IBC Jurisprudence Reaffirmed: Supreme Court Saves JSW Resolution Plan

By its landmark judgment dated September 26, 2025, the Supreme Court has restored the resolution plan of JSW Steel Limited for the corporate insolvency resolution process **(CIRP)** of Bhushan Power and Steel Limited **(BPSL)**. This reversal has saved the insolvency framework from multiple cascading complications. The plan value involved was INR 19,350 crores paid to financial creditors, along with over INR 500 crores to operational creditors and statutory creditors. In addition, JSW infused INR 8,550 crores in equity, comprising INR 100 crores as equity shares and INR 8,450 crores via compulsorily convertible debentures **(CCDs)** and additional substantial costs were also incurred in keeping BPSL as a going concern during the prolonged litigation.

Had the May 2025 judgment (which ordered liquidation) been allowed to stand, it would have triggered enormous complications on account of (a) Refund and restitution issues as the financial and operational creditors had already received large sums under the plan. Clawing these back or redistributing them in liquidation would have been legally and practically fraught.

Further, JSW, having infused equity, capital, and management resources, would have been forced to litigate for recovery under uncertain doctrines of restitution or unjust enrichment. Instead of being a revived and profit-making unit, BPSL would have been dragged into liquidation, wiping out the revival achieved and eroding the value of investments, modernization, and expansion undertaken post-plan.

Judicial quagmire: Even the courts would have been saddled with the task of resolving innumerable disputes over refunds, creditor distributions, treatment of infused capital, and operational liabilities, a role never contemplated under the IBC.

Above all, allowing the earlier ruling to operate would not only have undermined eight years of carefully built jurisprudence under the Insolvency and Bankruptcy Code, 2016, spanning Swiss Ribbons (upholding the Code's constitutional validity), Essar Steel (finality of CoC's commercial wisdom), ArcelorMittal (strict application of Section 29A), and Ebix (binding nature of resolution plans) but also risked throwing the system into reverse gear.

Background of the Case and Impact of the May Judgment:

The litigation surrounding the resolution of Bhushan Power & Steel Limited **(BPSL)** has travelled through multiple tiers of adjudication, ultimately reaching the Supreme Court on more than one occasion. The controversy stemmed from the approval of the resolution plan submitted by JSW Steel **(SRA)**, which was approved by the Committee of Creditors **(CoC)** and approved by the NCLT and NCLAT. However, in May 2025, the Supreme Court, while dealing with challenges raised by the erstwhile promoters and certain operational creditors, set aside the approved resolution plan and ordered liquidation of BPSL, holding that the plan violated certain mandatory provisions of the IBC and CIRP Regulations.

In this context, the judgment of 26 September 2025 of the Hon'ble Supreme Court assumes great importance. The Court not only reversed its earlier view but also reaffirmed the foundational doctrines of the IBC, finality of resolution plans, sanctity of commercial wisdom, and limited judicial review.

The Issues Dealt with By the Court and legal position settled:

- **Locus Standi of the Erstwhile Promoters**

The Supreme Court first noted that both the Successful Resolution Applicant **(SRA),** JSW Steel and the Committee of Creditors (CoC) had heavily challenged the locus standi of the erstwhile promoters of BPSL to maintain the appeals. Reliance was placed on **Section 62 of the IBC**, which allows "any person aggrieved" to file an appeal before the Supreme

Court. The Court observed that while the term *"person aggrieved"* is not defined in the Code, its interpretation must be guided by the objectives of the IBC, as reflected in its Preamble and Section 12, which stress the need for expeditious, time-bound resolution and promotion of entrepreneurship.

In this context, the Court referred to ***Arun Kumar Jagatramka v. Jindal Steel and Power Ltd***[i]., where it was emphasised that the IBC brought in a "quantum change in corporate governance and the rule of law," and that the Code must ensure that *"the interests of corporate enterprises are not conflated with the interests of their promoters."* The Court underlined that the integrity of the resolution process must be preserved, and that the problems of the earlier regime must not "enter through the backdoor through disingenuous stratagems."

At the same time, the appellants relied on ***Vijay Kumar Jain v. Standard Chartered Bank***[ii], where it was held that members of the erstwhile Board of Directors, being vitally interested in the outcome of a resolution plan, are entitled to receive copies of such plans and may be treated as "persons aggrieved" for the purpose of filing appeals under Section 61 of the IBC. The Court acknowledged that resolution plans can also affect the rights of guarantors, thereby widening the scope of who may be considered "persons aggrieved."

In light of Vijay Kumar Jain, the Court concluded that it would not non-suit the appellants on the ground of locus. Instead, it proceeded to decide the appeals on merits after considering the submissions of all parties. However, it expressly noted that the **conduct of the erstwhile promoters during the CIRP** would be relevant when evaluating the merits of their challenge.

- **Conduct of the Erstwhile Promoters**

The Supreme Court noted the submissions of the SRA, JSW that Mr. Sanjay Singal, an erstwhile promoter of BPSL, attended only one CoC meeting in person and two through his authorised representatives, while Mrs. Aarti Singal did not attend a single meeting of the CoC. Referring to the observations of the NCLT in its order dated 5 September 2019, the Court highlighted that the attendance record of the erstwhile management demonstrated a lacklustre participation.

The NCLT had specifically observed that the ex-management and promoters were "moving places to delay the conclusion of proceedings," and that even after the matter had been reserved for orders, they filed numerous applications which interrupted the pronouncement. It recorded that these actions showed "***how desperate and frustrated the Ex-Management/Promoters are and how they are making efforts to cause delay***." The NCLT therefore dismissed their application for copies of the resolution plan as frivolous and imposed costs of INR 1 lakh personally on Mr. Sanjay Singal and Mrs. Aarti Singal.

The Supreme Court, agreeing with this view, noted that after the NCLT had heard the matter in detail, the filing of repeated applications by the erstwhile promoters before various fora had indeed delayed the approval order. It accepted the NCLT's finding that the appellants were attempting to thwart the CIRP and prevent it from being taken to a logical conclusion. Accordingly, the Court concluded that the conduct of the erstwhile promoters clearly reflected an intent to obstruct and frustrate the resolution process, and this background would have to be kept in mind while considering their submissions on merits.

- **Existence of the CoC after approval of the Resolution Plan**

To address this, the Court went through the scheme of the IBC, and thereafter turning to the IBBI (CIRP) Regulations, the Court noted Regulation 2(d) (definition of "committee") and, crucially, Regulation 18—as clarified by the Explanation inserted on 16.09.2022, that meetings "*may be convened… till the resolution plan is approved under Section 31(1) or order for liquidation is passed under Section 33*," with the rider that such meetings "*shall not decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority*." The Court also recorded that Regulation 38 was first amended on 15.02.2024 (introducing sub-regs (4)–(5)) permitting the CoC to "*consider the requirement of a monitoring committee*," and then substituted on 03.02.2025 to mandate that "***the committee shall consider setting up a monitoring committee for monitoring and supervising the implementation of the resolution plan***," whose composition may include the RP/another IP, representatives of the CoC and representatives of the resolution applicant(s).

Against this statutory and regulatory backdrop, the Court held that accepting the appellants' functus officio argument would lead to an anomalous situation. As a matter of experience under the IBC, "*after the resolution plan is accepted under Section 31… the same does not achieve finality unless the appeals under Section 61… and by this Court under Section 62 are decided*," and in some cases the plan may fail and "the matter may lead to liquidation proceedings." If the CoC were deemed to cease upon approval, creditors could be left "high and dry" where implementation stalls "for 'a' reason or 'b' reason," producing "a state of limbo", "such cannot be the intention of the legislature," whose dual purpose is to keep the corporate debtor as a going concern and realise dues in accordance with the approved plan.

The Court therefore read the Explanation to Regulation 18(2) as clarifying the position: the CoC is empowered to hold meetings till either (i) approval under Section 31(1), or (ii) an order of liquidation under Section 33, and to decide all matters that affect the resolution plan submitted to the Adjudicating Authority. It underlined that the CoC has a "vital interest in the resolution plan" which continues till actual implementation, because only after implementation can payments be made to creditors "in accordance with the resolution plan."

Applying this to the case at hand, the Court noted that although the plan was stated to have been implemented on 26.03.2021, senior counsel for the CoC had undertaken that, if the appeals succeed, creditors would refund the amount; thus, till these appeals were decided under Section 62, the CoC had a vital interest in the proceedings and could not be treated as functus officio. Conclusion: "in view of the Explanation to clause 2 of Regulation 18 of the IBBI (CIRP) Regulations, the CoC continues to exist till the resolution plan is implemented or an order of liquidation is passed under Section 33 of the IBC," and given the "cloud of uncertainty" that persists until this Court accords finality under Section 62, the appellants' contention is rejected.

- **Grounds of Appeal**

The Court recorded that "except the finding on distribution of EBITDA the present appeals arise out of the concurrent findings by the NCLT and the NCLAT." The resolution plan of the SRA–JSW, "submitted after following the entire procedure prescribed under the IBC and IBBI (CIRP) Regulations," was approved by the CoC and then by the Adjudicating Authority on 5.9.2019, and while dismissing other appeals the NCLAT only clarified/modified certain conditions, particularly setting aside para 128(j) (EBITDA distribution) and directing the Monitoring Committee to examine the RfRP issued under Section 25 IBC, relying on this Court's reversal of NCLAT Essar in Essar Steel ("Supreme Court Essar").

Emphasising the appellate structure, the Court reiterated that an appeal to this Court under Section 62 IBC lies "only on a question of law." Further, Section 61 IBC confines appeals to five grounds: (i) contravention of law, (ii) material irregularity by the RP during CIRP, (iii) improper provision for OCs, (iv) non-prioritisation of CIRP costs, or (v) non-compliance with criteria specified by the Board. The Court found that "the appeal before the NCLAT in this matter does not fit in any of the aforesaid criteria," and therefore, "on a conjoint reading of Sections 61 and 62," no question of law within Section 61's five grounds arose before this Court.

Reinforcing restraint against re-appreciation of concurrent findings, the Court cited ***Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd***[iii]**.**, noting that where specialist fora have taken a concurrent view, interference is unwarranted "unless it is found that such a view was in ignorance of the mandatory statutory provisions or was based on extraneous consideration or was ex facie arbitrary or illegal."

- **Legality of the clause permitting CoC to extend the implementation period**

On the challenge to the clause allowing the CoC (by 66% vote) to extend the Effective Date/implementation timeline, reliance was placed on ***Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. and CoC of AMTEK Auto Ltd. v. Dinkar T. Venkatasubramanian, (2021) 4 SCC 457***. The Court recognised the principle that, once a plan is submitted and accepted, "there cannot be any alterations, amendments or modifications in the Resolution Plan" (Ebix/Amtek), but held "such is not the case here."

Quoting Clause 3 ("Resolution Plan – Stage of Implementation"), the Court noted it requires implementation within 30 days of NCLT approval "or such extended period which may be permitted by 66% majority of the lenders forming part of the erstwhile CoC." This does not provide for withdrawal, modification, or renegotiation by the SRA; it merely "reserves certain discretion in the CoC to extend the period for implementation," which is consistent with practical

exigencies. By contrast, Amtek Auto involved a renegotiation attempt (post-approval, Covid-19 context), impermissible under the Code, "such is not the case here." The submission was therefore rejected.

- **Delay in implementation of the Resolution Plan**

On the allegation of inordinate delay (approval on 5.9.2019, implementation on 26.3.2021), the Court traced the impediments/ delays due to a CBI FIR (April 2019), ED's ECIR and Provisional Attachment Order (October 2019), and parallel PMLA proceedings. Though NCLT approved the plan, protections were initially denied; NCLAT (Feb 2020) upheld it with Section 32A IBC immunity, but multiple appeals followed. The CoC and JSW jointly stressed that ED actions threatened implementation, while the CoC later (Feb 2021) extended the timeline. On 26.3.2021, JSW implemented the plan by paying INR 19,350 crore to financial creditors. Final clarity came on 11.12.2024 when the Supreme Court directed release of unencumbered assets.

On these facts, the Court held the delay was "neither attributable to the CoC nor to the SRA–JSW," but flowed from stays, PMLA proceedings/attachments, and the EBITDA direction that effectively modified the plan until clarified. The case of Consortium of ***Murari Lal Jalan & Florian Fritsch***[iv] was distinguished, as there the plan languished for about 5 years, repeated non-compliance with Court directions occurred, and delay was attributable to the SRA; "such is not the case here." Here, CoC and SRA–JSW made "consistent efforts" and acted jointly to secure implementation, which in fact occurred on 26.3.2021. Hence, the contention of deliberate delay was found without substance.

- **Upfront infusion of funds by the SRA–JSW**

The appellants (erstwhile promoters) contended that JSW did not honour its "upfront infusion" commitment, against an alleged INR 8,550 crore equity obligation (Schedule 3 of the plan), only INR 100 crore was infused; the "upfront" head had boosted JSW's score over the next highest bidder, hence, the plan stood unimplemented. Per contra, JSW submitted that the balance was infused via Compulsorily Convertible Debentures (CCDs), which "are to be treated the same as equity instruments," thereby complying with the plan; further, issues of scoring/marks lie within the exclusive domain of the CoC and its commercial wisdom.

The Court held the issue "no more res integra." In ***Narendra Kumar Maheshwari v. Union of India***[v]**,** it was observed that "a compulsorily convertible debenture does not postulate any repayment of the principal. Wherever the concept of compulsorily convertible debentures is involved, the guidelines treat these as 'equity', any instrument which is compulsorily convertible into shares, is regarded as 'equity' and not as a loan or debt." The Court recently reaffirmed this in ***IFCI Ltd***[vi]., holding that treating CCDs as debt would breach the concessional/common loan agreements and that CCDs "were compulsorily convertible into equity," not partaking the character of financial debt on any contingency.

Applying the above, the Court found that the CCDs infused by JSW must be treated as equity instruments. It noted the CoC's stand that the reconstituted BPSL Board (26.03.2021), with the Steering Committee (three largest FCs) present, approved issuance of CCDs of INR 8,450 crore to Piombino Steel Ltd. (a JSW group company), with mandatory conversion after five years and an option to convert earlier, thus satisfying the "upfront infusion" obligation as per the resolution plan. Recalling the catena of judgments (including *K. Shashidhar*) that courts will not interfere with the CoC's commercial wisdom, the Court held there is no merit in the appellants' challenge; the ground is rejected.

- **Distribution of EBITDA**

After review was allowed on 31.07.2025, the CoC (affidavit dated 07.08.2025) newly asserted entitlement to EBITDA "under the plan". The Court traced the path that the NCLT's 05.09.2019 direction awarding EBITDA to creditors relied on NCLAT Essar, which was reversed by this Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* ("Supreme Court Essar") holding that a successful resolution applicant cannot be faced with "undecided" claims, "***hydra heads popping up***", after plan approval under Section 31 IBC, and that distribution of profits during CIRP must follow the process/RfRP terms (there, the RFP addendum barred use of profits to pay creditor debts). Relying on Supreme Court Essar, the NCLAT on 17.02.2020 set aside para 128(j) of NCLT and directed the Monitoring Committee/RP to "go through the RfRP" and make distribution accordingly. The Court noted that this NCLAT judgment was not assailed by the CoC. The RfRP was silent on EBITDA distribution, and the plan contemplated a "going concern"

takeover (profits/losses of CIRP remain with the company). On 04.07.2020, lenders (erstwhile CoC) resolved that EBITDA may remain with the company, consistent with Supreme Court Essar and the impugned NCLAT judgment.

Given this categorical stand, the Court held it was impermissible for the CoC to "***make a volte face***" at this stage (in appeal/review) and assert a contrary claim to EBITDA. The Court further invoked ***Ghanshyam Mishra and Sons Pvt. Ltd.***, reaffirming that once a plan is approved under Section 31(1) IBC, all claims not forming part of the plan stand extinguished and the plan binds all stakeholders (Central/State Governments included)—a principle repeatedly followed (e.g., *K.N. Rajakumar*, *Ruchi Soya*, *Greater Noida Industrial Development Authority*, *Vaibhav Goel*, *Electrosteel Steel*). Accepting the CoC's new stance would "unsettle the position" that approved plans freeze claims.

The Court thus concluded that unless there is a specific provision in the RfRP regarding EBITDA distribution, permitting a fresh claim now would be "totally inconsistent with the avowed object" of the IBC. Issues whether BPSL ran losses are not entered upon, given the limited scope against non-concurrent findings and the primacy of commercial wisdom. Finally, the Section 95 IBC guarantor proceedings (pending since 2021) do not justify reopening EBITDA via a late affidavit; CIRP and Section 95 proceedings are independent, the issue was never raised earlier in this Court and introducing it now would be "totally unjust."

- **Contingent claim of Jaldhi**

The Court noted that Jaldhi's stance was "varying and inconsistent." Before the NCLT (order dated 05.09.2019), Jaldhi at one stage treated itself as a "contingent creditor" (arguing such liability could not be resolved under a resolution plan and the SRA must assume future risk), and later claimed parity as an OC entitled to the plan's OC treatment. The Court first examined the status of foreign awards under Section 49, Arbitration and Conciliation Act, 1996, emphasizing that a foreign award becomes "deemed decree" only upon a court being satisfied of enforceability under Part II, Chapter I; hence, foreign awards are not automatically enforceable. On facts, Jaldhi had withdrawn its enforcement proceedings before the Calcutta High Court, denying the SRA an opportunity to contest; therefore, it could not contend that its claims were crystallized OC dues under the plan.

The Court further observed that while the IBC differentiates only between OCs and FCs, the classification of Jaldhi as "contingent creditor" by the SRA–JSW was approved by the CoC as part of the plan approval process. Such a decision falls within the "commercial wisdom" of the CoC, which is non-justiciable, per *K. Sashidhar*. The Court reiterated that neither NCLT nor NCLAT nor this Court may substitute the CoC's commercial assessment, save on the circumscribed statutory grounds. Held: No question of law arose, Jaldhi's appeal was liable to be dismissed.

- **Pre-CIRP dues of Medi and Darcl**

Medi and Darcl argued that the RP promised payment of pre-CIRP dues as an incentive to keep the CD running as a going concern during CIRP, they pleaded that pre-CIRP payments were made for 10 months, before a corrigendum termed those payments a "mistake" by an accounting clerk and adjusted them against CIRP-period services, clarifying that pre-CIRP dues would be treated under the Resolution Plan. The RP maintained that no pre-CIRP payment was authorised, any such payment being a clerical error, promptly rectified by adjustment; CIRP-period services were duly paid, and pre-CIRP dues must be dealt with as per the plan.

On scrutiny, the Court found no agreement with the RP post-commencement of CIRP and no CoC approval for pre-CIRP payments; nor did such payments feature in the plan. Reiterating settled law, the Court held that any payments towards pre-CIRP dues must strictly follow the Resolution Plan and CoC's express approval. With concurrent findings by NCLT and NCLAT against the appellants and no new question of law, the appeals were dismissed.

Conclusion:

While concluding the judgement, the Court cautioned against the "disastrous results" that would ensue if the promoters' appeals or the CoC's belated EBITDA claim were accepted. The RfRP did not provide for EBITDA treatment; after delays from multiple causes, the plan was implemented, and a loss-making corporate debtor was turned into a profit-making enterprise through substantial investment by SRA–JSW, safeguarding employment and fulfilling the IBC's

objective of preserving the CD as a going concern. Allowing post-approval claims would open a **"Pandora's Box**" and vitiate the plan's finality.

Reaffirming *Essar Steel* (Supreme Court), the Court held that permitting "***hydra heads popping up***" after plan approval would contradict Section 31 IBC. Absent any RfRP clause governing EBITDA, the erstwhile promoters' or CoC's late-stage arguments were rejected as inimical to the IBC's design. Finally, the Court observed that all appeals lack merit and thus dismissed. The NCLAT judgment dated 17.02.2020 is upheld, pending applications stand disposed of.

In the end, the judgment delivered on 26 September 2025 has brought much-needed closure to a long and complex battle, brining much needed certainty not only for the creditors and the resolution applicant but also for the larger insolvency framework. The decision has protected thousands of crores already infused, safeguarded the revival of a major industrial undertaking, and avoided a flood of fresh disputes that could have destabilised the system. It stands as a reaffirmation that the Insolvency and Bankruptcy Code must be worked in a practical and time-bound manner, with consistency and clarity at its core.

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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[i] (2021) 7 SCC 474
[ii] (2019) 20 SCC 455
[iii] (2023) 14 SCC 731
[iv] 2024 SCC OnLine SC 3187
[v] 1990 Supp SCC 440
[vi] 2023 SCC OnLine SC 1529