

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CASE COMMENTARY ON:
KALYANI TRANSCO VS. BHUSHAN POWER AND STEEL
LTD: RECONCILING PROCEDURAL DISCIPLINE WITH
COMMERCIAL WISDOM.

AUTHORED BY - VISHAL PAREEK
(4TH YEAR, BA., LLB STUDENT), NMIMS, INDORE.

Abstract

This case commentary examines the Supreme Court's ruling in Kalyani Transco v. Bhushan Power and Steel Ltd. (Review judgement) a landmark in India's evolving insolvency jurisprudence under the IBC. The Court's order in May 2025 pronouncing liquidation on procedural lapses was later overturned through review judgment, reinstating JSW Steel's resolution plan to safeguard commercial value and ensure business continuity. Through a focused analysis of key issues such as the scope of the "person aggrieved", post-approval powers of the Committee of Creditors, delays in implementation, immunity under Section 32A, and disputes over EBITDA and equity infusion this commentary highlights how the Court sought to balance procedural rigor with commercial pragmatism. The court reaffirm the principles of commercial wisdom, the clean slate doctrine, and statutory immunity, the review judgment again highlights the ongoing tensions between equity, creditor protection, and the finality of resolution plans. The BPSL ruling thus showcase the judiciary's gradual shift towards a purposive, value-oriented interpretation of the IBC, while leaving open crucial questions of fairness and accountability for future.

Introduction

Through its judgment dated May 2, 2025, the Supreme Court of India in *Kalyani Transco v. Bhushan Power and Steel Limited and Others* delivered a significant verdict concerning the acquisition of Bhushan Power and Steel Limited ("BPSL") under the Insolvency and Bankruptcy Code, 2016 ("IBC"). BPSL, one of India's largest steel producers, had financial debts of RS. 47,000 crores, making its resolution one of the most complex proceedings and falls under the category of "Dirty dozen" under the IBC framework. Pursuant to the CIRP initiated in 2017, JSW Steel emerged as the Successful Resolution Applicant (SRA) with an approved plan involving an upfront commitment of INR 19,350 crore. However, procedural

irregularities, enforcement proceedings by the Resolution Professional, Directorate of Enforcement, and challenges by competing bidders delayed implementation for several years. On May 2, 2025, the Supreme Court set aside JSW Steel's Resolution Plan citing procedural lapses, non-compliance by the SRA-JSW, and undue indulgence by the Committee of Creditors ("CoC"), and directed liquidation under Section 33 of the IBC. Subsequently, on September 26, 2025, the Court through its Review Judgment reversed its earlier ruling and restored JSW Steel's plan. The BPSL proceedings, lasting nearly eight years, though left some of the issue for future to decide have now become a defining precedent on the tension between procedural sanctity and commercial value preservation under the IBC.

Background

Insolvency proceedings were initiated against Bhushan Power and Steel Limited ("BPSL") in July, 2017, by an order issued by the National Company Law Tribunal, New Delhi ("NCLT") admitting an application filed by Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). Initially, resolution plans were submitted by Tata Steel Limited, Liberty House Group, and JSW Steel Limited ("JSW Steel"), with JSW Steel emerging as the highest bidder. The resolution plan submitted by JSW Steel was approved by the Committee of Creditors ("CoC") with an overwhelming majority of 97% and was subsequently placed before the NCLT for approval under Section 30(6) of the IBC.

By its order the NCLT approved the Resolution Plan with certain conditions. Aggrieved by these conditions, JSW Steel filed an appeal before the National Company Law Appellate Tribunal ("NCLAT"). Thereafter, the appeal came before the Supreme Court. During the pendency of the appeal, the Enforcement Directorate ("ED") attached assets of BPSL under the Prevention of Money Laundering Act, 2002 ("PMLA"), which deprived CoCs to transfer the assets to SRA thereby, causing significant delays in the plan's implementation. Furthermore, multiple appeals were filed before the NCLT and NCLAT by operational creditors, erstwhile promoters, and enforcement authorities.

On May 2, 2025, the Supreme Court overturned the NCLAT's decision which had approved the resolution plan in favor of JSW Steel. The Supreme Court determined that procedural lapses had occurred, the SRA did not comply, and the CoC exercised undue lenience, therefore directing liquidation under Section 33 of the IBC. However, on September 15, 2025, the honourable court, realizing some inaccuracies, overturned its previous ruling and restored JSW

Steel's Resolution Plan citing that liquidation would be contrary to the objectives of the IBC to maximize value and revival. The BPSL proceedings, which spanned almost a decade, however did not clarify the confusion that existed and established some landmark principles in developing the jurisprudence of procedural sanctity and commercial flexibility under India's insolvency law.¹

Supreme Court Observation and Determination

ISSUE 1: “Person Aggrieved” Still an Unsettled Question.

(a) Issue

The Successful Resolution Applicant (SRA) – JSW Steel and the Committee of Creditors (CoC) challenged the locus standi of the erstwhile promoters, contending, once the CIRP is initiated, their legal relationship with Bhushan Power & Steel Ltd. (BPSL) ceases. They argued that the promoters cannot qualify as “persons aggrieved” under Sections 61 and 62 of the IBC, because their interests are extinguished, and allowing their participation would undermine the statutory objective of isolate the resolution process from the influence of prior management.

(b) Observation

The Court perused Section 62, along with the Preamble and the provisions relating to time-bound procedure for the purpose attention was drawn to Section 12, to emphasize that the Code seeks to guard against undue delay and the creeping influence of erstwhile promoters. Citing *Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.*, the Court reaffirmed that one of the IBC’s core purposes is to prevent the company’s insolvency proceedings from being manipulated by erstwhile management or related parties². The Court recognized that the statutory design is deliberately exclusionary on this point.

On the other hand, the appellants relied on *Vijay Kumar Jain v. Standard Chartered Bank*, observes that under Regulation 39(5) of the CIRP Regulations a copy of the resolution plan must be sent to “participants” including erstwhile directors³. They also cited *Glas Trust Company LLC v. Byju Raveendran* (2024 SCC OnLine SC 75), supporting a purposive, expansive reading of “person aggrieved” so that parties with genuine stakes in the outcome are not arbitrarily excluded⁴. Ultimately, while the Supreme Court allowed the promoters’ appeals

¹ Kalyani Transco v. Bhushan Power & Steel Ltd., 2025 SCC OnLine SC 2093

² Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr. MANU/SC/0182/2021

³ *Vijay Kumar Jain v. Standard Chartered Bank* (2019) 20 SCC 455

⁴ *Glas Trust Company LLC v. Byju Raveendran* (2024) SCC OnLine SC 75

on the merits, it did not expressly decide the question of locus standi, leaving room for interpretation and future determination.

(c) Analysis:

NCLT / NCLAT Practice & Tension in Doctrine

Lower tribunals have often adopted a restrictive view of “person aggrieved.” For instance, multiple NCLAT benches have held that shareholders or minority promoters lacking creditor status are not aggrieved parties under Section 61 and thus cannot maintain appeals. In one NCLAT decision, a shareholder’s appeal was dismissed on the ground that he had no vested legal grievance under the Code.⁵

While some benches take the aggrieved person definition literally, i.e., NCLAT benches that include non-creditor stakeholders may hear appeals where the orders may impact their rights or interests even when they are not formal parties. For example, in the case *Nirej Vadakkedathu Paul v. Sunstar Hotels and Estates Pvt. Ltd.* for such a position. Hence, the apex court remained silent on the locus standi, which cannot be interpreted as complete endorsement of one side or the other. Instead, it shows the restraint exercised by the judiciary in a contested issue. This approach by the court maintained the Code’s integrity by limiting promoter interference while endorsing procedural flexibility in exceptional cases. The doctrine of “person aggrieved” under IBC remains unsettled. Future decisions, particularly from the larger NCLAT bench or Supreme Court, will need to demarcate the scope.

ISSUE-2: Existence of CoC post approval.

(A) Issue

The erstwhile promoters argued that the Committee of Creditors (CoC) becomes *functus officio* after the Resolution Plan is approved by the Adjudicating Authority under Section 31 of the IBC, 2016. They contended that the Code does not envisage the concept of an “erstwhile CoC,” as the role of CoC is to approve and facilitate the CIRP in coordination with the Resolution Professional (RP), whose statutory functions also ends upon plan approval. Any post-approval authority exercised by the CoC, they argued, would thus be *ultra vires* the IBC’s framework. Relying on *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*⁶ and *Innoventive Industries Ltd. v. ICICI Bank*⁷, the appellants content that the IBC envisages a time-bound process where

⁵ ‘Concept of an “aggrieved Person” under Section 61 of the IBC: A Settled Law?’ (*Live Law*, 7 October 2025)

⁶ *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2019) 2 SCC 1

⁷ *Innoventive Industries Ltd. v. ICICI Bank* (2018)1 SCC 407

control shifts to the successful resolution applicant once a plan is sanctioned. They further challenged the clause allowing the CoC to extend implementation by a 66 per cent vote, contending that it amounted to a modification of an approved plan which held impermissible under *Ebix Singapore Pvt. Ltd. v. CoC of Edu comp Solutions Ltd.* (2021)⁸. By this court. Such discretionary extensions, they submitted, undermine the finality of judicial approval and give rise to uncertainty in the resolution framework.

(b) Observation

For this issue, The Supreme Court noted that while the CoC's primary role is to facilitate the Resolution Professional (RP) during the Corporate Insolvency Resolution Process (CIRP), certain residual functions extend until full implementation of the plan. The Court observed that the IBC, read in conjunction with the IBBI (CIRP) Regulations, 2016 specifically Regulation 18(2)⁹, permits CoC meetings post-approval to address matters related to execution of the plan. This allows the CoC to provide limited oversight without interfering with the commercial wisdom or operational authority of the successful resolution applicant.

Respect to clause 3.1, permitting extension for implementation of the approved plan by creditors, the Court held that clause does not constitute modification of the approved plan. Rather, it is a practical mechanism to address unforeseen regulatory or operational delays beyond the control of the parties. The Court also emphasised that the Code aims to preserve both procedural discipline and the commercial objective of value maximisation, and rigid enforcement of timelines should not defeat the purpose of revival¹⁰.

Reaching to conclusion, the Supreme Court relied on prior judgments such as *Essar Steel India Ltd.*, which recognised the balance between statutory compliance and commercial pragmatism, and *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019)¹¹, which stressed minimal judicial interference in CoC decisions weigh commercial wisdom. Consequently, the Court implicitly held that the CoC may continue in a restricted supervisory capacity until plan implementation is complete, without being treated as *functus officio* immediately upon approval.

(c) Analysis

Although the Supreme Court upheld that the erstwhile Committee of Creditors (CoC) retains a

⁸ *Ebix Singapore Pvt. Ltd. v. CoC of Edu comp Solutions Ltd.* (2021) 9 SCC 401

⁹ Insolvency and Bankruptcy Board of India, Noti. No. IBBI/2016-17/GN/REG004

¹⁰ *Kalyani Transco v. Bhushan Power & Steel Ltd.*, 2025 SCC OnLine SC 2093

¹¹ *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019) 4 SCC 17

restricted supervisory role post-approval, questions regarding the extent of its influence vis-à-vis the Monitoring Committee (MC). The Court recognised that the creation of an MC serves important operational purposes. While the CoC continues to exercise ultimate oversight, monitoring day-to-day compliance with plan obligations such as procedural Deadlines, payments, and performance milestones can be cumbersome for a collective body comprising multiple financial institutions.

The CoC's designated executive arm, the Monitoring Committee (MC), is usually established under the resolution plan and is responsible for overseeing the resolution plan's seamless, transparent, and accountable execution. Although an MC is not required by the IBC, it is included for commercial necessity and creditor consensus¹². Therefore, in order to effectively function as the executive arm and uphold the Supreme Court's ruling that the CoC should maintain oversight without being regarded as *functus officio*, the MC supplements the CoC's remaining supervisory powers.

Importantly, the acknowledgement of post-approval oversight also means that, with CoC approval, some economic contingencies, like the EBITDA distribution (Discussed later), could be operationalised through a post-CIRP RFRP addendum or clarifying mechanism during the implementation phase, condition the change is consistent with the approved plan's commercial framework. This method provides flexibility to handle unforeseen financial issues while maintaining procedural integrity.

As a result, while the MC's role can only be executory and facilitative, ensuring compliance, accountability, and transparency in the CIRP, the CoC's role must be primarily strategic and supervisory. The IBC's intention to balance statutory discipline with commercial pragmatism has issued this double-edged sword, ensuring creditor protection and plan viability until full implementation, with CoC holding powers and MC executing on the ground.

Issue 3: Delay in implementation of the Resolution Plan

(a) Issue

The appellants contended that the Successful Resolution Applicant (SRA) JSW Steel inordinately delayed the implementation of the approved Resolution Plan by nearly one and a half years after it received approval from the Adjudicating Authority. It was therefore such delay, being contrary to the time-bound mandate of the Insolvency and Bankruptcy Code, 2016,

¹² Raunak Dhillon AG, 'Beyond Approval: Decoding the Committee of Creditors' Continuing Role under the IBC' (*Dispute Resolution Blog*, 16 September 2025) <<https://disputeresolution.cyrilamarchandblogs.com/2025/09/beyond-approval-decoding-the-committee-of-creditors-continuing-role-under-the-ibc/>> accessed 15 October 2025

warranted the setting aside of the Resolution Plan.

(b) Court's Observation

However, this contention was rejected by the Supreme Court. On perusal of the record and the submissions of the respondents, the Court noted that both the Committee of Creditors (CoC) and the SRA JSW had faced several impediments while implementing the plan, such as pendency of proceedings under the Prevention of Money Laundering Act, 2002 (PMLA), the provisional attachment of properties belonging to the Corporate Debtor Bhushan Power & Steel Ltd. (BPSL) and certain unilateral directions given by the Adjudicating Authority relating to the distribution of the company's EBITDA.¹³

(c) Analysis

The Court further noted that the CoC and the SRA–JSW had been acting in concert and making bona fide efforts before the Court to ensure the implementation of the plan, which was ultimately completed on 26 March 2021.

The way in which the Court addressed implementation delay indicate a clear preference for substantive economic outcomes over strict procedural adherence¹⁴ By condoning the delay on account of bona fide impediments such as PMLA proceedings and regulatory uncertainty, the Supreme Court signalled that procedural timelines under the IBC, though mandatory in spirit, are flexible when compliance becomes objectively impossible.

The judgment acknowledges that the outcome of the resolution process recognizes the quality of cooperation between the CoC and the successful resolution applicant over strictly complying with timeframes. This approach resonates with the principle laid down in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) , when the Court recognised the primacy of commercial wisdom and value preservation. However, such judicial tolerance raises a normative concern: whether accommodating delays in the name of cooperation may weaken procedural discipline and encourage future deviations under the guise of “joint efforts.” The judgment highlights a new tension in the development of jurisprudence, between the purity of procedure and commercial practicality within the IBC.

Reaffirming Corporate Debtor liability under Section 32A

A crucial element in the Court's reasoning concerned with the operation of Section 32A of the

¹³ Kalyani Transco v. Bhushan Power & Steel Ltd., 2025 SCC OnLine SC 2093

¹⁴ Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019) 16 SCC 479

Insolvency and Bankruptcy Code, 2016, which grants statutory immunity to the *corporate debtor* and its assets from prosecution for offences committed by its erstwhile promoters before the commencement of the CIRP, once a resolution plan is approved and control passes to an unrelated acquirer¹⁵. The Supreme Court observed that the continued attachment of Bhushan Power & Steel Ltd.'s properties by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002 (PMLA) had created legitimate uncertainty that impeded the implementation of the plan. Referring to its decision in *Manish Kumar v. Union of India* (2021), the Court reaffirmed that Section 32A was enacted precisely to ensure that resolution applicants are not deterred by inherited criminal exposure and that revival of the corporate debtor is not frustrated by legacy liabilities¹⁶.

Accordingly, the Court clarified that once JSW Steel's plan received approval, BPSL stood discharged from liability for prior offences, and all encumbrances on its assets were to be lifted. Enforcement agencies were directed not to pursue prosecution or attachment against the corporate debtor post-approval. The personal liability of erstwhile promoters and other accused individuals, however, remains unaffected. This interpretation of Section 32A thus fortified the Court's decision to condone the delay, recognising that implementation was stalled by external legal barriers rather than inaction by the SRA or the CoC.

Issue 4: Distribution of EBITDA: Clean Slate vs Equitable distribution

(i) Lenders Entitlement

The dispute concerning the distribution of Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) generated during the Corporate Insolvency Resolution Process (CIRP) of Bhushan Power & Steel Ltd. (BPSL) emerged after the Resolution Plan had been approved but before its full implementation.

The NCLT initially held that such interim profits should accrue to the lenders, reasoning that the assets of the Corporate Debtor remained under the control of the Resolution Professional and that the lenders, as financial stakeholders, were entitled to the returns until the plan was effectuated.

On appeal, the NCLAT affirmed this view, relying on its earlier decision in *Essar Steel India Ltd. v. Satish Kumar Gupta* (NCLAT, 2019), which had held that all profits generated during CIRP belonged to the creditors. However, the Supreme Court in *Essar Steel India Ltd.* (2019)

¹⁵ Insolvency and Bankruptcy Code, 2016, § 32A.

¹⁶ *Manish Kumar v. Union of India* (2021) 5 SCC 1

subsequently overruled that position, holding that such post-resolution claims cannot be entertained outside the framework of the approved plan, as that would amount to reopening settled commercial terms which will give rise to claims post-approval as described by court “hydra head popping up again.”¹⁷

In its September 2025 review judgment, the Supreme Court, relying on *Essar Steel*, held that the CoC had no legal basis to claim BPSL’s EBITDA after plan approval. Since the RFRP was silent on profit distribution and the resolution plan treated BPSL as a “going concern,” profits earned during CIRP became part of the assets transferred to JSW. The Court ruled that any CoC claim to such profits would amount to an impermissible modification of the approved plan, citing *Ebix Singapore*, *Ghanshyam Mishra*, *K.N. Rajakumar*, and *Ruchi Soya*, which all uphold the finality and binding nature of approved resolution plans.

Erstwhile promoters

The erstwhile promoters contended that they should be allowed to use the EBITDA produced during CIRP to offset their liability because they were personal guarantors of BPSL's debts. The Court rejected this contention, observing that proceedings under Section 95 of the IBC (initiated against the guarantors in 2021) were independent of the CIRP. The NCLT’s order in October 2024 had already clarified that liabilities of the corporate debtor and those of personal guarantors operate in separate legal spheres. Accordingly, the Supreme Court held that the erstwhile promoters had no claim to the company’s profits during the CIRP.

By applying the "clean slate" doctrine according to Section 32A, the Supreme Court's decision in BPSL (JSW Steel) treats profits and losses incurred during CIRP as integral components of the corporate debtor's assets that, upon plan approval, transfer fully to the resolution applicant. This strict application ignores the equitable interests of creditors and guarantors whose previous investments made it possible for the assets to produce such profits, even though it is doctrinally consistent with the principle of finality.

Recent rulings, notably in *Kalyan Janata Sahakari Bank v. Cicil Biochem Pvt. Ltd.* , supports a more flexible approach. The NCLT held that when neither the RFRP nor the resolution plan specifies the treatment of interim profits, these can justifiably be distributed among financial creditors. This reasoning aligns with the principle of restorative fairness, ensuring that creditors are not deprived of value generated from assets financed by them.¹⁸

¹⁷ Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019) 16 SCC 479

¹⁸ ‘Profits during CIRP Can Be Allocated to Financial Creditors When RFRP and Resolution Plan Are Silent – Arjim Jain’ (*IBC Laws*, 8 May 2024) <<https://ibclaw.in/profits-during-cirp-can-be-allocated-to-financial-creditors-when-rfrp-and-resolution-plan-are-silent-arjim-jain/>> accessed 16 October 2025

In contrast, the Supreme Court's clean-slate interpretation prioritises procedural closure over equitable balancing. Applying an equitable distribution model where the plan is silent could better harmonise creditor protection with the Code's objective of value maximisation.

Issue 5: Upfront infusion of funds by the SRA JSW Commercial wisdom and company law

(a) Issue

It was argued by the erstwhile-promoters that the SRA JSW failed to honour its commitment of an "upfront infusion of funds" as per schedule 3 of the Resolution Plan. They claimed that the plan required an upfront equity infusion of Rs. 8,550 crores, but only Rs. 100 crore was actually infused. The Appellants argued that on the basis of this upfront infusion of funds, the SRA JSW got additional marks and crossed the score of the next highest bidder and hence, this non-compliance affected the evaluation of bids and the implementation of the Resolution plan. Thereby the plan must be set aside.

The respondent argued that the infusion of Rs. 8550 was made through Compulsory convertible debentures (CCD) and which are considered at par with equity instruments. So, the question before the court to decide was whether the infusion of fund in the form of CCD be treated or construed as equity instruments or not?

(b) Court's Observation

The court cited its previous decision in *Narendra Kumar Maheshwari v. Union of India and Others*, in which it noted that the rules treat compulsorily convertible debentures as "equity" whenever the concept is involved¹⁹. Guidelines 8 and 11 of the Employees Stock Option Guidelines, as well as guidelines IV(I) and IV(iii) of the Guidelines for Issue of Cumulative Convertible Preference Shares, provide evidence of this.

These sets of guidelines clearly indicate that any instrument which is compulsorily convertible into shares, is regarded as a "equity" and not as a loan or debt. and since CCDs do not involve any repayment and have to be mandatorily converted into equity shares at the time of maturity, they must be treated as Equity Instruments. Furthermore, it was reaffirmed that if a CCD is to be compulsorily converted at the time of maturity, without any obligation of repayment of a debt it must be treated the same as an equity instrument.

Additional reference been given to IFCI Limited (supra). wherein observed that to treat them

¹⁹ Narendra Kumar Maheshwari vs Union of India & Ors, 1990 SCC (SUPP) 440

as a debt would tantamount to breach of the concessional agreement and the common loan agreement. The investment was clearly in the nature of debentures which were compulsorily convertible into equity and nowhere is it stipulated that these compulsorily convertible debentures would partake the character of financial debt on the happening of a particular event²⁰.

Hence the supreme court of the view that the CCDs infused by the SRA – JSW are to be treated the same as an equity infusion. And further court consider the stand of the CoC to ascertain the Commercial Wisdom of COC so to examines whether the commitment for the upfront infusion was actually satisfied by the SRA – JSW through the CCDs.

It has to be noted that in 2021 the reconstituted Board of the resolved entity BPSL held a meeting which also attended by the Steering Committee, i.e., the three largest FCs of the Corporate Debtor. In the said meeting the group company of JSW named Piombino Steel Limited been issued CCDs valued at Rs. 8,450 crores. Also provide that after 5 years has to be mandatorily converted into equity shareholding. The CCDs issued satisfy the test of compulsory conversion as laid down by this Court in the case of Narendra Kumar Maheshwari (supra) and therefore have to be treated as equity instruments.

(c) Analysis

A central contention in the *BPSL (JSW Steel)* litigation was whether the Successful Resolution Applicant (SRA) had complied with its obligation of upfront equity infusion as stipulated under Schedule 3 of the Resolution Plan, which recorded a total commitment of ₹8,550 crore in equity contribution. The appellants raised the contention that only ₹100 crore had been actually infused in cash, and the remaining amount was infused in the form of Compulsorily Convertible Debentures (CCDs) a move they claimed diluted the plan's binding terms and secured an inflated evaluation advantage for JSW Steel over other bidders such as Tata Steel. The Supreme Court, however, rescue itself from the issue. It observed that the CoC had approved the financial structure after evaluating the feasibility and viability of the Resolution Plan, and that the infusion partly through CCDs remained compliant with the approved modalities under Schedule 3. The Court thus treated the instrument's form as sufficient compliance with the plan, emphasising that judicial review cannot re-evaluate commercial terms ratified by the CoC. This In-consonance with *Essar Steel India Ltd. v. Satish Kumar Gupta* (2019), where the Court reaffirmed the primacy of CoC's commercial wisdom in

²⁰ IFCI Ltd. v. Sutanu Sinha, (2023) ibclaw.in 149 SC

determining plan structure and implementation mechanics²¹.

On doctrinal touchstone, however, the judgment leaves unresolved the “substance-over-form” dilemma²². The Court’s reliance on formal plan approval under Schedule 3 overlooked the economic reality that CCDs may not immediately transfer risk or capital akin to genuine equity infusion. Unlike equity, CCDs can carry assured returns and deferred conversion, potentially allowing an SRA to control assets and accrue profits (such as EBITDA during CIRP) without proportionately invested its committed funds.

This again raises a question of unjust enrichment as the SRA, having delayed capital infusion, nonetheless benefitted from the ongoing profitability of the Corporate Debtor. This fact further strengthens the author’s opinion on distribution of EBITDA, discussed earlier in the paper, where equitable sharing between lenders and contributors could mitigate such asymmetries.

While the Court upholds transactional predictability and respects CoC autonomy, it risks legitimising deferred funding mechanisms that may vitiate the competitive neutrality of the resolution process. Commercial freedom and the IBC's fundamental goals of equity and transparency would be better aligned with a more purposeful investigation into the content of financial instruments listed in Schedule 3, especially when "upfront infusion" is stated as a deciding bid parameter.

Conclusion

The Supreme Court's effort to balance procedural discipline with commercial pragmatism is evident in the BPSL ruling. The Court preserved the IBC's preference for corporate revival over dissolution by implementing JSW Steel's plan, avoiding liquidation. Its flexible attitude on implementation delays and recognition of CoC oversight demonstrate its pro-restructuring stance. However, it can be ascertained from the ruling that it struggles between finality and fairness due to its rigid adherence to the clean slate principle and its limited judicial review of CCD-based funding. The question on the scope of "persons aggrieved," how interim profits are handled, and the nature of equity infusion must all be clarified by future jurisprudence in order to strike a balance between creditor protection and business certainty. Thus, the case serves as a reminder that insolvency resolution must continue to be based on equity, transparency, and accountability, as well as a victory for economic pragmatism.

²¹ Essar Steel India Ltd. v. Satish Kumar Gupta (2019) 16 SCC 479

²² Nluo C, ‘CCDS in Insolvency: Form Follows Substance’ (CCL, NLUO, 25 August 2025)

<<https://ccl.nluo.ac.in/post/ccds-in-insolvency-form-follows-substance>> accessed 18 October 2025