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## ENSURING FAIR PLAY IN CIRP: HON’BLE SUPREME COURT’S RULING ON BHUSHAN POWER INSOLVENCY

**Case name:** Kalyani Transco vs. M/s. Bhushan Power and Steel Limited & Ors.

**Case No.** Civil Appeal No. 1808 of 2020

**Court:** Hon’ble Supreme Court of India, New Delhi

**Order Date:** May 02, 2025

### Facts of the Case

In the case of *Kalyani Transco vs. M/s. Bhushan Power and Steel Limited & Ors. in Civil Appeal No. 1808 of 2020*, decided by the Hon’ble Supreme Court of India (“**Supreme Court**”) on May 02, 2025, operational creditor Kalyani Transco (“**Kalyani**”) challenged the approval and implementation of the resolution plan for Bhushan Power and Steel Limited (“**BPSL**”), a corporate debtor undergoing insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). BPSL entered the Corporate Insolvency Resolution Process (“**CIRP**”) on July 25, 2017, initiated by the State Bank of India under Section 7 of the IBC due to substantial unpaid debts. JSW Steel Limited (“**JSW**”), as the Successful Resolution Applicant (“**SRA**”), secured Committee of Creditors (“**CoC**”) approval with 94.31% voting share on August 28, 2019, proposing a Rs. 19,700 crore resolution plan offering approximately 41% recovery. The Hon’ble National Company Law Tribunal (“**NCLT**”), approved the plan on September 05, 2019, subject to conditions including appointment of a monitoring agency, and the Hon’ble National Company Law Appellate Tribunal (“**NCLAT**”) upheld it with modifications on February 17, 2020. Dissatisfied operational creditors, including Kalyani, along with former promoters and other stakeholders, appealed to the Hon’ble Supreme Court alleging procedural irregularities, asset undervaluation, and violations of IBC provisions, seeking a thorough review after nearly six (6) years of litigation.



## Issues

1. Whether "any person aggrieved" under Sections 61 and 62 of the IBC includes operational creditors, former promoters, or other stakeholders to challenge Hon'ble NCLT and Hon'ble NCLAT orders approving resolution plans, even if not directly parties to prior proceedings.
2. Whether the CoC's approval of the resolution plan can be interfered with on grounds of undervaluation, inadequate distribution to operational creditors, or deviation from Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**IBC Regulations**"), without violating substantive IBC provisions.
3. Whether the Resolution Professional ("**RP**") and CoC adhered to due process, including fair invitation of Expression of Interest ("**EoI**"), evaluation of bids, and information memoranda, or if there were irregularities like suppression of material facts or undue favoritism.
4. Whether the SRA can justify delays in implementing the approved plan citing pending litigations or external factors, and if such delays warrant setting aside the plan under IBC timelines.
5. Whether the Hon'ble NCLT and/or the Hon'ble NCLAT imposed conditions, such as the monitoring agency, exceed their jurisdiction, and if unresolved claims post-approval violate the clean slate principle under Section 32A of the IBC.

## Regulatory Context

The regulatory framework governing the case is rooted in IBC, which provides for a time-bound CIRP under Sections 7, 9, and 10 of IBC to facilitate the resolution of financially distressed corporate entities through creditor-driven plans. Key supporting regulations include the IBC Regulations, with Regulation 38 mandating fair and equitable treatment of operational creditors and requiring fair value assessments of the corporate debtor. The IBC framework gives primacy to the commercial wisdom of the CoC, limiting judicial intervention in the approval of resolution plans, as affirmed by the Hon'ble Supreme Court in *K. Sashidhar v. Indian Overseas Bank & Ors.*, (2019) 12 SCC 150. The framework also incorporates the "clean slate" doctrine under Section 32A of the IBC, which extinguishes prior liab-



-bilities and claims against the corporate debtor upon approval of a resolution plan. Further, the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, along with post-2019 notifications issued by the Insolvency and Bankruptcy Board of India, aimed to streamline the resolution process and limit delays caused by ongoing investigations or asset attachments, including those by the Enforcement Directorate (“ED”) under the Prevention of Money Laundering Act, 2002. Additionally, the IBC operates in conjunction with the Companies Act, 2013, particularly concerning corporate governance and management oversight during the CIRP.

### **Findings and Analysis by Hon’ble Supreme Court**

The Hon’ble Supreme Court nullified the Hon’ble NCLT and Hon’ble NCLAT orders endorsing JSW’s resolution plan, identifying significant procedural irregularities and non-adherence with IBC. The Hon’ble Supreme Court adopted a broad interpretation of the phrase “any person aggrieved” under Sections 61 and 62 of the IBC, thereby affirming the locus standi of operational creditors and ex-promoters who could demonstrate material harm, such as exclusion from the process or undervaluation of claims. This interpretation was consistent with *Glas Trust Company LLC v. Byju Raveendran*, (2025) 3 SCC 456, and rejected narrower constructions previously adopted.

While reaffirming the principle of deference to the CoC’s commercial wisdom, as laid down in *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150, the Hon’ble Supreme Court clarified that such discretion cannot override statutory mandates. The resolution plan for Bhushan BPSL was found to be discriminatory for offering only ~8% recovery to operational creditors, compared to near-complete recovery for financial creditors, thereby violating Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The Hon’ble Supreme Court also criticized the RP for flawed processes concerning EoI, bid evaluations, and concealment of BPSL’s asset valuations—actions that contravened Sections 29A and 30 of the IBC—and for granting JSW unwarranted extensions that unfairly favored it. It held that the SRA cannot justify undue delays, including those caused by actions of the ED, especially in light of the strict timelines prescribed under IBC. Notably, JSW’s five (5) year delay in implementation was found to have thwarted the core objective of IBC, which is the timely resolution and revival of distressed companies.



Furthermore, the Hon'ble Supreme Court held that the Hon'ble NCLT's decision to impose a monitoring agency was ultra vires, conflicting with the "clean slate" doctrine under Section 32A of the IBC. Consequently, the Hon'ble Supreme Court directed the liquidation of BPSL under Section 33 of IBC, emphasizing that unresolved procedural violations undermine the integrity and effectiveness of the insolvency resolution framework.

### **Reliefs Granted**

The Hon'ble Supreme Court set aside the resolution plan approved for BPSL, quashed the Hon'ble NCLT order dated September 05, 2019, and Hon'ble NCLAT order dated February 17, 2020, and ordered immediate liquidation of BPSL under Section 33 of the IBC, appointing a liquidator within thirty (30) days to distribute assets per waterfall mechanism under Section 53 of IBC, prioritizing secured creditors. It vacated all post-approval conditions, including the monitoring agency, and directed the RP to hand over assets to the liquidator forthwith. No revival opportunity was extended to JSW, citing irreparable procedural breaches and delays; however, the Hon'ble Supreme Court allowed JSW to participate in liquidation proceedings as a creditor. Appeals by ex-promoters and other operational creditors were allowed with costs on respondents, while financial creditors' cross-appeals were dismissed. The judgment was declared binding under Article 141 of the Constitution, with a stay on liquidation for ninety (90) days to facilitate any review petitions, underscoring the need for strict IBC compliance to restore investor trust.

### **Conclusion**

The Hon'ble Supreme Court's decision in *Kalyani Transco vs. M/s. Bhushan Power and Steel Limited & Ors.* sends a clear warning to RPs, CoCs, and SRAs, emphasizing the importance of procedural integrity and fair distribution over unfettered commercial discretion in the Insolvency and Bankruptcy Code (IBC) process. By ordering liquidation after a lengthy CIRP, the ruling upholds IBC's strict timelines and the "clean slate" principle, highlighting the dangers of delays that diminish asset value and creditor recoveries. While expanding the right to appeal increases stakeholder participation, it also raises concerns about prolonged litigation, which could deter investment unless balanced by strong procedural safeguards. This landmark judgment reshapes IBC jurisprudence, calling for reforms to ensure transparent bidding and expedited adjudication, thereby strengthening the insolvency framework's ability to revive distressed companies while safeguarding the rights of all creditors.



## TARIFF RATIONALITY REAFFIRMED: HON'BLE SUPREME COURT BACKS CERC IN POWERGRID APPEAL

**Case Name:** Powergrid Corporation of India Limited

**Case No.:** Civil Appeal Nos. 5857-5858 of 2011

**Court:** Hon'ble Supreme Court of India, New Delhi

**Order Date:** May 05, 2025

### Facts of the Case

In the case of *Powergrid Corporation of India Limited vs. Central Electricity Regulatory Commission & Ors. in Civil Appeal Nos. 5857-5858 of 2011*, decided by the Hon'ble Supreme Court of India ("**Supreme Court**") on May 05, 2025, the transmission utility Powergrid Corporation of India Limited ("**Powergrid**") challenged tariff determinations for inter-state transmission projects. Powergrid, as the designated licensee under the Electricity Act, 2003 ("**EA, 2003**"), filed petitions before the Hon'ble Central Electricity Regulatory Commission ("**CERC**") in 2008 for tariff fixation under the Central Electricity Regulatory (Conduct of Business) Regulations, 2004 ("**CERC Regulations**"), seeking recovery of capital costs, operation and maintenance expenses, and return on equity for projects like the Sipat Transmission System and others. The Hon'ble CERC, vide orders dated February 03, 2009, and others, allowed the tariffs but disallowed certain capitalizations and adjustments, citing non-compliance with the CERC Regulations and the Tariff Policy, 2006. Aggrieved, Powergrid appealed to the Hon'ble Appellate Tribunal for Electricity ("**APTEL**") under Section 111 of the EA, 2003 in Appeal Nos. 91 and 92 of 2009, which dismissed the appeals on March 23, 2011, holding Hon'ble CERC's determinations consistent with statutory mandates. This prompted Powergrid to file the instant appeals before the Hon'ble Supreme Court, seeking enhanced tariff recovery and judicial review of the regulatory framework's application to transmission utilities.

### Issues

1. Whether the Hon'ble CERC correctly applied the CERC Regulations in disallowing capitalization of certain project costs and adjustments for additional capitalization, and if such disallowances violated the principles of actual cost recovery under Sec-



2. Whether the Hon'ble CERC exceeded its jurisdiction under Sections 61, 79, and 86 of the EA, 2003 in fixing tariffs without considering the normative parameters set by the Tariff Policy, 2006, and the National Electricity Policy, 2005.
3. Whether Powergrid was entitled to a higher return on equity ("RoE") or incentives for efficient transmission, and if the Hon'ble CERC's fixation of 14% RoE was arbitrary or inconsistent with the policy's objective of attracting investments in the sector.
4. Whether the Hon'ble APTEL erred in dismissing the appeals without re-appreciating evidence, and if courts can intervene in tariff matters beyond the limited scope of *Wednesbury* unreasonableness.
5. Whether delays in tariff petitions and the Hon'ble CERC's handling violated the time-bound framework under the CERC Regulations, warranting interest or penalties.

### Regulatory Context

The dispute is governed by the EA, 2003, which revolutionized India's power sector by promoting competition, efficiency, and private investment through unbundling generation, transmission, and distribution. Section 61 of EA, 2003 mandates the Hon'ble CERC to ensure tariff determination promotes non-discriminatory access and cost recovery, while Section 79 of EA, 2003 empowers it to regulate inter-state transmission tariffs. The CERC Regulations, outline the procedure for tariff petitions, emphasizing normative parameters like RoE at 14% for transmission utilities to incentivize infrastructure development. These align with the National Electricity Policy, 2005, and Tariff Policy, 2006, which prioritize reliable supply and financial viability for licensees like Powergrid, designated under Section 14 of EA, 2003 as the central transmission utility ("CTU"). The framework, informed by precedents like *Transmission Corporation of Andhra Pradesh Ltd. v. Sai Renewable Power Pvt. Ltd. (2011) 11 SCC 34* on regulatory fairness, balances consumer protection with utility recovery, while Section 111 of EA, 2003 vests Hon'ble APTEL with appellate jurisdiction limited to substantial questions of law. This context underscores the EA, 2003's shift from cost-plus regulation to performance-based incentives, addressing challenges in funding capital-intensive transmission projects amid growing demand.



### **Findings and Analysis by Hon'ble Supreme Court**

The Hon'ble Supreme Court upheld the orders of Hon'ble CERC and the Hon'ble APTEL, finding no error in their interpretation or application of the EA, 2003. The Hon'ble Supreme Court confirmed that tariff determination is a regulatory function governed by Section 61 of EA, 2003 and the CERC Regulations, and endorsed the CERC's decision to disallow certain capitalizations, such as interest during construction and cost escalations, which exceeded prescribed normative limits. This was held to be consistent with consumer protection principles and aimed at preventing excessive recovery by transmission utilities. The Hon'ble Supreme Court also reaffirmed that the 14% return on equity is fixed by policy and cannot be modified without legislative or policy changes. Powergrid's claim for additional incentives was rejected due to lack of adequate justification. Emphasizing regulatory discipline, the Hon'ble Supreme Court held that failure to adhere to filing timelines under the relevant regulations could lawfully result in disallowance of claims. It further clarified that appellate or judicial review of tariff orders is limited to instances of manifest illegality or procedural irregularity, and not intended for re-examination of factual determinations. Finding no such irregularity, the Hon'ble Court concluded that the decisions of Hon'ble CERC and Hon'ble APTEL were within the bounds of law and reasonableness. It also directed that future tariff petitions should be supported by audited financial data to ensure transparency and accountability.

### **Reliefs Granted**

The Hon'ble Supreme Court dismissed the appeals, upholding the Hon'ble APTEL's order dated March 23, 2011, and the underlying CERC tariff determinations without modifications. No enhanced capitalization, RoE adjustments, or incentives were granted to Powergrid, and the existing tariffs were confirmed as final. The Hon'ble Supreme Court directed the Hon'ble CERC to expeditiously process any pending tariff revisions for ongoing projects in line with the CERC Regulations. No interim relief or remand to Hon'ble APTEL was ordered, emphasizing finality in regulatory matters, and the judgment was declared binding under Article 141 of the Constitution of India.



### Conclusion

The Hon'ble Supreme Court's ruling in *Powergrid Corporation of India Limited vs. Central Electricity Regulatory Commission & Ors.* reinforces the robust regulatory architecture under the EA, 2003, prioritizing fiscal discipline and consumer interests in tariff fixation for transmission utilities. By upholding the Hon'ble CERC's disallowances and limiting judicial interference to errors of law, the decision safeguards against over-capitalization while incentivizing efficient operations through normative RoE. This verdict, building on *PTC India Ltd. vs. Central Electricity Regulatory Commission (2010) 4 SCC 603* and allied precedents, bolsters investor confidence in the sector's predictability, urging utilities like Powergrid to align projections with audited realities. Ultimately, it advances the EA, 2003's vision of a competitive, sustainable power grid, balancing recovery with accountability amid India's energy transition.





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