matter of ***Torrent Power Ltd. v. Ashish Arjunkumar Rathi and Ors. (MANU/SC/0202/2026)***. The decision not only reaffirms the primacy of the CoC's commercial wisdom, but goes further delivering a searching critique of the strategic litigation that has come to characterise unsuccessful resolution applicants and issuing a firm caution against the creeping expansion of judicial review in CIRP proceedings.

2. Factual Background

SKS Power Generation (Chhattisgarh) Ltd. is the Corporate Debtor against whom Bank of Baroda filed an application under Section 7 of the IBC seeking initiation of the Corporate Insolvency Resolution Process (CIRP), which was admitted by the NCLT. Thereafter, Form G was issued inviting expressions of interest, and upon conclusion of the CIRP process, the Resolution Plan filed by one Sarda Energy and Minerals Limited ("SEML") was approved by the CoC and subsequently by the NCLT.

The Appellant, Torrent Power Limited ("Torrent"), was an unsuccessful resolution applicant whose plan was unanimously rejected by 100% of the CoC. Aggrieved, Torrent challenged the approval of SEML's plan before the NCLT, and failing there, before the NCLAT. Both forums ruled against it. Torrent thereafter preferred civil appeals before the Supreme Court under Section 62 of the IBC.

3. Decision of the NCLT

Before the NCLT, Torrent contended that the Resolution Professional and the CoC had selectively permitted SEML to modify its commercial offer after the conclusion of the negotiation process on 19.04.2023. According to Torrent, once the negotiation process had concluded, no resolution applicant was entitled to alter its Key Commercial Terms, and the email dated 08.05.2023 purportedly seeking "clarifications" was, in substance, a device to allow SEML to enhance its bid.

The NCLT rejected this contention. Placing reliance upon the judgment of the Supreme Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, (MANU/SC/1577/2019)*** ("*Essar Steel India Limited*"), the NCLT reiterated the well-settled position that **it cannot interfere on merits with the commercial decision taken by the CoC**. The limited judicial review available to the NCLT is confined to ascertaining whether the CoC has: (*i*) taken into account the need to keep the corporate debtor as a going concern; (*ii*) endeavoured to maximise asset value; and (*iii*) protected the interests of all stakeholders, including operational creditors. Once these parameters are satisfied, the NCLT must approve the resolution plan. Finding no infirmity on these grounds, the NCLT approved SEML's plan.

4. Decision of the NCLAT

The NCLAT found as a matter of fact that there was no modification or enhancement of SEML's offer as alleged. On the question of law, the NCLAT affirmed the narrow scope of appellate interference under the IBC: an appeal under Section 61(3) is maintainable only where there is a **material irregularity** in the exercise of powers by the Resolution Professional, and such appellate jurisdiction does not extend to the merits of the CoC's commercial decision. The NCLAT found no irregularity and dismissed the appeals of the unsuccessful resolution applicants accordingly.

5. Rival Submissions

5.1 Submissions of the Appellants (Torrent)

Torrent's case rested principally on the Process Note governing the negotiation process, which required that once the negotiation process closed, no modification of Key Commercial Terms or insertion of additional offers by any applicant was allowed. Torrent contended that despite this express prohibition, SEML was selectively permitted to increase its commercial offer constituting both **discrimination and material irregularity** in the process within the meaning of Section 61(3)(*ii*) of the IBC.

5.2 Submissions of the Respondents

The Respondents countered the above and pointed out that in its 29th meeting dated 06.05.2023, the CoC had directed the RP to seek clarifications from **all** resolution applicants. Acting on those specific instructions, the RP by email dated 08.05.2023 sought clarifications from all resolution applicants and no case of selective treatment could be made out.

6. Discussion and Findings of the Supreme Court

6.1 The Narrow Statutory Gateway Under Section 61(3)

The Supreme Court began its analysis by surveying the grounds upon which an appeal lies before the NCLAT under Section 61(3) of the IBC. Having done so, it held that on a perusal of the material on record, the appeals before the NCLAT did not meet any of the prescribed criteria. The only semblance of a ground advanced by the Appellants was

"**material irregularity in the exercise of powers by the RP**" under Section 61(3)(*ii*). This too was found not to be made out.

The Court noted the admitted factual position: the RP had acted strictly on the instructions of the CoC**.** During evaluation of the resolution plans, the CoC identified certain ambiguities and directed the RP to seek clarifications from all applicants. Pursuant to those directions, the RP sought clarifications from all applicants including SEML. The RP took no independent or unilateral decision; he merely communicated the CoC's queries and placed all responses before the CoC for its consideration.

The Court drew a sharp legal distinction: where the RP acts on the instructions of the CoC, such conduct cannot, by any stretch of imagination, be characterised as a "material irregularity" within the meaning of Section 61(3)(*ii*). To hold otherwise, the Court observed, would be to conflate the statutorily distinct roles of the RP and the CoC, and to indirectly subject the decisions of the CoC to judicial review contrary to the scheme of the IBC. Since the appeal before the NCLAT was thus not made out on any ground under Section 61(3), the appeals before the Supreme Court on a conjoint reading of Sections 61 and 62 were equally not tenable no question of law pertaining to any of the five prescribed grounds arose for consideration.

6.2 Concurrent Findings of Two Adjudicating Authorities

Independently, the Court invoked the well-settled principle governing concurrent findings in special statutes. Observing that the findings on all issues in the case were concurrent between the NCLT and the NCLAT, the Court held that when **a concurrent view** has been taken by two adjudicating authorities, unless it is found that such a view was in ignorance of the mandatory statutory provisions or was based on irrelevant considerations or was ex facie arbitrary or perverse, an interference would not be permissible.

6.3 The Commercial Wisdom of the CoC: Paramount and Non-Justiciable

Having concluded that neither of the issues raised by the Appellants established any modification of the Resolution Plan or any material irregularity in the conduct of the RP, the Court observed that what remained was, in substance, **a challenge to the commercial decision** taken by the CoCand that the IBC leaves no scope for judicial intervention even here.

The Court reiterated that the issue is no longer res integra: **the commercial wisdom of the CoC enjoys primacy and cannot be supplanted by judicial review.** Neither the NCLT, nor the NCLAT, nor even the Supreme Court is empowered to substitute its assessment in place of the commercial decision arrived at by a requisite majority of the CoC. This bright line drawn in *Essar Steel India Limited* and consistently maintained thereafter was once again affirmed without qualification.

6.4 A Caution Against Strategic Litigation by Unsuccessful Bidders

The Supreme Court did not stop at resolving the appeal. It proceeded to make observations of wider institutional significance. The Court noted that the appeals typified the growing strategic use of the judicial system by unsuccessful resolution applicants, who seek to reopen almost every commercial decision of the CoC under the guise of procedural impropriety. Such conduct converts the corporate resolution process into a protracted adversarial contest and erodes the value of the Corporate Debtor. It incentivises delay, rent-seeking, and strategic obstruction, and is fundamentally inconsistent with the economic logic and statutory design of the IBC.

6.5 The Economic Case for Judicial Restraint

In a passage that deserves to be cited at length in every insolvency proceeding going forward, the Court articulated the economic rationale for confining judicial review to its narrow statutory boundaries. The analysis proceeded at three levels.

From an **ex post perspective**, excessive judicial review in CIRP carries significant economic costs. The IBC is premised on the recognition that delay and uncertainty are value-destructive in distressed situations. When

commercial decisions of the CoC are subjected to expansive judicial scrutiny, resolution timelines lengthen, transaction costs rise, and the going-concern value of the Corporate Debtor erodes. The consequence is not merely delay, but a tangible loss of economic value for all stakeholders.

From an **ex ante perspective**, the expectation of expansive judicial review distorts incentives for future bidders. Future resolution applicants may price legal uncertainty into their bids either by discounting their offers or by refraining from participation in the CIRP altogether. This weakens competition in the resolution process and reduces recoveries for creditors.

Finally, **excessive review encourages strategic litigation.** Stakeholders with little or no economic interest in the Corporate Debtor may resort to litigation as a bargaining tool to delay implementation of the Resolution Plan or extract concessions, thereby converting the insolvency process into an adversarial contest incompatible with the objective of value maximisation.

6.6 Predictability, Finality, and the Freedom of Exit

The Court then situated these concerns within the broader architecture of insolvency law. It observed that an efficient legal system must secure three interdependent economic freedoms: entry into the market, continuation of business operations under conditions of competitive neutrality, and exit from the market. While entry and operation enable risk-taking and value creation, exit performs the critical function of ensuring that failure an inevitable by-product of risk-taking is resolved efficiently rather than postponed indefinitely.

The Court noted that for the longest time under Indian law, the freedom of exit remained over institutionalised. The enactment of the IBC was a decisive correction of this imbalance, introducing a predictable and time-bound mechanism for insolvency resolution. Predictability allows market participants to form stable expectations about enforcement outcomes; finality curtails strategic delay and rent-seeking, ensuring timely redeployment of capital and labour into more productive use.

Judicial intervention beyond the narrow statutory confines, the Court held, undermines both predictability and finality. Recognising this, the IBC deliberately confines judicial review to strict statutory compliance under Sections 30(2) and 61(3). Respecting these limits preserves the economic sense of the IBC and ensures that insolvency remains a predictable, time-bound, and market-driven process.

7. Conclusion

Ten years ago, the IBC planted a flag that Indian insolvency law had never planted before: that creditor judgment, not judicial second-guessing, would govern the fate of distressed enterprises. ***Torrent Power*** is the latest in a long line of decisions that have held that flag in place but it is also one of the most important, because it says something that earlier decisions only implied: that unsuccessful resolution applicants who dress commercial grievances in procedural clothing are not merely wrong on the merits, but are actively harmful to the insolvency ecosystem.

The IBC at ten is a statute that has largely delivered on its central promise. Recoveries have improved. Resolution timelines, while still imperfect, are vastly better than what came before. The CoC has functioned not always perfectly, but consistently as the mechanism of informed creditor decision-making that the legislature intended it to be. What threatens that progress is not the inherent imperfection of the CoC's decisions, but the systematic effort by losing bidders and aggrieved stakeholders to relitigate those decisions through an ever-expanding conception of judicial review. The real question for the next ten years is not whether the Supreme Court will hold this line; it will, but whether it can hold it against the ingenuity of litigants who will keep finding new ways to dress commercial disappointment as legal impropriety.