
COMMERCIAL WISDOM V. JUDICIAL REVIEW: REDEFINING BOUNDARIES UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Gopika S Syam, Symbiosis Law School, Hyderabad

1. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) ¹was a catalyst in the historical journey of the corporate legal sector because it became a complete system of settling the insolvency of companies in a systematic and time-managed fashion. The doctrine of commercial wisdom is one of the most significant elements of this framework, which gives the Committee of Creditors (CoC) (mainly consisting of financial creditors) the power to make significant decisions regarding the revival or liquidation of the corporate debtor. These decisions are essential not only because they affect the further existence of the business but also because they condition the chances of recovery of different stakeholders. The concept makes financial decisions to be made by the most financially exposed and experienced, and the decision-making process is economically motivated, not derailed by many legal formalities. The CoC has been given specific authority to make any resolution plan during the corporate insolvency resolution process (CIRP). However, the decision taken by the committee might not be inclusive, which leads to a situation that is unfair to other stakeholders. The judiciary has the power to examine the decision of the CoC only to the extent that the decisions violate the provisions of law. On one side, the CoC is exercising the power of commercial wisdom conferred on it. On the other side, the judiciary can only deal with matters contradictory to the law. The rest of the creditors who are not part of CoC are the ones who are affected. Simultaneously, it identifies the strains that follow when such wisdom is exercised to create perceptions of inequity or other procedural anomalies, particularly to parties who are not members of the CoC, including operational creditors or dissenting financial creditors. The changing role of the judiciary is also explored in the paper, as it is becoming increasingly burdened with balancing the autonomy of creditors with the necessity to promote legality, procedural fairness, and protection of stakeholders. The current paper provides a complete picture of how commercial wisdom works in practice by examining statutory provisions, developments in regulation, and interpretative practices. The paper explores the challenges faced by the stakeholders and tries to find a possible solution for them by interpreting the statutory provisions and following the purposive interpretative approach so that the other stakeholders are treated fairly

¹ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016).

2. UNDERSTANDING THE DOCTRINE OF COMMERCIAL WISDOM IN COC

The Insolvency and Bankruptcy Code 2016 ²brought a time-bound, creditor-centred resolution process, which marked a shift in India's approach to the corporate insolvency system. The cornerstone for this system is the concept of commercial wisdom, wherein the creditors have the authority to decide on important issues which pertain to the distressed company. A creditor can be an individual or a financial entity to whom the company owes money. Creditors play a role in commercial wisdom as they form a committee of creditors (CoC). This decision-making body acts as a guide for the company going into insolvency. The CoCs' decision, together with the commercial wisdom, saves the company from undergoing insolvency.

There is a process through which the CoC gives its commercial knowledge to the company running into insolvency, named the Corporate Insolvency Resolution Process (CIRP). This process is initiated when a company's debtor defaults on the payment. In the present economic situation, which is marked by increased financial strain and the requirement to maintain viable firms, the CIRP is an essential instrument for reviving businesses and guaranteeing the best possible value for all parties involved.

In the context of the insolvency and bankruptcy code, the creditors can be classified into 2: financial creditors and operational creditors. The committee of creditors falls under the financial creditors. Once the circuit has started, the committee, which consists of the financial creditors, is constituted. The task is to assess the resolution plan given by the resolution applicants. Section 5(26) of the Insolvency and Bankruptcy Code, 2016 (IBC or Code) ³defines the resolution plan as an application submitted by a person to resolve the corporate debtor's insolvency, a growing concern. The principle of commercial wisdom comes into play when the CoC accepts or rejects the resolution application based on this principle, which grants them the discretion to assess the strategic viability, whether there are any potential recovery and the economic feasibility of the same. The decision-making authority is derived from section 30(4)

² *Id.* at .5.

³ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 5(26).

⁴of the IBC, which allows the COC to approve a plan by a specific voting threshold, and section 31 ⁵requires the adjudicating body to approve the plan after it satisfies legal requirements. CoC has to ensure that the stakeholders' interests are protected when any decisions are made. As per the principle of commercial wisdom, every decision taken by the committee and the formulation of the resolution plan must provide equitable treatment for all parties involved while considering the creditors' best interests.

As a result, the IBC resolution process is a business decision-making exercise meant to maintain enterprise value rather than just a legal formality. Using commercial wisdom ensures that the results are fair, economically viable, and consistent with the overarching goal of encouraging credit restraint and long-term company viability.

3. LITERATURE REVIEW

1. According to **Viswajith T. S.** in his work titled *“Critical Study of the Commercial Wisdom of Committee of Creditors under IBC”* has given a critical analysis of how the commercial wisdom of the Committee of Creditors (CoC) as interpreted by courts under the IBC and its limitation by courts has been limited by the courts particularly in the area of judicial review. He claims that the CoC is appointed to make crucial decision-making features on the resolution plan but still, judicial control is necessary in instances of irrationality, its illegality or violation of procedures. Among other problems that Viswajith points at are delays, recovery rates and the dangers of marginalizing other stakeholders hence suggesting a more inclusive decision-making. The research enriches the knowledge on boundaries in CoC discretion and judicial intervention.⁶

2. According to **Abhijeet Mishra & Dr. Ekta Gupta** In their research titled *“Evolving Landscape of Commercial Wisdom: Analysing Judicial Interpretations in IBC Cases”*

⁷Mishra and Gupta conduct a survey of major judicial precedents to trace the history of how

⁴ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 30(4).

⁵ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 31.

⁶ Viswajith T. S, “Critical Study of The Commercial Wisdom of Committee of Creditors Under IBC” 6 ShodhKosh: Journal of Visual and Performing Arts 2 (2025).

⁷ Abhijeet Mishra & Dr. Ekta Gupta, “Evolving Landscape of Commercial Wisdom: Analysing Judicial Interpretations in IBC Cases” 7 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 2 (2024).

the doctrine of commercial wisdom under IBC has been developed by the courts. They are described as to how the autonomy of the CoC is generally observed; however, the courts interfere in the cases of violation of the statutory norms, fairness or the fundamental principles of equity. The article provides recent cases (such as the case of M.K. Rajagopalan v. Dr. Periasamy Palani Gounder)⁸ that repay the fact that commercial wisdom is not absolute. They further indicate that a Code of Conduct will be introduced to CoC to make it transparent in decision-making that is consistent with the goals of IBC.

3. According to **Vidhi Sharma** in her research titled *“Commercial Wisdom vs Judicial Review: The Supreme Court’s BPSL Verdict and the Future of IBC”* discusses the decision of the Supreme Court in Kalyani Transco vs. Bhushan Power and Steel Ltd. (“BPSL”)⁹ wherein the Court struck out a resolution plan that was passed by CoC and NCLAT. She maintains that as much as commercial wisdom is central, its validity is conditional on adhering to the statutory procedure. The procedural breaches (such as eligibility under section 29A,¹⁰ delay, etc.) were the grounds of the judicial intervention in BPSL. According to Sharma, such a decision could be an indication that the judicial process might be moving toward greater oversight, particularly in cases when the system or the process itself is systematically or procedurally flawed, and is not serving the purpose of the IBC.

4. According to **Vishawjeet Singh** in his work titled *“Decoding the Commercial Wisdom of Committee of Creditors (CoC): An Analysis of Indian & Global Scenarios”*¹¹ Vishawjeet presents a comparative analysis, comparing Indian jurisprudence to that of the world on matters of creditor decision-making during insolvency regimes. The article highlights that the Indian courts (SC, NCLT, NCLAT) once again reiterate that CoC commercial wisdom prevails, but simultaneously establish that in instances of legal breach, or contravention of provisions such as that of Section 30 (2)¹² or 61(3)¹³ intervention is allowed. Singh insists on setting clear boundaries of CoC discretion and giving a lesson to those jurisdictions where judicial review also presupposes such notions like fairness, non-arbitrariness, and protection of stakeholders.

⁸ M.K. Rajagopalan v. Dr. Periasamy Palani Gounder, NCLAT Chennai judgment dated 17-03-2023

⁹ Kalyani Transco v. Bhushan Power and Steel Ltd & Ors, 2025 SCC OnLine SC 1010

¹⁰ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 29A.

¹¹ Vishawjeet Singh, Decoding the Commercial Wisdom of Committee of Creditors (CoC): An Analysis of Indian & Global Scenarios (2023) (Unpublished IBC Laws).

¹² The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 30(2).

¹³ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 61(3).

5. According to Rohan Srivastava & Priyanshu Mishra in their research titled “*Scope of Judicial Interference in the CIRP: Rethinking the Commercial Wisdom Doctrine*”¹⁴ explored the conflict between the commercial wisdom of CoC and judicial review of corporate insolvency resolution process (CIRP). They analyze that although CoC does analyse feasibility and commercial, the Adjudicating Authorities (NCLT/NCLAT) are only limited to legal scrutiny; that is, whether the plan complies with the procedural, fairness, and statutory provisions. Cases such as Ramkrishna Forgings are provided as examples when judicial intervention is warranted, in case of violation of statutory norms. They further propose that additional broader bases of review (not only of Section 30(2)¹⁵ and 61(3)¹⁶) might be required to shelter stakeholders.

4. EVOLVING NATURE OF JUDICIAL REVIEW IN UPHOLDING COMMERCIAL WISDOM

The National Company Law Tribunal (NCLT) serves as the adjudicating authority for matters involving the judicial interpretation of the insolvency and bankruptcy code. The idea of minimal judicial intrusion, which acts as a fundamental component of the code, guarantees that the adjudicating authorities do not question the commercial decisions made by financial creditors. The scope of judicial review under the IBC is deliberately restricted and is mainly limited to evaluating the compliance of a resolution plan with the condition given down under section 30(2)¹⁷ of the code. This includes making sure that the operational creditors are paid, managing the corporate debtors’ affairs adhering to implementation schedules, and handling other procedural issues. If the resolution plan is in consonance with the legal requirements, the adjudicating authority which is the NCLT is mandated under section 31(1)¹⁸ to approve it.

The evolution of judicial review in the context of commercial wisdom under the Insolvency and Bankruptcy Code, 2016 (IBC),¹⁹ highlights the shaping of the boundaries between

¹⁴ Rohan Srivastava & Priyanshu Mishra, “Scope of Judicial Interference in the CIRP: Rethinking the Commercial Wisdom Doctrine” (2023) (Unpublished IndiaCorpLaw)

¹⁵ *Supra* note 12, s. 30(2).

¹⁶ *Supra* note 13, s. 61(3).

¹⁷ *Supra* note 12, s. 30(2).

¹⁸ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 31(1).

¹⁹ *Supra* note 1 at 4.

judiciary's role and the decisions of the CoC. In the case of *Innoventive Industries Ltd. v. ICICI Bank (2017)*²⁰ the supreme court laid the groundwork by stating that the IBC will supercede all other laws and highlighted the importance of the code in ensuring transparency and fair treatment in resolving corporate insolvencies. A major turning point was reached in the landmark ruling of *K. Sashidhar v. Indian Overseas Bank (2019)*,²¹ where the supreme court emphasized that the decisions given by CoC in its commercial wisdom specially with respect to the approval or rejection of a resolution plan will be not open to judicial interference unless there has been a legal violation. In the same year another case of *Essar Steel India Ltd. v. Satish Kumar Gupta (2020)*²² the supreme court held that the NCLT cannot go beyond the power conferred in section 30(2) of IBC²³. This emphasis the supremacy that the CoC is holding with respect to its commercial wisdom making sure that the creditors are being treated equally. Furthermore, the Supreme Court reiterated in *Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. (2021)*²⁴ that unless the resolution plan violates the fundamental rules of the Code, judicial interference should not include assessing the plan's fairness or reasonableness. Therefore, the judiciary's function is procedural and supervisory rather than consultative or evaluative. To sum up, the IBC strikes a delicate balance between judicial supervision and creditor liberty. Judicial review preserves the effectiveness and purpose of the insolvency framework by upholding legality and procedural safeguards while also honoring the CoC's business judgment.

5. CHALLENGES FACED BY OTHER STAKEHOLDERS DUE TO THE COMMERCIAL WISDOM DOCTRINE UNDER THE IBC

There are various difficulties that the stakeholders face due to the doctrine of commercial wisdom. The insolvency and bankruptcy code allows the committee of creditors to exercise commercial wisdom, but the problem arises for those stakeholders who are not included in the committee. This includes the operational creditors and dissenting financial creditors. One of them is the absence of explicit restrictions on the authority of the CoC, and it tends to treat the

²⁰ *Innoventive Industries Ltd. v. ICICI Bank (2017)* 1 SCC 407.

²¹ *K. Sashidhar v. Indian Overseas Bank (2019)* 12 SCC 150

²² *Essar Steel India Ltd. v. Satish Kumar Gupta (2020)* 8 SCC 531

²³ *Supra* note 12, s. 30(2).

²⁴ *Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. (2021)* 10 SCC 401

creditors who are not included in the decision-making process unfairly in the case of Videocon Industries Ltd. A 64,000 crore default happened, and as a result, the Videocon industries, along with 12 other associated companies, went through the CIRP. The management, operation and finance aspects of these companies were linked. The SBI and other companies wanted a consolidation to optimise the asset value and facilitate a single resolution plan. Twin Star Technologies (Vedanta Group) proposed a strategy to address the value of liquidation. Both the resolution and consolidation got the approval from NCLT. Later, the case was set aside by NCLAT, mentioning that there was unfair treatment of the creditors and a violation of valuation secrecy.

Another challenge is with respect to the equitable treatment of the creditors. There are various practical difficulties in treating all creditors equally. In the case of *Swiss Ribbons Pvt Ltd*,²⁵ the court emphasised the importance of operational creditors. However, it also underlined that financial creditors may overshadow their interests because of their risk exposure. However, operational creditors remain at risk because they are not included in the CoC.

When there is a conflict between commercial wisdom and the provisions of law, the judiciary needs to intervene in those matters, as was stated in *Rajagopalan v. Dr Periasamy Palani Gounder*,²⁶ that there was a violation of Section 88²⁷ of the Indian Trusts Act and that the CoC's business judgment could not supersede statutory provisions. This illustrates how unbridled discretion can result in legally unsound decisions.

Moreover, the balance between speed and fairness is another challenge. Although the IBC requires resolution in 330 days, disagreements resulting from unhappy stakeholders frequently lead to delays, in the case of *Vallal RCK Vs. M/s Siva Industries and Holdings Ltd*²⁸, the IDBI Bank filed for bankruptcy under Section 7 of the IBC.²⁹ After rejecting a resolution plan, the Committee of Creditors (CoC) eventually agreed to a one-time payment that the promoters had put forward with a majority of more than 94%. Citing anomalies in the settlement, the NCLT and NCLAT denied the withdrawal under Section 12A³⁰. The Supreme Court, however, maintained the CoC's business judgment, holding that tribunals should not get involved unless

²⁵ *Swiss Ribbons Pvt Ltd v UOI* (2019) 4 SCC 17.

²⁶ *Supra* note 8 at 7.

²⁷ Indian Trusts Act, 1882 (Act 2 of 1882).

²⁸ *Vallal RCK Vs. M/s. Siva Industries and Holdings Ltd. and Ors.*, Civil Appeal Nos. 1811-1812 of 2022

²⁹ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 7.

³⁰ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 12A.

rulings are unlawful or arbitrary. Permitting the withdrawal strengthened the CoC's authority to make judgments about insolvency within the IBC framework.

In the case of *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. & Ors.*,³¹ the court mentioned the limitation faced by the judiciary during the insolvency proceedings. The company had objections from the homebuyers and dissenting creditors against the resolution plan. The creditors argued that there was no equitable treatment from the company. The court held that the judiciary had certain limitations when it comes to the commercial decision of the court, where it cannot adjudicate on the matter, be it the NCLT or NCLAT. As long as the resolution plan complies with the requirements of Section 30(2)³² of the IBC, judicial bodies have no power to interfere. This decision brings about conflict between the judicial restraint on one side and the protection of stakeholders' rights on the other. This ruling is important as the fairness in decision-making is not protected by the insolvency framework.

6. CONFLICT RESOLUTION: THE WAY FORWARD

The conflict associated with the commercial wisdom can be lessened by the interpretation of the provisions of the Insolvency and Bankruptcy Code, 2016. The interpretations that can be used here are the literal and purposive interpretations. By analysing section 30(2)(b),³³ which directs that the resolution plan has to provide for payment to operational creditors in a way that is not less than the one they would receive at the time of liquidation. From the literal interpretation side, it may require a minimal payout. However, if the interpretation is to be taken in a purposive manner, then a wider ambit must be considered. Here, the objective of the code is to aim for equitable treatment, and hence, there has to be fairness and proportionality when distributing to the creditors.

According to section 30(4)³⁴ of the code, the COC can decide based on commercial wisdom. However, this cannot be read in isolation. Section 61(3)³⁵ permits an appeal against the decision

³¹ *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. & Ors.*, AIR ONLINE 2021 SC 224

³² *Supra* note 12, s. 30(2).

³³ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 30(2)(b).

³⁴ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 30(4).

³⁵ *Supra* note 13, s. 61(3).

of the NCLT if there is any legal controversy surrounding the commercial wisdom aspect, which makes it clear that the COC does not get unlimited authority when there is a violation of substantive law.

Under section 12(3),³⁶ the time limit for the corporate insolvency resolution process is 330 days and is not mandatory, but it is directory in nature when the fairness aspect is at stake. By analysing the judicial precedents, it can be understood that the timeline cannot be prioritised over substantive justice. The NCLT and NCLAT, under section 30(2)(e),³⁷ have the power to reject those plans that are discriminatory or contradictory to law, in case any inequality is found. Hence, if there is any plan that is violative of the interest of the creditors, it can be considered as violative of this section, as the aim of the code is to protect the interest of the creditors and work for reasonableness and fairness.

The code has to be interpreted in a broader scope to get the benefits of the same to all the creditors, and there is a sense of inclusivity among the creditors. The scope of judicial review is narrowed down as the court can interfere only in matters vital to the substantive provisions of law. However, the judiciary, which acts as a protector of the rights of the citizens, must deal with the textual interpretation and look into the purposive interpretation aspect. This would ensure that the objective of the code is met, where there is justice provided to the operational and financial creditors, as well as upholding the authority given to the code. This balance can be maintained without disturbing the commercial wisdom by interpreting the existing provisions holistically, which focuses on legal compliance, transparency and proportionality.

7. GLOBAL PERSPECTIVE OF THE INSOLVENCY PROCESS

The formal procedure of insolvency in the UK, which is called as administration, is designed to save the company or yield greater returns to the creditors than the liquidation. In case of neither of these, the assets can be sold to pay secured creditors. The company is administered under the supervision of an appointed Administrator who has general authority to do anything necessary and just in the best interest of all the creditors. A creditors committee can be established; however, its task is confined to that of helping the Administrator. Nevertheless, as

³⁶ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 12(3).

³⁷ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 30(2)(e).

a deterrent to abuse of power, creditors may take suit against any action of the Administrator to the court in case they feel that there has been misbehaviour or their interests have been negatively impacted.

The Singaporean form of insolvency is called the judicial management and is administered by the court. It mainly tries to revive companies that are on the brink of bankruptcy like the CIRP in India. The insolvency professionals replace the directors with a judicial manager who is appointed to assume control of affairs, business, and property of the company. The judicial manager is serving the interest of all creditors. It is interesting to note that the manager is both a Resolution Professional and exercises the commercial judgment which is usually vested on a creditors committee, but under the supervision and participation of the court.

US has adopted the formal insolvency regime just like India which has adopted the Corporate Insolvency Resolution Process (CIRP) if a company is going through a financial distress. Chapter 11 of the U.S. formal insolvency regime permits corporate debtors to restructure even though they maintain control over the operations of the business under court supervision. The process is overseen by a U.S. Trustee, and where the management of the debtor has been found guilty of fraud or mismanagement, the management of a debtor can be substituted by a court-appointed trustee. Creditors are also actively involved particularly in the unsecured creditors committee which represents the interests of the creditors by pushing to have maximum returns. By contrast, the UK gives relatively few rights to creditors' committees to assist the Administrator. The Judicial Manager in Singapore is in charge of the management of the assets and decision-making. The U.S. model is creditor friendly yet creditor participation is guaranteed in the restructuring process.

By analysing India's stance, it is quite different from the rest of the countries, as India gives immense power to the COC, which becomes disadvantageous for the other stakeholders. There must be specific rules and guidelines to ensure transparency during insolvency. The guidelines must clarify that all the stakeholders are treated equally, leaving no scope for imperality. By analysing the insolvency process of other countries, India could adopt some of them, wherein, just like the UK, specific criteria can be created for the decisions made by the COC. Just as the US has adopted, there could be certain principles and norms the COC has to comply with, which is another option. There also has to be a proper justification given to the stakeholders for taking any decision during the insolvency process. These measures would ensure that the

stakeholders rights are protected as well as maintaining a balance between the commercial wisdom and the interference of judiciary in matters of insolvency.

8. LATEST JUDICIAL INTERPRETATION ON THE COMMERCIAL WISDOM OF CoC

1. In the case of *Piramal Capital and Housing Finance Ltd. (formerly DHFL) v. 63 Moons Technologies Ltd. & Ors (2025)*³⁸ the DHFL had to go through the CIRP according to the Insolvency and Bankruptcy Board of India. Before the initiation of the CIRP, the RBI had already superseded the Board of Directors of the DHFL, according to the RBI Act. A resolution plan was made, and approval was obtained from both the CoC and NCLT. The 63 Moons Technologies Ltd company, which was acting as a financial creditor, raised objections to specific aspects of the plan about the fraudulent transactions being done. They also challenged the exclusion of supersede directors from the CIRP process. The questions raised before the Court were: (1) Can courts intervene in the CoC approval resolution plan concerning the distribution of future recoveries from avoidance transactions? (2) During a crisis, is there a right for a company's directors to participate in the CoC meetings? In its ruling, the Court affirmed that the sanctity of commercial wisdom of the CoC will not be subject to challenge by the Adjudicating Authority (NCLT) once the CoC passes the resolution plan and meets the requirements of Section 30(2)³⁹ of the IBC. The Court ruled on the second issue that a supersession by the RBI is not temporary but a permanent suspension. Therefore, the directors who preceded the inception of CIRP similarly lack any right to attend the CoC meetings or proceedings of the CIRP. Once the RBI orders that they do so, the end of their work in management is complete. Hence, the objections raised by 63 Moons Technologies Ltd. were dismissed. The Court upheld the resolution plan and held that the judicial review may not go as far as commercial wisdom, and superseded directors cannot retain any control and participation rights in CIRP.

³⁸ Piramal Capital & Housing Finance Ltd. v. 63 Moons Technologies Ltd., 2025 SCC OnLine SC 690.

³⁹ *Supra* note 12, s. 30(2).

2. In the case of *Kalyani Transco vs Bhushan Power & Steel Ltd. & Ors (2025)*⁴⁰ One of the “Dirty Dozen” large defaulters listed on the RBI (2017) list is Bhushan Power and Steel Ltd (BPSL), which was put under expedited CIRP (Corporate Insolvency Resolution Process). Punjab National Bank the petition was admitted by NCLT on 26 July 2017; a Successful Resolution Applicant (SRA) was chosen by CoC, JSW Steel and its resolution plan were approved by the NCLT in September 2019. NCLAT in February 2020 affirmed subject to amendments. Some operational creditors and other such as Kalyani Transco argued that there were grave procedural defects - delay, lack of compliance with the eligibility (Section 29A),⁴¹ lack of compliance with the statutory timelines (particularly with Section 12 / the 330 -day outer limit), non-payment of upfront payments, misrepresentation, and so on. the issue was whether the plan of JSW complied the provisions of IBC. Whether the CoC could appropriately invoke its commercial wisdom in the face of such procedural failures, notwithstanding that the plan had been approved. Whether it was statutory silence that JSW (i.e. a successful resolution applicant) had failed to pay upfront or that it had taken time to implement the resolution plan. The resolution plan of JSW Steel approved by NCLT and NCLAT was set aside and Bhushan Power and Steel Ltd. was ordered to go into liquidation under the watch of the Court, which had found that the plan failed to comply with the mandatory requirements of IBC such as lack of compliance with such requirements by the eligibility under Section 29A⁴², failure by the resolution professional to issue a proper certificate, failure to make certain upfront payments, and that the plan incurred significant delays in making payments in fulfilling the obligations. Procedural compliances are not a choice. It indicates greater judicial review of resolution plans, particularly relating to eligibility, disclosures, upfront payments, delay issues. It also brings in issues of predictability and stability of the entire process of resolution, when a plan already in place may still be reversed.

⁴⁰ Kalyani Transco v. Bhushan Power and Steel Ltd & Ors, 2025 SCC OnLine SC 1010

⁴¹ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 29A.

⁴² *Id.* at .41.

9. CONCLUSION

The commercial wisdom doctrine is one of the main aspects in the Insolvency and Bankruptcy Code, 2016 (IBC).⁴³ It focuses on the move towards a creditor-oriented model, with financial creditors, via the Committee of Creditors (CoC), ascribed the majority of decision-making authority in the Corporate Insolvency Resolution Process (CIRP). The idea of commercial wisdom acknowledges that the people who have invested a significant amount of money in the troubled firm are in a better position to determine its solvency and chances of survival. Therefore, the judgment, especially whether to approve or disapprove resolution plans by the CoC, is regarded as business judgments and cannot be interfered with much by the judiciary, as long as they are in accordance with the statutory requirements.

Simultaneously, the article is characterized by a critical assessment of the constraints and shortcomings of such a method. Though the doctrine strengthens efficiency and market-oriented decision-making, it introduces lack of protection of stakeholders such as the operational creditors, dissenting financial creditors as they are not usually included in the CoC. Such a lack of balance may lead to unfair results, particularly, when commercial decisions are taken with very little supervision. The narrow mandate of the judiciary, which is aimed at ensuring that it does not interfere with the business decision-making process, does not always enable the judiciary to maintain fairness and inclusivity in the resolution process. Nevertheless, there are ways to solve such inadequacies without compromising the authority of the CoC through some interpretations of the law and purposive interpretations of the major provisions.

Finally, this paper proposes a moderate path that upholds the validity of the commercial wisdom doctrine and, at the same time, ascertains that the rights and obligations of all stakeholders are upheld. It suggests that the legal provisions should be considered in a manner that is not only based on literal interpretation but also the overall goals of the IBC, which includes a maximization of asset value, fair treatment of creditors, and maintenance of enterprise value. The insolvency system should now adapt to accept transparency, proportion, and responsibility, without jeopardizing the speed and decisiveness that commercial wisdom aims to accomplish. The IBC can be further strengthened as a tool of corporate rehabilitation and financial stability by making the system more inclusive and fairer.

⁴³ *Supra* note 1 at 4.