



# IMPACT OF SC DECISION IN BPSL IN CIRP

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# Supreme Court Orders Liquidation of Bhushan Power and Steel: A Landmark Ruling on Insolvency Process Violations


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CS Vekas Kumar Garg, Insolvency Professional, Whole Time Director,  
Value Plus Insolvency Resolution Process

In its recent ruling in CIVIL APPEAL NO. 1808 of 2020 delivered on 02<sup>nd</sup> May, 2025, the Supreme Court rejected JSW Steel's resolution plan for Bhushan Power and Steel Limited (BPSL) due to gross violations of the Insolvency and Bankruptcy Code (IBC) and CIRP Regulations. It found non-compliance with mandatory provisions, including Section 30(2) and Section 31(2), and criticized JSW Steel, the Resolution Professional, and the CoC for delaying implementation and misusing the legal process. The Court ordered liquidation proceedings for BPSL under Chapter III of the IBC and stated that payments made by JSW Steel to creditors would be subject to the appeals' outcome. The issue of EBITDA distribution was left open for future consideration.

## Background of the Matter

The background of the matter revolves around the Corporate Insolvency Resolution Process (CIRP) initiated against Bhushan Power and Steel Limited (BPSL), one of the "dirty dozen" companies identified by the Reserve Bank of India (RBI) for resolution under the Insolvency and Bankruptcy Code, 2016 (IBC). In BPSL, Punjab National Bank filed a petition before the National Company Law Tribunal (NCLT) to initiate CIRP against BPSL, which was admitted on July 26, 2017. The Interim Resolution Professional (IRP) invited claims from stakeholders, admitting claims of INR 47,204.51 crores for financial creditors and INR 621.37 crores for operational creditors. Prospective resolution applicants, including JSW Steel, Tata Steel, and Liberty House, submitted resolution plans. After multiple rounds of negotiations and evaluations, JSW Steel's resolution plan was approved by the Committee of Creditors (CoC) and subsequently by the NCLT on September 5, 2019, subject to certain conditions. Various appeals were filed before the National Company Law Appellate Tribunal (NCLAT) by operational creditors, ex-promoters, and government authorities challenging the NCLT's approval of JSW Steel's resolution plan. JSW Steel also filed an appeal against certain conditions imposed by the NCLT. On February 17, 2020, the NCLAT approved the resolution plan with modifications, dismissing appeals filed by other parties.



The Directorate of Enforcement (ED) provisionally attached BPSL's assets under the Prevention of Money Laundering Act, 2002 (PMLA), which was challenged by JSW Steel and CoC. The matter reached the Supreme Court, where various appeals were filed, including challenges to the NCLAT's decision and the ED's attachment of assets. JSW Steel delayed the implementation of the resolution plan, citing legal proceedings, and eventually made payments to financial and operational creditors after significant delays.

## What were the grounds of appeal by the appellants in the present case

The appellants in the present matter raised several contentions challenging the resolution plan of JSW Steel and the decisions of the NCLT and NCLAT. These contentions can be summarized as follows:

### Contentions Raised by Ex-Promoters

#### (Sanjay Singal & Others):

The appellants argued that there were gross violations of mandatory provisions of the IBC and CIRP Regulations during the insolvency resolution process, including non-compliance with timelines and statutory requirements. Regulation 38 of the CIRP Regulations mandates payment to operational creditors in priority over financial creditors. However, the resolution plan treated financial creditors as having priority, which was contrary to the law. It was also argued that the resolution plan was indeterminate and unpredictable, with JSW Steel delaying its implementation by over 540 days for financial creditors and 900 days for operational creditors, causing significant prejudice to stakeholders. JSW Steel ("SRA") secured the position of the highest bidder by making false assurances regarding upfront payments and equity infusion, which it failed to comply with. The resolution plan treated secured statutory dues of operational creditors as unsecured dues, contravening the law laid down in *State Tax Officer v. Rainbow Papers Limited*. The appellants also contended that the profits generated during the CIRP period should be distributed among creditors, rather than retained by JSW Steel. The appellants argued that there was no scope for negotiations between the CoC and JSW Steel after the approval of the resolution plan, as per the law laid down in *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Limited*.

## Contentions Raised by Operational Creditors (Kalyani Transco, CJ Darcl Logistics Ltd., Jaldhi Overseas PTE Ltd., Medi Carrier Pvt. Ltd.):

The operational creditors contended that JSW Steel reclassified their claims from "admitted operational creditors" to "identified contingent creditors," which was impermissible under the IBC. The power to admit or reject claims lies solely with the Resolution Professional. The reclassification of operational creditors' claims resulted in inter se discrimination, which is not permissible under the IBC. The operational creditors argued that the profits generated during the CIRP period should be distributed among creditors, as directed by the NCLT, rather than retained by JSW Steel. The operational creditors contended that the Monitoring Committee, being a creature of the resolution plan, had limited powers and could not negotiate or alter the terms of the plan post-approval. The appellants argued that the NCLAT set aside the NCLT's directions regarding EBITDA, which did not fall within the grounds specified under Section 61(3) of the IBC.

## Contentions Raised by the State of Odisha:

The State of Odisha contended that its claims for electricity duty and entry tax dues were drastically reduced by the Resolution Professional without proper justification. The State argued that it had raised demands for entry tax dues prior to the initiation of CIRP and approval of the resolution plan, and the Resolution Professional had adequate notice of such claims. The State contended that the resolution plan contravened these provisions and was incapable of being enforced or implemented.

## Other General Contentions Raised by Appellants:

The appellants argued that the resolution plan failed to comply with mandatory provisions of the IBC and CIRP Regulations, including timelines, priority payments, and feasibility requirements. JSW Steel delayed the implementation of the resolution plan, misusing the legal process and frustrating the objectives of the IBC. The appellants contended that the CoC failed to exercise its commercial wisdom and protect the interests of creditors and stakeholders. The appellants argued that the resolution plan was so flawed that liquidation of the Corporate Debtor was the only viable option. The appellants raised serious concerns about the legality, fairness, and implementation of the resolution plan, highlighting violations of the IBC, misuse of the legal process, and prejudice caused to stakeholders. These contentions ultimately led the Supreme Court to reject the resolution plan and direct the liquidation of Bhushan Power and Steel Limited.



The appellants argued that JSW Steel's resolution plan violated IBC provisions, delayed implementation, and failed equity infusion commitments. Operational creditors challenged claim reclassification, while ex-promoters alleged misuse of process and discrimination. The State of Odisha contended improper reduction of dues. They sought rejection of the plan and liquidation of Bhushan Power and Steel.



# GROUND OF DEFENCE AS PUT FORWARD BY SRA, RP & COC

The respondents, including JSW Steel (Successful Resolution Applicant – SRA), the Committee of Creditors (CoC), and the Resolution Professional (RP), presented the following arguments in defense of the resolution plan and the decisions of the NCLT and NCLAT. JSW Steel argued that the resolution plan had been successfully implemented, with payments of INR 19,350 crores made to financial creditors in March 2021 and payments to operational creditors completed in March 2022. JSW Steel claimed that it had infused the entire equity commitment of INR 8,550 crores, split into INR 100 crores of equity shares and INR 8,450 crores of Compulsorily Convertible Debentures (CCDs), which were regarded as equity instruments. JSW Steel contended that the delay in implementing the resolution plan was due to legal proceedings, including the attachment of assets by the Directorate of Enforcement (ED) under the Prevention of Money Laundering Act (PMLA). JSW Steel argued that there was no stay on the implementation of the resolution plan, and it had acted in accordance with the court's order dated March 6, 2020. JSW Steel contended that the profits (EBITDA) generated during the CIRP period were not required to be distributed among creditors, as the resolution plan did not contemplate such distribution. It argued that the EBITDA should remain with the Corporate Debtor, which was being taken over as a going concern. JSW Steel argued that the resolution plan complied with the provisions of the IBC and CIRP Regulations, and the payments to operational creditors were made in accordance with the law as it stood prior to the amendment of Regulation 38 in November 2019. JSW Steel contended that liquidation of the Corporate Debtor would be against the objectives of the IBC, which aims to revive distressed companies and maximize asset value.

## Arguments by the Committee of Creditors (CoC):

The CoC argued that its decision to approve the resolution plan was based on its commercial wisdom, which should be given primacy in adjudicatory proceedings. The CoC defended its decision to accept payments from JSW Steel, arguing that it was in the best interest of all stakeholders to ensure the successful implementation of the resolution plan. The CoC contended that the delay in implementation was due to unforeseen circumstances, including legal proceedings and the attachment of assets by the ED. The CoC supported JSW Steel's stance that the resolution plan had been implemented successfully and argued that the appeals filed by the appellants were an attempt to derail the resolution process. The CoC argued that the Monitoring Committee, which oversaw the implementation of the resolution plan, did not require representation from operational creditors, as its role was limited to ensuring compliance with the plan.

## Arguments by the Resolution Professional (RP):

The RP argued that the resolution plan was in compliance with the provisions of the IBC and CIRP Regulations, and the plan was approved by the CoC after due deliberation. The RP contended that its role was administrative and facilitative, and it had acted in accordance with the instructions of the CoC. The RP argued that it did not possess adjudicatory powers under the IBC and had verified claims based on the documents submitted by creditors. The RP contended that the resolution plan, once approved by the NCLT, was binding on all stakeholders, including the appellants.

## General Arguments by Respondents:

The respondents argued that the appeals filed by the appellants were frivolous and lacked merit, as the resolution plan had already been implemented successfully. The respondents contended that the resolution plan was aimed at reviving the Corporate Debtor as a going concern, which was in line with the objectives of the IBC. The respondents argued that liquidation would be detrimental to all stakeholders and would defeat the purpose of the IBC. The respondents contended that the resolution plan complied with all applicable laws and regulations, and the payments to operational creditors were made in accordance with the law as it stood at the time of approval.

The respondents defended the resolution plan and its implementation, arguing that it complied with the provisions of the IBC and CIRP Regulations, and that the delay in implementation was justified due to legal proceedings. They emphasized the primacy of the CoC's commercial wisdom and contended that liquidation was not a viable option. However, the Supreme Court ultimately rejected these arguments, finding gross violations of the IBC and CIRP Regulations, and directed the liquidation of Bhushan Power and Steel Limited.

*The respondents, including JSW Steel and the CoC, defended the resolution plan, claiming it was successfully implemented with payments to creditors and equity infusion. They argued delays were due to legal challenges and external factors. They emphasized commercial wisdom, compliance with IBC provisions, and the plan's benefits for stakeholders and corporate revival.”*



# Brach of statutory requirements as observed by supreme court in the present matter

The Supreme Court ultimately rejected JSW Steel's resolution plan due to non-compliance with mandatory provisions of the IBC and CIRP Regulations, directing the liquidation of BPSL. The Court highlighted gross violations of the law, misuse of the process, and failure to implement the resolution plan in a time-bound manner. The lapses on the part of the Resolution Professional (RP), Committee of Creditors (CoC), and Successful Resolution Applicant (SRA) in complying with the provisions of the Insolvency and Bankruptcy Code (IBC), 2016, are as follows:

## Lapses by the Resolution Professional (RP):

1

### **FAILURE TO SEEK EXTENSION OF TIME:**

The RP did not file an application to extend the CIRP period beyond 180 days as required under Section 12(2) of the IBC, nor did the NCLT pass any order extending the time limit. The CIRP proceedings exceeded the maximum permissible period of 270 days.

2

### **NON-COMPLIANCE WITH MANDATORY TIMELINES:**

The RP failed to submit the resolution plan approved by the CoC within the prescribed timeline under Section 12 and Regulation 39(4) of the CIRP Regulations, 2016.

3

### **FAILURE TO VERIFY ELIGIBILITY UNDER SECTION 29A:**

The RP did not verify or certify whether JSW Steel was eligible to submit the resolution plan under Section 29A of the IBC. The compliance certificate in Form H was not submitted.

4

### **Non-Filing of Avoidance Applications:**

The RP did not file applications for avoidance of transactions under Chapter III of the IBC, despite the Corporate Debtor being part of the "dirty dozen" identified by the RBI.

5

### **FAILURE TO CONFIRM COMPLIANCE WITH SECTION 30(2):**

The RP did not confirm that the resolution plan met the requirements under Section 30(2), including payment of operational creditors in priority over financial creditors and non-contravention of any law.

## Lapses by the Committee of Creditors (CoC):

1

### **FAILURE TO EXERCISE COMMERCIAL WISDOM:**

The CoC approved JSW Steel's resolution plan despite its non-compliance with mandatory provisions of the IBC and CIRP Regulations, including the priority payment to operational creditors under Regulation 38.

2

### **CONTRADICTIONARY STANCE:**

The CoC initially raised serious grievances against JSW Steel for delaying the implementation of the resolution plan but later accepted payments without objection, raising doubts about its bona fides.

3

### **DUBIOUS ROLE IN EXTENDING EFFECTIVE DATE:**

The CoC allegedly extended the "Effective Date" for implementing the resolution plan, despite being functus officio and lacking authority to do so.

4

### **Failure to Protect Stakeholders' Interests:**

The CoC did not adequately evaluate the feasibility, viability, and capability of JSW Steel to implement the resolution plan, as required under Regulation 38.

## Lapses by the Successful Resolution Applicant (SRA) - JW Steel:

1

### **MISREPRESENTATION TO COC:**

JSW Steel presented a rosy picture of its resolution plan during the evaluation process but failed to honor its commitments, including upfront payments and equity infusion.

2

### **DELAY IN IMPLEMENTATION:**

JSW Steel delayed the implementation of the resolution plan for over two years, citing legal proceedings, despite the plan being unconditional and binding under Section 31 of the IBC.

3

### **NON-PAYMENT OF UPFRONT AMOUNT:**

JSW Steel failed to make upfront payments to financial creditors within 30 days of the NCLT's approval, as committed in the resolution plan.

4

### **Failure to Infuse Equity:**

JSW Steel did not fulfill its equity commitment of INR 8,550 crores upfront on the "Effective Date," as required under the resolution plan.

5

### **MISUSE OF LEGAL PROCESS:**

JSW Steel filed frivolous appeals and applications to delay the implementation of the resolution plan, undermining the objectives of the IBC.



The lapses by the RP, CoC, and SRA collectively led to gross violations of the mandatory provisions of the IBC and CIRP Regulations, frustrating the objectives of the Code, including time-bound resolution and maximization of asset value. These lapses ultimately resulted in the Supreme Court rejecting the resolution plan and directing the liquidation of the Corporate Debtor, Bhushan Power and Steel Limited.

# What were the issues dealt by Hon'ble Supreme Court in the present matter

The Supreme Court dealt with several critical issues in the present matter concerning the resolution plan of JSW Steel and the insolvency resolution process of Bhushan Power and Steel Limited (BPSL). These issues can be summarized as follows:

## 1. Non-Compliance with Mandatory Provisions of the IBC and CIRP Regulations

- **Failure to Adhere to Timelines:** The Court examined whether the insolvency resolution process complied with the mandatory timelines prescribed under Section 12 of the IBC. It found that the process exceeded the maximum permissible period of 270 days (as applicable at the time) without proper justification or extension.
- **Priority of Payments:** The Court addressed whether the resolution plan complied with Regulation 38, which mandates priority payment to operational creditors over financial creditors. It found that the plan violated this requirement.
- **Eligibility of JSW Steel:** The Court scrutinized whether JSW Steel was eligible under Section 29A of the IBC to submit the resolution plan. It noted that the Resolution Professional failed to verify and certify JSW Steel's eligibility.

## 2. Role and Conduct of the Resolution Professional

- **Failure to Discharge Duties:** The Court examined whether the Resolution Professional fulfilled its statutory duties under the IBC and CIRP Regulations. It found that the Resolution Professional failed to:
  - o File an application for extension of time under Section 12.
  - o Verify the eligibility of JSW Steel under Section 29A.
  - o Ensure compliance with mandatory provisions of the IBC and CIRP Regulations.
  - o File applications for avoidance of transactions under Chapter III of the IBC.

### 3. Role and Commercial Wisdom of the Committee of Creditors (CoC)

- **Contradictory Stance:** The Court analyzed the CoC's conduct, including its contradictory positions during the proceedings. It found that the CoC failed to exercise its commercial wisdom effectively and protect the interests of creditors.
- **Approval of Flawed Resolution Plan:** The Court questioned whether the CoC exercised due diligence in approving the resolution plan, given its non-compliance with mandatory provisions of the IBC and CIRP Regulations.

### 4. Misuse of Process of Law by JSW Steel

- **Delay in Implementation:** The Court addressed JSW Steel's delay in implementing the resolution plan, despite it being an unconditional plan. It found that JSW Steel misused the legal process to delay implementation for over two years.
- **Fait Accompli Argument:** The Court rejected JSW Steel's argument that the resolution plan had been implemented during the pendency of the appeals, stating that such actions cannot be used to cover up illegalities.

### 5. Jurisdiction of NCLAT Over Public Law Matters

- **Attachment of Assets by ED:** The Court examined whether the NCLAT had jurisdiction to review the Directorate of Enforcement's (ED) decision to attach assets of the Corporate Debtor under the Prevention of Money Laundering Act (PMLA). It held that the NCLAT lacked jurisdiction to decide matters falling within the realm of public law.

### 6. Distribution of EBITDA

- **Profits Generated During CIRP:** The Court considered whether the profits (EBITDA) generated during the CIRP period should be distributed among creditors. It kept the question of law regarding EBITDA open, as it rejected the resolution plan itself.

### 7. Liquidation of Bhushan Power and Steel Limited

- **Initiation of Liquidation Proceedings:** The Court addressed whether liquidation was the appropriate course of action given the flaws in the resolution plan and the insolvency resolution process. It directed the NCLT to initiate liquidation proceedings under Chapter III of the IBC.

### 8. Binding Nature of Resolution Plan

- **Contravention of Approved Plan:** The Court examined whether JSW Steel's actions contravened the terms of the approved resolution plan. It found that JSW Steel failed to honor its commitments, including upfront payments and equity infusion.

## 9. Misrepresentation and Fraud

- **Misrepresentation by JSW Steel:** The Court dealt with allegations that JSW Steel misrepresented its commitments during the evaluation process to secure the highest score and later failed to fulfill those commitments.

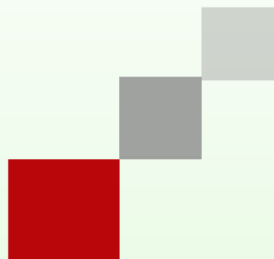
## 10. Impact on Stakeholders

- **Prejudice to Creditors and Stakeholders:** The Court considered the impact of the flawed resolution plan and delayed implementation on creditors, operational creditors, and other stakeholders.

The Supreme Court addressed issues related to non-compliance with the IBC and CIRP Regulations, the conduct of the Resolution Professional and CoC, misuse of the legal process by JSW Steel, jurisdictional overreach by the NCLAT, and the binding nature of the resolution plan. It ultimately rejected the resolution plan, quashed the decisions of the NCLT and NCLAT, and directed the liquidation of Bhushan Power and Steel Limited.

# Final Decision of Supreme Court in the matter

The Supreme Court quashed and set aside the judgments and orders passed by the NCLT (dated September 5, 2019) and NCLAT (dated February 17, 2020) that had approved JSW Steel's resolution plan. The resolution plan was rejected for failing to comply with mandatory provisions of the Insolvency and Bankruptcy Code (IBC) and CIRP Regulations, including non-compliance with Section 30(2) and Section 31(2) of the IBC. The Court directed the NCLT to initiate liquidation proceedings against BPSL under Chapter III of the IBC. The liquidation process is to be carried out in accordance with the provisions of the IBC. As regards the payment already released by JSW Steel to the creditors of BSPL, the court directed that these payments be dealt with as per the statement made by Senior Advocate Dr. Abhishek Manu Singhvi (representing the CoC) in the order dated March 6, 2020, which stated that the money would be returned within two months if the appeal succeeded. The NCLT was directed to proceed with the liquidation of BPSL and ensure compliance with the provisions of the IBC. The Supreme Court allowed the appeals filed by the operational creditors, ex-promoters, and other appellants, rejecting JSW Steel's resolution plan and ordering the liquidation of Bhushan Power and Steel Limited. The Court emphasized the importance of strict compliance with the IBC and CIRP Regulations and condemned the misuse of the legal process by JSW Steel and the contradictory stance of the CoC.

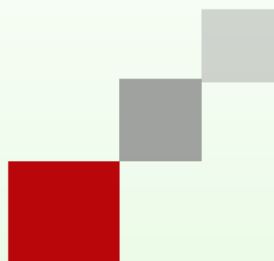


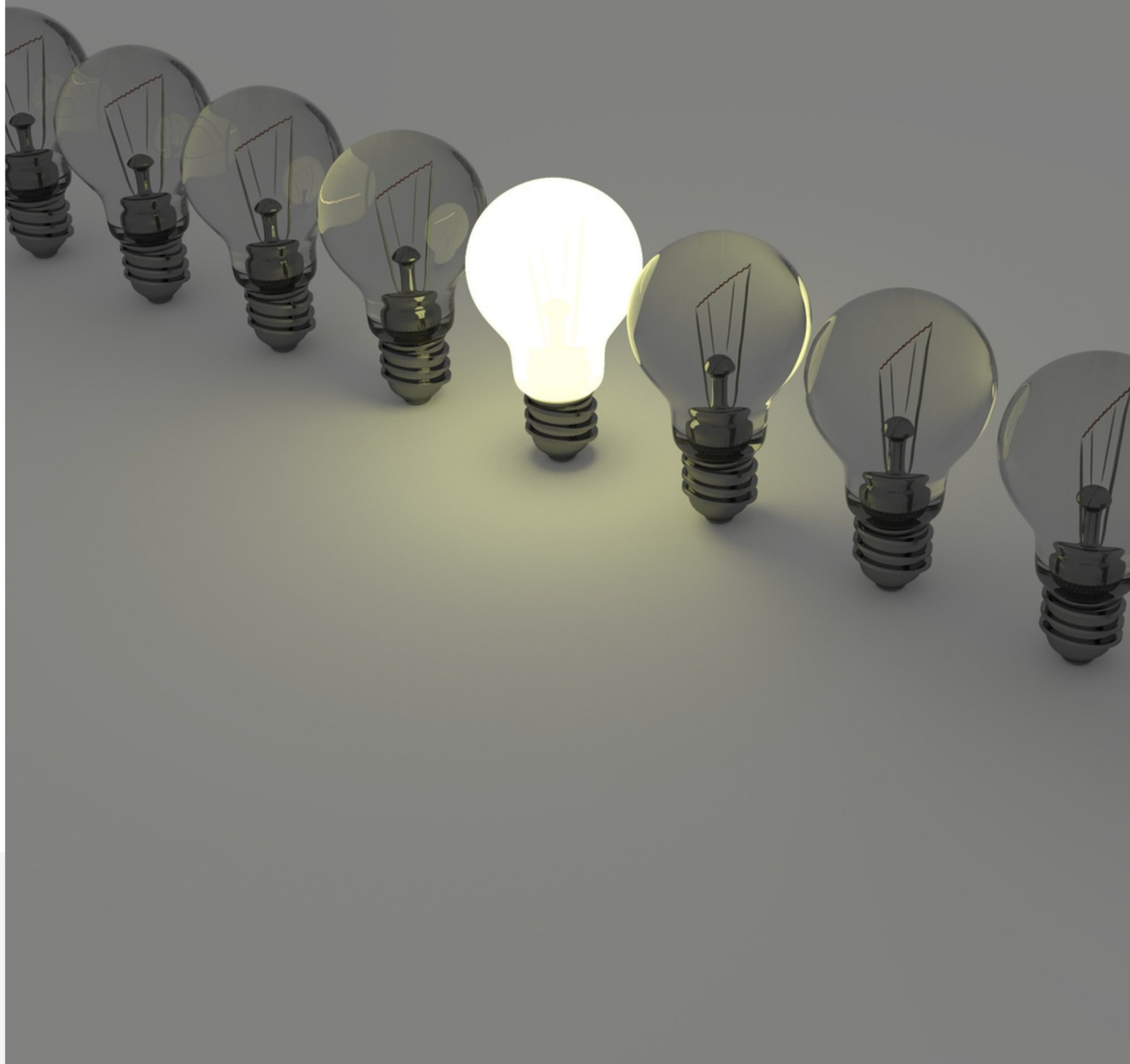
## Is there any scope for COC to invite fresh resolution plan in light of supreme court decision

The Supreme Court's decision leaves no room for the CoC to invite fresh resolution plans. The liquidation process is now the only course of action for BPSL, as explicitly directed by the Court. The Order explicitly directed the initiation of liquidation proceedings for Bhushan Power and Steel Limited (BPSL) under Chapter III of the Insolvency and Bankruptcy Code (IBC). The Supreme Court did not provide any direction or indication that fresh resolution plans could be invited. Instead, it emphasized that the liquidation process must proceed in accordance with the law. As per Section 33 of the IBC, once liquidation is initiated, the corporate debtor's assets are sold to repay creditors, and the company ceases to operate as a going concern.

## Key Take Away of Supreme Court Decision on Bhushan Power and Steel Case:

The Court emphasized the mandatory nature of timelines under Section 12 of the IBC, underscoring the importance of completing insolvency proceedings within prescribed limits to avoid delays. The Order outlines the importance that Resolution Professionals must diligently verify compliance with mandatory provisions, including eligibility under Section 29A, and ensure proper certification of resolution plans. Similarly, the Committee of Creditors must exercise its commercial wisdom responsibly, ensuring resolution plans are feasible, viable, and compliant with IBC provisions. The Order also lays down that once a resolution plan stands approved, Successful Resolution Applicants must implement approved plans in a timely and unconditional manner, as delays undermine the IBC's objectives. Another key take-away of Supreme Court decision is that any misuse of legal processes, delaying tactics, and non-compliance with resolution plan terms can lead to rejection and liquidation. Similarly, the Plan has to mandatorily prioritize operational creditors and balance the interests of all stakeholders, as mandated by IBC and CIRP Regulations. Any non-compliance with mandatory provisions and misuse of the insolvency process can result in liquidation, highlighting the need for integrity and transparency in CIRP proceedings.



**PHONE**

+91-9999148006  
+91-9756608086

**MAIL**

ibcresolutions@outlook.com

**WEBSITE**

[www.ibcprofessionals.in](http://www.ibcprofessionals.in)

**ADDRESS**

Regd Office - 1-B, 1/17, LALITA PARK,  
LAXMI NAGAR, NEW DELHI, Delhi - 11003

**Value Plus Insolvency Resolution  
Professionals Private Ltd.**

CIN - U74899DL1997PTC087197

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