

# HANGING IN BALANCE

The SC verdict could mean a reset for the IBC process, even as JSW Steel is expected to file a review petition

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Flash back to March 26, 2021. JSW Steel had just completed its largest acquisition—Bhushan Power and Steel (BPSL)—under the Insolvency and Bankruptcy Code (IBC). “This acquisition not only aligns with our core business and purpose but also establishes our presence and accelerates our growth vision in eastern India,” Sajjan Jindal, chairman of JSW Steel, had written to BPSL employees after paying financial creditors ₹19,350 crore.

Four years later, on May 2, 2025, that vision took a severe blow when the Supreme Court rejected JSW Steel’s resolution plan for BPSL and ordered its liquidation.

## The big jolt

The apex court struck down JSW Steel’s resolution plan primarily on two counts. A change in the financing structure from what was laid out in the resolution plan at the time of evaluation of bids. And a breach of timeline.

The court noted gross noncompliance of the mandatory provisions of the IBC and the regulations and an attempt made by JSW to misuse the process of the court by not making the upfront payments for about two and a half years.

JSW made payment to the financial creditors in March 2021 and to the operational creditors in March 2022.

Since acquisition, JSW has expanded capacity from 2.75 million tonne (mt) at the BPSL plant in Jharsuguda, Odisha, to 4.5 mt. And there are plans for further expansion.

An Axis Capital report said, BPSL contributed 13 per cent of JSW Steel’s consolidated volume and 10 per cent of its consolidated Ebitda (earnings before interest, taxes, depreciation and amortisation) in the first nine months of FY25.

There is a lot at stake here.

## Equity in responsibility

The apex court order four years after the acquisition raises questions whether it’s too late.

The IBC aims to resolve insolvency cases within strict timelines, points out MS Sahoo, former chairperson of the Insolvency and Bankruptcy Board of India (IBBI).

“This can happen only if all actors—stakeholders, government, and courts—play their roles with urgency and discipline. It is time for the courts not only to enforce the timeliness for others but also hold themselves to the same time discipline. Had the Supreme Court delivered this judgement in 2020, as it ideally should have, the consequences may have been far less damaging,” he said.

Sahoo, who was the first chairperson of the IBBI, added that while the Supreme Court’s judgement was legally sound, it had serious implications for the economy, undermining the very purpose of the IBC.

Once a resolution plan is approved by the competent authority and implemented, and several years have passed, undoing it carries significant economic and institutional costs. “No



prudent resolution applicant would submit a plan if there remains a lingering fear that some state authority might overturn it decades later. The right course would have been for the Supreme Court to use its powers under Article 142 to rescue the company rather than liquidate it, while holding those responsible for the flaws to account,” Sahoo said.

“In this case, the Court has rightly flagged serious concerns regarding the conduct of the resolution professional, the committee of creditors, the successful resolution applicant, and even the adjudicating authorities—the NCLT and the NCLAT—but effectively penalised the company and the economy at large,” he added.

## India Inc in a quandary

Corporate India is trying to read between the lines of the Supreme Court.

This is bad for the IBC process, an executive said. “Now, all bidders will wait for the Supreme Court to iron out the issues and then complete the process. That nullifies the IBC process.”

Another official pointed out that big cases were turning out to be a testing ground for a nascent insolvency law.

There is a lot of uncertainty, pointed out H M Bangur, chairman, Shree Cement. “If I acquire any such asset (under IBC), I have to be doubly and triply sure from a legal angle. So the legal cost will increase.”

Binoy Parikh, partner, Katalyst Advisors, an M&A advisory firm, said, this will be a huge deterrent for future acquisitions under IBC. “After going through the rigours of NCLT, NCLAT and SC, an acquisition is made null and void. It’s a setback to the purpose of IBC, which is to secure the interest of creditors.”

Consultants in Big Four firms echoed similar sentiments. “Every large IBC case has been funded through debt and equity. State Bank of India itself lent to JSW, that is how the business is done,” said an executive.

## Sanctity of timeline

However, there is hope. Abhishek Dafia, senior vice-president, Icra, said: “Hopefully, this order will enhance NCLT’s accountability in adhering to

the prescribed timelines.” But it could also reopen old cases approved by the NCLT, he added.

BPSL was part of the 12 large accounts initiated for resolution under IBC as directed by the Reserve Bank of India (RBI) almost a decade ago. Litigations impacted timelines in the resolution of most of these accounts that had an aggregate outstanding claim of ₹3.45 trillion.

In a significant observation, the apex court said the resolution professional had “utterly failed” to discharge statutory duties and the committee of creditors failed to exercise its commercial wisdom while approving the resolution plan of JSW.

This could lead to a reset for the process.

A top company official said that the order had enforced accountability of lenders and the RP. “Many cases are pending in the SC and swift decisions will help revive these companies.”

Anju Thomas, associate partner, AQUILAW, while acknowledging that the order had sent ripples of uncertainty through the insolvency landscape, said, it would strengthen future resolutions, reduce opportunistic practices, and enhance stakeholder confidence in the IBC proceedings.

## Cutting the Gordian knot

The Supreme Court said payments made by JSW to financial creditors and the operational creditors as

also equity contribution would be dealt with as per the statement of senior advocate Abhishek Manu Singhvi appearing for the CoC in the order dated March 6, 2020.

The CoC had said in court that it would return the money if received within two months in case of an adverse order.

A senior banker with a public sector bank said: “This is a very drastic decision. We are examining the legal side.... There is a good case for review. If the company goes for a review petition, then banks will certainly be party to that.”

Market analysts expect JSW to file a review petition in the Supreme Court. But an order will take time. Till then, future prospects for BPSL might just hang in balance.



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**M S SAHOO,**  
Former IBBI chairperson