Solventia – Journal of Insolvency & Bankruptcy Laws
II(2), Jul – Dec 2025, pp. 62-91

When Process Imperils Rescue: Lessons from Kalyani Transco v. Bhushan Power & Steel

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ABSTRACT

*The Supreme Court's (**SC**) decision in Kalyani Transco v. Bhushan Power & Steel Ltd. (**Kalyani Tansco**) marks a pivotal moment in Indian insolvency jurisprudence, reflecting an uncompromising insistence on procedural compliance under the Insolvency and Bankruptcy Code, 2016 (**IBC** or **Code**). By invalidating the JSW Steel resolution plan and directing liquidation, the Court reinforced the sanctity of statutory timelines, eligibility conditions under Section 29A, and the limited jurisdiction of adjudicating authorities. It simultaneously clarified the boundaries of Section 32A, refusing to shield corporate debtors from ongoing enforcement actions under the Prevention of Money-Laundering Act, 2002 (**PMLA**). This article critically examines the decision's implications for insolvency professionals, Resolution Applicants (**RA**), and the Committee of Creditors (**CoC**), highlighting institutional failures, judicial overreach, and regulatory gaps. Through a comparative analysis with global*

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*restructuring norms, the piece underscores the tension between procedural fidelity and commercial pragmatism. It advocates for targeted reforms to enhance inter-agency coordination, strengthen resolution professional accountability, and clarify the treatment of tainted assets during Corporate Insolvency Resolution Process (**CIRP**). Ultimately, the judgment signals a shift towards a more rule-bound insolvency regime, where even commercially viable plans may be set aside for technical infirmities, compelling stakeholders to pursue meticulous compliance at every stage of the process.*

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I. INTRODUCTION

The SC's judgement in *Kalyani Transco v. Bhushan Power & Steel Ltd*[1] has sent shockwaves through India's insolvency community. The Court, sitting in plenary on 2 May 2025, set aside the JSW Steel resolution plan for Bhushan Power and Steel (**BPSL**) and directed the National Company Law Tribunal (**NCLT**) to initiate liquidation. From an insolvency professional's (**IP**) standpoint, the ruling is a high-water mark of legal strictness.[2] It reaffirms strict compliance with the IBC but also raises deep concerns about practical commercial considerations. In what follows we dissect the Court's interpretation of key IBC provisions, notably Sections 29A[3] and 32A,[4] clarify the Enforcement Directorate's (**ED**) role under the PMLA[5] post-judgment, discuss the conduct of the resolution professional (**RP**) and the Committee of Creditors (**CoC**), and examine judicial overreach by the NCLT/National Company Law Appellate Tribunal (**NCLAT**). Comparative insights and reform recommendations are offered at each stage to assist readers navigating the evolving post-IBC landscape.

[1] *Kalyani Transco v Bhushan Power & Steel Ltd* [2025] INSC 621.
[2] Karishma Dodeja and Tine Abraham, 'Supreme Court: Liquidation of Bhushan Power and Steel Limited – A cautionary tale' (*Trilegal*, 9 May 2025) <https://trilegal.com/knowledge_repository/trilegal-update-supreme-court-liquidation-of-bhushan-power-and-steel-limited-a-cautionary-tale/> accessed 1 July 2025.
[3] Insolvency and Bankruptcy Code 2016, s 29A (**IBC**).
[4] IBC, s 32A.
[5] Prevention of Money-Laundering Act 2002.

II. BACKGROUND AND FACTUAL MATRIX

BPSL was among the Reserve Bank of India's (**RBI**) "dirty dozen" Non-Performing Assets (**NPAs**) that were subject to mandatory resolution under the IBC.[6] The Punjab National Bank-led CIRP began on 26 July 2017 with over ₹47,000 crore of admitted financial debt and more than ₹600 crore of operational debt. Three resolution plans emerged (JSW Steel, Tata Steel, Liberty House), with JSW's plan scoring the highest under the CoC evaluation. The RP filed for plan approval on 5 September 2019, and the NCLT granted its conditional approval on the same day.[7] Its order directed, inter alia, that (a) Section 30(2) of the IBC must be fully complied with;[8] (b) pending criminal proceedings against erstwhile directors "shall not affect" plan implementation; and (c) profits earned during CIRP be distributed per *Essar Steel*,[9] ie, via the insolvency estate.

Crucially, during this period, BPSL became a target of criminal investigation. The Central Bureau of Investigation (**CBI**) and the ED had cases relating to alleged financial irregularities by BPSL's promoters. On 10 October 2019, the ED invoked the PMLA and provisionally attached BPSL's assets. JSW and the CoC challenged this before the

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[6] Mayur Shetty, "Dirty dozen' Bankruptcy Cases to be Resolved in Current Fiscal: SBI' (*Times of India*, 29 October 2018) <https://timesofindia.indiatimes.com/business/india-business/dirty-dozen-bankruptcy-cases-to-be-resolved-in-current-fiscal-sbi/articleshow/66407528.cms> accessed 7 December 2025; Reserve Bank of India, 'RBI identifies Accounts for Reference by Banks under the Insolvency and Bankruptcy Code (IBC)' (Reserve Bank of India, 13 June 2017) <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR3363482A1FF9229F4B9A92EA0090D5D71518.PDF> accessed 7 December 2025.

[7] *Punjab National Bank v Bhushan Power & Steel Ltd* CP (IB) No 202 (PB)/2017 (5 September 2019).

[8] IBC, s 30(2).

[9] *Electrosteel Steel Ltd (Now M/S ESL Steel Ltd) v Ispat Carrier Pvt Ltd* [2025] Civil Appeal No 2896 of 2024 (21 April 2025).

NCLT/NCLAT, invoking the new Section 32A of the IBC which immunizes a debtor from prosecution for prior offences once a new management takes over.[10] The NCLAT upheld the NCLT's plan but modified some conditions and held, ipso facto, that by virtue of Section 32A, the ED could not attach BPSL's assets after plan approval.[11] Meanwhile, the original approval was appealed by operational creditors and government authorities, who raised procedural lapses in the CIRP.

The appellants' principal contentions were that the CIRP process was severely *flawed*: the plan took far beyond the 270-day deadline under Section 12,[12] and no valid extension had been granted; the RP had *utterly failed* to verify the Resolution Applicant's eligibility under Section 29A and to ensure payment priority for operational creditors; and the CoC had not properly exercised its commercial wisdom, instead colluding with JSW to delay implementation for personal gain.[13] For instance, appellants noted that the CoC took inconsistent positions – defending the plan's terms in NCLAT appeals yet simultaneously continuing to collect payments under it – thereby raising concerns over fairness and transparency. They also argued that the NCLAT had no jurisdiction to annul the ED's PMLA actions, which fall outside the IBC's ambit. JSW, as a successful RA, countered that the plan had been implemented: it paid financial creditors in March 2021 and operational creditors in March 2022 as agreed, subject to pending appeals. JSW blamed any

[10] IBC, s 32A.
[11] *JSW Steel Ltd v Mahender Kumar Khandelwal & Anr* Company Appeal (AT) (Insolvency) No 957 of 2019 (17 February 2020).
[12] IBC, s 12.
[13] *JSW Steel Ltd v Mahender Kumar Khandelwal & Anr* Company Appeal (AT) (Insolvency) No 957 of 2019 (17 February 2020) [39], [61].

delays on legal uncertainties (the PMLA attachment) and maintained that all CoC actions were commercially justified.

In early 2025, the SC consolidated these appeals. On 2 May 2025, a bench of Justices Bela M Trivedi and Satish C Sharma delivered a scathing judgment, quashing both the NCLT and NCLAT orders and rejecting JSW's plan as contrary to law. The CoC and RP were criticised at every turn, and JSW itself was found to have *misused the process of law* by delaying the implementation of the plan and by misrepresenting facts. The Court ordered that the NCLT must commence liquidation of BPSL under Section 33(1) of the IBC,[14] and while recording the CoC counsel's undertaking, directed that JSW's payments be held in escrow pending appeal. Subsequently, on 26 May 2025, the Court stayed the liquidation proceedings pending review, directing status quo.

The *Kalyani Transco* ruling thus stands as a landmark decision that strikes at the core of IBC practice.[15] It underscores the sanctity of strict timelines and procedural mandates, but also raises questions: has the Court's literalism unduly collateralized commercial reality? Below we analyse the key legal points the SC addressed, and the ripple effects for IPs.

[14] IBC, s 32(1).
[15] Sushmita Gandhi, Anamika Singh and Kushal Boolchandani, 'Unraveling the Facade of Resolution: Saga of Bhushan Power and Steel Limited' (*Mondaq*, 20 May 2025) <www.mondaq.com/india/trials-appeals-compensation/1626378/unraveling-the-facade-of-resolution-saga-of-bhushan-power-and-steel-limited> accessed 24 June 2025.

III. SECTION 29A – ELIGIBILITY AND DISCLOSURE REQUIREMENTS

Section 29A of the IBC sets out a comprehensive list of disqualifications for RAs: for example, existing or erstwhile promoters of the debtor, wilful defaulters, or persons connected to them are not allowed to bid for resolution.[16] Critically, the statute mandates full disclosure of any potential disqualifying status and an affidavit of eligibility along with the resolution plan.[17] The Code and CIRP Regulations impose strict formats: Regulation 39 requires the RP to collect from each RA (i) an affidavit affirming eligibility under Section 29A, and (ii) upon plan approval, a Form H compliance certificate signed by the RP certifying that all statutory requirements, including Section 29A, have been met.[18] Form H further explicitly requires the RP to attest that "the Resolution Applicant has submitted an affidavit confirming its eligibility under Section 29A".[19]

In *Kalyani Transco*, the SC zeroed in on this requirement. It observed that JSW Steel had engaged in an arguably *related party* transaction with BPSL, a 2008 joint-venture for a coal block, facts that emerged during criminal investigations. That gave rise to a genuine concern as to whether JSW might be disqualified under Section 29A. Though that precise issue was not pressed before the Court, the bench nonetheless emphasized the mandatory nature of the disclosure obligations. It held that the RP had *utterly failed* in his core statutory duties: he did not file

[16] *Bank of Baroda v MBL Infrastructures Ltd* [2022] 5 SCC 661.
[17] *Armada Singapore Pte v Ashapura Minechem* [2019] 217 Comp Cas 298.
[18] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, reg 39 (**CIRP Regulations**).
[19] IBC, s 29A.

the required Form H, nor did he properly record JSW's Section 29A affidavit properly in the NCLT application. Indeed, the court noted, the RP's own compliance certificate in the company petition simply reproduced plan clauses, for eg, the disqualification under Section 29A should not apply, instead of certifying them. This lapse meant that no judicial officer was assured that JSW had honestly declared its eligibility.

The Court's scathing comments make clear that Section 29A is foundational to insolvency resolution. Any doubt about an RA's status must be resolved before approval, and an RP who glosses over it, is performing in a *lackadaisical manner*.[20] In practice, this raises the bar for RPs and CoCs: they must *actively validate* every RA's Form Section 29A affidavit and lodge Form H with the NCLT.[21] Similarly, RAs are under a heightened obligation to self-report any connection with the debtor.[22] The SC warned that even a plausible instance of non-disclosure could cast serious doubt on the resolution applicant's eligibility.[23]

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[20] Live Law, 'Supreme Court Rejects JSW's Resolution Plan for Bhushan Steel as Illegal, Orders Liquidation; Says CoC Acted Without Commercial Wisdom' (*Live Law*, 2 May 2025) <https://www.livelaw.in/supreme-court/supreme-court-rejects-jsws-resolution-plan-for-bhushan-steel-as-illegal-orders-liquidation-290994> accessed 27 June 2025.

[21] *EBIX Singapore (P) Ltd v Mahendra Singh Khandelwal* [2024] SCC OnLine NCLAT 1714.

[22] SS Rana & Co, 'Interim Resolution Professional in CIRP' (*SS Rana & Co*, March 2025) <https://ssrana.in/litigation/insolvency-and-bankruptcy/resolution-professional-in-cirp/> accessed 24 June 2025.

[23] ACM Legal, 'Supreme Court Upholds Resolution Plan in Bhushan Power & Steel Insolvency: Detailed Scrutiny of ED Powers, Section 29A Compliance, and NCLAT Jurisdiction' (*ACM Legal*, 21 May 2025) <www.acmlegal.org/blog/bhushan-power-and-steel-insolvency-sc-final-ruling/> accessed 24 June 2025.

From an IP's vantage, this clarity is useful as it reinforces that incomplete filings can prove fatal.[24] However, it also suggests potential uncertainty: if an RP misses a disclosure and plan is approved, can the plan ever stand? *Kalyani Transco* implicitly answers in the negative. In fact, the Court went further: it found JSW's approved plan itself in "flagrant violation" of Section 30(2) of the IBC, which requires strict compliance with Section 29A and other provisions, thereby rendering it liable to immediate rejection under Section 31(2). In other words, procedural defects in verifying 29A are not mere technicalities; they go to the root of the process.[25]

In practical terms, the judgment reinforces that RPs and CoCs must ensure *rigorous* 29A checks. As for the implication, this means: (1) collecting and scrutinizing the RAs' Section 29A affidavits; (2) verifying their accuracy through due diligence and; (3) filing Form H with the NCLT application. Failure to do so may doom a plan even years later. Practitioners may also urge legislative guidance, for example, an RP should immediately alert the Authority if any doubt arises about an RA's Section 29A status. The current IBC does not explicitly authorize RPs to withdraw a submitted plan on eligibility grounds, leaving them in a quandary when a defect is discovered at a later stage.

[24] *Gaja Trustee Company Private Limited & Ors v Haldia Coke & Chemicals Pvt. Ltd & Ors* [2018] SCC Online NCLAT 331.

[25] Aditya Vaid, 'Rejection of Resolution Plan: Review of Judgment?' (*IndiaCorpLaw*, 19 June 2025) <https://indiacorplaw.in/2025/06/19/rejection-of-resolution-plan-review-of-judgment/> accessed 24 June 2025.

IV. SECTION 32A AND THE ED/PMLA INTERFACE

Another flashpoint in *Kalyani Transco* was the interplay between the IBC and the PMLA, via Section 32A of the IBC. Section 32A, inserted with effect from 28 December 2019, provides that "the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease and the corporate debtor shall not be prosecuted" from the date of plan approval onwards.[26] Notably, Section 32A speaks of *offences and prosecution*, but does not explicitly refer to asset attachments.[27] The NCLAT's majority had interpreted Section 32A(1)(2) broadly, ruling that after plan approval, the ED (or any agency) could not attach the corporate debtor's assets, thereby deeming such assets 'immune' from attachment. It even went so far as to hold the ED's provisional attachment to be illegal.

The SC flatly rejected that jurisdictional leap and held that neither the NCLT nor the NCLAT has any power to review or invalidate the ED's actions under the PMLA. Invoking *Embassy Property Developments Pvt Ltd v State of Karnataka*,[28] the Court emphasized that actions by statutory authorities in the public law realm, such as the ED under the PMLA, lie outside Section 60(5)(c) of the IBC.[29] As Justice Trivedi observed, insolvency adjudication bodies are creatures of the Companies Act and the IBC; their jurisdiction is well circumscribed to orders arising out of or in relation to the insolvency resolution. They cannot sit in

[26] *Manish Kumar v Union of India* [2021] SCC OnLine SC 30.
[27] Adimesh Lochan, Ritika Bansal and Arjun Gupta, 'Dissecting the Insolvency Code: Empowering Investors by Extinguishing Antecedent Liabilities' (*Nishith Desai Associates*, 26 September 2023) <https://nishithdesai.com/default.aspx?id=10773> accessed 24 June 2025.
[28] [2019] SCC Online SC 1542.
[29] IBC, s 60(5)(c).

judgment over police or ED investigations, which are matters of independent public law. Thus, the SC voided the NCLAT's direction on ED attachments as 'without any authority of law' and *coram non judice*. Importantly, the Court explicitly left open the question of whether Section 32A protects debtor assets with retrospective effect.

For insolvency practitioners, this can be regarded as a pivotal clarification. Until now, there was confusion: did a plan's approval preclude the ED from clawing back previously siphoned funds? The Court's decision suggests that it does not. In effect, the ED's PMLA rights are on a separate track: the ED can continue its investigation and attachment even during CIRP, limited only by regular legal challenges, not by the IBC. The nexus with Section 32A remains unsettled by the SC but its footnote is clear: Section 32A confers immunity from prosecution for the corporate debtor, not a license to frustrate law enforcement by preventing asset recovery.

In practical terms, RPs should proceed on the assumption that ED/PMLA actions will continue independently. They must coordinate closely with government agencies. In *Kalyani Transco*, the SC had to order the ED to hand back attached assets (by consent) so that the plan could be implemented. Going forward, best practice may involve obtaining no-objection certificates from the ED/CBI or seeking monitored undertakings early in the CIRP to reduce uncertainty. The legislature or the Insolvency and Bankruptcy Board of India (**IBBI**) might also consider amending Section 60[30] to expressly clarify whether ED attachments are "matters in relation to insolvency". However, many

[30] IBC, s 60.

experts think PMLA actions will always be treated as outside the IBC's scope, per the Court's reasoning.[31] In essence, RPs cannot assume automatic release of assets by virtue of a plan.

V. CONDUCT OF THE RESOLUTION PROFESSIONAL AND COMMITTEE OF CREDITORS

A major thrust of the judgment was the Court's criticism of both the RP and the CoC. On the RP's duties, the Court reminded that an RP is bound to act as an "insolvency expert" in the public interest, not as a rubber stamp.[32] Here the RP was censured for "unutterable failure" to discharge even elementary obligations.[33] Beyond the Section 29A lapse discussed above, the RP was faulted for allowing the CIRP to drag past statutory deadlines. The Plan application was filed well after 270 days from CIRP commencement, with no valid extension from the NCLT. The RP never sought an extension from the Adjudicating Authority (**AA**); worse, he 'had not even bothered to seek any extension' to keep the CIRP alive. This alone made the entire exercise non-compliant with Section 12. The Court made it plain that IBC deadlines are sacrosanct: any failure to complete CIRP within 330 days (270 days plus 60 days) can only be cured by liquidation, not by "creative" footnotes.[34]

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[31] Vikash Kumar Jha and Namrata Sadhnani, 'IBC vs. PMLA: Supreme Court Reinforces Jurisdictional Boundaries in Kalyani Transco Case' (*Cyril Amarchand Mangaldas Dispute Resolution Blog*, 10 June 2025) <https://disputeresolution.cyrilamarchandblogs.com/2025/06/ibc-vs-pmla-supreme-court-reinforces-jurisdictional-boundaries-in-kalyani-transco-case/> accessed 24 June 2025.

[32] *IDBI Bank Ltd v Deegee Cotsyn Private Limited* (NCLT Mumbai Bench, LSI-818-NCLT-2021).

[33] *Kalyani Transco* (n 1) [64].

[34] *ArcelorMittal India Pvt Ltd v Satish Kumar Gupta & Ors* 2019 SCC Online SC 1645.

The RP was also rebuked for mishandling creditor claims. Regulation 38 of the CIRP Regulations requires certain minimum distribution to operational creditors.[35] The SC noted that the RP did not ensure this priority: at one point the NCLT had ordered EBITDA distributions per *Essar Steel*, but the RP and the monitoring committee (constituted by the CoC) allowed the plan's terms, which inadequately compensated operations to stand.[36] Form H required the RP to certify full compliance with Section 30(2)(b),[37] including payment to operational creditors in priority, but he failed to do so. In short, the RP's oversight was lax on multiple fronts. His counsel had argued that the RP was "assisting" the CoC, but the Court said such lapses undermined confidence in IPs.

The CoC, too, was put in the dock, as the SC held that it had abused its commercial wisdom, indeed noting that that there was 'no commercial wisdom' on display. The CoC had greenlit JSW's plan despite clear contradictions: it had approved a plan that violated mandatory rules, then offered no resistance when JSW delayed payments by two years. Justice Trivedi observed that the CoC had taken contradictory stances – filing appeals to protect plan payments, forcing SC to preserve them in escrow, while simultaneously defending the plan's validity in the NCLAT. The CoC's conduct raised transparency concerns: were members fully informed of JSW's non-compliance, and were other legitimate plans (eg,

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[35] CIRP Regulations, reg 38.

[36] Divyam Agarwal and Divyanshu Pandey, 'Supreme Court of India set aside JSW Steel's Resolution Plan for Bhushan Steel and Power Limited; National Company Law Tribunal directed to initiate liquidation proceedings' (*Lexology*, 4 June 2025) <www.lexology.com/library/detail.aspx?g=cfa798de-2ea6-405b-903d-40693b6c0de4> accessed 24 June 2025.

[37] Mariappan Govindarajan, 'Compliance certificate under Corporate Insolvency Resolution Process' (*TaxTMI*, July 2018) <www.taxtmi.com/article/detailed?id=8211> accessed 24 June 2025.

Tata's or Liberty's) given adequate consideration? The Court suggested the CoC may have focused myopically on financial returns to secured lenders, at the expense of statutory priorities and other stakeholders.

In sum, the SC's narrative paints a picture of a CIRP gone awry through shared complacency. Each stakeholder (RP, CoC, RA) failed to police the process. The RP *forgot all norms*, the CoC *turned a blind eye*, and JSW *stretched implementation for its own enrichment*. The upshot for insolvency practice is stark: RPs must be vigilant,[38] CoCs must document and justify their commercial decisions transparently,[39] and RAs must honour agreed timelines.[40] Practitioners should also note that mere ex post 'best interests' arguments, for example, 'we completed the plan eventually', will not excuse legal non-compliance.[41]

[38] *RPS Infrastructure Ltd v Mukul Kumar* 2023 INSC 816.
[39] Vishawjeet Singh, 'Decoding the Commercial Wisdom of Committee of Creditors: An Analysis of Indian & Global Scenarios' (*ibclaw.in*, 25 February 2023) <https://ibclaw.in/decoding-the-commercial-wisdom-of-committee-of-creditors-an-analysis-of-indian-global-scenarios-by-vishawjeet-singh/> accessed 24 June 2025.
[40] Aseem Chaturvedi and others, 'Time of Essence: A Test of IBC's Timelines and Accountability' (*SCC Online*, 9 April 2025) <www.scconline.com/blog/post/2025/04/09/time-of-essence-ibc-timelines-accountability/> accessed 24 June 2025.
[41] *Kalyani Transco* (n 1).

VI. JUDICIAL OVERSIGHT: NCLT/NCLAT JURISDICTION AND OVERREACH

The *Kalyani Transco* case is also a cautionary tale about judicial profligacy. Two issues stood out: first, the Court's reaffirmation of the narrow compass of NCLT/NCLAT jurisdiction; and second, its rebuke of specific instances of overreach.

On the first point, the SC reiterated that the AA and Appellate Tribunal under the IBC are tribunals of very limited powers. Section 60(5) explicitly bars IBC courts from entertaining matters outside the insolvency resolution.[42] In *Kalyani Transco*, the NCLAT had gone beyond reviewing insolvency issues, e.g., it attempted to rule on the validity of the ED's PMLA actions and even on corporate-law issues like promoter classification of related companies. The SC held such acts to be 'ultra vires' the IBC. It cited *Embassy Property* to underline that only High Courts or the SC, as constitutional courts, can examine public law actions like tax or enforcement attachments.[43] For example, the NCLAT had declared that BPSL was no longer a promoter of its group companies (Nova Iron Steel Ltd, etc), a determination clearly rooted in corporate and securities law, not insolvency law. The SC struck this down as a 'judicial overreach', noting the NCLAT had no power to rewrite company-law status.

On the maintainability of appeals, the SC also sharpened the boundaries between Sections 61 and 62 boundaries. It held that the term "person aggrieved" in Section 62 is broad as observed in *Glas Trust v Byju*

[42] *Sumati Suresh Hegde & Ors v Anand Sonbhadra RP of Champalalji Finance Pvt Ltd & Ors* (NCLAT Delhi Comp App (AT)(Ins) No 884 of 2024).
[43] *Embassy Property* (n 28).

Raveendran.[44] Operational creditors, the ex-promoter (Sanjay Singal), and the State of Odisha were all entitled to challenge the plan's approval. This confirms that CIRP proceedings are *collective* and any stakeholder can appeal against gross non-compliance. In contrast, JSW Steel's own Section 61 appeal was deemed "not maintainable", as the successful applicant, it had no ground to challenge conditions it itself agreed to. This strict reading of "limited appeal grounds" under Section 61(3) signals that appellate review will not be used to renegotiate plan terms except on the five enumerated statutory grounds.[45]

The *Kalyani Transco* judgment suggests the need for clearer institutional and cross-institutional roles. The SC implicitly called for better coordination between the insolvency process and other regulators. For instance, one might envision a statutory mandate that before plan approval, the RP must obtain or note the status of any law enforcement actions and expressly record them in the plan.[46] Alternatively, amendments could clarify the interplay of Sections 32A and 60(5); for example, an explicit carve-out stating that PMLA matters can only be adjudicated in appropriate forums, as the Court did. On the procedural side, the ruling underscores that RPs and CoCs should feel empowered to push back against jurist overreach: if an insolvency tribunal starts wandering off into policing or corporate governance, RPs should object to ensure the preservation of the Insolvency Resolution Process as a pure

[44] *Glas Trust Company LLC v Byju Raveendran & Ors* [2024] INSC 811.
[45] *Panch Tatva Promoters Pvt Ltd v GPT Steel Industries Ltd & Ors* (SC Civil Appeal No 5630 of 2021).
[46] *Municipal Corporation of Greater Mumbai v Abhay Narayan Manudhane* (CP(IB)/27/I&B/MB/C-III/2019).

insolvency process.[47] For the judiciary, the decision is a reminder that IBC bodies must rein in any tendency to fill gaps beyond the Code's ambit,[48] as the SC noted with some disdain.

VII. COMPARATIVE PERSPECTIVES

Though *Kalyani Transco* is rooted in Indian law, similar issues arise globally in restructuring regimes. Two comparisons are especially instructive: the treatment of criminal/tainted assets in reorganization processes, and the enduring validity of public law actions.

In many common-law jurisdictions, insolvency relief does not equate to amnesty from criminal or regulatory claims.[49] For example, under Chapter 11 of the US Bankruptcy Code, a debtor's reorganization plan does not extinguish its obligations under criminal law or forfeiture statutes, and enforcement agencies can still pursue civil forfeiture or fines, subject only to the automatic stay's temporary shield.[50] Likewise, the United Kingdom Insolvency Act and the Proceeds of Crime Act have robust provisions for confiscation and restraint, independent of administration or liquidation.[51] IPs are often the very agents used to

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[47] Vinay Sachdev, 'Whether Resolution Professional has Adjudicatory Power in the CIRP Process?' (*Centre for Business & Commercial Laws*, 25 October 2022) <https://cbcl.nliu.ac.in/insolvency-law/whether-resolution-professional-has-adjudicatory-power-in-the-cirp-process/> accessed 25 June 2025.

[48] Arush Khanna and Swetalana Rout, 'Strengthening Our Insolvency Regime: The Answer Lies Within' (*SCC Online*, 15 January 2025) <www.scconline.com/blog/post/2025/01/15/strengthening-our-insolvency-regime-the-answer-lies-within/> accessed 25 June 2025.

[49] International Monetary Fund, *Greece: Selected Issues, Country Report No 17/41* (*IMF*, 23 January 2017) <www.imf.org/~/media/Files/Publications/CR/2017/cr1741.ashx> accessed 27 June 2025.

[50] 11 USC, ch 11 (Reorganization).

[51] Proceeds of Crime Act 2002, s 41.

unwind tainted structures:[52] the World Bank/United Nations Commission on International Trade Law guidelines note that where a company was used as an instrument of corruption or money laundering, the insolvency process itself can be harnessed to recover assets.[53] Indeed, in common-law jurisdictions there is a doctrine of "just and equitable" winding-up for companies engaged in fraud, allowing courts to dissolve sham entities even if they are not technically balance-sheet insolvent.[54] In practice, an insolvency representative, akin to an RP, is vested with investigative powers and a mandate to trace and claw back ill-gotten gains.[55] This contrasts with the uncertainty in India's framework: in *Kalyani Transco*, the ED had to pause its attachment due to the injunction (since lifted) and the fate of Section 32A is unresolved. The global norm favours proactive asset recovery by fiduciaries, rather than a blanket grant of immunity after a plan.[56]

The broader lesson is that insolvency law is generally designed to resolve civil claims (debts) and facilitate rescue; criminal liability is seen

[52] Insolvency and Bankruptcy Board of India, 'Insolvency Professional: A Key to Resolution – Information Brochure' (*IBBI*, 13 April 2021) <www.ibbi.gov.in/uploads/whatsnew/2021-04-13-163323-pt2ei-a56e6e185a5c5b7e8c7355f7a68f612f.pdf> accessed 27 June 2025.

[53] Jean-Pierre Brun and Stephen Baker, 'Going for Broke: Can Insolvency Proceedings Help Recover Corrupt Assets?' (*World Bank Governance for Development Blog*, 9 December 2019) <https://blogs.worldbank.org/en/governance/going-broke-can-insolvency-proceedings-help-recover-corrupt-assets> accessed 27 June 2025.

[54] Jonathan Hardman, 'Tensions in Corporate Contractarianism: Rhetoric Rather than Logic' (2025) International Journal for the Semiotics of Law.

[55] Stolen Asset Recovery Initiative, 'Going for Broke: Using Insolvency for Cross-Border Asset Recovery' (*The World Bank UNODC*, 16 April 2019) <https://star.worldbank.org/blog/going-broke-using-insolvency-proceedings-cross-border-asset-recovery> accessed 27 June 2025.

[56] *Kalyani Transco* (n 1).

as a separate track.[57] The Indian "clean slate" theory, that no fresh claims against a new owner apply, is conceptually limited to financial obligations, not to extinguish crimes.[58] Other jurisdictions explicitly preserve police powers for instance, US Chapter 11 contemplates that criminal enforcement, including fines and restitution, survives plan confirmation. By contrast, a literal reading of Section 32A might appear to suggest immunity for corporate offences, a result not mirrored in many legal systems. The SC's refusal to interpret Section 32A as a free pass is therefore consistent with international practice: it did not allow IBC proceedings to nullify ED investigations.

A final comparative note on priority of payments: India's insistence on Section 29A and operational-creditor priority has parallels in, say, the US *absolute priority rule* which mandates certain creditor hierarchies in Chapter 11.[59] However, many countries grant more discretion to restructuring stakeholders on how to share pie, subject, of course, to overarching fairness.[60] The *Kalyani Transco* verdict falls on the strict side: it vindicated creditors who complained that the JSW plan did not pay unsecured operational creditors in priority, and ordered JSW to return those payments made out of turn. A more balanced approach might have allowed some remedy short of liquidation, but the Court

[57] Legal Department International Monetary Fund, 'Orderly & Effective Insolvency Procedures: Key Issues' (*International Monetary Fund*, 2 August 1999) <https://www.imf.org/external/pubs/ft/orderly/> accessed 27 June 2025.

[58] Majmudar & Partners, 'The Clean Slate Doctrine and the Tax Quandary' (*Majmudar & Partners*, 5 May 2025) <www.majmudarindia.com/clean-slate-doctrine-tax-quandary/> accessed 27 June 2025.

[59] 11 USC, ch 11 (Reorganization).

[60] Jaco Johann Pepler, 'Advantage for Creditors in South African Insolvency Law – A Comparative Investigation' [2014] (LLM dissertation University of Pretoria) <http://hdl.handle.net/2263/41241> accessed 27 June 2025.

made clear that compliance with the Code's priority scheme is mandatory, akin to creditor rights that cannot be contractually waived.

VIII. RECOMMENDATIONS AND FORWARD VIEW

The fallout of *Kalyani Transco* will surely occupy practitioners and regulators for years. To preserve the IBC's objectives while addressing the Court's concerns, we suggest several reforms:

Clarify Section 32A's Scope: Parliament/IBBI should consider amending Section 32A or releasing clarification circulars to explicitly state its effect, or non-effect on criminal asset attachments and investigations. For example, a proviso might say that ED actions under PMLA "shall not be deemed barred solely because a resolution plan has been approved."[61] This would align legislative intent with the Court's distinction between criminal and civil realms.

Strengthen RP Accountability: The IBBI could enhance code of conduct rules to impose penalty or removal of RPs who fail basic duties like filing Form H or meeting timelines,[62] this will bring in a deterrence effect against the non-compliance of the guidelines by RPs. A checklist mechanism inserted into Form H could require the RP to tick off each statutory compliance (Sections 12, 29A, Regulation 38, etc) before court

[61] *Kiran Shah (RP of KSL & Industries Ltd) v Enforcement Directorate Kolkata* NCLAT New Delhi Company Appeal (AT)(Ins) No 817 of 2021; Fox Mandal, 'IBBI Notifies Updated Form H Under CIRP Regulations' (*Fox Mandal India*, 8 April 2025) <www.foxmandal.in/News/ibbi-notifies-updated-form-h-under-cirp-regulations/> accessed 27 June 2025.

[62] *Canara Bank Ltd v Ms Mamta Binani (Resolution Professional of Aristo Texcon Pvt Ltd) & Ors* NCLAT New Delhi Company Appeal (AT)(Insolvency) No 1117 of 2019.

submission.[63] Additionally, higher oversight, eg, IBBI audits of large CIRPs, might detect procedural lapses early.

Limit CoC Overreach with Checks: The CoC's freedom under *commercial wisdom* is broad, but might benefit from guardrails.[64] One idea is to require independent valuations or third-party opinions when a plan deviates from statutory norms, such as sub-prioritizing operational creditors.[65] Minutes of CoC meetings should explicitly record how each member evaluated statutory priorities.[66] Courts could also insist on hearing dissenting creditors' views before approving plans that arguably disadvantage them.[67]

Expedite Appellate Review: The Court's frustration partly stemmed from the long pendency such as two years of appeals before final judgment. To avoid plan implementations being stayed indefinitely, faster appellate mechanisms via special benches or stricter timelines

[63] ibid.
[64] Somya Gadpayle, 'A Study of Commercial Wisdom of Committee of Creditors: Knowing the Status Quo' (*IBCLaw*, 6 April 2024) <https://ibclaw.in/a-study-of-commercial-wisdom-of-committee-of-creditors-knowing-the-status-quo-somya-gadpayle/> accessed 28 June 2025.
[65] *Omkush Infrastructure (P) Ltd v Merushikhar Realty (LLP)* [2024] SCC OnLine NCLT 2714.
[66] Indian Institute of Insolvency Professionals of ICAI, 'Best Practices – Meetings of Committee of Creditors under CIRP and Stakeholder's Consultation Committee under Liquidation Process' (*IIIPI*, November 2024) <www.iiipicai.in/wp-content/uploads/2024/11/Final-Report-Best-Practices-COC-and-SCC-Meetings.pdf> accessed 28 June 2025.
[67] Sparsh Shrivastava, 'Entitlement to Dissenting Financial Creditor: Need to Revisit the Decision of DBS Bank' (*Centre for Business & Commercial Laws*, 17 August 2024) <https://cbcl.nliu.ac.in/insolvency-law/entitlement-to-dissenting-financial-creditor-need-to-revisit-the-decision-of-dbs-bank/> accessed 28 June 2025.

under Section 61 are needed.[68] Otherwise, the policy of time-bound resolution is undermined by protracted litigation.

Inter-Agency Coordination Protocols: Given the interplay with ED/CBI, statutory guidelines could mandate that RPs immediately notify the ED/Court when a plan is approved,[69] and similarly that ED must inform the insolvency court before attaching assets post-approval.[70] A joint monitoring committee with representation from law enforcement and the CoC could help coordinate asset recovery with plan execution.

Legislate for "Tainted Assets" Handling: Many jurisdictions earmark illicit assets during restructuring.[71] The IBC could, for example, allow the creation of a "special purpose" asset pool.[72] Assets identified as proceeds of crime could be ring-fenced, so that genuine creditors share

[68] Swipe Blog, 'Fast Track Corporate Insolvency Resolution Process Under IBC 2016: A Swift Path to Corporate Restructuring' (*Swipe*, 11 February 2025) <https://getswipe.in/blog/article/fast-track-corporate-insolvency-resolution-process-under-ibc-2016/> accessed 28 June 2025.

[69] Insolvency & Bankruptcy Board of India, 'Agenda of the Insolvency and Bankruptcy Board of India Governing Board Meeting' (*IBBI*, 2 December 2017) <www.ibbi.gov.in/Agenda_2_01122017.pdf> accessed 28 June 2025.

[70] Shahezad Kazi, Utkarsh Trivedi and Ridhima Chandani, 'Bombay High Court: Enforcement Directorate Should Necessarily Release Attachment over Assets of a Corporate Debtor after Approval of Resolution Plan' (*S&R Insights*, 5 April 2024) <www.snrlaw.in/bombay-high-court-enforcement-directorate-should-necessarily-release-attachment-over-assets-of-a-corporate-debtor-after-approval-of-resolution-plan/> accessed 28 June 2025.

[71] The Institute of Company Secretaries of India, 'Corporate Restructuring, Insolvency, Liquidation & Winding-Up' <www.icsi.edu/media/webmodules/CRILW_PART_1.pdf> accessed 28 June 2025.

[72] Insolvency and Bankruptcy Board of India, 'Legal Framework for Ensuring Creditor Protection on Insolvency and Liquidation' *(IBBI*, 16 January 2023) <https://ibbi.gov.in/uploads/legalframwork/b9b7d1e976d46ff8a982b6178303a1ff.pdf> accessed 28 June 2025.

only untainted value.[73] This ensures corruption proceeds do not reduce the estate available to innocent stakeholders.

In the longer view, *Kalyani Transco* may signal a judicial push for credible resolutions and not just mechanically cleared plans. IPs will have to adapt exercise greater diligence, insist on compliance checks within the CoC, and perhaps document more fully the business rationales for contentious decisions.

IX. REVIEW JUDGEMENT (26 SEPTEMBER 2025): CHANGES AND CONTINUITIES

On 26 September 2025, the SC in its review judgment upheld JSW Steel's resolution plan for BPSL and put to rest all remaining challenges. The Court began by reminding that the IBC's overriding purpose is to rescue distressed businesses and maximize value for stakeholders, in essence, to ensure that an insolvent company is "revived or liquidated expeditiously".[74] Against that backdrop, it took up the appellants' objections one by one.

First, the Court addressed whether the former promoters could even appeal. Applying Vijay Kumar Jain,[75] it held that because promoters had guaranteed BPSL's debts, they certainly qualified as "persons aggrieved" under Section 62 of the Code.[76] A resolution plan often cuts the amount

[73] Ankoosh Mehta, Vikash Kumar Jha and Nikhil Aradhe, 'Is mere possession of proceeds of crime sufficient for triggering PMLA?' (*Cyril Amarchand Mangaldas Dispute Resolution Blog*, 14 November 2024) <https://disputeresolution.cyrilamarchandblogs.com/2024/11/is-mere-possession-of-proceeds-of-crime-sufficient-for-trigerring-pmla/> accessed 28 June 2025.
[74] *Kalyani Transco* (n 1) [55].
[75] *Vijay Kumar Jain v Standard Chartered Bank and Others* (2019) 20 SCC 455.
[76] IBC, s 62.

creditors receive and thus directly affects guarantors' interests. In fact, the Court noted that an approved or rejected plan is sent to all 'participants' (including ex-directors) precisely because they are 'vitally interested' and may appeal. In short, the plan's terms did impact the promoters' rights, so their appeals could not be thrown out on jurisdictional grounds.

The next question was whether the CoC loses its authority once the NCLT sanctions a plan. Here too, the Court gave a clear answer: the CoC does not become functus officio upon approval. Citing the IBBI (CIRP) Regulations, the Bench emphasized that the CoC "continues to exist" until the plan is fully implemented or, alternatively, the debtor is liquidated under Section 33.[77] It warned that treating the CoC as defunct immediately after approval would lead to an "anomalous situation":[78] if implementation lagged or appeals remain pending, creditors would be left with no forum to enforce the plan. In other words, the creditor committee and its monitoring mechanism remain in place until all legal and execution uncertainties are resolved. As for timing, the Court noted that Section 12 of the IBC imposes strict deadlines (a CIRP must be completed within 180 days, extendable once up to 330 days) and observed that the Code "does not allow any undue delays".[79]

Nonetheless, the judges found that the inordinate delays in this case were largely caused by exceptional circumstances beyond JSW's control. The resolution plan was approved on 5 September 2019, but its implementation was repeatedly stalled by multiple events (Enforcement

[77] IBC, s 33.
[78] *Kalyani Transco* (n 1) [78].
[79] *Kalyani Transco* (n 1) [57].

Directorate attachment orders and overlapping litigation). Crucially, both JSW and the CoC actively worked to overcome these hurdles. Therefore, they agreed to extend the implementation deadline and pursued all available legal remedies. The Court therefore concluded that neither the CoC nor JSW should be faulted for the timetable. In its words, the "delay is neither attributable to the CoC nor to the SRA - JSW" and both parties were "making consistent efforts" to expedite the plan.

On the financial terms of the plan, the Court affirmed that JSW's upfront funding met the Code's requirements. JSW had committed to infuse equity through Compulsorily Convertible Debentures (**CCDs**). Relying on its prior rulings, the Court reiterated that CCDs, which carry no repayment obligation and will mandatorily convert into shares, are to be treated as equity instruments. In fact, the judgment explicitly states that these CCDs "are to be treated the same as an equity infusion".[80] Therefore, JSW's CCDs satisfied the plan's capital-infusion requirement, and there was no breach of the funding condition.

Perhaps the most critical point was the fate of the Earnings Before Interest, Taxes, Depreciation and Amortisation (**EBITDA**) generated during the insolvency. The former promoters and some creditors sought to claim a share of these operating profits, but the Court flatly rejected that approach. It noted that the CoC itself had already resolved to retain the EBITDA within the corporate debtor, and that neither the RP nor the approved plan provided for any post-approval redistribution of earnings. To allow a change in this position now would violate the settled terms of the plan. Indeed, the Court observed that the plan's implementation had

[80] *Kalyani Transco* (n 1) [146].

done exactly what the Code intends, it transformed BPSL from a loss-making to a profit-making entity under JSW's management. Posing the question itself, the Bench asked: "If, after the implementation of the Resolution Plan, the SRA-JSW has converted a loss-making entity into the one making profits, can it be penalised for that?".[81] The answer was emphatically no. The Court warned that permitting any EBITDA claim outside the approved plan would open a Pandora's Box and vitiate the finality of the resolution. This reasoning reflects the SC's Essar Steel decision:[82] once a plan is confirmed, claims not provided for in the plan cannot be entertained thereafter.

Finally, the Court upheld the CoC's classification of claims. Jaldhi Overseas, initially admitted as a contingent operational creditor, had shifted its stance and argued it should be treated as a full operational creditor. The Court refused to intervene. It held that the CoC had validly exercised its commercial wisdom in keeping Jaldhi's claim contingent, and under *K Sashidhar v IOB*,[83] such CoC decisions are not open to judicial second-guessing once the plan is approved. Because the NCLT and NCLAT themselves had sanctioned the plan with Jaldhi classified as contingent, the SC found no pure question of law in Jaldhi's appeal. Accordingly, that challenge was dismissed as well.

These analyses, when taken together, reinforce the message that has now been consistently held: an approved resolution plan must normally be given effect to under the IBC. The SC's review judgment made it clear that the Code favours going-concern revival and creditor consensus over

[81] *Kalyani Transco* (n 1) [187].
[82] *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v Satish Kumar Gupta and Others* [2020] 8 SCC 531.
[83] *K Sashidhar v Indian Overseas Bank and Others* [2019] 12 SCC 150.

collateral attacks. As the Court warned, allowing claims or objections outside the perimeter of a sanctioned plan would frustrate the very purpose for which the IBC came to be enacted. In practical terms, once a plan has cleared NCLT/NCLAT scrutiny and been implemented, its core provisions will ordinarily hold, absent a clear violation of law. This re-endorsement of finality and commercial wisdom is the key takeaway for insolvency practitioners in the Bhushan Power saga.

X. CONCLUSION

Kalyani Transco v Bhushan Power is undeniably a watershed for India's insolvency jurisprudence mainly because of the following reasons: Firstly, the judgment raises questions for global investors and stakeholders by challenging the issue of resolution plan 'finality' on procedural grounds. This introduces a level of uncertainty that may affect perceptions of commercial predictability within India's insolvency framework. Secondly, the judgment marks a departure from earlier SC rulings[84] that have generally prioritised substantive justice over procedural lapses. Lastly, while the stated objective of CIRP is resolution and revival (and not liquidation) as reiterated in *K N Rajakumar v V Nagarajan*,[85] this decision can be viewed as potentially moving away from that approach by setting aside an approved resolution and opening the door to liquidation.

The SC has reiterated that process matters: statutory timelines, eligibility norms and creditor priorities cannot be sacrificed on the altar of expedience. The ruling thus serves as both warning and guide. On one

[84] *Essar Steel* (n 82).
[85] *K N Rajakumar v V Nagarajan* [2021] SCC OnLine NCLT 426.

hand, it vindicates the IBC's purpose of swift, rule-based resolution; on the other, it highlights the delicate balancing act between legal correctness and commercial viability. By setting aside the approved plan, the Court underscored that even a high-scoring bid by a reputed company, in this case, JSW, must satisfy every code provision, or risk liquidation.

From the practitioner's lens, the key lessons are clear: be *meticulous* at every stage of CIRP, maintain *transparency* with all stakeholders, and recognize that the insolvency process exists within a larger legal ecosystem (tax, criminal law, company law) that cannot be overridden without express authority. The judgment reasserts that NCLT/NCLAT powers are confined to the IBC's text, and that stakeholders beyond financial creditors have a voice when statutory safeguards are ignored.

Significantly, the review judgment, recalibrated the earlier judgment to insulate the finality of an approved plan in cases of delays caused by external litigation or enforcement proceedings, thus reinforcing the rescue-oriented purpose of the IBC. However, this recent development does not deviate from the central messages: stringent compliance with Section 29A, strong RP oversight, and clearer inter-agency arrangements remain imperative to avert process breakdowns that may still threaten even commercially viable resolutions.

Ultimately, the *Kalyani Transco* saga may prompt the insolvency community and lawmakers to refine the framework: from clarifying the reach of Section 32A to setting stronger institutional checks on CoC decisions. Comparative practice suggests that many jurisdictions explicitly preserve enforcement actions even during a restructuring; India may need to do likewise to avoid stonewalling anti-corruption

measures. As this article illustrates, the judgment's implications are profound. Going forward, every RP would do well to ensure their processes are beyond reproach lest a technically flawless, financially sound plan be unwound on a legality.