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# SEQUENCING MERGER CONTROL IN CIRP: ANALYSING INDEPENDENT SUGAR CORPORATION LTD. V. GIRISH SRIRAM JUNEJA & ORS.

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## ABSTRACT

The Supreme Court's ruling in *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Ors.* (2025 INSC 124) marks a watershed moment in the harmonisation of India's insolvency and competition regimes. Addressing the critical interpretive question surrounding the proviso to Section 31(4) of the Insolvency and Bankruptcy Code, 2016 (IBC), the Court held that in resolution plans involving combinations, obtaining prior approval from the Competition Commission of India (CCI) is a mandatory pre-condition to the Committee of Creditors' (CoC) vote. The majority ruling underscores the legislative intent behind the "prior approval" mandate, while rejecting purposive dilution of statutory language. It further interrogates procedural deficiencies in the CCI's conduct and warns against the regulatory risks of post-facto and conditional merger clearances. This decision reinforces the primacy of ex-ante antitrust scrutiny in distressed M&A, recalibrating procedural discipline in CIRP, and offering clarity on merger control obligations within India's insolvency architecture.

## Introduction

The evolving interface between competition law and insolvency regulation has given rise to a complex set of questions regarding regulatory sequencing, statutory harmonisation, and market oversight. A particularly contested issue has been the procedural placement of Competition Commission of India (CCI) approval in relation to the Committee of Creditors' (CoC) vote under the Insolvency and Bankruptcy Code, 2016 (IBC). The Supreme Court's decision in *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Ors.* (2025 INSC 124) decisively settles this interpretive impasse, holding that in resolution plans involving combinations, the requisite CCI approval must mandatorily precede CoC approval, as per the proviso to Section 31(4) of the IBC.

The ruling arises from the corporate insolvency resolution process of Hindustan National Glass and Industries Ltd., where AGI Greenpac's resolution plan was approved by the CoC before receiving CCI's conditional clearance. This sequence was found to contravene both the text and purpose of the statutory framework, prompting a realignment of compliance obligations in distressed mergers and acquisitions.

## Facts

### Brief facts

## II. Factual Background

The present judgment arises from the Corporate Insolvency Resolution Process (CIRP) of Hindustan National Glass and Industries Limited (HNGIL), initiated under the Insolvency and Bankruptcy Code, 2016 (IBC). In April 2022, two resolution applicants—AGI Greenpac Limited (AGI) and Independent Sugar Corporation Ltd. (INSCO)—submitted competing resolution plans for HNGIL. Given that the proposed acquisition of HNGIL involved a combination under the Competition Act, 2002, both plans required prior approval from the Competition Commission of India (CCI).

The Resolution Professional (RP), however, permitted the resolution applicants to seek CCI clearance after approval by the Committee of Creditors (CoC), but before submitting the plan for final approval before the National Company Law Tribunal (NCLT).

A summary of key procedural events is presented below:

Date	Event
April 2022	AGI and INSCO submit their resolution plans for HNGIL
August 25, 2022	CoC approves AGI's resolution plan with 98% votes
September 27, 2022	AGI files CCI merger notification in Form I
October 22, 2022	CCI invalidates Form I and directs AGI to refile in Form II
November 3, 2022	AGI submits Second CCI Notification (Form II)
February 9, 2023	CCI issues prima facie opinion that the proposed transaction may cause AAEC
February 10, 2023	CCI issues Show Cause Notice to AGI
March 10, 2023	AGI proposes voluntary divestiture (Rishikesh plant) in its SCN Response
March 15, 2023	CCI grants conditional approval to the transaction
April 24, 2023	NCLT rejects INSCO's application challenging CoC's approval

INSCO challenged both the CCI approval and the NCLT/NCLAT findings, filing an appeal before the Supreme Court of India, asserting that AGI's resolution plan was approved by the CoC without obtaining mandatory prior clearance from the CCI—contrary to the statutory requirement under the proviso to Section 31(4) of the IBC.

## Issue

Whether CCI's approval for a proposed combination under a resolution plan must mandatorily precede the approval of the resolution plan by CoC, as envisaged under the proviso to Section

31(4) of the IBC?

### III. Arguments Advanced by the Parties

#### A. Submissions by the Appellant – Independent Sugar Corporation Ltd. (INSCO)

The appellant, Independent Sugar Corporation Ltd. (INSCO), contended that the resolution plan submitted by AGI Greenpac violated the mandatory requirement under the proviso to Section 31(4) of the Insolvency and Bankruptcy Code, 2016 (“IBC”), which demands that approval from the Competition Commission of India (“CCI”) be obtained *prior to* the Committee of Creditors’ (“CoC”) approval of a resolution plan involving a combination. INSCO argued that the term “prior” must be accorded its plain and literal meaning, relying on the Supreme Court’s ruling in *Manohar Lal Sharma v. Principal Secretary* [(2014) 9 SCC 516], where the Court emphasized strict adherence to unambiguous statutory language.

INSCO further contended that the CCI’s eventual approval, issued post-CoC approval and based on AGI’s voluntary divestiture of the Rishikesh plant, materially altered the resolution plan and warranted fresh CoC evaluation. Procedural lapses were also alleged, including CCI’s failure to issue the Show Cause Notice under Section 29(1) of the Competition Act, 2002 to the corporate debtor. For this, INSCO drew support from *Sun Pharma v. CCI* [2019 SCC OnLine CCI 38], where failure to follow complete notification protocol compromised the legitimacy of merger review proceedings.

#### B. Submissions by the Respondents – AGI Greenpac Limited and the Committee of Creditors

The respondents, AGI Greenpac and the Committee of Creditors (CoC), contended that the “prior approval” requirement under Section 31(4) of the IBC should be construed as directory, not mandatory. They argued that the primary goal of the IBC is to achieve time-bound resolution, and imposing a strict sequencing requirement would delay the process and disincentivize resolution applicants. In support, the respondents relied on *Swiss Ribbons Pvt. Ltd. v. Union of India* [(2019) 4 SCC 17], which emphasized a purposive interpretation of the IBC to ensure business efficacy.

AGI further argued that CCI approval was ultimately secured before the plan was approved by the National Company Law Tribunal (NCLT), satisfying the substantive objective of regulatory

compliance. The respondents relied on *K. Sashidhar v. Indian Overseas Bank* [(2019) 12 SCC 150] to assert that courts must defer to the CoC's commercial wisdom, especially when a plan has been approved with an overwhelming majority. They also cited *Binani Industries Ltd. v. Bank of Baroda* [(2018) SCC OnLine NCLAT 521] to support the proposition that procedural rigidity should not frustrate viable resolutions. Thus, the respondents urged the Court to favor a harmonious reading of the IBC and Competition Act that accommodates practical transaction timelines.

#### IV. Court's Analysis and Ruling

Delivering the majority judgment, the Supreme Court (per Roy, J. and Dhulia, J.) undertook a textual, contextual, and purposive interpretation of the proviso to Section 31(4) of the Insolvency and Bankruptcy Code, 2016 ("IBC"). At the heart of the Court's reasoning was the statutory language of the proviso, which mandates that where a resolution plan contains a proposal for a combination, the requisite approval under the Competition Act, 2002 must be obtained "prior to the approval of such resolution plan by the CoC."

The Court firmly rejected the argument that the use of the word "prior" could be interpreted as directory. It reiterated the principle that where the language of a statute is clear and unambiguous, courts must adopt a literal interpretation, unless such reading leads to absurdity. (*Union of India v. Hansoli Devi*, (2002) 7 SCC 273). The proviso was thus held to establish an express legislative exception to the general flexibility afforded under Section 31(4) for obtaining post-approval clearances from other statutory authorities. By contrast, combination approvals under the Competition Act were meant to be completed before the CoC exercises its commercial discretion.

The Court also dismissed the contention that there was any inherent conflict between the IBC's time-bound framework and the merger control timelines under the Competition Act. It noted that in practice, the average time taken by the CCI to dispose of combination notifications was approximately 21 working days, and that delays beyond 120 days were exceptionally rare. The Court observed that the "trigger event" for filing a merger notification was flexible enough to accommodate CIRP timelines—such as signing of a term sheet or issuing a letter of intent—thereby allowing resolution applicants to initiate the CCI process well in advance (*Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531).

Further, the judgment highlighted substantive concerns about post-facto CCI approvals, particularly where the resolution plan is materially modified during the merger control process. In this case, AGI's divestment proposal—accepted by the CCI as a voluntary modification—directly altered the structure of the plan. The Court held that permitting CoC approval over a plan that was later amended to address competition concerns undermined the integrity of the CoC's decision-making and eroded the “finality” central to the IBC framework (*Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd.*, (2022) 2 SCC 401).

The Court also took note of procedural lapses in the CCI's handling of the matter, especially the issuance of a Show Cause Notice under Section 29(1) of the Competition Act to the acquirer alone. Interpreting the term “parties” in the plural, the Court held that both the acquirer and the target are integral to the competitive assessment of a combination, and failure to issue notices to both vitiates due process.

Finally, the Court voiced systemic concerns over the growing trend of conditional approvals granted by the CCI. It flagged the absence of robust monitoring and enforcement mechanisms to ensure that such remedies—like divestitures—are meaningfully implemented. In the insolvency context, where finality and certainty are paramount, reliance on future compliance creates a regulatory vacuum that may enable anti-competitive conduct.

Accordingly, the Supreme Court allowed INSCO's appeal and held that the CoC's approval of AGI's resolution plan—having preceded the CCI's final decision—was legally unsustainable. The Court declared that prior CCI approval is a mandatory precondition for CoC consideration of any resolution plan involving a notifiable combination.

## V. Dissenting Opinion – Justice S.V.N. Bhatti

In a lone but thoughtfully reasoned dissent, Justice S.V.N. Bhatti disagreed with the majority's strict textual interpretation of the proviso to Section 31(4) of the Insolvency and Bankruptcy Code, 2016 (“IBC”). While acknowledging the use of the term “prior” in the statutory language, the dissent held that a **literal interpretation** may not always be the **most appropriate tool** for harmonising statutes with divergent objectives, especially in the context of India's evolving insolvency jurisprudence.

Justice Bhatti opined that the IBC, being a **beneficial legislation**, must be interpreted

**purposively** to further its core objective: maximising the value of the corporate debtor's assets and ensuring timely resolution. In his view, a rigid requirement of prior CCI approval could potentially disincentivize resolution applicants and unduly prolong the resolution process—thereby defeating the IBC's mandate of time-bound insolvency resolution.

The dissent emphasized that the requirement under the proviso should be treated as **directory**, not mandatory, particularly when the ultimate objective of obtaining CCI clearance was fulfilled before the adjudicating authority's approval under Section 31(1) of the IBC. Justice Bhatti reasoned that the **commercial wisdom of the CoC** should not be invalidated merely because CCI's formal clearance came post-facto, especially in cases where there was substantial compliance and no demonstrable harm to market competition.

Additionally, he expressed concern that interpreting the proviso as mandatory would have the effect of “**catapulting**” a subsidiary clause into a **determinative procedural hurdle**, not contemplated by the legislature. Such a construction, according to the dissent, risked unduly restricting the pool of eligible resolution applicants and could result in lower asset value realisation—contrary to the economic intent behind the Code.

In conclusion, the dissent advocated for a **flexible and pragmatic approach**, one that preserves the delicate balance between competition law enforcement and the IBC's goals of swift and value-maximising resolutions. Accordingly, Justice Bhatti voted to uphold the NCLAT's interpretation and dismiss the appeal.

## VI. Conclusion and Judgment Impact

The Supreme Court's majority decision in *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Ors.* marks a pivotal moment in Indian insolvency jurisprudence by decisively settling the timing of regulatory approvals under the IBC-Competition Act interface. By interpreting the term “prior” in Section 31(4) of the IBC as **mandatory**, the Court ensures that the Competition Commission of India's (CCI) ex-ante review forms an **integral precondition** to the Committee of Creditors' (CoC) commercial decision-making in cases involving combinations.

This judgment introduces **regulatory discipline** in cross-sectoral transactions and strengthens the normative foundations of merger control in distressed M&A. It also prevents resolution

plans from being retrofitted post-approval with competition remedies, thereby preserving the sanctity of the CoC's vote and preventing market distortion.

However, the ruling also underscores the urgent need for **procedural coordination** between the IBC and the Competition Act frameworks. It may compel resolution applicants to engage in early-stage merger filings, potentially front-loading transaction costs and timelines. The Court's emphasis on maintaining competitive market structures, even in insolvency contexts, reaffirms the public interest dimension of antitrust law. For practitioners and market participants, this decision serves as a **compliance compass**, mandating early merger analysis in CIRP strategy.

While the dissent raises compelling concerns about practical delays and reduced bidder interest, the majority's ruling ultimately prioritizes **regulatory certainty, legal clarity, and institutional coherence** over commercial expediency. It remains to be seen whether the pending **review petition by AGI Greenpac** will succeed, but unless reversed, this precedent sets a new compliance baseline for resolution applicants in India.