

33 Reasons why SC scrapped JSW's Bhushan Power & Steel Resolution Plan

May 05, 2025

Case: Kalyani Transco vs. Bhushan Power and Steel Ltd. & Ors.
Issue: Excessive leeway to Resolution Applicant in implementing plan

Basis for Appeal: Vide the order impugned in this batch of appeals, NCLAT had upheld an NCLT order approving JSW Steel's resolution plan for Bhushan Power and Steel Ltd., subject to certain modifications/clarifications. Earlier, NCLT had dismissed Company Applications filed by the erstwhile Directors, and approved the said plan.

What was Held: In this notable ruling, Apex Court bench of **Justice Bela M. Trivedi and Justice Satish Chandra Sharma** quashed the impugned NCLAT, NCLT judgments and rejected JSW's resolution plan while remarking that "... it is quite clear that merely because the Code is silent with regard to the phase of implementation of the Resolution Plan by the Successful Resolution Applicant, neither the Tribunal nor the Courts should give excessive leeway to the Successful Resolution Applicant to act in flagrant violation of the terms of the Resolution Plan or in a lackadaisical manner. In the instant case, SRA/JSW did not implement the Resolution Plan for about two years since its approval by the NCLAT, though there was no legal impediment in implementing the same. Such flagrant violation of the terms of the Resolution Plan, has frustrated the very object and purpose of the Code."

SC further held, "In view of the provisions contained in sub-section (1) of Section 33, and in exercise of the jurisdiction conferred under Article 142 of the Constitution of India, the Adjudicating Authority i.e. the NCLT is directed to initiate the Liquidation Proceedings against the Corporate Debtor-BPSL...The payments made by the JSW to the Financial Creditors and the Operational Creditors, as also the Equity contribution if any infused, under the garb of the implementation of the Resolution Plan, being subject to the outcome of the present set of Appeals, shall be dealt with by the parties..."

Factual Background:

The CIRP proceedings against Bhushan Power and Steel Ltd. (BPSL / Corporate Debtor) were triggered at the instance of Punjab National Bank. In the 18th CoC meeting, resolution plans submitted by the Liberty House, the Tata Steel and the JSW Steel were evaluated by the CoC, as per the evaluation matrix formulated by it, and JSW was found to have scored the highest in terms of the said evaluation matrix.

CBI registered an FIR against BPSL, its Directors and others u/s 120B r.w.s. 420, 468, 471, 477A IBC and Sec. 13(2) r.w.s. 13(1)(d) of the Prevention of Corruption Act. On the basis of the said FIR, ED registered a case for the offences under PMLA. There were other many Company Applications filed by the erstwhile Directors and some operational creditors before the NCLT in the said Company Petition.

NCLT dismissed the Company Applications filed by the erstwhile Directors, and [approved](#) the Resolution Plan of JSW. Successful Resolution Applicant-JSW, challenged some of the conditions mentioned in said order passed by NCLT approving its Resolution Plan, by filing an appeal. Several Company Appeals also came to be filed by various parties before the NCLAT challenging the NCLT order.

NCLAT vide the [impugned judgment and order](#), approved NCLT order subject to certain modifications/clarifications.

Submissions advanced on behalf of BPSL's Ex-Promoters:

1. *There were gross violations of mandatory provisions of IBC in the entire process of insolvency resolution proceedings at the instance of Resolution Professional, the CoC and SRA-JSW who were in collusion with each other.*
2. *Resolution Plan was indeterminate and unpredictable. The clause which permitted the erstwhile lenders of CoC to enlarge the Effective date has been misused to the prejudice of all the*

stakeholders including the financial institutions, which had led to a deliberate delay of more than 540 days in partial implementation of the plan.

3. *The SRA-JSW had secured the position of the highest bidder by wrongly assuring the upfront payments and infusion of funds, parameters, which JSW had admittedly failed to comply with.*
4. *On a demurrer, the Resolution Plan if it is sustained by this Court, the issue of Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) is required to be decided in favour of the Appellants and other stakeholders, and against JSW.*
5. *Granting of EBITDA to the creditors, would reduce the liability of the appellants who are the personal guarantors.*

Submissions advanced on behalf of the Operational Creditors:

1. Re-classification of Operational Creditors claims have resulted in inter se discrimination towards class of Creditors, not permissible under the Code.
2. There was no provision either in the IBC or in RFRP published by the Resolution Professional or in the Resolution Plan submitted by the SRA, which permitted the Monitoring Committee or the Financial Creditors/CoC to enter into any negotiations with the SRA post the approval of the Resolution Plan.
3. IBC does not provide for constitution of a Monitoring Committee, and the Monitoring Committee being a creature of the Resolution Plan, its powers would be limited to the extent granted under the Resolution Plan.

Submissions advanced on behalf of the SRA and CoC:

1. An Appeal u/s 62 could be filed only by a “person aggrieved” against an order passed by the NCLAT, and that too on a question of law arising out of such order.
2. The Ex-Promoters have raised the issues in their Appeals with regard to implementation of the Resolution Plan which issues were not raised even before the NCLAT, and even otherwise the said issues are beyond the scope of Sec. 62.
3. In any case the SRA-JSW has already implemented the Resolution Plan successfully by making payments to the Financial Creditors in 2021 and to the Operational Creditors in March 2022.
4. The Operational Creditors could no longer be said to be the “person aggrieved,” once they have now accepted their payments under the said Resolution Plan.
5. Similarly, the State of Odisha had failed to raise its claim w.r.t. Electricity dues before the RP, did not file any proceeding before NCLT and NCLAT, and for the first time filed the instant appeal, which may not be entertained.

CoC's submissions:

1. The erstwhile Promoters who had ceased to have any relationship with Corporate Debtor once the CIRP had commenced, could not be said to have been prejudiced with respect to the implementation of Resolution Plan.
2. The issues raised by the erstwhile Promoters with respect to implementation of the Resolution Plan are nothing but a malafide attempt to scuttle a successfully implemented Resolution Plan. The issues raised by them did not fall within the ambit of Sec. 62 of IBC.
3. Though CoC as a juristic body had become functus officio after approval of Resolution Plan by the NCLAT, in the facts of the case, the lenders of BPSL forming part of CoC were specifically empowered in terms of the Resolution Plan read with the impugned judgment of NCLAT to convene and take decisions that were necessary for successful implementation of the Resolution Plan.
4. The lenders of BPSL forming part of the CoC in their commercial wisdom had taken steps to ensure implementation of Resolution Plan to the benefit of all stakeholders of the Corporate Debtor. Though

there was a delay of about 2 years in the implementation of the Resolution Plan, the lenders of BPSL forming part of CoC have taken commercial call in prioritizing the implementation of the Resolution Plan.

5. As per the understanding of the lenders of BPSL, at the time of plan implementation, the SRA infused only Rs. 100 crores as share capital towards Equity contribution, and the delay of remaining Rs. 8,450 Crores by way of convertible debentures was due to the uncertainty created because of the attachment of assets of BPSL by the ED.

Supreme Court's observations:

1. SC noted that NCLAT virtually justified the non-disclosure and suppression of the material fact in JSW's Resolution Plan w.r.t. the Joint Venture agreement entered into by the JSW, BPSL and Jai Balaji, and stated that these facts suppressed by JSW had surfaced during the course of the investigation in the PMLA proceedings initiated against the Corporate Debtor and others.

2. The Apex Court highlighted that the RP had not submitted the Compliance Certificate in the prescribed Form 'H' of the Schedule, while submitting the application before NCLT seeking approval of the Resolution Plan and added that, "Since, the eligibility/ineligibility of the Resolution Applicant to submit the Resolution Plan goes to the root of the matter, it was incumbent on the part of the Resolution Professional to verify and certify that the contents of the mandatory affidavit, filed by the Resolution Applicant-JSW in respect of Section 29A were in order."

Powers of NCLAT to Review the Decision of Statutory Authority Under PMLA -

3. SC underscored that neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law.

4. Accordingly, SC opined that the observations made and the findings recorded by the NCLAT w.r.t the PAO passed by ED under PMLA, being without any authority of law and without jurisdiction, were coram non iudice.

Delay in implementing Resolution Plan and non-compliance with IBC timelines -

5. It appears that in the instant set of Appeals, the respondents-JSW, CoC and Resolution Professional have sought to sweep many seminal issues under the carpet to cover up gross violations of the provisions of the IBC and of the Regulations 2016, at every stage of the CIR proceedings initiated against the CD-BPSL.

6. Except bare submissions made by the learned advocates during the course of hearing, there is no material or affidavit placed on record by the Respondent JSW to show that the Equity Commitment as contemplated in the aforesaid clauses, which was condition precedent, was fulfilled by it. There is also no material placed on record by it to show that the Effective date as contemplated in its Resolution Plan was extended after the order of NCLT or NCLAT as per Clause 3.1 of the Resolution Plan. There is nothing on record to show as to how, when and by whom the Effective date as contemplated in the Resolution Plan was extended.

7. "If the Effective date was surreptitiously extended by some lenders, claiming to be part of CoC which had become functus officio and which had no authority to do so, any payment made or Equity infused by JSW under the garb of such decision, cannot be vindicated by the Court...A situation of fait accompli cannot be permitted to be created in the Court to frustrate the proceedings, more particularly when the CIR proceedings had ex facie stood vitiated on account of non-compliance of the mandatory provisions of law and on account of the misuse of the process of law by the parties."

8. "It has been reiterated time and again by this Court that one of the main objects for enacting the IBC is to complete the entire CIR Proceedings in a time bound manner, and that is the reason, a time-line is set out in the Code and its Resolutions for every stage of the proceedings. As well settled, time is a crucial factor of the scheme under IBC. To allow the proceedings to lapse into indefinite delay will frustrate the very object of the Code."

9. Stressing on the very first time limit set under IBC, i.e. in Sec. 12, SC relied on its judgment in [Arcelormittal India Private Limited vs. Satish Kumar Gupta and Others](#) to observe that “it is explicitly made clear that the provision contained in Section 12(1) is mandatory in nature as the expression “shall be completed” is used. Sub-section (3) further makes it clear that the duration of 180 days may be extended further “but not exceeding 90 days”, meaning thereby a maximum of 270 days’ time limit is statutorily laid down.”

10. “The process, which was required to be completed within a maximum period of 270 days from the date 26.07.2017 i.e. the date of the initiation of proceedings, the Resolution Plan of JSW was sought to be placed before the NCLT for the approval under Section 31 after almost one and a half year on 14.02.2019...it was incumbent on the part of the Resolution Professional to bring to the notice of the CoC about the expiry of 180 days and seek instructions in that regard from the CoC. However, no such application, appears to have been filed by the Resolution Professional, nor any order extending the said time limit appears to have been passed by the NCLT.”

11. “...the CIRP against BPSL having been initiated on 26.07.2017 and the Resolution Professional having filed the Application under Section 31 on 14.02.2019, even the maximum period of 330 days including the time taken in legal proceedings had expired much prior to filing of the said Application under Section 31 on 14.02.2019...In that view of the matter, we have no hesitation in holding that the Application submitted by the Resolution Professional seeking approval of the Resolution Plan of JSW under Section 31 being hit by Section 12 of IBC, the NCLT had committed grave error of law in approving the said plan vide its order dated 05.09.2019.”

12. Elaborating on the role and duties of a Resolution Professional under the IBC “...the role of the Resolution Professional while conducting the entire CIRP, is not only of an Administrator or Facilitator, but is also of an Invigilator, to ensure that the CIR proceedings are completed in a time bound manner...”

Resolution Professional's failure in duties -

13. “The Resolution Professional had utterly failed in discharging his duties under the Code, by not making Application for extension of time under Section 12 and by not certifying as to whether the Resolution Applicant-JSW was an “eligible” person under Section 29A to submit the plan.”

14. “He also had failed to make any Applications for avoidance of transactions in accordance with Chapter-III of the Code. When the RBI had issued directions to the Indian Banks to mandatorily initiate CIRP against infamously known as “dirty dozen” companies, and when BPSL was one of them, it was obligatory on the part of the Resolution Professional to discharge his statutory duty cast upon him to file Applications for avoidance of transactions in accordance with Chapter-III of IBC.”

15. “The Resolution Professional had also failed to confirm that the Resolution Plan of JSW met with the requirements under Section 30(2) more particularly with regard to non-contravention of any provision of law and with regard to the payment of debts to the Operational Creditors in priority.”

16. “Despite such gross non-compliances of the mandatory provisions of IBC and the CIRP Regulations 2016, the Resolution Professional placed the Resolution Plan of JSW before the CoC. The CoC also without verifying the mandatory requirements of Regulation 38 particularly with regard to the feasibility and viability of the plan, effective implementation of the plan and the capability of Resolution Applicant to implement the plan, permitted the Resolution Applicant to submit the Consolidated Resolution Plan with Addendum Letter, which otherwise had many loose ends.”

17. Despite such gross violation of mandatory provisions of IBC and the CIRP Regulations in the entire proceedings undertaken by the Resolution Professional, and by the CoC while considering the Consolidated Resolution Plan and Addendum Letter of JSW, the Resolution Professional without paying any heed to the said violation or noncompliance, submitted the said Resolution Plan of JSW for approval before the NCLT.

NCLT's oversight -

18. The NCLT also without satisfying itself whether the Resolution Applicant-JSW was eligible to submit

the plan or not, whether the Application for approval of plan was within the prescribed time limit u/s 12 or not, whether the Resolution Plan submitted by JSW had met the requirements as referred to in sub-section (2) of Section 30 or not, and whether the Resolution Plan had the provisions for its effective implementation as required to be satisfied under proviso to sub-section (1) of Section 31, approved the said Plan of JSW.

19. Therefore, SC upheld the ex-promoters' contention that apart from the fact that there was gross noncompliance of the mandatory provisions of the IBC and the Regulations, there was a dishonest and fraudulent attempt made by JSW, misusing the process of the Court by not making the upfront payments as committed by it for about two and a half years and thereby enriching itself unjustly, and thereafter considering the rising prices of steel in the market, JSW sought to comply with the terms of Resolution Plan at a very belated stage, in collusion with the CoC and the Resolution Professional.

20. "The changing stance of CoC in the present proceedings also smacks of its bona fides and raises serious doubts about the exercise of its so-called commercial wisdom. The position of law, propounded by this Court is that commercial wisdom of CoC means a considered decision taken by the CoC with reference to the commercial interest, the interest of revival of Corporate Debtor and maximization of value of its assets."

21. "This wisdom is not a matter of rhetoric but is denoting a well-considered decision by the CoC as the protagonist of CIRP. The CoC therefore has to take into consideration the mandatory requirements of the Code as well as the Regulations framed by the Board, and to see that the Insolvency Resolution of the Corporate Debtor is completed in a time bound manner and for maximization of value of assets of the Corporate Debtor."

22. Further, setting out the mandatory compliances as given under the IBC, SC observed that "If the Resolution Plan does not comply with such mandatory requirements and such plan is approved by the CoC, it could not be said that the CoC had exercised its commercial wisdom while approving such Resolution Plan. In the instant case, though the CoC in its 18th and 19th Meetings had flagged all the issues with regard to noncompliance of various provisions of the IBC and the Regulations by JSW, surprisingly it approved Plan of JSW, without any deliberation on all the compliances."

23. Though the commercial wisdom of the CoC should have been given the primacy in any adjudicatory proceedings, the changing stance of CoC from time to time during the course of proceedings right from the holding of meetings for approving the Resolution Plan of JSW till the final hearing of the present Appeals, has led this Court to believe that the CoC also has played a very dubious role in the entire CIRP. Though the CoC had written number of letters raising grievances with regard to non-payment of upfront amount of Rs.19,350 Crores to the Financial Creditors within 30 days of the approval of the plan, the CoC had changed its stance all of a sudden accepting the payment of Rs. 19350 crores without any demurer, and though the Effective date for implementation of the plan had already expired. "Such a contradictory stands taken by the CoC at various stages of proceedings clearly proves that CoC had played foul and had not exercised its commercial wisdom in the interest of the Creditors."

24. "The SRA-JSW also made misrepresentations before the CoC, presenting a very rosy picture of Resolution Plan at the time of evaluation process conducted during the 18th Meeting and after securing the highest score as per the evaluation matrix, amended the said Plan, under the guise of compliance of the amended provisions of the Regulations, by submitting the Consolidated Resolution Plan with Addendum."

Even after the impugned judgment was passed by the NCLAT, allowing the said untenable Appeal of JSW and dismissing the other Appeals of the Operational Creditors and the Ex-Promoters, the Resolution Plan was not implemented by JSW under the guise of pendency of the present Appeals, though there was no stay granted by this Court against the implementation of the Resolution Plan.

25. Further, opining that "nobody should be permitted to misuse the Process of law nor should be permitted to take undue advantage of the pendency of any proceedings in any Court or Tribunal.", Court held that "Instituting vexatious and frivolous litigations in the NCLT or NCLAT and delaying the implementation of Resolution Plan under the garb of pendency of proceedings, has clearly proved the mala fide and dishonest intention on the part of JSW, in firstly securing highest score making

misrepresentation before CoC and then not implementing the same under the garb of pendency of proceedings, though the Resolution Plan was supposed to be an unconditional one.”

26. “Such acts of misuse and abuse of process of law cannot be vindicated by this Court, which otherwise would tantamount to ratifying and pardoning the illegal acts committed by JSW and thereby giving them a clean chit. An illegality of any nature cannot be permitted to be perpetuated, and a plea of fait accompli cannot be permitted to be raised by any party to cover up their illegal acts, after achieving the ill motivated intentions circumventing the law.”

27. There was an entire spectrum of lacunas and flaws in the Resolution Plan of JSW with regard to non-compliance of the mandatory requirements under the IBC. The Resolution Plan as approved by the CoC was an unconditional plan, and JSW was supposed to implement the same regardless of any unprecedented challenges or circumstances. JSW cannot treat the plan as conditional or optional, nor can it abdicate its responsibilities on the ground of unforeseen obstacles.

How JSW “played smart”

28. All throughout from the date of order passed by the NCLT till March, 2021, the stand of the JSW evidenced through an affidavit was that it was not obliged to implement the plan because of the pendency of these Appeals, however JSW played smart by making part payment to the Financial Creditors in March, 2021, realizing the beneficial market trend of the Steel. It also surreptitiously got the Effective date extended to March 31, 2021 from the so-called core group of CoC, which had already become functus officio and which had no authority to extend the said Effective date.

29. The net result is that the upfront payments as agreed to be made in the Resolution Plan within thirty days of the approval of the plan by NCLT was delayed by 540 days in respect of payment to the Financial Creditors and by 900 days in respect of payment to the Operational Creditors.

30. It is very pertinent to note that the upfront payments and commitment with regard to infusion of Equity into the company was one of the main criteria on which JSW had scored the highest in the evaluation matrix determined by the CoC. Thus, after obtaining the approval of its Resolution Plan from CoC by presenting a rosy picture, misguiding the CoC, and defeating the rights of other Resolution Applicants, JSW did not respect and honor the said commitments, and on the contrary tried its level best to delay the implementation of the Resolution Plan without any cogent reason or justification. This is nothing but a misuse of process of law and a fraud committed by JSW with the CoC and other stakeholders.

31. SC referred to its recent judgment in [State Bank of India and Others Vs. Consortium of Murari Lal Jalan and Florian Fritsch and Another](#) and remarked that the Court has made very apt observations, with regard to the delaying tactics adopted by the Successful Resolution Applicant in implementing the Plan, and the NCLT and NCLAT adopting casual approach in exercising discretion in granting extension of the timelines fixed under the Code.

32. Thus, it is quite clear that merely because the Code is silent with regard to the phase of implementation of the Resolution Plan by the Successful Resolution Applicant, neither the Tribunal nor the Courts should give excessive leeway to the Successful Resolution Applicant to act in flagrant violation of the terms of the Resolution Plan or in a lackadaisical manner. In the instant case, SRA/JSW did not implement the Resolution Plan for about two years since its approval by the NCLAT, though there was no legal impediment in implementing the same. Such flagrant violation of the terms of the Resolution Plan, has frustrated the very object and purpose of the Code.

33. Therefore, Court concluded that -

(i) The Resolution Professional had utterly failed to discharge his statutory duties contemplated under the IBC and the CIRP Regulations during the course of entire CIR proceedings of the Corporate Debtor- BPSL.

(ii) The CoC had failed to exercise its commercial wisdom while approving the Resolution Plan of the JSW, which was in absolute contravention of the mandatory provisions of IBC and CIRP Regulations. The CoC also had failed to protect the interest of the Creditors by taking contradictory stands before this Court,

and accepting the payments from JSW without any demurer, and supporting JSW to implement its ill-motivated plan against the interest of the creditors.

(iii) The SRA-JSW after securing the highest score in the Evaluation matrix in the 18th meeting of CoC, submitted the revised consolidated Resolution Plan with addendum under the garb of complying with the amendments made in the CIRP Regulations, 2016, and got the same approved from the CoC. However, JSW even after the approval of its Plan by the NCLAT, willfully contravened and not complied with the terms of the said approved Resolution Plan for a period of about

two years, which had frustrated the very object and purpose of the IBC, and consequently had vitiated the CIR proceedings of the Corporate Debtor-BPSL.

(iv) The impugned judgment passed by the NCLAT in allowing the Company Appeal of JSW and issuing the directions without any authority of law and without jurisdiction is perverse, coram non iudice and liable to be set aside.

(v) The judgments and orders dated 05.09.2019 and 17.02.2020 passed by the NCLT and NCLAT respectively are quashed and set aside. The Resolution Plan of JSW as approved by the CoC stands rejected, being not in conformity with the provisions contained in sub-section (2) of Section 30, read with sub-section (2) of Section 31.

(vi) In view of the provisions contained in sub-section (1) of Section 33, and in exercise of the jurisdiction conferred under Article 142 of the Constitution of India, the Adjudicating Authority i.e. the NCLT is directed to initiate the Liquidation Proceedings against the Corporate Debtor-BPSL under Chapter III of the IBC and in accordance with law.

(vii) The payments made by the JSW to the Financial Creditors and the Operational Creditors, as also the Equity contribution if any infused, under the garb of the implementation of the Resolution Plan, being subject to the outcome of the present set of Appeals, shall be dealt with by the parties.

(viii) Since, we have rejected the Resolution Plan of JSW, we have not dealt with the issue of the EBITDA though raised and argued by the Learned Advocates for the parties. The question of law with regard to EBITDA is kept open.