

SC to hear JSW-Bhushan Steel case afresh, recalls May 2 liquidation ruling

The Hindu Bureau
New Delhi

A Special Bench of the Supreme Court, headed by Chief Justice of India BR Gavai, on Thursday recalled a May 2 verdict of the court rejecting a resolution plan submitted by JSW Steel for Bhushan Power and Steel Ltd (BPSL). Further, it had ordered the commencement of the liquidation of BPSL.

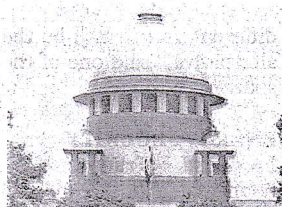
However, on Thursday, the Bench decided to hear the case afresh. It was of the *prima facie* view that the May judgment, authored by Justice Bela Trivedi (since retired), had not clearly appreciated the legal position in the case.

NEED REVIEW

"*Prima facie*, we are of the view that the judgment did not correctly consider the legal position laid down in a catena [chain] of judgments," the Bench noted. It said various factual aspects had to be taken into consideration in the case.

"This is a fit case wherein the judgment under review needs to be recalled and the matter is to be considered afresh," the court concluded.

It listed the review petitions for a detailed hearing on August 7. On May 26, the



This is a fit case wherein the judgment under review needs to be recalled and the matter considered afresh, the court said

court had ordered *status quo* in the liquidation proceedings before the National Company Law Tribunal.

The court passed the order of *status quo* on liquidation to give JSW time to file a review petition.

The court had, at the time, said *status quo* ought to prevail for BPSL in the interest of justice and to avoid future complications. JSW argued that the case was complicated and must not be rushed into liquidation. Senior advocate Neeraj Kishan Kaul, for JSW, had informed the court that BPSL had an annual turnover of ₹28,000 crore in one year. Its production had increased from 2.5 million tonnes to 4.5 million tonnes. The concern employed 25,000 people.

RP FAULTED

On May 2, the Supreme Court found JSW's resolution plan

for BPSL in "flagrant violation and contravention" of the law.

"The resolution professional had utterly failed to discharge his statutory duties contemplated under the Insolvency and Bankruptcy Code (IBC) and the Corporate Insolvency Resolution Process (CIRP) Regulations during the entire CIR proceedings of the corporate debtor BPSL," the court had concluded.

The court invoked its inherent powers under Article 142 of the Constitution to direct the NCLT to initiate liquidation proceedings against BPSL under the IBC.

The court faulted the Committee of Creditors (CoC) for accepting the resolution plan. "The CoC had failed to exercise its commercial wisdom while approving the resolution plan of JSW... The CoC had failed to protect the interest of the creditors by taking contradictory stands before this court and accepting the payments from JSW without any demur, and supporting JSW to implement its ill-motivated plan against the interest of the creditors," the May 2 verdict observed.

The CoC, represented by Solicitor General Tushar Mehta, too, submitted his reservations about the May 2 judgment.