
BPSL'S LIQUIDATION: A PYRRHIC VICTORY FOR THE IBC

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Introduction

In *Kalyani Transco vs. Bhushan Power*¹ Supreme Court's intervention sparked a lot of discussion, especially about whether the sanctity of an approved resolution plan can be questioned. While the court's decision to send BPSL into liquidation might seem significant, a closer look raises several concerns, particularly around post approval resolution plans, the jurisdictional boundaries between the PMLA² and the IBC³. This makes it necessary to critically examine the impact of the decision on India's growing insolvency regime. This case raised several intricate legal questions regarding the rights of stakeholders, statutory immunity under section 32A⁴ Of IBC and the legitimacy of decisions of quasi-judicial bodies, such as NCLT, NCLAT.

Brief Facts

This case began in 2017, when Punjab National Bank initiated CIRP against BPSL, which was identified as one of the twelve large non-performing assets, termed the "Dirty Dozen," which were 12 major corporate defaulters who collectively owed Rs 3.4 lakh crore, which constituted approximately 25% of India's non-performing assets. By the RBI in 2017, through a circular. JSW Steel submitted a resolution plan, which was approved by the Committee of Creditors, and CIRP proceeded. JSW Steel became the successful Resolution Applicant. After approval by the NCLT on 05.09.2019, the ED issued a temporary attachment order against the assets of BPSL, alleging proceeds of crime under the PMLA and stating an ongoing investigation against the erstwhile promoters of BPSL. Following that, JSW challenged the ED's attachment order in the NCLAT, which stayed the order and modified and approved the NCLT's decision. An SLP was filed in the SC, where the Hon'ble Court reversed the NCLAT's order, setting aside

¹Kalyani Transco v. Bhushan Power & Steel Ltd., 2025 SCC OnLine SC 1010.

²Prevention of Money Laundering Act, No. 15 of 2003, Acts of Parliament, 2003.

³Insolvency and Bankruptcy Code, No. 31 of 2016, Acts of Parliament, 2016.

⁴Insolvency and Bankruptcy Code, No. 31 of 2016, Acts of Parliament, 2016, § 32A (2020).

JSW's resolution plan, pointing out violations of the IBC, including delayed implementation, and ordered the liquidation of BPSL. The judgment emphasizes that the IBC process must be used for resolving insolvency and not as a shield against legal actions. Statutory forums like the NCLAT must exercise judicial discipline and not overreach their jurisdictional boundaries.

I. THE TROUBLING TRAJECTORY OF JUDICIAL SCRUTINY OVER COMMERCIAL WISDOM

It is one of the fundamental principles of IBC, the “commercial wisdom” of a Committee of Creditors (CoC) in approving a resolution plan, which refers to who will make prudent and informed decisions based on their understanding of commercial principles and market realities⁵. Generally, courts do not ordinarily interfere with commercial decisions taken by the creditors, as affirmed in *S Ramuthai vs P Constructions*.⁶, where the Supreme Court observed that the Resolution Applicant cannot be allowed to face “hydra head popping up” after the approval of the Resolution plan, the applicant should not be worried about past actions. This principle ensures certainty and finality in the Corporate Insolvency Resolution Process (CIRP). If such decisions are frequently put under the cloud, it would discourage future potential resolution applicants, investors, and destabilize the process, which will defeat the very objective of the IBC of timely revival of Non-Performing Assets (NPAs). The IBC is designed to strike a balance between recovery and revival of NPAs. However, when there are glaring violations of the compliance process, as the court observed in this case, the CoC first approved the JSW's resolution plan without due diligence regarding regulatory compliance, and later accepted the amount without raising any objections. The Supreme Court in *SBI vs Consortium of Murari Lal*⁷, berated the successful resolution applicants for delaying plan implementation and emphasized that such delays defeat the purpose of timely resolution under the Code. Courts have made it clear that commercial wisdom is respected, but it does not shield procedural lapses, especially when it affects the legitimacy of the resolution process.

II. INCOHERENCE AND AMBIGUITY IN THE COURT'S APPROACH TO SECTION 32A

The significant aspect of this case revolves around section 32A, which was introduced through

⁵ *Swiss Ribbons (P) Ltd. & Anr. v. Union of India*, (2019) 4 SCC 17.

⁶ *S Ramuthai v. P dot G Constructions (P) Ltd.*, (2021) ibclaw.in 264 NCLAT.

⁷ *State Bank of India v. Constortium of Murari Lal Jalan & Florian Fritsch*, 2024 SCC Online SC 852.

an amendment, guaranteeing a shield to corporate debtors and their properties from prosecution for offenses committed before successful approval of the resolution plan by the adjudicating authority. This provision was enacted to encourage new investors or companies to invest in the companies and insulate them from antecedent liabilities or any criminal or regulatory compliances, giving the company a fresh start and ensuring the sanctity of the resolution process. However, the Enforcement Directorate (ED) had provisionally attached BPSL's assets under PMLA after the approval by the adjudicating authority. Following, NCLAT stayed the ED's order. The Supreme Court noted that there exists a vacuum related to ED's jurisdiction under section 8(8)⁸ and section 32A of the IBC. And held that PMLA is a public law and NCLAT cannot override its jurisdiction and set aside the order by the NCLAT and ordered for liquidation, but avoids the intricate question of whether the approved resolution plan, if implemented, would have indeed granted the protection under section 32A. This approach may be feasible in the narrower context, but it leaves the broader interpretative scope of section 32A in the face of post-approval challenges obscure. Thus, creating a lacuna in how section 32A should operate when a resolution applicant faces delays or non-compliances could have provided much-needed clarity for the evolving Insolvency jurisprudence. Moreover, the court's stance on NCLAT, that it cannot exercise powers of judicial review outside the scope of the IBC or matters within the realm of public law. A positive step towards preventing the insolvency tribunals from adjudicating on public matters. However, the court failed to acknowledge that matters under PMLA and IBC are inherently intertwined, necessitating a clear, practical framework.

III. LIQUIDATION AS A DISPROPORTIONATE AND REGRESSIVE REMEDY

The Court's decision to liquidate BPSL arguably portrays one of the most controversial, consequential outcomes of a judgment. In doing so, the court departed from the fundamental objective of the code, which is to revive viable businesses in a timely manner and order liquidation only when prescribed under Section 33⁹ of the code. First, when no resolution plan is received, Second, the CoC decides to liquidate by 66%, and last, when the adjudicating authority rejects the resolution plan. Insolvency is not a recovery mechanism but a tool for resolution, and liquidation is the last resort¹⁰. And in *Meghal house*¹¹ Supreme Court

⁸Insolvency and Bankruptcy Code, No. 31 of 2016, § 8(8).

⁹Insolvency and Bankruptcy Code, No. 31 of 2016, § 33.

¹⁰Binani Industries Ltd. v. Bank of Baroda, Company Appeal (AT) (Insolvency) No. 82 of 2018.

¹¹M/s Meghal Homes Pvt. Ltd. v. Shree Niwas Girmi K.K. Samiti & ors., (2007) 7 SCC 753.

emphasized that liquidation must be the last viable option. However, in the present case, court-ordered liquidation has wide and deep implications. It signals that the commercial transaction, regardless of how much time before it has been implemented or approved, can be reversed ex post if later found to have legal infirmities. Any prudent business would not be keen to invest in such a process, which is indefinitely exposed to reversal even after being concluded. Certainly, on discovery of such illegalities must necessitate swift, proportionate penalties to the wrongdoers, but such accountability shall not invalidate the transaction in whole. A judgement pronounced by the court under economic laws must balance between the Rule of Law commitment and economic consequences. A judgement that is legally impeachable and sound but oblivious to the broader economic repercussions is hollow. This order reflects a disproportionate remedy, punishing not merely the procedural violators but the whole BPSL's employees, stakeholders, etc, who were not involved in such lapses. It also reflects the stance of the court's preference for a punitive resolution rather than constructive correction; such a stance stands contrary to the aims of the code, and if liquidation becomes a default judicial response to procedural irregularities, then the confidence in the CIRP as a value-maximise process will start to diminish as would gradually erode the confidence, and India's distressed asset market which is already fragile will suffer a credibility crisis.

PROCEDURAL IRREGULARITY VS ILLEGALITY

The Insolvency and Bankruptcy Code was enacted with the objective of facilitating the time-bound resolution, encouraging investment in distressed assets, preserving a company's value, thereby keeping the liquidation as the last viable option due to its wide range of economic consequences. As reaffirmed by the Hon'ble Supreme Court in *Pradeep Kumar*¹², there exists a well-settled jurisprudential delineation between an irregular proceeding and an illegal proceeding. An irregularity, such as procedural lapse or technical deviation, can be cured and does not ordinarily vitiate the entire process, whereas an illegality strikes at the bottom of the proceeding and may render the whole process invalid. Mere non-compliance with the procedural requirement, unless it results in substantive injustice, cannot be the reason to invalidate the entire process. Section 392¹³ of the Singapore Companies Act empowers the court to address procedural lapses or defects without derailing from the resolution process, and this also empowers the Court to give direction or to pass an order to cure such irregularities.

¹² *Pradeep Kumar Nai v. State of U.P.*, 2025 AHC 87526 (All. HC).

¹³ Companies Act 1967 (Singapore), § 392.

Thereby, reaffirming the principle that resolution must not be sacrificed due to failure in procedural compliance. In *Chang Benety*¹⁴ the Court of Appeal observed that, in considering substantial injustice/ illegality, a holistic approach must be adopted, and the different interests of every related party weighed and balanced inter se. Similarly, section 1322¹⁵ of the Corporations Act of Australia allows the court to excuse procedural irregularities and declare that such lapses do not invalidate the process unless a substantial injustice would arise that cannot be remedied. A perusal of various legislations and judgments it demonstrates the court's intention not to invalidate the resolution process on mere procedural irregularity but for substantial injustice.

CRITICAL ANALYSIS

This Judgement has undoubtedly created a ripple effect in the IBC framework, marking a shift towards procedural rigor and accountability in the CIRP. It sets a precedent that echoes not only in India but globally. Fundamentally, the ruling reaffirms the supremacy of law and legal compliance over commercial suitability. Post approval resolution, if approved despite procedural lapse, can still be reversed, which has introduced an unsettling degree of uncertainty for investors and the Resolution Applicant. By ordering liquidation after approval and partially implemented, SC has opened the door to invalidate past successful resolutions, thereby weakening the finality of the CIRP. This could result in investors taking a more cautious and less risky stance when investing or bidding in distressed assets, which would significantly impact the efficacy and efficiency of the IBC framework. Furthermore, this could result in a hike in litigation, as any interested party might view the approved resolution as potentially reversible, diminishing the immunity granted under section 32A. From the policy point of view, this judgement demands urgent legislative introspection. The jurisdictional boundaries between IBC and PMLA require a definite stance, clear codification, especially in determining how the post-approved resolution should be handled for criminal investigations and asset attachment. The current scenario is ambiguous, which cannot be sustained. If PMLA authorities are allowed to intervene even after the adjudicating authority has approved the resolution, then it will defeat the very objective of section 32A, and the notion of a clean slate for resolution applicants remains a mere legal fiction.

¹⁴ *Chang Benety v. Tang Kin Fei*, (2011) SGCA 59 (Sing. C.A.)

¹⁵ Corporations Act 2001 (Cth) (Austl.), § 1322.

Additionally, the judgement emphasized the discipline and accountability of CoC members. It explicitly points out that procedural oversights, lapses, or blind acceptance of the resolution plan without proper scrutiny may invite judicial intervention. Thus, mandating the financial creditors to follow proper due diligence, conform to the statutory guidelines during the resolution process. The verdict sets a benchmark for future interactions between insolvency tribunals and public authorities, limiting the NCLAT's jurisdiction over public matters, but fails to provide clarity on how such matters ought to be resolved, thus leaving a lacuna that would hinder the process. In sum, the judgement may sound legally solid, but its consequences will impact the basic tenets of the IBC significantly; thus, if not addressed through legislative intent or clear policy guidelines, it may impede and destabilize the distressed asset market in India. For the IBC to function as a robust economic revival mechanism, a reasonable balance must be struck between enforcing procedural fairness and preserving commercial certainty. Failing it would result in erosion of trust in the IBC framework.

CONCLUSION

This judgement is indeed a landmark decision upholding the legislative intent and integrity of the IBC, ensuring all the procedures have been complied with. The court vehemently condemned JSW Steels' conduct, particularly regarding the foul play, delaying tactics, and sent a clear-cut message for the resolution applicant to honour their commitments promptly and diligently. And also, the emphasis on the role of the Resolution Professional to check the compliance under section 29¹⁶ of the IBC reaffirms that procedural integrity is not merely a technicality but a fundamental pillar of the code. However, the human element of this judgment lies in the understated yet deep frustration with the resolution process that extended over 4 years, only to leave the creditors *in the lurch*. The intervention by the court resulting in the liquidation of BPSL may be seen as a necessary evil to correct the past wrongs and send a deterrent signal. Yet, it undermines the very purpose of the resolution process, that is, revival, not destruction.

¹⁶ Insolvency and Bankruptcy Code, No. 31 of 2016, § 29.