

**Judicial review by NCLT/ NCLAT and courts is strictly confined to the limited grounds specified in the IBC, primarily concerning procedural compliance and legality under Sections 30(2) and 61(3) of the IBC, and does not extend to the merits of a commercial decision**

The **Supreme Court** in the case of **Torrent Power vs Ashish Arjunkumar Rathi [Civil Appeal Nos. 11746-11747 of 2024] dated February 27, 2026**, has held that the commercial wisdom of the Committee of Creditors (CoC) in evaluating and approving a resolution plan is paramount and non-justiciable. Essentially, judicial review by adjudicating authorities (NCLT, NCLAT) and courts is strictly confined to the limited grounds specified in the Insolvency and Bankruptcy Code, 2016 (IBC), primarily concerning procedural compliance and legality under Sections 30(2) and 61(3) of the IBC, and does not extend to the merits of a commercial decision.

The Court held that a 'material irregularity' under Section 61(3)(ii) of the IBC cannot be attributed to a Resolution Professional (RP) when the RP is acting solely on the express instructions of the CoC. The process of seeking clarifications from resolution applicants to remove ambiguities in their plans, without altering the fundamental commercial terms or the net present value of the offer, does not constitute an impermissible modification of the plan but is a valid exercise within the scope of the CoC's evaluation process.

The Court cautioned that that unsuccessful bidders will always try to spin commercial decisions of the CoC as procedurally faulty in order to secure a second shot through litigation by filing applications or making representations. Thus, from an ex-post perspective, excessive judicial review in the CIRP carries significant economic costs that run counter to the objects of IBC.

Further, the Court explained that the IBC is premised on the recognition that delay and uncertainty are value-destructive in distressed situations. When commercial decisions taken by the CoC are subjected to expansive judicial scrutiny, resolution timelines lengthen, transaction costs rise, and the going-concern value of the Corporate Debtor erodes. The consequence therefore is not merely delay, but a tangible loss of economic value for all stakeholders.

The Court observed that an appeal to the Supreme Court under Section 62 of the IBC is permissible only on a question of law. The grounds for an appeal to the NCLAT against an approved resolution plan are strictly limited by Section 61(3) of the IBC. As far as the appellants' primary ground regarding 'material irregularity' by the RP under Section 61(3)(ii) is concerned, the Court found this ground was not made out because the RP acted strictly on the instructions of the CoC when seeking clarifications.

The Court explained that to hold that the RP's actions, directed by the CoC, constitute a material irregularity would be to conflate the distinct statutory roles of the RP and the CoC and indirectly subject the CoC's decisions to judicial review, contrary to the IBC's scheme.

On the Bank Guarantee (BG) clarification, the Court analysed the email seeking clarification and SEML's response. It noted that SEML's Resolution Plan, from its inception, stated that the

entire margin money of Rs. 180.05 crores would be returned to the Corporate Debtor and utilized for payment to secured financial creditors. The confusion arose because SEML proposed to infuse Rs. 103.39 crores to replace margin money for BGs it intended to continue, while proposing to extinguish other BGs.