



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

No. 223

(May 13, 2025)

**Kalyani Transco vs. M/s. Bhushan Power and Steel Ltd. & Ors.**  
**Civil Appeal No. 1808 of 2020**  
**Date of Supreme Court Judgement: May 02, 2025**

### Facts of the Case

This batch of appeals arose from the common impugned judgment and order dated 17.02.2020 passed by the Appellate Tribunal (NCLAT), concerning the Corporate Insolvency Resolution Process (CIRP) of M/s Bhushan Power and Steel Ltd. (BPSL)/CD. The lead appeal was filed by Kalyani Transco (hereinafter referred as Appellant), an operational creditor of CD, challenging the approval of the Resolution Plan submitted by JSW Steel Limited (hereinafter referred to as "JSW") and accepted by the Committee of Creditors (CoC) and the Adjudicating Authority/AA.

Pursuant to the Reserve Bank of India's circular dated 13.06.2017 identifying the "dirty dozen" accounts, the CD was subjected to CIRP initiated by Punjab National Bank. The AA admitted the petition on 26.07.2017. Claims amounting to ₹4,72,04,51,78,073.88 were admitted for financial creditors and ₹6,21,37,61,735 for operational creditors. JSW, Tata Steel, and Liberty House submitted resolution plans. After multiple rounds of negotiations, JSW's revised and consolidated plan was approved by the CoC in October 2018 and subsequently by the AA on 05.09.2019, subject to conditions specified in para 128 of its judgment.

Meanwhile, the Directorate of Enforcement (ED) passed a Provisional Attachment Order (PAO) on 10.10.2019 under Section 5 of the PMLA attaching the assets of the CD. This was challenged by JSW and the CoC. The Appellate Tribunal stayed the PAO and declared the attachment illegal in its final order dated 17.02.2020. Several appeals were filed before the Supreme Court, including by Appellant, other operational creditors, and the State of Odisha, questioning the legality of the Appellate Tribunal's judgment, procedural irregularities in the approval of the Resolution Plan, and maintainability of JSW's appeal under Section 61 of the IBC.

### Supreme Court's observations:

The Apex Court noted several procedural irregularities and raised substantial concerns about the maintainability and legality of the proceedings. The Apex Court reaffirmed that operational creditors and former promoters are "persons aggrieved" under Section 62 of the IBC and hence entitled to file appeals.



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It referenced *Glas Trust Company LLC v. Byju Raveendran & Ors.* to confirm that insolvency proceedings are collective in nature and open to all stakeholders. The Apex Court found that the appeal filed by JSW before the Appellate tribunal under Section 61 of the IBC was not maintainable as none of the conditions under Section 61(3) existed. Despite the Resolution Plan being approved by the AA, JSW had appealed against certain conditions, which were not permitted under the IBC scheme. The Appellate tribunal erred in entertaining and allowing this appeal. The Supreme Court pointed to serious lapses in disclosure by JSW, particularly regarding its Joint Venture Agreement with CD and Jai Balaji dated 05.03.2008. The Resolution Professional had failed to file the mandatory compliance certificate (Form H), and the contents of the affidavit concerning JSW's eligibility were neither verified nor disclosed. This raised doubts over JSW's eligibility under Section 29A of the IBC.

The Appellate tribunal had declared the ED's Provisional Attachment Order (PAO) dated 10.10.2019 as illegal. The Supreme Court clarified that AA and Appellate tribunal, being forums under the Companies Act, cannot exercise judicial review over statutory authorities like ED under PMLA. It cited *Embassy Property Developments Pvt. Ltd. v. State of Karnataka* to state that such review lies outside their jurisdiction. Although JSW offered to deposit ₹19,350 crore in an escrow account and eventually implemented the plan, the Supreme Court emphasized that non-compliance with statutory provisions during the approval process could not be overlooked, especially when it relates to eligibility and disclosure norms.

**Order/Judgement:** The judgments dated 05.09.2019 (AA) and 17.02.2020 (Appellate tribunal) are quashed and set aside and the Resolution Plan of JSW, approved by the CoC, stands rejected for non-compliance with Section 30(2) read with Section 31(2) of the IBC. The Apex court directed the AA to initiate liquidation proceedings against the CD as per u/s 33(1) of the IBC and Article 142 of the Constitution of India and further said that the payments made by JSW to creditors and any equity infused shall be dealt with as per the statement of the CoC's counsel recorded in the order dated 06.03.2020. The issue of EBITDA is left open as the Resolution Plan stands rejected.

**Case Review:** Civil Appeal Nos. 1808, 2192–2193, 2225 & 3020 of 2020, including 6390 of 2021 are allowed to the extent stated above and Civil Appeal Nos. 3784 of 2020 and 668 of 2021 (State of Odisha) are disposed of without expressing any opinion on the merits of the claims, pending applications, if any, are also disposed of.