

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 89 of 2025 IA Nos. 250, 251 & 390/2025

IN THE MATTER OF:

**Riju Ravindran
Suspended Director & Promoter
of Think and Learn Pvt. Ltd.**

... Appellant

Vs.

Pankaj Srivastava,

IRP of Think and Learn Pvt. Ltd. & 3 Ors.

...Respondents

Present :

For Appellant :

Mr. Arun Kathpalia, Senior Advocate Mr. Abhijeet Sinha, Senior Advocate Mr. Adarsh Ramanujan, Advocate Ms. Ananya Ghosh, Advocate Ms. Mrinalini Mishra, Advocate Ms. Doel Bose, Advocate, Ms. Priscilla Carolyn, Advocate, Mr. Rishab Gupta, Advocate, Ms. Diksha Gupta, Advocate

For Respondents :

Ms. Ann Pereira, Ms. Bhavya Mohan & Ms. Anjali Kutiyal, Advocates for R2

Mr. Vijay Narayan, Senior Advocate For Ms. Sneha Parthasarathy, Mr. Abishek Jenasenan & Ms. Aparajitha Vishwanath, Advocates for R3

Mr Kapil Sibal, Senior Advocate Mr Krishnendu Datta, Senior Advocate For Mr. Prateek Kumar, Ms. Raveena Rai, Ms Moha Paranjpe, Mr Siddhant Grover, Advocates for R4

Mr. Abhinav Vasisht, Senior Advocate For Mr. Savar Mahajan, Ms. Arveena Sharma, Ms. Ichchha Kalash, Ms. Samridhi Shrimali, Ms. Lakshana Viravalli, Ms. S.Madhusmitha & Ms. Akshita Sachdeva Jaitly, Advocates for R5

Mr. V. Shyamohan, Ms. Sradhaxna Mudrika, Ms. Anshika Bajpai, Ms. Vrinda Baheti, Mr. Anirud C., Advocates in IA No. 390/2025

And

Company Appeal (AT) (CH) (Ins) No. 130 of 2025 (IA. Nos. 349 & 350/2025)

IN THE MATTER OF:

Board of Control for Cricket in India

... Appellant

Vs

**Pankaj Srivastava,
IRP of Think and Learn Pvt. Ltd. & 3 Ors.**

... Respondents

Present:

For Appellants :

Mr. C K Nandhakumar, Senior Advocate For Ms. Bhavya Mohan, Ms. Ann Pereira Ms. Anjali Kutiyal, Advocates

For Respondent :

Mr. Vijay Narayan, Senior Advocate Ms. Aparajitha Vishwanath, Mr. Abhishek Jenasen and Ms. Sneha Parthasarathy, Advocates for R3

Mr. Abhinav Vasisht, Senior Advocate Mr. Shailendra Ajmera Mr. Savar Mahajan Ms. Arveena Sharma Ms. Ichchha Kalash Ms. Samridhi Shrimali Ms. Lakshana Viravalli Ms S.Madhusmitha, Advocates for R5

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This order shall dispose of two appeals bearing CA (AT) (Ins) No. 89 of 2025 titled as “Riju Ravindran Vs. Pankaj Srivastava & Ors.” (herein after referred to as ‘the first appeal’) and CA (AT) (Ins) No. 130 of 2025 titled as “Board of Control For Cricket In India Vs. Pankaj Srivastava & Ors.” (herein after referred to as ‘the second appeal’) as both the appeals have been filed

against the order dated 10.02.2025 passed by the National Company Law Tribunal, Bengaluru Bench, Bengaluru (in short 'the Tribunal') by which an application bearing I.A No. 837 of 2024 filed by Pankaj Srivastava (RP)/Respondent No. 1 in CP (IB) No. 149/2023 titled as 'Board of Control for Cricket in India Vs. Think & Learn Pvt. Ltd.' on 14.11.2024 under Section 12A of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') r/w Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'Regulations'), praying for withdraw of the CIRP of Think & Learn Pvt. Ltd. (CD), admitted into CIRP on 16.07.2024 and to direct the BCCI/ Appellant in second appeal to furnish bank guarantee or pay an amount of Rs. 3,26,73,863/- towards CIRP costs under Regulation 30A(2)(a) of the Regulations, has been disposed of with a direction to submit the withdrawal application before the CoC under Section 12A of the Code and Regulation 30A(1)(b) of the Regulations.

2. Brief facts of this case are that the Appellant in the second appeal/BCCI filed a petition under Section 9 of the Code before the Tribunal against the CD for the resolution of an amount of Rs. 158,90,92,400/-.

3. While the aforesaid petition filed by the BCCI under section 9 of the Code was pending before the Tribunal, Glass Trust Company LLC, arrayed as Respondent No. 4 in both these appeals, filed a petition under Section 7 of the Code on 22.01.2024 for the resolution of its debt of USD

984,333,223.70 (approximately Rs. 8,200 Cr.) against the CD before the Tribunal which was registered as CP (IB) No. 55/BB/2024.

4. The Tribunal admitted the application filed under Section 9 of the Code by BCCI on 16.07.2024 registered as CP (IB) No. 149/BB/2023 and appointed BCCI's nominee Mr. Pankaj Srivastava as the Interim Resolution Professional (IRP).

5. CP (IB) No. 55/BB/2024 was disposed of on 16.07.2024 by the Tribunal with the following order:-

“1. The present petition is filed on 22.01.2024 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC/ Code), r/w Rule 4 of the I & B (Application to Adjudicating Authority) Rules, 2016, by GLAS Trust Company LLC (for brevity 'Financial Creditor/Petitioner') inter alia seeking Corporate Insolvency Resolution Process against Think & Learn Private Limited (hereinafter referred as Corporate Debtor/Respondent).

2. Heard the Learned Senior Counsel for the Petitioner and Learned Senior Counsel for the Respondent.

3. In view of the order passed today i.e., 16.07.2024 by this Adjudicating Authority in another Company petition bearing C.P (IB) No.149/BB/2023 which is filed by The Board and Control for Cricket in India under Section 9 of the I & B Code 2016 r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016, against the same Corporate Debtor herein i.e., Think & Learn Private Limited and since the Corporate Insolvency Resolution Process (CIRP) has been initiated in respect of the Corporate Debtor therein by appointing the IRP, the instant C.P is disposed of by granting liberty to the

Petitioner herein to put-forth their claim before the IRP appointed in C.P (IB) No. 149/BB/2023 in accordance with the provisions of the IBC 2016 and the Regulation made thereunder.

4. However, at the request of the Learned Senior Counsel for the Petitioner, we hereby grant liberty to the Petitioner to seek restoration/revival of the said petition bearing C.P (IB) No.55/BB/2024 depending on the subsequent developments in the matter at the Appellate level; if any.

5. Accordingly, C.P (IB) No.55/BB/2024 is disposed of and all the pending IAs in the present case stands closed.”

6. Mr. Byju Raveendran, promoter and suspended director of the CD challenged the order dated 16.07.2024, passed in CP (IB) No. 149 of 2023, by way of an appeal i.e. CA (AT) (Ins) No. 262 of 2024 before this Tribunal on 17.07.2024.

7. The IRP appointed in CP (IB) No. 149 of 2023, issued public announcement on 17.07.2024, to invite the creditors of the CD to file their claims. It is alleged that Respondent No. 4 filed its claim to the IRP of the CD on 27.07.2024.

8. CA (AT) (Ins) No. 262 of 2024 was allowed by this Tribunal vide its order dated 02.08.2024 approving the settlement arrived at between the parties and as a result thereof, the CIRP of the CD was set aside.

9. The order dated 02.08.2024 was challenged by Respondent No. 4 in appeal bearing Civil Appeal No. 9986 of 2024 before the Hon’ble Supreme Court on 07.08.2024 in which the Hon’ble Supreme Court issued notice on 14.08.2024, stayed the operation of the order dated 02.08.2024 and

further directed the BCCI to maintain the amount of Rs. 158 Cr., realized in pursuance of the settlement, in a separate escrow account and to abide by further directions of the Hon'ble Supreme Court. The order precisely passed on 14.08.2024 is also reproduced as under:-

“1 IA No 175985 of 2024 for permission to file the appeal and IA No 175989 of 2024 for permission to file the appeal without certified/plain copy of the impugned order are allowed.

2 Issue notice, returnable on 23 August 2024.

3 Pending further orders, there shall be a stay of the operation of the impugned judgment and order dated 2 August 2024 of the National Company Law Appellate Tribunal, Chennai in Company Appeal (AT) (CH) (Ins) No 262 of 2024.

4 The Board of Control for Cricket in India (BCCI) shall maintain the amount of Rs 158 crores which has been realized in pursuance of the settlement, in a separate escrow account, to abide by further directions of this Court.

5 A short list of dates together with written submissions not exceeding three pages shall be filed by the respective parties and be emailed to cmvc.dyc@gmail.com.

6 List the Civil Appeal on 23 August 2024 for final disposal.”

10. It is the common case of the Appellants in both these appeals that the BCCI wrote a letter to the IRP that after the receipt of the complete settlement amount of operational debt, the matter has been settled. The BCCI submitted form FA to IRP as prescribed under Regulation 30A of the Regulations, to be submitted to the Adjudicating Authority (AA) and also on the same date i.e. 16.08.2024 asked the IRP to file it when the appeal pending before the

Hon'ble Supreme Court is dismissed. Both the letter dated 16.08.2024 and Form FA dated 16.08.2024 are reproduced as under:-

To
Mr. Pankaj Srivastava
58, 3rd Cross,
Vinayak Nagar,
Hebbal,
Bengaluru – 560024.

August 16, 2024

Email: secy@psri.in; rpai@psri.in

Subject: Payment of operational debt that formed the subject-matter of CP (IB) 149 of 2023 before the National Company Law Tribunal, Bengaluru Bench

Dear Sir,

- As you are aware, the Hon'ble National Company Law Tribunal, Bengaluru Bench, by its order dated July 16, 2024 ("NCLT Order"), admitted the petition of the Board of Control for Cricket in India ("BCCI") which was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") and initiated a corporate insolvency resolution process ("CIRP") against Think & Learn Private Limited ("Corporate Debtor") appointing you as the Interim Resolution Professional ("IRP"). BCCI had filed the abovementioned petition (CP(IB) 149 of 2023) under Section 9 of the IBC, as the Corporate Debtor had defaulted in paying the fees for the services rendered by BCCI including the grant of the right to be the team sponsor of the Indian cricket teams and to display the Corporate Debtor's trademarks/brand names on the specified portion of the team kit worn by the Indian cricket teams (the "Operational Debt").
- Thereafter, Mr. Byju Raveendran, in his capacity as erstwhile director / promoter / shareholder of Corporate Debtor, filed a company appeal bearing CA (AT) Ins 262/CN/2024 challenging the NCLT Order ("Company Appeal") before the Hon'ble National Company Law Appellate Tribunal, Chennai Bench ("NCLAT"). An interlocutory application was separately filed by GLAS Trust Company LLC ("GLAS"), seeking to implead GLAS as an additional respondent in the Company Appeal (IA No. 727 of 2024) which was registered on July 29, 2024.
- While the Company Appeal was pending consideration, on July 30, 2024, Mr. Riju Ravindran (a promoter and shareholder of the Corporate Debtor) made a settlement offer to BCCI ("Settlement Offer"), to settle the Operational Debt owed to BCCI by the Corporate Debtor, by paying the sum of Rs 1,58,00,00,000 ("Settlement Amount"). The terms of the Settlement Offer are reproduced below for your reference –

"1. We undertake to pay INR. 50 crores upfront today i.e. 30 June 2024, by way of RTGS from the account of its promoter, Mr. Riju Ravindran. We shall forward the UTR details of the same shortly.

2. We further undertake to pay INR. 25 crores on 02 August 2024 through RTGS.

3. The total dues are approximately INR. 158 crores.

4. The balance amount of INR. 83 crores to complete the figures of INR. 158 crores shall be paid on or before 09 August 2024.

5. We shall also hand over post dated cheques to the tune of INR. 83 crores drawn in favour of "Board of Control for Cricket in India" payable on 09 August 2024.



THE BOARD OF CONTROL FOR CRICKET IN INDIA

Cricket Centre, Wankhede Stadium, D-Road, Churchgate, Mumbai 400 020 | T+91.22.6759 8800 | F +91 22 6759 8801 | www.bcci.tv

6. In view of the aforesaid proposed settlement, the parties shall jointly request the Hon'ble NCLAT on 31 July 2024 to suspend the order of admission of Think & Learn Pvt. Ltd passed by the NCLT until 09 August 2024.

7. Further, once the payment of complete INR. 158 crores to BCCI is made, BCCI shall make statement to withdraw the Company Petition and take necessary steps towards the same."

As per the Settlement Offer, once the complete Settlement Amount is paid to BCCI, BCCI would make a statement to withdraw the Company Petition and take necessary steps towards the same. It is pertinent to note that the Settlement Offer made to BCCI was not subject to the Adjudicating Authority accepting the withdrawal of the CIRP proceedings against the Corporate Debtor. Mr. Riju Ravindran also submitted an undertaking and affidavit-cum-undertaking ("Undertakings") before the Hon'ble NCLAT undertaking to pay the Settlement Amount to BCCI in settlement of the Operational Debt.

4. Thereafter, the Hon'ble NCLAT, by its order dated August 2, 2024 ("NCLAT Order") in the Company Appeal, set aside the NCLT Order approving the settlement between the parties and with the caveat that if there was a breach of the Undertakings, the NCLT Order would automatically revive.
5. While proceedings before NCLAT were pending, GLAS filed a *Motion for Temporary Restraining Order* before the United States Bankruptcy Court, Delaware District, *inter alia*, seeking an order requiring Mr. Riju Ravindran be enjoined from making payments to BCCI amongst others, and also seeking an order that BCCI be enjoined from receiving Ravindran's personal assets. By its order dated August 8, 2024, GLAS' Motion was denied by the Delaware Court.
6. GLAS also preferred an appeal against the NCLAT Order before the Hon'ble Supreme Court under section 62 of the IBC, on August 7, 2024 (Diary No. 35406 of 2024).
7. The Hon'ble Supreme Court stayed the NCLAT Order on August 14, 2024.
8. Please note that BCCI received the complete Settlement Amount. The Operational Debt owed to BCCI stands settled not from the money of the Corporate Debtor but from the personal money of Mr. Riju Ravindran who has categorically disclosed its source and the fact that he had paid income tax on the amount in the Undertakings, and out of which the dues of BCCI were paid. This settlement has, thus, nothing to do with the Corporate Debtor or any amount which may have been held by the Corporate Debtor in any manner whatsoever.
9. However, as mentioned hereinabove, in terms of the Settlement Offer, once the payment of complete Settlement Amount to BCCI is made, BCCI is required to make a statement to withdraw the Company Petition and take necessary steps towards the same. Since BCCI had agreed to file an application for withdrawal of its petition on settlement of its dues, BCCI is filing this application which may be placed before the Adjudicating Authority only after the pending appeal before the Hon'ble Supreme Court is dismissed.



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10. As such, in compliance with the Settlement Offer, and without prejudice to its rights and contentions (including with respect to the applicability of Regulation 30A), BCCI is submitting to you an application in Form FA in accordance with Regulation 30A(1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations").
11. As per paragraph 11 of the NCLT Order, BCCI was required to deposit a sum of Rs. 2,00,000 with you to meet the expenses arising out of issuing public notice and inviting claims; the said amount had already been deposited. Further, as per your fee quote, your fee was to be Rs. 2,75,000 for the first month (Rs. 1,50,000 payable at the time of giving consent, Rs. 75,000 payable upon the petition being admitted and Rs. 50,000 payable at the time of constituting the Committee of Creditors). BCCI has already paid an amount of Rs. 1,50,000 to you. A cheque bearing number 000015 dated 16 August 2024 for Rs. 1,25,000 drawn on Kotak Mahindra Bank Ltd. in favour of Pankaj Srivastava is enclosed hereto as per your fee quote. Accordingly, as per our understanding no amount is pending for which a bank guarantee would be required under Regulation 30A(2)(a) of the CIRP Regulations. BCCI will further comply with the provisions of Regulation 30A(7) of the CIRP Regulations, if the occasion arises.
12. BCCI is mindful and respectful of the Hon'ble Supreme Court's order dated August 14, 2024 granting a stay on the NCLAT Order. BCCI does not wish to and / or intend to precipitate any action while the matter is sub-judice before the Hon'ble Supreme Court. For the sake of good order, please note that BCCI is enclosing the withdrawal application in Form FA only to ensure compliance with the terms of the Settlement Offer. You may be well advised not to (and certainly we do not advise you to) precipitate or pursue any action while the matter is sub-judice before the Hon'ble Supreme Court. We may reiterate that the withdrawal application is only being filed by BCCI with you in terms of the Settlement Offer, and should be placed before the Hon'ble NCLT and pressed for orders only and if the abovementioned pending appeal is dismissed by the Hon'ble Supreme Court.
13. Further, this letter and the Form FA being submitted to you are without prejudice to BCCI's rights and contentions, including in respect of the applicability of Regulation 30A in view of the NCLAT Order, all of which are expressly reserved.
14. BCCI would also wish to clarify that BCCI has no intention of adversely affecting the lawful rights of any other creditor or stakeholder of the Corporate Debtor and is fully supportive of the law taking its own course. As mentioned hereinabove, the Settlement Offer made to BCCI was not subject to the Adjudicating Authority or any other court or authority accepting the withdrawal of the CIRP proceedings against the Corporate Debtor; and as such the Settlement Offer is executed and completed. The acceptance or rejection of any application for withdrawal of the CIRP against the Corporate Debtor by the Adjudicating Authority should not have any effect on the amounts received by BCCI from Mr. Riju Ravindran, which was paid to BCCI in settlement of a legally binding Operational Debt owed by the Corporate Debtor.

15. Needless to mention that this letter is without prejudice to the rights and contentions of BCCI, under law, contract and equity.

Yours sincerely

For the Board of Control for Cricket in India

Biswa Patnaik

Biswa Patnaik
Authorised Signatory
Enclosed: As above



FORM FA

APPLICATION FOR WITHDRAWAL OF CORPORATE INSOLVENCY RESOLUTION PROCESS
[Under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

August 16, 2024

To
The Adjudicating Authority
Through Mr. Pankaj Srivastava
Interim Resolution Professional
Think & Learn Private Limited

Subject: Withdrawal of Application admitted for corporate insolvency resolution process of Board of Control for Cricket in India

1. I, Board of Control for Cricket in India, had filed an application bearing CP(IB) 149 of 2023 on September 8, 2023 before the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016. The said application was admitted by the Adjudicating Authority on July 16, 2024, in CP(IB) 149 of 2023.
2. I, Board of Control for Cricket in India, hereby withdraw the application bearing CP(IB) 149 of 2023 filed by Board of Control for Cricket in India before the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016.
3. I attach the required bank guarantee as per sub-regulation (2) of regulation 30A – Not applicable.

On behalf of the Board of Control for Cricket in India:



Biswa Patnaik

Name: Biswa Patnaik
Authorised Signatory

Date: August 16, 2024
Place: Mumbai

11. After the receipt of the letter and form FA, Respondent No. 1/IRP sent an email to the BCCI that form FA cannot be acted upon as the issue regarding settlement between the BCCI and the promoters is subject to final outcome of the civil appeal. The email dated 19.08.2024 is reproduced as under:-

From: Pankaj Srivastava <rpal@psri.in>
Sent: Monday, August 19, 2024 7:24:09 PM
To: Biswa Patnaik <biswa.patnaik@bccitv>; Anitha Ram <secy@psri.in>
Cc: Adity Chaudhury <adity.chaudhury@argus-p.com>; Bhavya Mohan <bhavya.mohan@argus-p.com>
Subject: Re: Payment of operational debt that formed the subject-matter of CP (IB) 149 of 2023 before the National Company Law Tribunal, Bengaluru Bench

CAUTION: This email originated from outside of Argus Partners. Do not click links or open attachments unless you are absolutely certain of the sender's email address and sure that the content is safe.

Dear Sir/Ma'am,

The undersigned in receipt of your Letter dated 16.08.2024 (received on 19.08.2024 by mail) having subject "*Payment of operational debt that formed the subject-matter of CP (IB) 149 of 2023 before the National Company Law Tribunal, Bengaluru Bench*" as well as the enclosed FORM-FA dated 16.08.2024 withdrawing the Petition bearing C.P. (IB) No. 149 of 2023 filed on 08.11.2023 before the Hon'ble Adjudicating Authority, Bengaluru Bench.

The undersigned is cognizant of the fact that the Suspended Board of Directors made a settlement offer to you, the Operational Creditor, to settle the Operational Debt payable by the Corporate Debtor and the said settlement formed subject matter of order dated 02.08.2024 passed by the Hon'ble Appellate Tribunal in the Company Appeal (AT)(CH)(Ins.) No. 262 of 2024 wherein the Hon'ble Appellate Tribunal was pleased to set aside order dated 16.07.2024 passed by the Hon'ble Adjudicating Authority admitting the Corporate Debtor within the rigors of CIRP under the Insolvency and Bankruptcy Code, 2016.

However, Glas Trust Company LLC, a creditor of the Corporate Debtor, assailed order dated 02.08.2024 passed by the Hon'ble Appellate Tribunal before the Hon'ble Supreme Court wherein, in unequivocal terms, the Hon'ble Supreme Court vide order dated 14.08.2024 has **stayed the operation of order dated 02.08.2024** and directed you the Operational Creditor to maintain the realized settlement offer of Rs. 158 Crores in a separate escrow account and abide by the said direction. The relevant extract of order dated 14.08.2024 is reproduced hereinbelow: -

"3 Pending further orders, there shall be a stay of the operation of the impugned judgment and order dated 2 August 2024 of the National Company Law Appellate Tribunal, Chennai in Company Appeal (AT) (CH) (Ins) No 262 of 2024.

4 The Board of Control for Cricket in India (BCCI) shall maintain the amount of Rs 158 crores which has been realized in pursuance of the settlement, in a separate escrow account, to abide by further directions of this Court."

In view of the stay of the operation of impugned judgment and order dated 02.08.2024 passed by the Ld. NCLAT, the order of the NCLT revives and accordingly, the undersigned is acting as an Interim Resolution Professional.

The undersigned wishes to apprise you that since the Hon'ble Supreme Court has categorically directed you the Operational Creditor to keep the settlement amount in a separate escrow account and to abide by the directions under order dated 14.08.2024, your letter dated 16.08.2024 (received on 19.08.2024) as well as the enclosed FORM-FA dated 16.08.2024 cannot be acted upon by the undersigned as any settlement/compromise between the Operational Creditor and the Suspended Board is subject to final outcome of the Civil Appeal (Diary) No. 35406 of 2024. The undersigned is duty bound to act as per the terms of the order passed by the Hon'ble Supreme Court.

The undersigned has noted that in your letter as well, you have noted that the matter is *sub-judice* before the Hon'ble Supreme Court and therefore, forwarding the FORM FA to the undersigned is contrary to the directions of the Hon'ble Supreme Court and the undersigned cannot in any manner take any steps as contemplated in your letter qua the said FORM-FA at this stage, as the same will amount to an overreach and constitute a direct contravention of order dated 14.08.2024 passed by the Hon'ble Apex Court. Furthermore, the undersigned in view of the orders passed by the Hon'ble Apex Court cannot take any steps as envisaged in your letter with respect to the FORM-FA received, since the same will have an effect of rendering order dated 14.08.2024 as infructuous and amount to contempt of orders/directions of the Hon'ble Supreme Court, inviting legal consequences thereof.

In view of the aforesaid, the undersigned requests you to withdraw your Letter dated 16.08.2024 (received on 19.08.2024), since the matter is *sub-judice* before the Hon'ble Supreme Court.

Regards.
Mr. Pankaj Srivastava
Interim Resolution Professional for
Think & Learn Private Limited

12. The IRP constituted the CoC on 21.08.2024 comprising the following members, namely, Glas Trust Company LLC, Aditya Birla Finance Ltd., Incred Financial Services Ltd. and ICIC Bank Limited. However, on 31.08.2024 the Respondent No. 1 reconstituted the CoC with only one member, namely, Incred Financial Services Ltd..

13. The Hon'ble Supreme Court also passed an order on 26.09.2024, directing the IRP to maintain status quo and not to hold any meeting of the CoC pending the pronouncement of judgment by it.

14. On 23.10.2024, Civil Appeal No. 9986 of 2024 and SLP (C) No. 21023 of 2024 were allowed and the order dated 02.08.2024 passed by this Court

was set aside. The conclusion drawn by the Hon'ble Supreme Court is reproduced as under:-

“86. For the above reasons, we allow the present appeal and set aside the impugned judgment of the NCLAT dated 2 August 2024 in the above terms. At this stage, it would not be appropriate for this Court to adjudicate on the objections of the appellant to the settlement agreement on merits. The issues raised are the subject matter of several litigations in different fora, including the Delaware Court and investigation by various authorities, including the Enforcement Directorate, which are pending.

87. During the course of the proceedings before this Court, the CoC has been constituted. The parties are at liberty to invoke their remedies, to seek a withdrawal or settlement of claims, in compliance with the legal framework governing the withdrawal of CIRP. Nothing in this judgment should be construed as a finding on the conduct of any of the parties or other stakeholders involved in the insolvency proceedings.

88. The amount of Rs 158 crore, along with accrued interest, if any, which has been maintained in a separate escrow account pursuant to the Order of this Court dated 14 August 2024, is to be deposited with the CoC. The CoC is directed to maintain this amount in an escrow account until further developments and to abide by the further directions of the NCLT.

89. The civil appeal and special leave petition shall stand disposed of accordingly. ”

15. Pursuant to the liberty granted by the Hon'ble Supreme Court in para 87 of the aforesaid judgment, the Appellant in the first appeal wrote to the Appellant in the second appeal to take steps for withdrawal of the

application filed under Section 9 pursuant to which the Appellant in the second appeal, namely, BCCI instructed Respondent No. 1/RP on 11.11.2024 to place form FA before the Tribunal. The IRP filed an application bearing I.A No. 837 of 2024 on 14.11.2024 in terms of Section 12A of the Code r/w Regulation 30A of the Regulations in view of the settlement between the parties. It is alleged that the Appellant in the first appeal filed an application bearing I.A No. 842 of 2024 seeking impleadment in CP (IB) No. 149 of 2023. It is also alleged that objections were filed by Aditya Birla Finance and Glass Trust Company LLC to the withdrawal of the application.

16. The appeal filed by Riju Ravindran (Appellant in the first appeal) bearing CA (AT) (Ins) No. 58 of 2025 before this Tribunal was disposed of on 07.02.2025 with a direction to the Tribunal to decide the withdrawal application within a week. The said order is also reproduced as under:-

07.02.2025: This appeal is directed against the order dated 29.01.2025 by which the National Company Law Tribunal, Bengaluru Bench (in short 'Tribunal') has allowed two applications. The first application bearing I.A No. 660 of 2024, filed by Aditya Birla Finance Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 and 32 of the NCLT Rules, 2016 with the following prayers:-

- “a) set aside the decision made by the Respondent in respect of the Applicant's classification as an Operational Creditor;
- b) direct Respondent to exclude the Applicant from Annexure S List of Operational Creditors dated 30th August 2024 and to consider the

Applicant's claim as a 'financial debt' within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016;

c) direct the Respondent to appropriately reconstitute the Committee of Creditors with the Applicant classified as a Financial Creditor with the proportionate voting accruing in light of the financial debt owed to it by the Corporate Debtor”

The second application bearing I.A No. 820 of 2024 has been filed under the same provisions, by GLAS Trust Company LLC, in which the following prayers have been made:-

“(i) declare that Respondent No.1 does not have the power to re-constitute to the Committee of Creditors [“CoC”] of the Corporate Debtor;

(ii) Set aside reconstitution of CoC and restore the CoC as on 21.08.2024 and

(iii) Set aside resolutions of the CoC held on 03.09.2024 and all subsequent meetings which may have taken place.”

2. Both the applications have been disposed of by the impugned order with the following directions:-

“a. The reconstitution of the Committee of Creditors carried out by the Interim Resolution Professional on 31st August 2024 is hereby set aside. The Committee of Creditors constituted on 21st August 2024 is upheld and shall remain in effect.

b. The Interim Resolution Professional is directed to convene a meeting of the Committee of Creditors as constituted on 21st August 2024 and submit their recommendation on appointment of the Resolution Professional.

c. The resolution passed by the reconstituted Committee of Creditors on 3rd September 2024, which appointed the Interim Resolution Professional as the Resolution Professional, is hereby set aside. In addition, any subsequent resolutions, if passed by the reconstituted CoC, are also nullified.

d. The Applicant No. 1, Aditya Birla Finance Limited is hereby restored to the status of a Financial Creditor, with all attendant rights, privileges, and obligations, as envisaged under the Code and letter dated 05/09/2024 re-classifying Applicant No.1 as Operational Creditor is set aside.

e. Accordingly, consequential prayers are dealt with.”

3. The present appeal, however, is filed by the erstwhile director of the Corporate Debtor, namely, Think and Learn Pvt. Ltd., with the grievance that though the Tribunal has heard together with I.A No. 660 of 2024 and I.A No. 820 of 2024, the application filed by the RP bearing I.A No. 837 of 2024 in which the following prayers have been made:-

a. Pass an order directing allowing the withdrawal of the CIRP of the CD which was admitted into CIRP vide order dated 16.07.2024 passed by this Tribunal.

b. Pass an order direction directing the Respondent No. 1 to furnish the bank guarantee or pay an amount of Rs. 3,26,73,863 towards CIRP costs, under Regulation 30A(2)(a) of the CIRP Regulations.

c. Grant such other and further reliefs as the Hon'ble Tribunal may consider just and necessary in the interest of justice”

It has not passed any decision in the application I.A No. 837 of 2024, even though it has passed orders in the other two applications.

4. It is submitted that the application bearing I.A No. 660 of 2024, 820 of 2024 and 837 of 2024 were heard on the same day i.e. on 08.01.2025 and the orders in all the applications were reserved but the impugned order has been passed only in I.A No. 660 of 2024 and I.A No. 820 of 2024.

5. It is submitted that in terms of the impugned order passed by the Tribunal, the CoC constituted by the RP on 21.08.2024 has been restored and the IRP has called the first meeting of the CoC on 08.02.2024.

6. The case of the Appellant is that if any step is taken towards the CIRP including reconstitution of the CoC, in terms of the impugned order, then it shall be prejudicial to the interest of the Appellant because had the application bearing I.A No. 837 of 2024 been decided in favour of the Appellant before the impugned orders, the CIRP proceedings would have been terminated.

7. The brief facts of this case are that an application bearing CP No. 149 of 2023, under Section 9 was filed by the BCCI against the CD which was admitted on 16.07.2024 and Mr. Pankaj Srivastava was appointed as the IRP. The IRP made the public announcement on 17.07.2024 pursuant to which both the Applicants in I.A No. 660 of 2024 and I.A No. 820 of 2024, namely, Aditya Birla Finance Pvt. Ltd. and GLAS Trust Company LLC respectively, filed their claims in Form C.

8. The admission order was challenged by one of the suspended directors (Mr. Byju Raveendran) of the CD by way of CA (AT) (Ins) No. 262 of 2024 before this Tribunal.

9. During the pendency of this appeal, the Appellant and BCCI entered into a settlement on the basis of which the appeal was allowed and the CIRP was set aside on 02.08.2024 by this Tribunal. However, the order dated 02.08.2024, passed by this Court, was challenged by way of an appeal before the Hon'ble Supreme Court by GLAS Trust Company LLC. It was initially registered as Civil Appeal Diary No. 35406 of 2024 in which stay was granted by the Hon'ble Supreme Court on 14.08.2024. The order of stay read as under:-

“1 IA No 175985 of 2024 for permission to file the appeal and IA No 175989 of 2024 for permission to file the appeal without certified/plain copy of the impugned order are allowed

2 Issue notice, returnable on 23 August 2024.

3 Pending further orders, there shall be a stay of the operation of the impugned judgment and order dated 2 August 2024 of the National Company Law Appellate Tribunal, Chennai in Company Appeal (AT) (CH) (Ins) No 262 of 2024.

4 The Board of Control for Cricket in India (BCCI) shall maintain the amount of Rs 158 crores which has been realized in pursuance of the settlement, in a separate escrow account, to abide by further directions of this Court.

5 A short list of dates together with written submissions not exceeding three pages shall be filed by the respective parties and be emailed to cmvc.dyc@gmail.com.

6 List the Civil Appeal on 23 August 2024 for final disposal.”

10. According to the Appellant, before the order dated 02.08.2024 passed by this court could have been approved or set aside, the BCCI approached the IRP on 16.08.2024 for filing the application under Section 12A of the Code before the Tribunal. In the said application, it was mentioned by the BCCI that :-

BCCI is mindful and respectful of the Hon'ble Supreme Court's order dated August 14, 2024 granting a stay on the NCLAT Order. BCCI does not wish to and / or intend to precipitate any action while the matter is sub-judice before the Hon'ble Supreme Court. For the sake of good order, please note that BCCI is enclosing the withdrawal application in Form FA only to ensure compliance with the terms of the Settlement Offer. You may be well advised not to (and certainly we do not advise you to) precipitate or pursue any action while the matter is sub-judice before the Hon'ble Supreme Court. We may reiterate that the withdrawal application is only being filed by BCCI with you in terms of the Settlement Offer, and should be placed before the Hon'ble NCLT and pressed for orders only and if the abovementioned pending appeal is dismissed by the Hon'ble Supreme Court.

11. The IRP, on the basis of claim submitted by the Financial Creditors, constituted the CoC on 21.08.2024 in the following manner:-

“That on the basis of verification of available information, the Applicant has constituted the Committee of Creditors in the matter of Think & Lear Private Limited on 21.08.2024 in accordance with Section 18(c) and Section 21(2) of the Code as follows:

Name of The Creditor	Amount Claimed	Amount Verified	Voting Share (%)
Glas Trust Company LLC	11,432,98,87,753/-	11,432,98,87,753/-	99.41%
Aditya Birla Finance Limited	47,12,00,000/-	47,12,00,000/-	0.41%
Incred Financial Services Limited	20,34,52,440/-	20,34,52,440/-	0.18%
ICICI Bank Limited	Nil	Nil	0.00%
Total	11,500,45,40,193	11,500,45,40,193	100%

12. However, the IRP reconstituted the CoC on 31.08.2024 with only one Financial Creditor. The reconstitution of CoC is as under:-

Name of The Creditor	Amount Claimed	Amount Verified	Voting Share (%)
Incred Financial Services Limited	20,34,52,440/-	20,34,52,440/-	100%
Total			100%

13. The decision of the IRP dated 31.08.2024 was challenged by Aditya Birla Finance Limited by way of I.A No. 660 of 2024 on 09.09.2024 and by GLAS Trust Company LLC by way of I.A No. 820 of 2024 on 24.10.2024.

14. In the meanwhile, on 23.10.2024, the Hon'ble Supreme court allowed CA No. 9986 of 2024 and set aside the order passed by this Court on 02.08.2024 with the following conclusions:-

“F. Conclusion

86. For the above reasons, we allow the present appeal and set aside the impugned judgment of the NCLAT dated 2 August 2024 in the above terms. At this stage, it would not be appropriate for this Court to adjudicate on the objections of the appellant to the settlement agreement on merits. The issues raised are the subject matter of several litigations in different fora, including the Delaware Court and investigation by various authorities, including the Enforcement Directorate, which are pending.

87. During the course of the proceedings before this Court, the CoC has been constituted. The parties are at liberty to invoke their remedies, to seek a withdrawal or settlement of claims, in compliance with the legal framework governing the withdrawal of CIRP. Nothing in this judgment should be construed as a finding on the conduct of any of the parties or other stakeholders involved in the insolvency proceedings.

88. The amount of Rs 158 crore, along with accrued interest, if any, which has been maintained in a separate escrow account pursuant to the Order of this Court dated 14 August 2024, is to be deposited with the CoC. The CoC is directed to maintain this amount in an escrow account until further developments and to abide by the further directions of the NCLT.

89. The civil appeal and special leave petition shall stand disposed of accordingly.

90. Pending applications, if any, stand disposed of.”

15. Since, the proceeding in I.A No. 819 of 2024 and I.A No. 820 of 2024 was not making any head way, therefore, GLAS Trust Company LLC, who had filed the said application, filed a writ petition before the Hon’ble Karnataka High Court bearing Writ Petition No. 28827 of 2024 for the issuance of a writ of mandamus directing the Tribunal to adjudicate upon its interim application within two weeks. The said writ petition was disposed of on 30.10.2024 with the direction to the Tribunal to dispose of the applications pending before it. Thereafter, the Tribunal heard the applications bearing I.A No. 660 of 2024, 820 of 2024 and 837 of 2024 on 08.01.2025 and reserved the orders. Thereafter, the impugned order has been passed only in respect of two applications i.e. I.A No. 660 of 2024 and 820 of 2024 but I.A No. 837 of 2024 is still pending for decision.

16. Mr. Arun Kathpalia, Sr. Counsel for the Appellant has vehemently argued that once the Tribunal has reserved all the three applications on the same day then it should have decided all the three applications together and should not have kept the application bearing IA No. 837 of 2024 for orders after the applications I.A No. 660 of 2024 and 820 of 2024 were decided.

17. Mr. Kapil Sibal, Sr. Adv. duly assisted by Mr. Datta, Sr. Adv. appearing on behalf of the Respondent has submitted that the application was not filed before the constitution of CoC rather it was filed somewhere in November, 2024 after the

constitution of CoC. He has further submitted that the first CoC meeting about which there is a great hue and cry raised by the appellant is only with regard to approval for transfer of settlement of funds to CoC, approval for appointment of IRP as the RP and any other matter with the permission of the chair. He has further submitted that this meeting had been called in regard to the agenda qua the orders passed by the Hon'ble Supreme Court on 23.10.2024 in which it has been held that "the amount of Rs 158 crore, along with accrued interest, if any, which has been maintained in a separate escrow account pursuant to the Order of this Court dated 14 August 2024, is to be deposited with the CoC. The CoC is directed to maintain this amount in an escrow account until further developments and to abide by the further directions of the NCLT" and that the said proceedings are totally innocuous which is not going to harm the Appellant. He has also submitted that the Appellant does not have the locus to maintain this appeal. As against this, Counsel for the appellant has submitted that the Appellant has the locus because settlement application was filed pre-CoC whereas stand taken by the Respondent is that the application for settlement has been filed after the CoC.

18. We have heard Counsel for the parties in detail and are of the considered opinion that the grievance of the Appellant shall be addressed by issuing a direction to the Tribunal, seized of the application bearing I.A No. 837 of 2024, in which the order has already been reserved, to decide the said application as early as possible but preferably within a period of one week. Therefore, we order accordingly.

19. It is however made clear to the parties as well as to the Tribunal that while disposing of this appeal we have not made any observation anywhere in the order on the merit of the case.

20. The Tribunal has to take the decision independently about the application in question pending before it for adjudication.

21. With these observations, the present appeal is hereby disposed of. No costs.

22. It is needless to mention that in case any order is passed adverse to the interest of the Appellant, the Appellant shall have the liberty to take its legal recourse in accordance with law.

I.As, if any pending, are hereby closed.

17. On 10.02.2025, the Tribunal decided the application bearing I.A No. 837 of 2024, inter alia, holding that the application has been filed after the constitution of the CoC and therefore, it is required to be submitted to the CoC under Section 12A of the Code r/w Regulation 30A (1)(b) of the Regulations.

18. Aggrieved against the order dated 10.02.2025, the aforesaid two appeals have been filed in which the grievance of both the appellants is similar that since the application under Section 12A was filed before the constitution of the CoC, therefore, the provisions of Section 12A coupled with Regulation 30A(1)(a) shall apply and not Regulation 30A(1)(b).

19. Counsel for the Appellant has submitted that the settlement was arrived at between the parties on 31.07.2024 and was given effect to on

16.08.2024 because it has been mentioned in Form FA that the BCCI withdraws the application bearing CP (IB) No. 149 of 2023. He has further submitted that Regulation 30A(3) requires the IRP to file Form FA within three days from its receipt. Form FA was submitted on 16.08.2024 whereas the CoC was constituted on 21.08.2024. The settlement was arrived at between the parties before the CoC was constituted and Form FA was also submitted to the IRP to be filed before the AA on 16.08.2024, therefore, the right of the Appellant cannot be defeated if Form FA is filed after the constitution of the CoC. He has further submitted that the stage of the case of the Appellant has been noticed by the Hon'ble Supreme Court in para 78 of its order dated 23.10.2024, therefore, it shall have to be considered to be a case of filing the application for settlement before the constitution of CoC to which Regulation 30A(1)(a) is applicable and not Regulation 30A(1)(b) as held by the Tribunal.

20. He has further submitted that the Tribunal has committed an error in holding that the application could have been filed by the IRP whereas the R1 was RP by that time. In this regard, it is submitted that the Tribunal, vide its order dated 29.01.2025, set aside his confirmation and held that he was only an IRP even on 14.11.2024.

21. It is further submitted that in para 63(ii) of the order dated 23.10.2024, the Tribunal heard their objections in the capacity as stakeholders before passing the impugned order and could not have turned around to observe that Form FA should be placed before the CoC for its commercial wisdom.

22. In the end, It is argued that the Appellant has filed I.A No. 842 of 2024 for impleadment but no hearing was afforded whereas in para 63(ii) of the order dated 23.10.2024 it has been categorically held that all concerned parties must be heard while deciding the withdrawal application. It is submitted that the Appellant, having paid the entire amount of settlement, was required to be heard by the Tribunal.

23. On the other hand, Counsel appearing on behalf of Respondent No. 4, defending the order of the Tribunal, has argued that in para 87 of the order passed by the Hon'ble Supreme Court it has been noticed that CoC has been constituted during the pendency of the proceedings before it and the parties were given liberty to invoke their remedies to seek withdrawal on settlement of claims in compliance with the legal framework governing the withdrawal of the CIRP.

24. It is further submitted that the CoC was constituted on 21.08.2024 whereas the withdrawal application was filed by the IRP on 14.11.2024 after the CoC was constituted. It is argued that in such circumstances, the only course to be adopted by the Tribunal is to follow the Regulation 30A(1)(b), 30A(4) and 30A(5) of the Regulations.

25. Counsel for Respondent No. 4 has further argued that reliance placed by the Appellant in para 78 of the said judgment is totally misplaced because it records about the situation when the judgment of the NCLAT was delivered. It is argued that the contents of para 78 only stated as to what existed at

that time, with a view to apply the rules to opine on what the outcome would have been if that set of circumstances persisted.

26. He has further argued that in this regard, the Hon'ble Supreme Court has taken a decision in para 87 to grant liberty to the parties to proceed with in accordance with law for the purpose of settlement of their claim but at the same time it has noted that the CoC has already been constituted

27. Counsel for Respondent No. 4 has also argued that the letter dated 16.08.2024 by the BCCI, who had submitted form FA on the same date to the IRP, clearly reflects the decision of the Appellant of filing the application for withdrawal because in the said letter it was categorically mentioned that the application for withdrawal may be filed only when civil appeal is dismissed by the Hon'ble Supreme court whereas the appeal was allowed on 23.10.2024 and thereafter on being asked by the RP, the Appellant has filed the application under Section 12A alongwith form FA on 14.11.2024.

28. He has further submitted that it does not lie in the mouth of the Appellant to blame the IRP/RP for not filing Form FA within three days as stipulated in the Regulations because the Appellant itself had wished and directed the RP to file the application for withdrawal only after dismissal of the appeal by the Hon'ble Supreme Court which was eventually allowed on 23.10.2024.

29. He has also submitted that in reply to the letter dated 16.08.2024, the RP sent an email dated 19.08.2024 that any steps taken at this stage of filing Form FA before the Tribunal shall be an overreach of the SC's order dated 14.08.2024 and that decision of the IRP dated 19.08.2024, though open to challenge was never questioned by the Appellant before the Tribunal and in the meanwhile the IRP constituted the CoC on 21.08.2024.

30. He has further submitted that only material date for withdrawal is the date on which the application is filed by the IRP and in this regard, he has relied upon a decision of this Court in the case of K.C. Sanjeev Vs. Easwara Pillai Kesavan Nair, 2020 SCC Online NCLAT 980.

31. Counsel for Respondent No. 4 has further submitted that even Form FA, which was submitted, was not complete because form FA must be accompanied with a bank guarantee as specified under Regulation 30A(2)(a)&(b). The non-provision of the bank guarantee has been acknowledged by the IRP in the withdrawal application.

32. It is further submitted that the Appellant (Riju Ravindran) has alleged that he was not heard on the application i.e. I.A No. 842 of 2024 which was firstly filed in the main petition and not in the withdrawal application. It is also submitted that the Appellant was present throughout the hearing of the withdrawal application and failed to make any submissions in support of or objecting to the withdrawal application and therefore, this submission that he has not been given hearing is an after thought argument.

33. It is further submitted that even if the Appellant in the first appeal who had filed an application for impleadment was allegedly not heard, the same argument he would have raised as nothing new has been argued before this Court as well in this appeal and all the submissions made before this Court were raised before the Tribunal have been duly considered and rejected.

34. Similar argument have been raised by Counsel for Respondent No. 3, supporting the case of the Respondent No. 4, for the purpose of dismissal of both the appeals.

35. Counsel for Respondent No. 1 has also supported the case of the Respondents.

36. We have heard Counsel for the parties and perused the record with their able assistance.

37. From the narration of the facts and submissions made by Counsel for the parties, the only question which arises for consideration by this Court is as to whether the application for withdrawal of CIRP submitted with form FA should be considered to have been filed before the constitution of the CoC on 21.08.2024 or it has to be considered as filed on 14.11.2024 that is the date of filing of the application by the IRP for settlement which is after the constitution of the CoC?

38. On 02.08.2024, the application filed under Section 9 by the BCCI was set aside by this Court on the basis of the settlement invoking Rule 11 of the NCLAT Rules, 2016. However, in the appeal filed by R4 before the

Hon'ble Supreme Court against the order dated 02.08.2024, the operation of the order dated 02.08.2024 was stayed on 14.08.2024. On 16.08.2024 the BCCI handed over Form FA to the IRP and also on the same day wrote a letter to him that the application for settlement may be placed before the Tribunal only after the appeal pending before the Supreme court is dismissed. On 19.08.2024 the IRP also wrote back to the BCCI that he will file form FA only after the decision of the Hon'ble Supreme Court on the pending appeal. On 19.08.2024 the IRP verified the claim of R4 as a financial creditor and on 21.08.2024 constituted the CoC with Respondent No. 4 as one of the members of the CoC with voting share of 99.41%.

39. The Hon'ble Supreme Court allowed the appeal on 23.10.2024 and categorically observed that the CoC has now been constituted and granted liberty to the parties for pursue their settlement application within the legal framework.

40. On 11.11.2024 the BCCI instructed Respondent No. 1 to file Form FA which was filed on 14.11.2024.

41. According to the Appellant, the Hon'ble Supreme Court, in para 78 of its order dated 23.10.2024, has held that the situation before the NCLAT in the present case fell within serial number (ii). In this regard, para 63(ii) as well as 78 are reproduced as under:-

63(ii). After an application under Sections 7, 9, or 10 is admitted, but before the CoC has been constituted: Although Section 12A continues to be silent on this aspect, after the decision in Swiss Ribbons (supra), Regulation 30A was amended to provide for this eventuality. An application for withdrawal in

such cases may be made by the applicant through the IRP.⁴⁶ The IRP will then place the application before the NCLT, which may pass an order either approving or rejecting the application. As noted above, once the application has been admitted, the proceedings are no longer the sole preserve of the applicant creditor and the corporate debtor. They are now in rem and at this stage, the NCLT must hear the concerned parties and consider all relevant factors before approving or rejecting the application for withdrawal. The NCLT being a quasi-judicial body, must not act as a mere post office, which stamps and approves every settlement agreement, without application of judicial mind.

78.In paragraph 63 of this judgement, we identified the four stages at which a procedure for the withdrawal of CIRP or settlement of claims is contemplated in the existing legal framework. The situation before the NCLAT in the present case fell within serial number (ii), that is, when the application of a creditor has been admitted and CIRP has been initiated, however, the CoC has not been formed. When settlement was sought by the first respondent before the NCLAT, the Section 9 petition had been admitted and the Section 7 petition had also been disposed of on that basis. However, admittedly, on this date, i.e. 31 July 2024, the CoC had not been constituted and the NCLAT subsequently stayed the formation of the CoC.

42. It has been observed in para 78 that till 31.07.2024 the CoC was not constituted whereas in para 87 it has been observed that during the pendency of the proceedings, the CoC was constituted. Para 87 is also required to be considered and is reproduced as under:-

87.During the course of the proceedings before this Court, the CoC has been constituted. The parties are at liberty to invoke their remedies, to seek a withdrawal or settlement of claims, in compliance with the legal framework governing the withdrawal of CIRP. Nothing in this judgment should be construed as a finding on the conduct of any of the parties or other stakeholders involved in the insolvency proceedings.

43. Form FA, admittedly having been filed on 14.11.2024, is post CoC. In this regard, it shall be worthwhile to refer to Section 12A and Regulation 30A of the Regulations which are also reproduced as under:-

“Section 12A. Withdrawal of application admitted under section 7, 9 or 10

[12A. Withdrawal of application admitted under section 7, 9 or 10.—The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.]

Regulation 30A: Withdrawal of application.

[30A. (1) An application for withdrawal under [section 12A](#) may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under [regulation 36A](#), the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the ³[Schedule-I] accompanied by a bank guarantee-

- (a) towards estimated expenses incurred on or by the interim resolution professional for purposes of [regulation 33](#), till the date of filing of the application under clause (a) of sub-regulation (1); or
- (b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of [regulation 31](#), till the date of filing of the application under clause (b) of sub-regulation (1).
- (3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.
- (4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.
- (5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.
- (6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).
- (7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.]”

44. Section 12A deals with the withdrawal of the application, filed under Section 7, 9 or 10 of the Code with the approval of 90% voting share of the CoC.

45. Regulation 30A which came to be introduced in the regulations on 25.07.2019 has provided for both the scenarios i.e. filing of the application for withdrawal before the constitution of CoC and filing of the same after the constitution of the CoC. If the application under Section 12A is filed under Regulation 30A(1)(a) before the constitution of CoC then Section 12A which mandates the approval of such application for withdrawal by 90% voting share of the CoC shall not apply but if the application is filed after the constitution of the CoC then the provisions of Section 12A shall apply with full force.

46. We do not agree with the contention of the Appellant that this Tribunal shall have to read only para 78 of the order of the Hon'ble Supreme Court and hold that the application for withdrawal, even though filed on 14.11.2018, has to be considered to have been filed before the constitution of the CoC because in para 78, the Hon'ble Supreme Court is stating the fact which existed at that time and in para 87 of the judgment it categorically deals with the factual situation because when the order of the Hon'ble Supreme Court was passed on 23.10.2024, the CoC had already been constituted on 21.08.2024 whereas the application form FA was filed on 14.11.2024 much thereafter. We also do not agree with the Appellant on the issue that the IRP had erred in not submitting the application for withdrawal within three days as stipulated in Regulation 30A(3) because

of the fact that the Appellant himself had directed / asked the RP to file form FA only after the dismissal of the appeal which was otherwise allowed on 23.10.2024. Moreover, even if the IRP had erred in not submitting the application and replied on 19.08.2024 to the Appellant, expressing his difficulty in filing form FA during the pendency of the appeal before the Hon'ble Supreme Court for whatever reasons, the Appellant had the remedy to question the decision of the RP before the Tribunal by filing a miscellaneous application which he has failed to do.

47. In so far as argument of the Appellant (Riju Ravindran) is concerned that he was a necessary party and was not heard contrary to the order of Hon'ble Supreme Court, where it has been held that all the concerned parties must be heard coupled with the fact that he had also filed an application i.e. I.A No. 842 of 2024, it would suffice to note that the application I.A No. 842 of 2024 filed by him was not filed in I.A No. 837 of 2024 rather the said application was filed in the main petition.

48. Be that as it may, the Appellant was present throughout the hearing of the withdrawal application as stated by the Respondent. Even otherwise, the present appeal has been filed by the same applicant who has raised all the issues available to him before this Court. No other point has been raised except the main issue that the application filed for withdrawal was before the constitution of the CoC about which we have heard him thoroughly and the issue is accordingly decided.

49. Thus, in view of the above facts and circumstances, we do not find any merit in these two appeals, therefore, both the appeals are hereby dismissed, though without any order as to costs.

I.As, if any, pending are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

New Delhi
17th April, 2025
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