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Supreme Court's Verdict in the JSW-Bhushan Steel
Insolvency Case Saga Opens a Pandora's Box**



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Setting Aside of an Executed Resolution Plan: Supreme Court's Verdict in the JSW — Bhushan Steel Insolvency Case Saga Opens a Pandora Box

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Published on June 22, 2025 - By Editor



Introduction

In a judgment that may well redefine the contours of finality in insolvency resolution under India's insolvency regime, the Supreme Court, in *Kalyani Transco v. Bhushan Power and Steel Ltd.*¹, directed the liquidation of a corporate debtor more than five years after its resolution plan had been approved and implemented. The decision not only invalidated a resolution plan that had been fully executed by the successful resolution applicant but also ordered the return of funds disbursed to financial and operational creditors, thereby unsettling what had long been presumed settled. The ruling has sent tremors through the insolvency ecosystem, raising foundational questions about legal certainty, institutional roles, and the scope of judicial intervention in the insolvency resolution process.

At the core of this extraordinary judicial outcome lies a fundamental tension in Indian insolvency law jurisprudence: can procedural irregularities and statutory non-compliance serve as justifiable grounds for undoing a resolution plan that has already been implemented and relied upon by multiple stakeholders, including lenders, investors and regulators?

The Supreme Court's decision² suggests that they can and indeed must if the process leading to the resolution is tainted by material illegality. This marks a potentially significant shift in the fundamental principles under the Insolvency and Bankruptcy Code, 2016³ (IBC or Code).

Over almost a decade of the IBC's existence, the primacy of the Committee of Creditors (CoC) and the principle of finality had underpinned the jurisprudence following landmark decisions such as *Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta*⁴ and *ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta*⁵.

The facts of the case would only amplify the normative dilemma. The resolution plan of JSW Steel for Bhushan Power and Steel Ltd. (BPSL) one of the Reserve Bank of India's (RBI's) "dirty dozen" cases, was approved by the CoC, the National Company Law Tribunal (NCLT) and subsequently affirmed, with modifications, by the National Company Law Appellate Tribunal (NCLAT).

Following the prolonged litigation, interim orders and amendments, JSW implemented the resolution plan in phases between 2021 and 2022, infusing equity and paying off financial and operational creditors in accordance with the plan. Yet, in 2025, the Supreme Court invalidated the very basis of that implementation, holding that the resolution process suffered from deep procedural infirmities, non-compliance with mandatory provisions, and a failure by institutional actors, including the resolution professional (RP) and CoC, to perform their statutory duties with due diligence.

What sets this ruling apart is not just its outcome but also its implications. The decision calls into question the assumed finality of judicially approved resolution plans. In doing so, it prompts a reassessment of the limits between commercial wisdom and legal supervision.

This article examines the decision at length, tracing the facts of the matter and examining the law laid by the Supreme Court.

Factual background

The corporate insolvency resolution process (CIRP) of BPSL traces its origin to the Reserve Bank of India's June 2017 directive targeting the so-called "dirty dozen", twelve large accounts representing nearly a quarter of India's non-performing assets. Pursuant to this directive, Punjab National Bank initiated insolvency proceedings against BPSL under

Section 7⁶ of the IBC, leading to its admission into CIRP by the NCLT on 26-7-2017⁷. What began as a prototypical large-value insolvency proceeding would, over time, become one of the most protracted and controversial cases under the Code.

Following the commencement of CIRP, claims aggregating over INR 47,000 crores were admitted from financial creditors, with a further INR 621 crores admitted from operational creditors. Several major bidders submitted resolution plans in response to the invitation by the RP, including Liberty House, Tata Steel and JSW Steel. After multiple rounds of evaluation and negotiation, JSW's plan emerged as the highest-scoring bid in accordance with the prescribed evaluation matrix. The CoC eventually approved a consolidated resolution plan, as supplemented by an addendum letter submitted by JSW, through e-voting held in October 2018.

The resolution plan was filed⁸ before the NCLT for approval in February 2019. By this point, the proceedings had already exceeded the statutory time-limits under Section 12 of the Code⁹, but no extension was sought. On 5-9-2019, the NCLT approved the plan, subject to a series of conditions.¹⁰ These included directions for compliance with the amended Section 30(2)¹¹ vis-à-vis operational creditors, explicit reservations on the grant of statutory waivers, and the establishment of a monitoring agency comprising the RP and the CoC.¹² Against the judgment of the NCLT dated 5-9-2019¹³, appeals were filed both by JSW (challenging specific conditions) and by various other parties, including operational creditors, erstwhile promoters, and the State of Odisha. The NCLAT, while deciding the appeals, upheld the approval of the resolution plan on 17-2-2020, modifying some of the conditions imposed by the NCLT.¹⁴

Meanwhile, several collateral developments complicated the implementation landscape. In April 2019, the Central Bureau of Investigation registered a first information report (FIR)¹⁵ against BPSL and its former directors. This was followed by the Directorate of Enforcement's initiation of proceedings under the Prevention of Money-Laundering Act, 2002 (PMLA)¹⁶, including a provisional attachment order issued in October 2019. These developments raised concerns about the immunity provisions under Section 32-A¹⁷ of the IBC and whether they would shield JSW from prosecution or enforcement action for offences predating the CIRP.

JSW challenged the attachment before the NCLAT, securing a stay. Parallely, it began the implementation of the resolution plan. Payments to financial creditors commenced in March 2021 and were followed by payments to operational creditors in 2022.

During the implementation of the resolution plan by JSW, a batch of appeals was filed before the Supreme Court by various stakeholders challenging the NCLAT's order dated 17-2-2020¹⁸, which upheld the resolution plan with modifications.

In one such appeal filed by Kalyani Transco, the Supreme Court recorded a statement

made on behalf of the CoC that any money received by the creditors would be returned if the appeal were to succeed.¹⁹

The matter eventually culminated in the Supreme Court's judgment delivered on 2-5-2025²⁰. In a sweeping ruling, the Supreme Court set aside the approval of the resolution plan and directed the liquidation of the corporate debtor under Section 33²¹ of the IBC. This outcome came nearly six years after the commencement of CIRP and over three years after JSW had begun executing its obligations under the plan. In doing so, the Court reversed a fully implemented resolution process, raising important questions about legal finality, judicial review, and institutional accountability under the IBC.

Supreme Court's rationale

In its ruling, the Supreme Court quashed and set aside the NCLAT's decision dated 17-2-2020²² and consequently rejected the resolution plan. The Supreme Court held that the entire CIRP was vitiated by material legal infirmities, including non-compliance with mandatory timelines and the failure to verify the resolution applicant's eligibility. Based on these systemic lapses, the Supreme Court invoked its powers under Article 142 of the Constitution²³ and directed liquidation under Section 33 of the IBC.

In doing so, the Supreme Court framed its decision not as an intrusion into the commercial wisdom and autonomy of the CoC but as a necessary enforcement of procedural and statutory discipline.

The Supreme Court began its analysis by identifying the standard of judicial review applicable to resolution plans under the IBC. While reaffirming the limited role of courts in economic matters falling within the domain of the CoC's "commercial wisdom", the Supreme Court distinguished between commercial decisions and legal compliance. It observed that while courts must defer to the CoC on matters of feasibility and viability, they are duty-bound to ensure that the statutory scheme is strictly adhered to. Legal compliance, the Supreme Court held, is not an arena for deference but for enforcement. This framing allowed the Supreme Court to review the conduct of the RP, the CoC, and even the adjudicating authorities in terms of their fidelity to statutory mandates.

The most critical infraction identified by the Supreme Court pertained to Section 12 of the Code, which stipulates that the CIRP must be completed within 330 days, inclusive of any extensions or time consumed in legal proceedings. The resolution plan in question had been submitted to the NCLT more than eighteen months after admission, and no formal extension had been granted under Section 12(2). The Supreme Court interpreted this as a per se violation of a mandatory statutory provision. Drawing on its earlier pronouncements in *Satish Kumar Gupta case*²⁴ and *ArcelorMittal case*²⁵, the Supreme Court held that the object of time-bound resolution cannot be sacrificed to ad hoc extensions or procedural laxity.

The absence of a valid extension, in the Supreme Court's view, rendered the resolution plan legally unsustainable, irrespective of its subsequent approval and implementation.

The Supreme Court was equally unsparing in its treatment of the compliance requirements posed by Section 29-A²⁶ of the Code. Section 29-A of the IBC disqualifies certain categories of persons from submitting resolution plans. The RP had failed to furnish the mandatory compliance certificate in Form H, verifying, amongst other things, JSW's eligibility under Section 29-A. While the judgment does not make a positive finding that JSW was ineligible, it squarely holds that the RP's failure to diligently verify, certify and record such eligibility vitiates the process. The Supreme Court read Sections 30(1) and (4) of the Code and Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016²⁷ together to establish a non-derogable duty upon the RP to conduct independent verification, rather than merely relying on self-certifying affidavits. The lapse, in the Supreme Court's view, "went to the root of the process" compromising the legitimacy of the plan and infecting the approval granted by the CoC and the NCLT.

Beyond these statutory lapses, the Supreme Court also took exception to the broader governance and procedural conduct of the CIRP. It found the RP had acted more as a conduit than as a fiduciary gatekeeper, transmitting documents without adequate diligence, failing to enforce timelines, and abdicating responsibility for verifying compliance. The CoC, for its part, had failed to exercise oversight or demand statutory accountability. As a result, the Supreme Court held that the adjudicating authority had erred in law by approving the resolution plan.

Particular emphasis was placed on the conditional nature of the plan and the delays in its implementation. The Supreme Court noted that even after approval, JSW had sought time extensions, raised queries, and failed to act with commercial urgency. The Supreme Court rejected the contention that mere implementation should immunise the plan from scrutiny. It was observed that the Code did not contemplate conditional, deferred, or half-hearted implementation. Plans had to be enforceable, unconditional, and immediate in their obligations. The Supreme Court interpreted the absence of this standard as another indication that the CIRP had been structurally compromised.

Perhaps most significantly, the Supreme Court invoked Article 142 of the Constitution to issue a direction for liquidation under Section 33 rather than remanding the matter to the CoC. It held that a remand would serve no purpose when the process had been fundamentally flawed and had exceeded all permissible time-limits.

Finally, the Supreme Court addressed the interplay between the CIRP and parallel proceedings under the PMLA. While not explicitly adjudicating the validity of the attachment under the PMLA, the Supreme Court clarified that criminal investigations and the rights of prosecutorial agencies could not be undermined by an improperly

conducted resolution process. It cautioned against using Section 32-A as a blanket shield when the CIRP itself is tainted by illegality. In the absence of procedural purity, the Supreme Court implied that invoking statutory immunities under Section 32-A would be premature and potentially illegitimate.

The Supreme Court's judgment thus rests on a layered synthesis of statutory textualism, fiduciary accountability and institutional integrity. It does not question the primacy of commercial wisdom but insists that such wisdom must operate within the boundaries of the law. Where those boundaries are breached through procedural omission, regulatory non-compliance, or institutional neglect, the resolution process, however advanced, must be quashed.

The doctrine of clean slate revisited

Few principles have been more central to the functioning of the IBC than the doctrine of the "clean slate". Rooted in the need to ensure finality and certainty for successful resolution applicants, the doctrine emerged from the Supreme Court's landmark rulings in *Satish Kumar Gupta case*²⁸ and *ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta*²⁹, and was later codified under Section 32-A of the Code.

The underlying idea propounded by the clean slate principle is simple yet commercially vital. Upon approval of a resolution plan, the corporate debtor would emerge with a clean operational and legal slate, insulated from past liabilities, and free to begin afresh under new management. This principle not only aligns with the Code's goal of prioritising revival over liquidation but also inspires confidence in the resolution process.

At first glance, the clean slate doctrine would appear to favour the position adopted by the successful resolution applicant, JSW Steel. The plan had been approved by the CoC, affirmed by the NCLT and the NCLAT, and implemented through substantial financial disbursements and restructuring actions. Moreover, the plan sought protections under Section 32-A, which provides that a corporate debtor shall not be prosecuted for any offence committed prior to the commencement of the CIRP, subject to a change in management and lack of collusion. From this perspective, the implementation of the resolution plan should have triggered the statutory clean break from past conduct.

The Supreme Court, however, declined to extend the protective umbrella of the clean slate doctrine in this case. Its reasoning was rooted not in the rejection of the doctrine per se, but in a prior logical sequence. The resolution plan itself, in the Supreme Court's view, was vitiated by illegality and ultra vires conduct at nearly every stage of the CIRP. If the very approval of the resolution plan was invalid, then the foundation upon which the clean slate rests was absent. The doctrine, the Supreme Court implied, is predicated on a valid process, and it cannot be invoked to immunise an outcome that ought never to have existed in law.

Thus, in *Kalyani Transco case*³⁰, the Supreme Court appears to draw a critical distinction between post-resolution claims arising despite a valid process and post-resolution invalidation due to a fatally defective process. In the former, the clean slate protects the applicant, and in the latter, the question of applying the doctrine does not even arise.

The broader effect of this reinterpretation in *Kalyani Transco case*³¹ is likely to be felt in how resolution applicants approach due diligence and risk assessment. Regulatory filings, RP conduct, CoC meeting records, and procedural timelines may assume heightened importance in evaluating enforceability risk. In this sense, *Kalyani Transco case*³² transforms the clean slate doctrine from a shield into a conditional privilege, one that must be earned through compliance rather than presumed as a statutory right.

Commercial finality versus procedural sanctity: What should prevail?

We revisit the moot question of whether the adjudicating authority should favour the finality of a commercially negotiated and implemented resolution plan or if it should prioritise strict adherence to statutory procedure, even at the cost of reversing a consummated transaction.

The Supreme Court's unequivocal response that procedural sanctity must prevail raises challenging questions regarding the coherence and stability of the insolvency regime, particularly given that commercial certainty is a cornerstone of its appeal to investors and financial institutions.

The judgment reflects a view that finality cannot be the product of illegality. The Supreme Court held that mere implementation cannot sanctify what is void from inception. This approach is doctrinally defensible; a void act is a legal nullity, and its effects can be unravelled even after the fact. However, the difficulty arises when this principle is applied to resolution plans under the IBC, which are not ordinary contracts or administrative decisions, but rather complex, court-approved instruments negotiated among multiple stakeholders. The process culminates in an order under Section 31(1)³³ of the Code, which renders the plan binding on the corporate debtor, creditors and other stakeholders. When such an order is reversed after implementation, the disruption is nuanced and systemic.

This raises a fundamental concern: what weight should courts attach to commercial reliance on a resolution plan once it has been approved and acted upon? JSW, in this case³⁴, had made significant payments to financial and operational creditors and had begun to restructure BPSL's operations. The CoC had accepted the plan based on their commercial evaluation; the NCLT and the NCLAT had approved it after scrutiny, and regulatory authorities had allowed for operational continuity.

Yet, the Supreme Court found that none of these actions could overcome the underlying illegality of the process. The question is not whether this conclusion was technically accurate, it indeed was, but whether it reflects an optimal balance between legal form and economic substance.

There are valid concerns that rigid and uncompromising judicial intervention, especially after implementation, may deter participation in the resolution process. Resolution applicants might worry that their investments, despite plan approval and execution, could still be subject to retrospective invalidation due to procedural issues. This situation undermines the Code's aim of delivering a predictable, timely, and market-driven resolution framework.

The Court's rejection of alternatives such as remand to the CoC or prospective enforcement merits deeper introspection. The decision to order liquidation directly, without allowing the CoC to cure the procedural lapses or reapprove the plan, suggests a judicial assessment that the defects were incurable. The Supreme Court's refusal to entertain any remedial possibilities represents a choice for finality in liquidation, not resolution. This may be permissible under Article 142 of the Constitution, but it also risks being perceived as excessive, particularly when weighed against the Code's preference for revival over liquidation.

Moreover, the ruling leaves unresolved a critical grey area: what degree of non-compliance is sufficient to render a resolution plan invalid? Not all defects are equally damaging. A missed deadline, a missing certificate, or an insufficient disclosure should each lead to the same result of liquidation? Or should courts distinguish between material and non-material breaches, assessing whether the defect impacted the plan's commercial substance, creditor rights, or public interest? The judgment offers no such calibration, instead treating procedural sanctity as a categorical imperative.

A further concern lies in the Supreme Court's treatment of institutional actors. The RP, the CoC, and even the adjudicating authorities were faulted for lapses and errors. Yet, the consequences of these failures were borne not by the erring institutions but only by the successful resolution applicant and the creditors. This introduces a perverse incentive structure, where institutional dereliction is immunised while commercial actors bear the costs of systemic failure. The question arises whether judicial energy would be better spent improving institutional accountability rather than penalising those who operate in reliance on those institutions.

None of this is to say that procedural compliance should be dispensable. Insolvency resolution is a creature of statute, and its legitimacy depends on faithful adherence to the provisions of the Code. But the question is one of remedy, not recognition. When a resolution plan is found to be procedurally deficient after approval and partial performance, courts must weigh the relative harms of curative intervention versus

retrospective annulment. A jurisprudence of strict invalidation may win on textual grounds but risks losing on normative and practical ones.

*Kalyani Transco case*³⁵, therefore, demands a nuanced recalibration. It calls for an approach that recognises the sanctity of procedure while acknowledging the commercial finality necessary to sustain an effective resolution regime. Whether that balance is best struck by the courts or by Parliament remains open, but it must be struck if the Code is to function as a reliable mechanism of economic justice.

Implications for stakeholders

The judgment in *Kalyani Transco case*³⁶ reverberates well beyond the confines of BPSL's insolvency. By unsettling what was presumed to be a final, court-approved, and executed resolution plan, the ruling introduces a new axis of risk into the Indian insolvency regime, affecting not only resolution applicants but also financial creditors, operational stakeholders, regulators, and the institutional machinery of the IBC. Its implications are systemic, influencing both the psychology of the market and the operational integrity of the Code.

For resolution applicants, the message is unequivocal: implementation does not guarantee immunity. Even if a plan has been approved by the CoC, sanctioned by the NCLT, and executed in accordance with its terms, it may still be judicially unravelled if the underlying process is found to be vitiated by illegality or non-compliance. This significantly elevates the due diligence burden on applicants. They must now assess not only the commercial viability of the target but also the procedural hygiene of the entire CIRP.

The financial consequences of this risk are substantial. In this case³⁷, JSW Steel had already disbursed thousands of crores to financial and operational creditors, relying on judicial approval and market practice. The Supreme Court has now directed that these funds be returned. This sets a precedent under which restitution becomes a viable possibility even after disbursement and significantly alters the economics of resolution bids.

Financial and operational creditors are not exempt. The directive to return funds previously received under the plan imposes exposure not just to commercial loss but also to accounting disruption. These funds may have been provisioned, reclassified, or deployed under the assumption that the resolution was final.

At the institutional level, the judgment is a stern indictment of the governance standards within the CIRP framework. The Supreme Court found the RP to have abdicated statutory responsibility, the CoC to have approved an infirm plan, and the NCLT and NCLAT to have sanctioned it without adequate scrutiny. Yet, these institutional failures have not been met with any tangible accountability.

1. 2025 SCC OnLine SC 1010.
2. *Kalyani Transco case*, 2025 SCC OnLine SC 1010.
3. Insolvency and Bankruptcy Code, 2016.
4. (2020) 8 SCC 531.
5. (2019) 2 SCC 1.
6. Insolvency and Bankruptcy Code, 2016, S. 7.
7. *Punjab National Bank v. Bhushan Power and Steel Ltd.*, 2017 SCC OnLine NCLT 557.
8. *Punjab National Bank v. Bhushan Power and Steel Ltd.*, 2019 SCC OnLine NCLT 18702.
9. Insolvency and Bankruptcy Code, 2016, S. 12.
10. *Punjab National Bank v. Bhushan Power & Steel Ltd.*, 2019 SCC OnLine NCLT 18702.
11. Insolvency and Bankruptcy Code, 2016, S. 30(2).
12. *Bhushan Power & Steel case*, 2019 SCC OnLine NCLT 18702, para 128..
13. *Bhushan Power & Steel case*, 2019 SCC OnLine NCLT 18702.
14. *JSW Steel Ltd. v. Mahender Kumar Khandelwal*, (2022) 233 Comp Cas 648 : 2020 SCC OnLine NCLAT 431.
15. The FIR was filed under Penal Code, 1860, S. 120-B read with Ss. 420, 468, 471 and 477-A
16. Prevention of Money-Laundering Act, 2002.
17. Insolvency and Bankruptcy Code, 2016, S. 32-A.
18. *JSW Steel case*, (2022) 233 Comp Cas 648 : 2020 SCC OnLine NCLAT 431.
19. Please see, *Kalyani Transco case*, 2025 SCC OnLine SC 1010.
20. *Kalyani Transco case*, 2025 SCC OnLine SC 1010.
21. Insolvency and Bankruptcy Code, 2016, S. 33.
22. *JSW Steel case*, (2022) 233 Comp Cas 648 : 2020 SCC OnLine NCLAT 431.
23. Constitution of India, Art. 142.
24. (2020) 8 SCC 531.
25. (2019) 2 SCC 1.
26. Insolvency and Bankruptcy Code, 2016, S. 29-A.
27. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regn. 39(4).
28. (2020) 8 SCC 531.
29. (2019) 2 SCC 1.

30. 2025 SCC OnLine SC 1010.
31. 2025 SCC OnLine SC 1010.
32. 2025 SCC OnLine SC 1010.
33. Insolvency and Bankruptcy Code, 2016, S. 31(1).
34. *JSW Steel case*, (2022) 233 Comp Cas 648 : 2020 SCC OnLine NCLAT 431.
35. 2025 SCC OnLine SC 1010.
36. 2025 SCC OnLine SC 1010.
37. *JSW Steel case*, (2022) 233 Comp Cas 648 : 2020 SCC OnLine NCLAT 431.