

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



KALYANI TRANSCO Vs. M/S BHUSHAN POWER AND STEEL LIMITED AND OTHERS

Brief Facts

The present appeals arose from the Corporate Insolvency Resolution Process (CIRP) initiated against M/s Bhushan Power and Steel Limited (BPSL) pursuant to directions issued by the Reserve Bank of India in 2017 identifying major corporate defaulters. The National Company Law Tribunal (NCLT) admitted the petition filed by Punjab National Bank and appointed a Resolution Professional (RP). Multiple resolution applicants submitted plans, with JSW Steel Ltd. emerging as the Successful Resolution Applicant (SRA). The Resolution Plan was approved by the Committee of Creditors (CoC) and subsequently by the NCLT in September 2019, subject to conditions. Appeals were filed before the National Company Law Appellate

Tribunal (NCLAT) and thereafter before the Supreme Court, raising issues of locus standi, delay in implementation, contravention of law, treatment of operational creditors, and distribution of EBITDA.

Decision

The Supreme Court, after extensive hearing, quashed the orders of the NCLT and NCLAT approving JSW Steel's Resolution Plan, holding that the plan was not in conformity with Sections 30(2) and 31(2) of the Insolvency and Bankruptcy Code (IBC). Exercising powers under Article 142 of the Constitution, the Court directed the initiation of liquidation proceedings against BPSL under Chapter III of the IBC. It further ordered that payments made by JSW to creditors and equity contributions infused under the plan be dealt with in accordance with prior undertakings recorded before the Court. The Court left open the question of law regarding distribution of EBITDA. Review petitions were subsequently entertained, recalling the earlier judgment, and the matter was listed for reconsideration, keeping all questions of law open for final adjudication.

Link of the Order

<https://www.ibbi.gov.in/uploads/order/4a4ff4f868baecdca7e02bd2e8156d78.pdf>



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**
PROMOTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA