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JSW-BHUSHAN POWER INSOLVENCY CASE: ANALYSIS & COMPARISON WITH CHAPTER 11 OF US BANKRUPTCY CODE

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ABSTRACT

The Supreme Court's judgement in *Kalyani Transco v. M/S. Bhushan Power and Steel Ltd.*, delivered in May 2025, is a landmark judgement and an important moment in India's Insolvency jurisprudence. The court held that the resolution plan approved in 2019 and implemented in 2021 is void because of procedural lapses that happened in the process. The court used its powers under Article 142 to initiate the liquidation of the company, Bhushan Power and Steel Ltd. This paper examines the facts of the case, the court's reasoning, as well as the consequences of such a judgement. It compares India's policy with the USA's Chapter 11, Section 1144, which provides for reversal within 180 days of the passing of such a plan. Drawing on the comparison, the paper proposed recommendations for policy reforms, including a fixed window to challenge such approved resolution plans and protection of investors who invested in good faith. Ultimately, the paper calls for a balance between compliance with procedure

KEYWORDS

Insolvency and Banking Code of India (IBC), 2016; *Kalyani Transco v. M/S. Bhushan Power and Steel Ltd.*; JSW Steel, Bhushan Power and Steel Ltd, Procedural Compliance, investor confidence.

INTRODUCTION

In May 2025, the Supreme Court passed a verdict in the case of *Kalyani Transco v. M/S. Bhushan Power and Steel Ltd.*² referred to as the Jindal South West Steel-Bhushan Power case. The court decided to nullify an insolvency resolution plan of Bhushan Power and Steel, which was approved in 2019 and was being implemented in stages through 2022. The court's decision had shocked many as it reversed the plan years after its confirmation. The resolution planned by JSW Steel was valued at Rs. 19,700 Crore. However, the judiciary intervened when procedural issues were noticed. The judgement has prompted debates on whether

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² *Kalyani Transco v. Bhushan Power & Steel Ltd.*, Civil Appeal No. 1808 of 2020, 2025 INSC 621 (India).

commercial finality and investor confidence are less important than compliance with procedure and statutes.

The court's reasoning was based on Sections 12, 29A and 31 of the Insolvency and Bankruptcy Code (IBC), 2016 and ruled that even a fully implemented plan is void if there are serious procedural violations. In contrast, the US Chapter 11 Code § 1144 provides that revocation of an order of confirmation can be done within 180 days of confirmation only. This comparison between India's broad policy for judicial intervention and the USA's time-bound policy creates a ground for evaluation of the policy and legislative framework.

This paper explains the facts of the case in brief, the reasoning the court applied and examines the consequences of this judgement on investor confidence and jurisprudence of insolvency laws. Then, the paper does a comparative analysis of relevant provisions of the Insolvency and Bankruptcy Code, 2016 with the USA's Chapter 11 Code § 1144 and recommends policy reform aimed at achieving a balance between compliance with procedure with commercial certainty.

MATERIALS AND METHODS

In conducting this research, the doctrinal method of research was employed, ensuring that the subject matter is thoroughly and accurately examined. This study uses secondary sources, including verified online databases, academic and research papers, and case laws. A systematic literature review was performed to gather relevant information, focusing on the most recent and pertinent publications.

BRIEF OF FACTS

In 2017, the Reserve Bank of India gave directions to banks to initiate insolvency proceedings against 12 large defaulters³ under the Insolvency and Bankruptcy Code, 2016. Bhushan Power & Steel being one of them, the Punjab National Bank started a Corporate Insolvency Resolution Process (CIRP) against the same. The National Company Law Tribunal (NCLT) accepted the petition on July 26, 2017. Claims were invited and the Interim Resolution Professional (IRP) admitted approximately Rs. 47,000 Crore from financial creditors and Rs. 641 Crore from Operational Creditors. The Committee of Creditors (CoC) confirmed IRP as the Resolution Professional on September 1, 2017.

³Circular No. DBR.No.BP.BC.101/21.04.048/2016-17, *Resolution of Stressed Assets – Revised Framework* (June 13, 2017).

Bidders like Jindal South West Steel (JSW), Tata Steel and Liberty House competed, and JSW was the highest scoring bidder under the CoC's matrix. CoC approved the JSW resolution plan on 16 October 2018, even though the statutory deadline of CIRP (330 days under Section 12 of IBC⁴) had expired and no extension was obtained. JSW filed it with the NCLT, which approved it in October 2018 with some conditions, such as operational creditors have to be paid in line with amended Section 30(2) of IBC, etc. JSW challenged the conditions in an appeal, and the National Company Law Appellate Tribunal (NCLAT) upheld the plan in February 2020.

JSW started the implementation of the resolution plan and made payments to creditors in March 2021 and 2022. It also took other procedural steps, such as taking over attached properties under PMLA⁵, which was upheld by NCLT⁶.

On the appeals of an operational creditor, Kalyani Transco, the Supreme Court set aside the resolution plan of JSW in *Kalyani Transco v. Bhushan Power & Steel Ltd.*⁷. The court directed the liquidation of Bhushan Power and Steel Ltd, as under Section 33 of the IBC⁸. The court used its powers under Article 142 and held that the violations are so fundamental that the resolution process was void ab initio.

COURT'S REASONING

In this landmark ruling, the court emphasised that compliance with the procedure is non-negotiable, regardless of the commercial success of the plan. Section 12 of IBC⁹ provides "Time-limit for completion of insolvency resolution process" and states that the total process of insolvency has to be completed within 330 days in total from the date of commencement of the process. It must be completed within 180 days of admission the application, with a maximum 90-day extension. The Court cited the precedents in the Essar Steel case¹⁰ and the Arcelor Mittal case¹¹ and held that time limits are mandatory to adhere to. The bypassing of the same (CIRP initiated in 2017 and plan implemented in 2021) was a violation of procedure.

⁴Insolvency and Bankruptcy Code, No. 31 of 2016, § 12, India Code (2016).

⁵Prevention of Money Laundering Act, No. 15 of 2003, India Code (2003).

⁶*Setting Aside of an Executed Resolution Plan: Supreme Court's Verdict in the JSW — Bhushan Steel Insolvency Case Saga Opens a Pandora Box*, SCC Times (June 22, 2025), <https://www.scconline.com/blog/post/2025/06/22/supreme-court-jsw-bhushan-steel-insolvency-case/>.

⁷*Supra* note 2.

⁸Insolvency and Bankruptcy Code, No. 31 of 2016, § 33, India Code (2016).

⁹*Supra* note 4.

¹⁰*Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

¹¹*ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1.

The court also held that the Resolution Professional (RP) did not completely do his duties by stating that he did not furnish a certificate in Form H, which verified JSW's eligibility to submit resolution plans as required by Section 29A of the IBC¹². The RP did not do his duties under Section 30(1) of the IBC¹³ and either. The court reasoned that the procedural lapse by the RP put a question mark on the legitimacy of the process¹⁴.

The court also criticised that JSW misrepresented information before the Committee of Creditors (CoC) and bypassed the procedure, delaying the execution through appeals. The court also condemned CoC for failing its fiduciary duties by approving RP's flawed plan. The court used its powers under Article 142 of the Constitution to initiate liquidation under Section 33 of the IBC¹⁵ instead of remanding the matter to the CoC. The judgement is rooted in the strict-compliance doctrine.

CONSEQUENCES OF THE JUDGEMENT

The Supreme Court's decision has many ripple effects that extend across India's Insolvency system and affect investors as well as lawmakers. The ruling shocked the investors and impacted their sentiments. JSW Steel shares on the Bombay Stock Exchange went down 5%¹⁶. If an implemented plan could be reversed later, it poses a significant financial risk. International funds directed towards distressed assets in India would now be hesitant, given the uncertainty of the resolution processes' finality¹⁷.

The CIRP resolutions were presumed to be final, but this judgement would change that perception. Observers of the market remark that such an erosion of legal certainty would result in reduced trust in IBC and discourage domestic and foreign capital¹⁸. The court invoked Article 142 of the constitution to order liquidity. Critics argue that this is judicial overreach as it bypasses the CoC's authority¹⁹.

JSW Steel had integrated the assets of Bhushan Power and Steel and this judgement means a disinvestment of approximately Rs. 19,000 Crore with the liquidation. Consequently, JSW

¹²Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A, India Code (2016).

¹³Insolvency and Bankruptcy Code, No. 31 of 2016, § 30(1), India Code (2016).

¹⁴*Supra note 6.*

¹⁵*Supra note 8.*

¹⁶Supreme Court Rejects JSW Steel's Resolution Plan, Orders Liquidation of Bhushan Power and Steel, TechStory, (last visited 8-7-2025), <https://techstory.in/supreme-court-rejects-jsw-steels-resolution-plan-orders-liquidation-of-bhushan-power-and-steel/>.

¹⁷*Supra note 6.*

¹⁸*Supra note 16.*

¹⁹The SC's JSW-Bhushan Ruling Will Hit Both the IBC and Investor Confidence, CUTS Int'l (May 7, 2025), <https://cuts-ccier.org/the-scs-jsw-bhushan-ruling-will-hit-both-the-ibc-and-investor-confidence/>.

faces a huge loss. Another consequence is that many other delayed CIRPs are now at risk of being challenged in court. This can potentially overwhelm the NCLT framework²⁰.

COMPARATIVE ANALYSIS WITH CHAPTER 11 US CODE

This section analyses and compares India's Insolvency and Bankruptcy Code with USA's Chapter 11 regime, particularly its Section 1144.

INDIA: Section 12 of IBC²¹ provides that,

*“(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of **one hundred and eighty days** from the date of admission of the application to initiate such process. (2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares. (3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but **not exceeding ninety days**: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of **three hundred and thirty days from the insolvency commencement date**, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor: Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the*

²⁰Gurkaran Singh & Tejaswini Nair. *Case Analysis: Kalyani Transco v. Bhushan Power and Steel Ltd. & Ors.*, 2025 SCC Online SC 1010. 7 Indian J.L. & Legal Res. 8970 (2025).

²¹*Supra* note 4.

date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.”

Hence, in India, the deadline of the resolution process is 180 days, with an extension of 90 days and requires that from the date of when insolvency commences, it should be finished within 330 days. The IBC does not provide for a cap on the reversal of the resolution plan post its confirmation. The Supreme Court’s decision in the case also shows that its authority to annul plans is not limited by any time frame, as the judgement was delivered years after the implementation of the plan began. The court considered misrepresentations, delayed payments and lack of compliance with procedure as misrepresentation and allowed their reversal after years of confirmation.

UNITED STATES OF AMERICA: Section 1144 of Chapter 11 of the US Code²² states,

“On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—(1) contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and(2) revoke the discharge of the debtor.”

Hence, the US Code states that a confirmation order can be revoked within 180 days of the confirmation date and only if it is procured by fraud. It also mentions that steps have to be taken to protect the interests of those parties who relied on the confirmed plan and revoke the debtor’s discharge.

The courts in the USA have interpreted “fraud” quite narrowly and require intentional misrepresentation that directly led to the confirmation of an insolvency procedure²³. In Tenn-Fla, the court did not open a plan which passed over 180 days ago²⁴.

Clearly, the US offers limited time for revocation of the order and has a narrow definition of fraud, which creates legal certainty and encourages investment from domestic and foreign

²²U.S. Code, Title 11, Chapter 11, Sub-chapter III, Section 1144.

²³Delaware Bankruptcy Court Reinforces Sanctity of Corporate Formalities in Chapter 11 Cases, JD Supra (May 15, 2023), <https://www.jdsupra.com/legalnews/delaware-bankruptcy-court-reinforces-5050780/>.

²⁴What's Done Is Done: A Confirmation Order Is Final Even When Fraud Is Alleged, Am. Bankr. Inst. (Jan. 9, 2023), <https://www.abi.org/member-resources/blog/what%E2%80%99s-done-is-done-a-confirmation-order-is-final-even-when-fraud-is-alleged>.

investors. On the other hand, the Supreme Court of India has placed a stricter compliance doctrine in place that prioritises compliance with procedure. This can introduce unpredictability, which is detrimental to investment and confidence in IBC.

RECOMMENDATIONS AND POLICY REFORM

1. Introduction of a fixed reversal time period.

IBC could be amended to introduce a resolution plan approved by the NCLT should be challenged within a certain time window, like US's Code Chapter 11 Section 1144 requires that challenges should be filed within 180 days of confirmation. This would add a level of certainty for the investors.

2. Stay on implementation during appeals

IBC and CIRP regulations need explicit provisions for staying implementation until an appeal is decided. This would prevent irreversible steps based on potentially flawed approvals²⁵.

3. Protection of interest

The US Code, under Section 1144, states, “*An order under this section revoking an order of confirmation shall contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation.*” A similar provision needs to be introduced to protect those parties who invested in good faith, such as creditors.

4. Committee of Creditors' wisdom

The commercial wisdom of creditors is an important part of the insolvency procedure. A legislative provision is required for narrower grounds of reversing resolution plans approved CoC plans with a 66% vote. Alternatively, courts could also be required to send the resolution plan back to the CoC to order modification before going for liquidation.

5. Strengthen the accountability of institutions

The Insolvency and Bankruptcy Code should be given the power to penalise underperforming Resolution Professionals (RPs) and CoC members. The training of such institutions should be extensive to reduce procedural lapses.

²⁵Suggestions for IBC Amendments, IBC Law (May 5, 2025), <https://ibclaw.in/suggestions-for-ibc-amendments/>.

CONCLUSION

The decision made by the Supreme Court in Kalyani Transco v. Bhushan Power is a landmark judgement that prioritises compliance with procedure rather than the commercial well-being of the company. It is a pivotal moment in insolvency jurisprudence in India. The Court rendered void a resolution plan which was approved years ago and was already in the stage of implementation. However, this judgement put investors in distress and raised concerns about the legal certainty of insolvency processes.

The US, in contrast, has put a cap on the time during which a resolution plan can be challenged under Section 1144 of the US Chapter 11. The section also offers protection to stakeholders who invested in good faith. This way, there is certainty in the legality of the procedure and encourages public trust.

The JSW-Bhushan case ultimately defends the rule of law and requires a deeper look at our statutes. A policy reform aimed at introducing legal certainty can help in increasing investor confidence. Ultimately, such a reform requires balancing investor interest with maintaining sanctity of procedure.