



KINGS & ALLIANCE LLP
LAW FIRM



www.knallp.com



info@knallp.com



+91 981 981 5818

How SC's Rejection of JSW's Resolution Plan for Bhushan Steel Redefines Stakeholders' Accountability and IBC Sanctity?



© Kings & Alliance LLP, 2025

The recent pronouncement by the Supreme Court in *Kalyani Transco v. Bhushan Power and Steel Ltd & Ors*¹ serves as a stark reminder of the sanctity of IBC², and the perils of procedural laxity and opportunistic manoeuvring. The Apex court not only disapproved of the powers of NCLAT³ to judicial review over the decision taken by ED⁴ under PMLA⁵ but also delivered a scathing critique of the entire CIRP⁶ of BPSL⁷, ultimately leading to the rejection of JSW Steel's resolution plan and an order for liquidation. This protracted and chequered journey, spanning nearly seven and a half years, underscores critical importance of adherence to timelines, diligent discharge of duties by resolution professionals, and exercise of commercial wisdom by CoC⁸.

One of the issues dealt with by the Supreme Court focused on NCLAT's interference with the provisional attachment order passed by ED against BPSL's assets under PMLA. The court said that NCLAT was erroneous in stating that before approval of the resolution plan, ED lacked the power to attach assets and that criminal investigations against the corporate debtor stood abated, declaring the ED's attachment as illegal. This interpretation of Section 32A drew sharp criticism from the Bench comprising Justice Bela M Trivedi and Justice Satish Chandra Sharma.





The Court emphasised that NCLT⁹ and NCLAT are not vested with the powers of judicial review over decisions taken by governmental or statutory authorities concerning matters of public law. Emphasising the distinct nature of the PMLA as a public law, the Court held that the NCLAT lacked the jurisdiction to review the ED's actions under the PMLA. Consequently, the NCLAT's observations and findings regarding the provisional attachment order were deemed "*coram non judice*,". This ruling reinforces the principle that insolvency proceedings cannot be used as a shield against legitimate actions by other statutory authorities under different laws.

The Bench set aside the resolution plan submitted by JSW Steel, flagging a multitude of "procedural non-compliances" by Resolution Professional (RP) and a "lack of commercial wisdom" exercised by CoC. This decision, culminating in an order for the liquidation of BPSL, casts a long shadow on the efficacy of the CIRP in this particular case and highlights critical failures that can derail the objectives of IBC.

The Court noted a blatant **non-compliance with the timelines prescribed under Section 12 of the IBC 2016**. Initiated on July 26, 2017, the CIRP was governed by the pre-2019 amendment version of Section 12, which the Court, relying on the precedent set in *Arcelormittal India Private Limited vs. Satish Kumar Gupta and Others*¹⁰, deemed mandatory. Crucially, the RP failed to file any application for extension of time as mandated under Section 12(2) and also did not comply with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which requires the submission of the approved plan at least 15 days before the maximum period for CIRP completion. The Court observed that even the extended period of 330 days, including legal proceedings, had expired long before application for approval was filed. Citing *ESSAR Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta*¹¹, the Court reiterated that deviations from the outer time limit are permissible only in exceptional circumstances, which were clearly absent in this case.

The Court highlighted the **non-filing of applications for avoidance transactions**. Given that BPSL was one of the "dirty dozen" companies against whom the RBI¹² had mandated CIRP initiation, the RP had an "obligatory statutory duty" under Chapter III of the IBC to investigate and file applications for preferential, undervalued, extortionate credit, and fraudulent transactions. The failure to do so represented a significant dereliction of duty.

The Apex Court pointed out **other non-compliances by the RP**, including failure to certify JSW Steel's eligibility under Section 29A, lack of confirmation that the plan did not





contravene any laws and provided clarity on priority payment to operational creditors as per Section 30(2), and contravention of Regulation 38(1) by prioritizing financial creditors over operational creditors in payment waterfall.

The Court found that **CoC had not applied its commercial wisdom on feasibility of the plan and had taken contradictory stands**. The Court emphasized that “commercial wisdom” entails a well-considered decision focused on commercial interest, revival of the corporate debtor, and maximization of asset value, taking into account the mandatory requirements under IBC and its regulations. According to the Court, CoC’s approval of a plan that disregarded statutory requirements, indicated a failure to exercise this wisdom. The Court also frowned upon CoC’s shifting stance, initially criticizing JSW Steel for non-implementation and then suddenly accepting a belated offer without demur, raising serious questions about their bona fides.

Finally, the Court took a stern view of **JSW Steel’s purposeful delay in implementation of the resolution plan**. Even after the NCLAT’s order, JSW Steel continued to delay under the guise of pending appeals before the Supreme Court, despite no stay being granted. The Court condemned such “delay tactics” and “misuse of the process of law,” stating that JSW Steel had acted with “malafide and dishonest intention” then delaying implementation. The Court referred to *State Bank of India and Others Vs. Consortium of Murari Lal Jalan and Florian Fritsch and Another*¹³, reiterating that successful resolution applicants cannot be given excessive leeway to act in flagrant violation of the terms of the resolution plan.

The culmination of these egregious lapses and opportunistic behaviours led to setting aside the plan along with an order for liquidation of BSPL. This case serves as a cautionary tale, highlighting critical importance of strict adherence to the procedural and substantive requirements under IBC. The failures of Resolution Professional to discharge statutory duties, lack of commercial wisdom displayed by the CoC, and opportunistic delays employed by the successful resolution applicant ultimately led to demise of resolution effort and an unfortunate outcome of liquidation.

Way Ahead for JSW

Following the above judgment, the former promoter of BPSL approached NCLT Delhi urging it to enforce the order which directed liquidation of BPSL. The Supreme Court on 26th May 2025 ordered¹⁴ status quo on the liquidation proceedings related to BPSL pending before NCLT, after hearing a petition filed by JSW Steel. A Bench of Justice BV Nagarathna and Justice Satish Sharma passed the order considering the fact that JSW’s limitation period for



filing a review against the Supreme Court's judgment is not yet over and it might jeopardise that.

Citations

1. Civil Appeal No. 1808 of 2020
2. IBC – Insolvency and Bankruptcy Code, 2016
3. NCLAT – National Company Law Appellate Tribunal
4. PMLA – Prevention of Money Laundering Act, 2002
5. CIRP – Corporate Insolvency Resolution Process
6. BPSL – Bhushan Power and Steel Limited
7. CoC – Committee of Creditors
8. NCLT – National Company Law Tribunal
9. Civil Appeal Nos. 9402 – 9405 /2018
10. Civil Appeal No. 8766-67 OF 2019
11. RBI – Reserve Bank of India
12. Civil Appeal Nos. 5023-5024 OF 2024
13. JSW Steel Ltd. v. Sanjay Singhal & Ors. (2025)

Expositor(s): *Adv. Khushboo Saraf*

