Supreme Court directs status quo to be maintained in the liquidation of Bhushan Power and Steel Ltd.

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Introduction

In *Kalyani Transco v. M/s Bhushan Power and Steel Ltd.* (2025 INSC 621), the Supreme Court (the "**SC**") set aside the approved resolution plan (the "**Resolution Plan**") and directed liquidation of Bhushan Power and Steel Ltd. ("**BPSL**") negating the judgments of the National Company Law Tribunal (the "**NCLT**") and the National Company Appellate Law Tribunal (the "**NCLAT**") which had approved the Resolution Plan. This caused a huge uproar in the financial world, and on an application filed by JSW Steel Ltd. ("**JSW**"), the SC has, by its order dated May 26, 2025, directed that *status quo* be maintained in respect of the liquidation proceedings of BPSL. For now, the order of liquidation passed in the foregoing case stands stayed and no steps towards liquidation are to be undertaken.

Background

This case deals with the corporate insolvency resolution process (the "**CIRP**") of BPSL, one of the dirty dozen non-performing asset accounts identified by the Reserve Bank of India for immediate resolution under the Insolvency and Bankruptcy Code, 2016 (the "**IBC**"). For context, the CIRP was initiated by Punjab National Bank, with claims more than INR470,000,000,000 (Indian Rupees Four Hundred and Seventy Billion) admitted for the financial creditors and over INR 6,000,000,000 (Indian Rupees Six Billion) for the operational creditors.

Several resolution applicants such as JSW, Tata Steel and Liberty House participated in the CIRP process, and JSW emerged with the highest score in the committee of creditors' (the "**COC**") evaluation. Following this, in February 2019, the resolution professional (the "**RP**") moved an application for approval of the Resolution Plan before the NCLT. Meanwhile, the Central Bureau of Investigation initiated criminal proceedings against BPSL and its directors, basis which the Enforcement Directorate (the "**ED**") registered a case against BPSL for offences under the Prevention of Money Laundering Act, 2002 (the "**PMLA**").

The NCLT, by an order dated September 5, 2019 (the "**NCLT Order**"), approved the Resolution Plan, subject to compliance with certain conditions, namely, the requirement to: (i) adhere to Section 30(2) of the IBC; (ii) treat pending criminal proceedings against erstwhile directors as not affecting the implementation of the Resolution Plan; and (iii) distribute profits earned during the CIRP in accordance with the *Essar Steel* judgment. Despite the approval of the Resolution Plan, the ED provisionally attached BPSL's assets under the PMLA in October 2019. JSW and the COC challenged the attachment before the NCLAT and the SC, respectively, and obtained interim protection against the attachment.

Thereafter, the NCLT Order was challenged in appeal before the NCLAT. Additionally, after the ED's attachment order was pronounced but while the foregoing appeal was pending, Section 32A of the IBC, which provides immunity to the corporate debtor from liability for offences committed prior to the commencement of the CIRP, was inserted into the IBC with effect from December 28, 2019.

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In the appeal, the NCLAT, by an order dated February 17, 2020 (the "**NCLAT Order**"), upheld the NCLT Order in large part but modified some conditions, including the condition related to the effect of criminal proceedings on the CIRP. The NCLAT Order also provided that, keeping in mind Section 32A of the IBC, the ED and other investigating agencies cannot attach the assets of BPSL, as the Resolution Plan had already been approved. Thereafter, the NCLAT Order was challenged before the SC. While proceedings were pending before the SC, the Resolution Plan was implemented by JSW by making payment to the financial creditors in 2021 and to the operational creditors in 2022.

Key contentions

Appellants' contentions: The appellants, which included the operational creditors, ex-promoters of BPSL, and the State of Odisha, argued that the CIRP was violative of the provisions of the IBC, as it involved: (i) a failure to adhere to the strict timeline of completing the CIRP within two hundred and seventy (270) days under Section 12 of the IBC; (ii) improper verification of the eligibility of the resolution applicants under Section 29A of the IBC; and (iii) non-compliance of the requirement to pay the operational creditors in priority over the financial creditors as mandated by Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the "**2016 Regulations**").

Further, the appellants also argued that JSW, in collusion with the COC, had enriched itself at the expense of the other creditors by delaying implementation of the Resolution Plan. The COC failed to exercise its commercial wisdom, took contradictory stances and did not act in the interest of all stakeholders. It was also argued that the NCLAT exceeded its jurisdiction by reviewing the ED's decision under the PMLA, which is outside the scope of the IBC.

Respondents' contentions: The respondents, which included JSW and the COC, argued that the Resolution Plan had been implemented, and payments had been made to the financial and operational creditors. The delays were due to legal uncertainties, such as the attachment of BPSL's assets. Further, they argued that the COC's commercial decisions, including extensions granted to implement the Resolution Plan, were necessary for the successful resolution of BPSL. It was also asserted that the implementation of the Resolution Plan was not prejudicial to any stakeholder, and the Resolution Plan was ultimately in the best interest of all parties.

The ruling

The SC, by its judgment dated May 2, 2025, set aside the NCLT Order and the NCLAT Order and rejected the Resolution Plan as being non-compliant with the provisions of the IBC. The SC ordered the NCLT to initiate liquidation proceedings against BPSL under Chapter III of the IBC, emphasizing that the benefit of Section 32A of the IBC cannot be used to justify non-implementation or delayed implementation of a resolution plan. Further, any payments made by JSW to creditors, during the pendency of the appeals, were directed to be returned, as per the statement made by COC's counsel, Dr. Abhishek Manu Singhvi.

The SC, *inter alia*, addressed the following points:

(i) Non-compliance with timelines**:** The SC held that the CIRP was not completed within the mandatory period of two hundred and seventy (270) days as required by Section 12 of the IBC, and no valid extension was sought or granted. The application for approval of the Resolution Plan was filed long after the expiry of the statutory period, rendering the process flawed.

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(ii) <u>Failure of RP</u>: The SC held that the RP failed to discharge key statutory duties, including verifying the eligibility of the resolution applicants under Section 29A of the IBC and ensuring compliance with the requirement to pay operational creditors on a priority basis under Regulation 38 of the 2016 Regulations.

(iii) <u>Role of the COC</u>: The SC held that the COC failed in exercising its commercial wisdom and did not take into account the interests of all stakeholders. The COC took contradictory positions and ultimately supported JSW's delayed implementation without proper justification.

(iv) <u>JSW's actions</u>: The SC found that JSW misused the process of law by: (I) delaying implementation of the Resolution Plan for over two (2) years; (II) making misrepresentations; and (III) unjustly enriching itself by not making upfront payments as was agreed upon in the Resolution Plan.

(v) <u>Jurisdictional overreach by the NCLAT</u>: The SC observed that the NCLAT had acted beyond its jurisdiction by reviewing the ED's order attaching assets under the PMLA, which is a matter outside the scope of the IBC.

Our comments

Although the strict interpretation employed in the SC's decision is a welcome step in terms of upholding the sanctity of the law, the decision may have inadvertently overlooked certain practical and commercial considerations. One such consideration is that the liquidation of a company as significant as BPSL may have far-reaching negative consequences for employees, suppliers, customers, and the broader economy in general. Additionally, the possibility that an approved resolution plan can be unwound years later, on account of procedural lapses, may have a chilling effect on participation by stakeholders in the CIRP process. This decision has created uncertainty among lenders and resolution applicants and has undermined the efficacy and finality of the CIRP process under the IBC. Considering all of this, the SC has issued an order of status quo pending the filing of a review petition by JSW. Let's hope that the SC takes a hard relook at its earlier order to better serve the ends of justice.

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