LITIGATION

ELP IBC Update

Compliance over Commerciality: Lessons from the Supreme Court's BPSL Judgment

The Supreme Court's judgment dated 2 May 2025 in the case of *Kalyani Transco v. Bhushan Power & Steel Ltd. & Ors.* marks a critical inflection point in India's insolvency jurisprudence. It not only sets aside the resolution plan approved for *Bhushan Power & Steel Ltd. (*BPSL) one of India's largest insolvency cases, but also redefines the standards of procedural integrity, regulatory compliance, and judicial oversight under the Insolvency and Bankruptcy Code, 2016 (IBC).

BPSL, identified among the 12 accounts by the RBI's 13 June 2017 circular, was subjected to corporate insolvency resolution proceedings (CIRP) due to a debt exposure exceeding INR 47,000 crore. The CoC-approved resolution plan submitted by JSW Steel, with an upfront commitment of INR 19,350 crore and proposed equity infusion through a special purpose vehicle, was approved by the NCLT on 5 September 2019. However, post-approval implementation was marred by extended litigation, post-facto plan modifications, enforcement actions by the Enforcement Directorate (ED) under the **PMLA**, and prolonged inaction by the Resolution Applicant (RA).

The resolution, though partially implemented in financial terms, was eventually invalidated by the Apex Court owing to multiple substantive and procedural violations. These included:

- Non-disclosure of material facts raising concerns under Section 29A (eligibility of RA),
- Failure to pay Operational Creditors in accordance with Regulation 38 and Section 30(2)(b),
- Post-CoC approval modifications without re-submission or compliance verification,
- Unilateral extension of the "Effective Date" by the CoC after it had become functus officio, and
- Strategic delay in plan implementation despite the absence of a legal stay, raising allegations of bad faith.

Importantly, the Supreme Court addressed the jurisdictional overreach by NCLAT in entertaining an appeal by JSW Steel against its own approved plan, a move it declared impermissible under Section 61(3) of the IBC. It also emphatically held that NCLT/NCLAT lacked authority to adjudicate or interfere in matters

governed by the Prevention of Money Laundering Act (PMLA), thereby demarcating the limits of insolvency forums in cross-statute conflicts. The Court reiterated that judicial intervention cannot be a shield for post-facto validation of non-compliance, and that the doctrine of fait accompli cannot override statutory mandates or be used to regularise fraud or deliberate violations.

The judgment has far-reaching consequences. It reinforces the principle that resolution must be legally clean, procedurally robust, and commercially credible. It sets a cautionary precedent that even high-value resolutions involving partial fund infusion will be annulled if they violate statutory requirements or are tainted by suppression, delay, or manipulation. Furthermore, the Court's critical observations on the role of Resolution Professionals, CoC members (including public sector banks), and Adjudicating Authorities underline the need for higher institutional accountability within the IBC ecosystem.

At a broader level, the judgment raises fundamental questions about judicial delays, institutional coordination, and the unresolved interplay between insolvency law and economic offences regimes. It is a sort of warning to the authorities that if such systemic lapses persist, the fate of the IBC may mirror that of the defunct SICA regime it replaced.

The BPSL verdict is therefore not just about the fate of one resolution plan, it is a pivotal pronouncement that demands rethinking of operational protocols, regulatory standards, and institutional roles across India’s insolvency landscape.

The Supreme Court’s judgment has also triggered an urgent need to re-evaluate established practices under the IBC, particularly in the post-approval phase of resolution plans. While the Code envisages a streamlined and commercially driven process, the BPSL decision has brought to the fore deep-rooted procedural lapses, conflicting interpretations of law, and a growing tension between judicial oversight and commercial finality.

This case has profound implications, not only for Resolution Professionals (RPs) and Committee of Creditors (CoC), but also for Resolution Applicants, Operational Creditors, and Adjudicating Authorities. The Court’s decision to set aside an approved resolution plan, despite financial infusion, CoC support, and partial implementation, emphasises that compliance with the letter and spirit of the Code is non-negotiable. Simultaneously, the judgment serves as a cautionary tale about judicial delays, regulatory uncertainty, and the unresolved interplay between IBC and other statutory frameworks like the Prevention of Money Laundering Act (PMLA).

Against this backdrop, the following segment distils key takeaways for different stakeholder groups, with a view to identifying actionable lessons, regulatory gaps, and institutional responsibilities that must be addressed to preserve the credibility and commercial efficacy of India’s insolvency regime.

Key Takeaways from the BPSL Judgment for Stakeholders

For Resolution Professionals (RPs)

Key Lessons	Implications
Mandatory Statutory Compliance Certification	RPs must affirmatively certify that the resolution plan complies with Section 30(2), Regulation 38, and other statutory provisions.
Section 29A Eligibility Must Be Verified	RPs cannot rely merely on affidavits. They must conduct independent due diligence on related party transactions, JV agreements, or past linkages, especially where there are fraud or ineligibility risks.
No Post-Approval Modifications Without Re-Scrutiny	Any addenda or changes post CoC approval must be resubmitted for compliance checks and voting. Procedural lapses here will vitiate the plan.
Failure to Act on Avoidance Transactions	The RP in BPSL did not file any avoidance applications under Sections 43–51, even in a complex case with ongoing ED and CBI investigations—this was noted as a dereliction of statutory duty.

Independent Role Must Be Maintained	The RP is expected to function as an independent officer of the court. Courts are now scrutinizing even inadvertent lapses—neutrality and diligence are non-negotiable.

For Committee of Creditors (CoC)

Key Lessons	Implications
Commercial Wisdom Not Absolute	Supreme Court reaffirmed that CoC's decisions must comply with the IBC. Any deviation, especially in treating Operational Creditors unfairly, cannot be justified on grounds of commercial wisdom.
Post-Approval Role Ends with NCLT Order	CoC becomes functus officio after plan approval. It cannot extend effective dates, modify plans, or renegotiate terms.
Due Diligence on Implementation Capacity	In BPSL, the CoC accepted CCDs in place of equity without scrutinizing implications. Future plans must be tested on feasibility, fund flow integrity, and time-bound implementation.
Cannot Validate Non-Compliant Plans	Courts will invalidate CoC-approved plans if found to be materially non-compliant. Consensus cannot override statutory violations.
Risk of Refund and Reversal	In BPSL, funds paid by JSW are liable for refund, impacting lenders' balance sheets. CoC should ensure undertakings are binding and enforceable.

For Resolution Applicants (RAs)

Key Lessons	Implications
No Leeway After Plan Approval	Once a resolution plan is approved by CoC and NCLT, the RA must implement it as-is. Any deviation, including delay in payment, could lead to annulment.
Appeal Against Own Plan is Not Maintainable	Filing an appeal under Section 61 against a plan already accepted and approved by the RA is legally impermissible, as held in the BPSL case.
Transparent Disclosures are Critical	Suppression of facts (e.g., past JV with CD) invites serious judicial criticism and risk of plan rejection. All disclosures under Section 29A must be full and true.
Deliberate Delays Will Be Penalised	Courts held that strategic delay in implementation for commercial benefit (like steel price rise) constitutes abuse of the process.
CCD vs Equity Infusion Matters	Any substitution of equity with quasi-debt instruments (e.g., CCDs) must be clearly disclosed and justified. In BPSL, this was a major ground for rejection.

For Adjudicating Authorities (NCLT/NCLAT)

Key Lessons	Implications
Limited Jurisdiction vis-à-vis PMLA	The NCLT/NCLAT cannot adjudicate ED's provisional attachment orders or interpret PMLA. Their role is confined to IBC.
No Power to Entertain Non-Maintainable Appeals	The NCLAT's intervention in JSW's appeal against its own plan was held ultra vires and coram non judice.
Strict Adherence to IBC Timelines Required	Courts warned against casual extension beyond 330 days or post-approval implementation delays. Judicial delay was held to be one reason for systemic failure.

Cannot Create New Reliefs Not Provided in Code	For instance, replacing statutory dues with general claims or ignoring OC priority violated statutory mandate under Regulation 38 (pre-2019).

For Regulators (IBBI, RBI, MCA)

Key Lessons	Implications
Need for Clarity on Post-Approval Process	Ambiguity around monitoring committees, effective dates, and operational mechanisms must be resolved through binding regulations.
Review of Clean Slate Doctrine	Supreme Court's caution on Section 32A underscores the need to harmonize IBC and PMLA to avoid jurisdictional conflict and bidder deterrence.

For Operational Creditors (OCs)

Key Lessons	Implications
Right to Fair Treatment is Enforceable	The Supreme Court affirmed that Operational Creditors must be paid in priority before FCs, as per pre-2019 Reg. 38 and Section 30(2).
Delay Beyond Plan Terms is Not Acceptable	In BPSL, 900-day delay in OC payment was censured. OCs must insist on payment timelines and file objections if delayed.
Can Challenge Plan Under Section 61	If a resolution plan does not adhere to statutory payment priorities, OCs are aggrieved persons with the right to challenge.

The judgment underscores that even commercially significant resolutions will not be allowed to stand if marred by suppression, delay, or statutory violations. For all stakeholders, the verdict is a moment of reckoning, demanding institutional introspection, regulatory clarity, and unwavering commitment to the integrity of the insolvency process.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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