
WHEN DEADLINES DECIDE FATE: HOW KALYANI TRANSCO V. BPSL REINVENTS THE IBC'S TIMELINE DISCIPLINE

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Introduction

The Supreme Court (SC) decision in the Kalyani Transco v. BPSL, 2025¹ judgement marks a watershed moment in the restructuring and liquidation jurisprudence of India. SC's strict adherence to procedure as established under the Insolvency and Bankruptcy Code (IBC), 2016 and Corporate Insolvency Regulation Process (CIRP) Regulations highlights its no tolerance policy for procedural lapses committed by the successful resolution applicant (SRA) i.e. JSW Steel. In October 2018 JSW Steel's plan was approved by the Committee of Creditors (CoC) out of the three resolution plans. The resolution was further sanctioned in September 2019 by the NCLT subject to certain terms and conditions pertaining to monitoring provisions, distribution of CIRP-period earnings before interest, taxes, depreciation, and amortisation (EBITDA) and equity and debenture payments by specified dates. The ostensible deviation from the standard procedure began when the ED attached BPSL's assets under Prevention of Money Laundering Act (PMLA) on October 10, 2019.

In this article we shall discuss the nuances of the regulatory framework of procedures established under IBC through the lens of the judgement: regarding the qualification of person aggrieved, repercussions of timeline violation, RP's failure to file Form H and verify SRA's affidavit, payment-priority breach and the jurisdictional breach of NCLAT.

Timeline of Core Developments

The Reserve Bank of India (RBI) identified BPSL as one of the 12 highly stressed companies in the country, commonly known as the "dirty dozen". This led to the first large-scale application of the IBC, 2016 in India. Consequently, in 2017, the Punjab National Bank filed

¹ Kalyani Transco v. M/S Bhushan Power & Steel Ltd., 2025 INSC 621.

an application under Section 7 of the IBC, 2016² which led to initiation of CIRP proceedings against BPSL. The IRP invited claims in July 2017 and was approved by the CoC as the RP in October 2017. Three resolution applicants namely JSW, Tata Steel and Liberty House submitted their resolution plans, out of which JSW's plan was approved by the CoC in October 2018. The NCLT (Chennai) approved the plan subject to certain conditions namely, EBITDA accrued during the CIRP proceedings is to be distributed in adherence to the principle laid down in *Standard Chartered Bank v. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors*³, equity and debenture payments to be made by the specified dates and monitoring provisions.

On October 10, 2019, the ED attached assets of BPSL under Section 5 of the PMLA, 2019. The said PAO was challenged by JSW in the NCLAT, which stayed both the attachment as well as the resolution plan. Moreover, it was challenged by the CoC in the Supreme court, which stayed the PAO as well. Multiple company appeals were filed against the NCLT approval of the resolution plan and the terms and conditions laid down therein.

The NCLAT upheld the judgement of the NCLT approving the Resolution plan, allowing JSW's appeal and dismissing the appeals of Kalyani Transco, Jaldhi Overseas, Medi Carrier, CJ. Darcl Logistics, State of Odisha and Ors., which led to an appeal before the SC by the aggrieved parties against the order passed by the NCLAT approving JSW's resolution plan.

The Supreme court ruling in this judgement highlights the importance of Section 12 compliance, lapses in procedural compliances by the SRA-JSW, RP's failure to file form-H and verify JSW's affidavit, jurisdictional breach of NCLAT to review ED's PMLA attachment of BPSL's assets.

Who qualifies as “any aggrieved person” under section 62 of the IBC, 2016?

The SC highlighted the recent judgement of *Glas Trust Company LLC Vs. Byju Raveendran and Other*⁴, reaffirming that there is no rigid locus requirement for a person aggrieved to file an appeal under Section 62 IBC, 2016⁵. Once the CIRP has initiated, the appeal is not merely restricted to the applicant creditor or the Corporate Debtor, but all collective stakeholders are allowed to file an appeal under section 62 of the IBC, 2016. Therefore, the SC dismissed the

² Insolvency and Bankruptcy Code, 2016, § 7, No. 31, Acts of Parliament, 2016 (India).

³ *Standard Chartered Bank v. Satish Kumar Gupta, , R.P. of Essar Steel Ltd. & Ors.*, (2020) 8 SCC 53.

⁴ *Glas Trust Company LLC Vs. Byju Raveendran and Other*, 2024 SCC OnLine SC 3032.

⁵ Insolvency and Bankruptcy Code, 2016, § 62, No. 31, Acts of Parliament, 2016 (India).

contentions of JSW Steel and the CoC regarding the qualification of the appellants under section 62 of the IBC, 2016 by allowing their appeal.

Non-compliance of Section 12 IBC

Even after the commencement of the resolution plan, JSW steel failed to implement the same in a timely manner. Moreover, it failed to file for an extension under Section 12 of the IBC⁶ before or after the 180 days deadline and had delayed payments to the financial creditors by 540 days as well as the operational creditors by 900 days.

On a plain reading of Section 12 of the IBC, 2016 it can be clearly established that the intent of the statutory provision is to ensure that the entire CIRP process is completed within a span of 180 days and on the discretion of the NCLT to be extended up to 270 days. The Supreme Court highlighted the underlying malafide intention of JSW steel by prolonging the implementation of the Resolution plan and underscored the importance of adhering to the provision, by ruling for liquidation of BPSL under Part III of IBC, 2016, due to a violation of various procedural lapse, non-compliance of Section 12 being the foremost.

RP's failure to file Form H and verify SRA's affidavit

One of the contributing factors which led to SC's rejection of JSW Steel's resolution plan was the RP's failure to file Form H under regulation 39(4) of the CIRP regulations, 2016⁷, and to verify SRA's eligibility affidavit under section 29A of the IBC, 2016⁸. The NCLT lacks the jurisdiction to approve any plan submitted by a resolution applicant without the compliance of Regulation 39(4), which requires the RP to submit a compliance certificate (Form H) so as to ascertain that the resolution applicant meets the disqualification criteria. The SC observed that the RP in the given case merely attached the plan clauses and failed to file form H as well as attest to the content of SRA's affidavit.

The procedural lapse committed by the RP is not merely minor but rather fatal, given it completely bypasses the statutory safeguard meant to prevent unqualified resolution applicants

⁶ Insolvency and Bankruptcy Code, 2016, § 12, No. 31, Acts of Parliament, 2016 (India).

⁷ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 39(4), Gazette of India, Extraordinary, Pt. III, § 4, No. 432 (Nov. 30, 2016) (India).

⁸ Insolvency and Bankruptcy Code, 2016, § 29A, No. 31, Acts of Parliament, 2016 (India).

to partake in the Resolution process defeating the intent of the provision. The SC's rejection of the resolution plan and order for liquidation bolsters the IBC strict-compliance doctrine.

Jurisdictional Breach

The Apex court reaffirmed that the NCLT and the NCLAT are governed under section 408⁹ and 410¹⁰ of the Companies Act and not under the IBC and the jurisdictional powers of the same are well circumscribed under Section 31¹¹ and Section 60¹² of the IBC for the NCLT and Section 61 of the IBC¹³ for the NCLAT. Both the authorities are not vested with the power of judicial review on public law.¹⁴ Consequently, the SC ruled that the NCLAT's orders ruling that the attachment of assets by the ED under PMLA was illegal, were passed without any authority of law and without jurisdiction and were coram non judice.

Payment-priority breach under CIRP Regulation 38 read with Section 30(2) IBC, 2016

Regulation 38 of the CIRP¹⁵ mandates the order in which payment is to be made to the creditors and section 30(2) of the IBC¹⁶ mandates that the insolvency resolution process costs be prioritized and discharged before other debts. JSW Steel's resolution plan breached both the provisions by prioritizing financial creditors over operational creditors and the CIRP cost. The SC observed that the CoC's act of flagging non-compliance at multiple meetings and still accepting JSW Steel's flawed resolution plan was "extremely dubious" without questioning the procedural lapse in the plan. Moreover, The Apex court emphasized that CoC's "commercial wisdom" cannot override the requisite compliances mandated in the IBC, 2016.

The Future of IBC compliance

The SC by striking down the resolution plan and ordering for liquidation of the Corporate Debtor highlights the importance of strict compliance of procedure established by the IBC, 2016 and bolsters the two pillars of insolvency in India namely "speed" and "due process".

⁹ Companies Act, 2013, § 408, No. 18, Acts of Parliament, 2013 (India).

¹⁰ Companies Act, 2013, § 410, No. 18, Acts of Parliament, 2013 (India).

¹¹ Insolvency and Bankruptcy Code, 2016, § 31, No. 31, Acts of Parliament, 2016 (India).

¹² Insolvency and Bankruptcy Code, 2016, § 60, No. 31, Acts of Parliament, 2016 (India).

¹³ Insolvency and Bankruptcy Code, 2016, § 61, No. 31, Acts of Parliament, 2016 (India).

¹⁴ M/S Embassy Property Developments Pvt. v. The State of Karnataka, AIR ONLINE 2019 SC 1652.

¹⁵ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 38, Gazette of India, Extraordinary, Pt. III, § 4, No. 432 (Nov. 30, 2016) (India).

¹⁶ Insolvency and Bankruptcy Code, 2016, § 30(2), No. 31, Acts of Parliament, 2016 (India).

The judgment highlights the importance of using IBC, 2016 as a tool for genuine corporate recovery rather than a tool for mere liquidation and the same can be achieved only through procedural compliances of the provision of IBC, 2016 and not by exercising flawed commercial wisdom.

This decision serves as a cautionary tale, reminding stakeholders that the sanctity of the resolution process hinges on unwavering adherence to statutory mandates. Ultimately, the judgment aims to preserve the integrity of the insolvency process, ensuring that it remains a credible and effective tool for corporate restructuring and creditor recovery.