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SUPREME COURT SCRAPS THE ACQUISITION DEAL OF JSW STEEL LIMITED FOR BHUSHAN POWER AND STEEL LIMITED TERMING IT AS ILLEGAL AND DIRECTES LIQUIDATION

The Hon'ble Supreme Court of India in its landmark Judgment dated May 2, 2025 in the matter of ***“Kalyani Transco Vs M/s Bhushan Power and Steel Ltd. & Ors.”*** has set aside the resolution plan submitted by JSW Steel Limited (**“SRA”**) in the Corporate Insolvency Resolution Process (**“CIRP”**) of Bhushan Power and Steel Limited (**“Corporate Debtor”**) which was approved by the Ld. National Company Law Tribunal, New Delhi (**“NCLT”**) as well as by the Ld. National Company Law Appellate Tribunal, New Delhi (**“NCLAT”**) and has directed the NCLT to initiate liquidation proceedings against the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016 (**“IBC”**).

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Following are the key-takeaways of the landmark ruling:

- **Erstwhile promoters / directors are entitled to prefer appeal being aggrieved person:** The usage of the phrase “*any person aggrieved*” in Sections 61 and 62 of the IBC certainly includes the erstwhile promoters, being important stakeholders and they are entitled to prefer appeal before the NCLAT or Supreme Court, as the case may be, as the aforesaid phrase indicates that there is no rigid locus requirement to institute an appeal challenging the order of NCLT before NCLAT, or an order of NCLAT before the Supreme Court. Any person who is aggrieved by the order may prefer an appeal as laid down in the judgment rendered by the Supreme Court in the matter of “***Glas Trust Company LLC Vs. Byju Raveendran and Others***”.

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- **Appeal filed by SRA before NCLAT legally not maintainable:** SRA could not have filed the appeal challenging the order passed by NCLT approving the resolution plan with certain conditions as none of the grounds stated in Section 61(3) of the IBC were raised as they did not exist. When the resolution plan of the SRA was approved, it was binding on all the stakeholders which includes the SRA. Hence, the appeal preferred by the SRA as allowed by NCLAT vide its impugned judgment was not legally maintainable.
- **Mandatory requirement of Section 29A Affidavit:** Section 30(1) of IBC stipulates that a prospective resolution applicant shall along with the resolution plan submit an affidavit stating that he is not ineligible under Section 29A of the IBC. However, a Resolution Professional (“**RP**”) also has to certify that

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the resolution applicant has submitted an affidavit in compliance with Section 30(1) of the IBC, confirming its eligibility under Section 29A of the IBC to submit the plan and that the contents of the aforesaid affidavit are in order.

- **Whether NCLT/NCLAT has powers of judicial review over the decision taken by statutory authority under the Prevention of Money Laundering Act, 2002:** NCLT and NCLAT are constituted under the Companies Act, 2013 and not under the IBC. The jurisdiction and powers of NCLT and NCLAT are well circumscribed under Sections 31, 60 and 61 of the IBC, as the case may be. Neither NCLT nor NCLAT is vested with the power of judicial review over decision taken by the Government or statutory authority in relation to a matter which is in realm of public law as held by the Hon'ble Supreme Court in the case of “*Embassy Property Developements*

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Private Limited Vs. State of Karnataka & Ors. The decision taken by the Government or statutory authority in relation to a matter which is in the realm of public law cannot be brought within the fold of the phrase “*arising out of or in relation to the insolvency resolution*” appearing in Section 60(5)(c) of the IBC and therefore wherever the Corporate Debtor has to exercise a right that falls outside the purview of IBC, especially in the realm of the public law, they cannot take a bypass and approach NCLT/NCLAT for enforcement of such a right.

- **Compliance of Section 12 of IBC is mandatory for the RP:** In the instant case, RP had utterly disregarded the mandatory timeline prescribed under Section 12 of IBC setting out the time limit for completion of CIRP and had not even bothered to seek any extension from NCLT before the expiry of 180 days from the commencement

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*of the CIRP nor had bothered to explain in the application filed under Section 31 of IBC as to how the entire CIRP was completed within the time limit prescribed under Section 12 of IBC read with the regulations made thereunder. Even the NCLT while passing the order approving the resolution plan failed to verify whether it was within the time limit prescribed under Section 12 of IBC which was mandatory in nature as held by the Supreme Court in the matter of “**Arcelormittal India Private Limited**”.*

- **Non-compliance of the provisions and misuse of process of law by SRA, RP and COC:** Supremes Court observed that SRA, Committee of Creditors (“COC”) and the RP have sought to sweep many seminal issues under the carpet to cover up gross violations of the provisions of the IBC and the regulations at every stage of the CIRP

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such as **(i) By RP:** The RP did not submit compliance certificate in prescribed form H while submitting application to NCLT for approval of the resolution plan, non-certification/verification of eligibility of the SRA by the RP, placing of the non-compliant plan before the COC, non-filing of application for avoidance of transactions, non-verification of the mandatory requirement of priority of payment to the operational creditors over financial creditors as per Section 30(2) of IBC; **(ii) by COC:** COC failed to verify the mandatory requirement of Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), particularly with regard to the feasibility and viability of the plan, effective implementation of the plan, capacity and resources of the SRA to implement the plan. in spite of allegations and grievances raised by the COC against the SRA during the hearings. However, surprisingly the COC against the SRA

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during the hearings. However, surprisingly the COC all of a sudden changed its stance by accepting the consideration at a very belated stage without any demurrer which also smacks of its bona fides and raises serious doubts about the exercise of its so called commercial wisdom; **(iii) by SRA:** Instead of implementing the Plan, SRA challenged the order of NCLT before NCLAT which was not maintainable, the terms of the plan remained unimplemented pending the hearing before NCLAT and also during pendency of appeals before the Supreme Court and hence, thereby delayed the upfront payment which was to be made within 30 days from NCLT approving the Plan, thereby dishonest and fraudulent attempt made and SRA misused the process of Court by not making the upfront payments as committed by it for about two and half years, thereby enriching itself unjustly, and thereafter considering the rising prices of steel in the market, SRA

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sought to comply with the terms of the plan at a very belated stage in collusion with the COC and the RP leaving the creditors in lurch and leaving them high and dry. The Court observed that even if it is assumed for the sake of arguments that pending the present appeals, the terms of the resolution plan have been complied with, it may be noted that no party can be permitted to deliberately create a situation where the proceedings in the Court would be frustrated, or the Court's decision would become irrelevant or ineffective. A situation of *fait accompli* cannot be permitted to be created in the Court to frustrate the proceedings, more particularly, when the CIRP had *ex facie* stood vitiated on account of non-compliance of the mandatory provisions of law and on account of the misuse of the process of law by the parties.

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- **Unilateral modification of resolution plan by SRA not permissible:** The Apex Court observed that as per the terms of the resolution plan, SRA was required to infuse the equity commitment of INR 8550 Crores in the form of equity shares only. However, SRA instead of infusing the entire equity commitment as contemplated in the resolution plan, initially infused only INR 100 Crore in the form of equity shares and during the pendency of the appeals, the reconstituted board approved issuance of compulsory convertible debentures to the remaining tune of INR 8450 Crores, which was not accepted by the Supreme Court and held to be in contravention of the terms of the resolution plan.
- **Compliance of CIRP Regulations is mandatory:** The Court observed that regulations being subordinate legislation having statutory force, having the same binding effect as the IBC itself. Therefore, the mandates

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given in the said regulations to carry out the provisions of the IBC have to be strictly complied with by all the stakeholders as well as the authorities under the IBC. However, the SRA had submitted the resolution plan in complete contravention of the mandates given in the IBC as well as in the regulations.

- **Role of RP is also of an Invigilator:** It cannot be gainsaid that as per the scheme of the IBC, the role of the RP while conducting the entire CIRP, is not only of an administrator or facilitator, but also of an invigilator to ensure that CIRP is completed in a time bound manner, for maximization of value of assets in order to balance the interest of the stakeholders and there is a compliance of all the mandatory provisions of the IBC during the course of entire proceedings.

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VA View:

This ruling of Supreme Court is an eye opener case emphasizing upon the need for resolution professional to strictly follow procedure laid down under the IBC and the rules and regulations framed therein and for the COC to ensure that the resolution plan is compliant with mandatory provisions of the IBC read with the regulations thereunder. It is also important that if the COC changes its stand on any important issue, it should record the reasons as to why it has changed its decision.

The judgment also makes it clear that merely because IBC is silent with regard to the phase of implementation of the resolution plan by a SRA, neither the Tribunal nor the Courts should give excessive leeway to a SRA to act in violation of the

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terms of the resolution plan or in a lackadaisical manner and even if a resolution plan has secured blessings from NCLT, still it carries the risk of and can be overturned by a Court of law later on if the same is found to be illegal or otherwise in contravention of the provisions of law.