

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/ VC Mode (Hybrid))*

I.A. No. 1111/2025
in
C.P. (IB) No. 149/BB/2023

IN THE MATTER OF:

Aakash Educational Services Limited

a public limited company,
bearing corporate identification number
UN0300KA2007 PLC 150057
Having its registered office at
No. 5/2, 2nd Floor, Kundanahalli Gate,
Varthur Road, Opposite SKR Kalyana Mandapa.
Whitefield, Bengaluru - 560037

... Applicant

VERSUS

Mr. Shailendra Ajmera

Resolution Professional of
Think & Learn Private Limited And
Partner at EY Restructuring LLP
Having office at
3rd Floor, Worldmark 1, Hospitality District,
Aerocity, Delhi 110037

... Respondent No.1

Reserve Bank of India

Through the
Governor 11 th Floor, Central Office Building,
Shahid Bhagat Singh Road, Fort,
Mumbai, Maharashtra-400001
Also at: 0/3/8,
Nrupathunga Road,
Bengaluru, Karnataka-560001

... Respondent No.2

Order delivered on: 07.04.2026

CORAM:

Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

ORDER

1. The present application has been filed by the Applicant under Section 60(5) read with Rule 11 of the NCLT Rules, 2016, inter alia seeking:
 - a. *Directing the 2nd Respondent - Reserve Bank of India to issue a report providing clarification on the compliance of all applicable laws in respect of the monies received from Think & Learn Private Limited into*

the Applicant - Aakash Educational Services Limited in respect of the Rights Issue;

- b. Directing the 2nd Respondent - Reserve Bank of India, to file a report on the regulatory classification of the Subscription Securities under the Debenture Subscription Agreement dated 7th November 2025 and the permissibility of utilisation of such funds for equity investment;*
- c. Adjudicate whether the funds raised under the Debenture Subscription Agreement dated 7th November 2025 and remitted by Think & Learn Private Limited to the Applicant for the purpose of subscribing to the Applicant's Rights Issue are legal, permissible and in compliance with all applicable laws;*
- d. In the event this Hon'ble Tribunal holds that the funds remitted by Think & Learn Private Limited are not legally permissible for equity investment, permit the Applicant to refund such amounts to Think & Learn Private Limited in such manner and within such time as this Hon'ble Tribunal may deem fit;*
- e. Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case, in the interest of justice, equity and good conscience.*

2. Brief facts of the Petition are given hereunder:

- i. The Applicant, Aakash Educational Services Limited, is engaged in providing educational and test preparatory services across India. It is submitted that the Applicant is undergoing financial distress and has undertaken a rights issue of equity shares aggregating to ₹240 crores (in one or more tranches) to its existing shareholders in proportion to their shareholding, in terms of Section 62 of the Companies Act, 2013.
- ii. It is submitted that the Board of Directors of the Applicant, in its meeting held on 04.10.2025, approved the rights issue, which was further approved by the shareholders in the Extraordinary General Meeting ("EGM") held on 29.10.2025. Pursuant thereto, a Letter of Offer dated 29.10.2025 was issued to the shareholders, including Corporate Debtor, for subscription to equity shares aggregating to ₹100 crores in the first tranche, with the offer period from 03.11.2025 to 17.11.2025, subsequently extended till 21.11.2025.
- iii. The Corporate Debtor, through its Resolution Professional ("RP")/Respondent No.1, executed a Debenture Subscription Agreement dated 07.11.2025 with Byju's Alpha Inc., a foreign entity, for raising funds aggregating to ₹100 crores through issuance of debentures, in order to participate in the Applicant's rights issue. It is submitted that out of the said funds, the Applicant received an

amount of approximately ₹25 crores from the Corporate Debtor towards subscription to the rights issue.

- iv. The Applicant submits that upon perusal of the Debenture Subscription Agreement, certain clauses appear to be inconsistent with the characterization of the instruments as Compulsorily Convertible Debentures (“CCD”). The Applicant further submits that there are concerns as to whether the said instruments satisfy the requirements of being fully and mandatorily convertible, as required under the applicable regulatory framework.
- v. It is submitted that the Applicant sought clarifications from the RP regarding the legality and compliance of the funds raised by the Corporate Debtor. The RP responded by providing certain clarifications along with a legal opinion. The Applicant thereafter sought independent legal opinions from various experts, which, according to the Applicant, indicated potential issues regarding compliance with the provisions of the Foreign Exchange Management Act, 1999 (“FEMA”), the applicable rules and regulations thereunder, and the External Commercial Borrowings (“ECB”) framework.
- vi. The Applicant contends that if the instruments issued under the Debenture Subscription Agreement are not in the nature of CCD, the same may be treated as debt, thereby attracting the ECB guidelines, which restrict the use of such funds for equity investment. The Applicant further submits that certain clauses of the Debenture Subscription Agreement provide for optional or partial conversion and fractional equity, which may be inconsistent with the applicable legal framework.
- vii. In view of the above concerns, the Applicant, in its Board Meeting held on 27.11.2025, approved allotment of shares to other shareholders but, in respect of the amount received from the Corporate Debtor, resolved to keep the said amount in a separate interest-bearing account and keep the allotment of shares to the Corporate Debtor in abeyance, pending adjudication on the legality of the funds. The same was communicated to the RP.
- viii. The Applicant submits that any irregularity in the funds received may have serious legal and regulatory consequences, including potential violations of applicable foreign exchange laws. It is therefore submitted that the present application has been filed seeking adjudication on the validity and regulatory

compliance of the funds remitted by the Corporate Debtor and for appropriate directions, including seeking clarification from the Reserve Bank of India.

3. **Submissions of Respondent No 1:**

The Respondent No.1 on the basis of the advance service of the petition, without being issued a notice, filed Submissions vide **diary no. 7255 on 02.01.2026.**

- i. Learned Counsel appearing for Respondent No. 1 submits that the present application is not maintainable under Section 60(5) of the Code, 2016, as the reliefs sought do not arise out of or relate to the Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor. It is contended that the application is premised on alleged non-compliance with provisions of the FEMA and related regulations, which fall outside the jurisdiction of this Adjudicating Authority and are within the domain of the authorities constituted under the said enactment.
- ii. It is further submitted that the present application is a deliberate attempt to obstruct the CIRP of the Corporate Debtor and to prevent it from exercising its statutory rights as a shareholder of the Applicant company. It is contended that the Corporate Debtor holds a substantial shareholding in the Applicant and is entitled to participate in the rights issue to preserve the value of its assets.
- iii. Learned Counsel submits that the Committee of Creditors (CoC), in its commercial wisdom, approved the raising of funds through issuance of CCD and the participation of the Corporate Debtor in the rights issue. It is submitted that the said decision was taken to protect and preserve the shareholding of the Corporate Debtor in the Applicant, which constitutes a valuable asset of the Corporate Debtor.
- iv. It is contended that the application has been filed as an afterthought and is intended to delay and frustrate proceedings initiated by the Corporate Debtor against the Applicant, including proceedings relating to oppression and mismanagement and challenges to the rights issue. It is further submitted that similar attempts to restrain the Corporate Debtor from participating in the rights issue have not succeeded, and the present application is a continuation of such efforts.

- v. Learned Counsel further submits that the jurisdiction of this Adjudicating Authority under Section 60(5) of the Code is limited to matters arising out of or in relation to the insolvency resolution process of the Corporate Debtor and cannot be invoked for adjudication of independent regulatory issues under other statutes. In support of this contention, reliance is placed on judicial precedents to submit that the Adjudicating Authority cannot usurp the jurisdiction of other statutory authorities where the dispute does not have a direct nexus with the insolvency process.
 - vi. It is further contended that the issues raised by the Applicant are purely regulatory in nature and, even if assumed to be valid, fall within the exclusive jurisdiction of authorities under the applicable foreign exchange laws. Therefore, the present application is liable to be dismissed as not maintainable.
 - vii. Learned Counsel also submits that the conduct of the Applicant is mala fide and amounts to abuse of process, as the application has been filed to stall the allotment of shares to the Corporate Debtor under the rights issue and to create a pretext for withholding such allotment. It is contended that the Applicant had no genuine regulatory concern at the time of receipt of funds and has raised such objections only subsequently to justify its actions. In view of the above, it was prayed that the present application be dismissed in limine as not maintainable and as an abuse of the process of law.
4. **Submissions of Respondent No 2:**
- The Respondent No.2 on the basis of the advance service of the petition, without being issued a notice, filed Submissions vide **diary no. 600 on 09.02.2026**
- i. Learned Counsel appearing for Respondent No. 2 submits that the applicability of the provisions of the FEMA and the rules and regulations framed thereunder would depend upon the specific facts and details of the transaction in question. It is submitted that the complete details of the transaction are not presently available with the answering Respondent and therefore no definitive opinion can be expressed at this stage.
 - ii. It is further submitted that, based on the limited facts available, the transaction appears to involve issuance of equity shares on a rights basis by the Applicant to the Corporate Debtor, both of which are stated to be resident

- entities. However, it is not clear whether the entities involved qualify as Foreign Owned or Controlled Companies under the applicable rules, or whether the debentures issued fall within the framework of Foreign Direct Investment or ECB.
- iii. Learned Counsel submits that in the absence of complete transaction details, including the nature of the instruments, the parties involved, and the routing of funds, it is not possible to determine the applicability of the relevant regulatory framework. It is further submitted that such examination would require consultation with the Authorised Dealer Bank through which the transaction has been undertaken.
 - iv. It is further submitted that foreign investment in India through non-debt instruments is governed by the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and the relevant directions issued thereunder. Additionally, in terms of the Master Direction on ECB, ECB cannot be utilised for equity investment.
 - v. Learned Counsel also submits that in the event the transaction constitutes indirect foreign investment, the responsibility for ensuring compliance with applicable provisions would lie with the investing Indian entity.
 - vi. In view of the above, Respondent No. 2 has submitted that it is presently not in a position to render any conclusive opinion on the issues raised in the application and has reserved its right to file further submissions, if required, upon being provided with complete details of the transaction.
5. The Applicant has filed a rejoinder to the objections filed by Respondent No. 1, reiterating the averments made in the application and denying the contentions raised in the reply vide **diary no.58 dated 08.01.2026**.
- i. Learned Counsel for the Applicant submits that the objections raised by Respondent No. 1 are misconceived and are an attempt to evade judicial scrutiny of the transaction in question. It is contended that the present application does not seek adjudication of regulatory compliance in the abstract, but raises issues concerning the legality and permissibility of actions undertaken by the RP pursuant to decisions of the CoC during the CIRP.
 - ii. It is further submitted that the decision to raise funds through issuance of debentures and to participate in the rights issue was taken pursuant to a resolution of the CoC, and therefore the same forms part of the CIRP of the

Corporate Debtor. It is contended that any action taken by the RP in furtherance of such decision is subject to the supervisory jurisdiction of this Adjudicating Authority under Section 60(5) of the Code.

- iii. Learned Counsel submits that the said transaction has also been treated as a Corporate Insolvency Resolution Process cost, and therefore forms an integral part of the insolvency process. It is contended that once the transaction is characterized as a CIRP cost, its legality and permissibility fall within the jurisdiction of this Adjudicating Authority and cannot be excluded from scrutiny.
 - iv. It is further submitted that the Applicant has acted bona fide and at the earliest opportunity by approaching this Adjudicating Authority. The Applicant has placed on record that the decision to keep the allotment of shares in abeyance was taken transparently and communicated to the RP, with an intention to seek appropriate directions from this Adjudicating Authority.
 - v. Learned Counsel denies the allegations of mala fides and abuse of process, and submits that the present application has been filed to ensure compliance with applicable laws and to avoid any potential legal or regulatory consequences. It is contended that the Applicant has not sought to obstruct the CIRP or the rights of the Corporate Debtor, but has merely sought clarity regarding the legality of the funds received.
 - vi. It is further submitted that the objections raised by Respondent No. 1 are internally inconsistent, in as much as the transaction is sought to be justified as part of the CIRP while simultaneously contending that the present application does not relate to the CIRP. It is contended that such a position is untenable in law.
 - vii. In view of the above, the Applicant has prayed that the present application be adjudicated on merits and the reliefs sought therein be granted.
6. We have heard the Learned Counsel appearing for the Applicant and the Respondents and perused the material available on record.
 7. From a plain reading of the above prayers, it is evident that the core issue sought to be raised pertains to the regulatory characterization of the transaction, including its compliance with the provisions of the FEMA 1999, the rules framed thereunder, and the framework governing foreign investment and ECB.

8. It is the case of the Applicant that the instruments issued under the Debenture Subscription Agreement may not qualify as CCD and may instead partake the character of debt, thereby attracting the ECB framework and consequential restrictions on utilisation of such funds.
9. In this regard, it is pertinent to note that Respondent No. 2, in its reply, has categorically submitted that:
 - i. the applicability of FEMA provisions depends on complete transaction details;
 - ii. such details are presently not available; and
 - iii. no conclusive opinion can be rendered at this stage. Thus, even the statutory regulatory authority has not undertaken any definitive determination on the issue.
10. Section 60(5) of the Code confers residuary jurisdiction upon this Adjudicating Authority to entertain or dispose of any question of law or fact arising out of or in relation to the insolvency resolution process; and while it is not in dispute that the decision to raise funds and participate in the rights issue was taken by the RP pursuant to the approval of the CoC during the CIRP of the Corporate Debtor, thereby establishing a nexus with the insolvency process, the mere existence of such nexus does not, ipso facto, confer jurisdiction upon this Adjudicating Authority to adjudicate upon all aspects of such transaction, particularly where the reliefs sought require determination of issues falling within the domain of specialised statutory frameworks.
11. In ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) ibclaw.in 12 SC***, the Hon'ble Supreme Court has categorically held that the Adjudicating Authority cannot, in exercise of jurisdiction under Section 60(5) of the Code, assume the role of a statutory or regulatory authority and adjudicate upon matters which fall within the domain of other specialised enactments. The relevant para is extracted below:

“36. ... The only provision which can probably throw light on this question would be Sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any

question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in Clause (c) of Sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore, the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results”

12. In **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021) ibclaw.in 44 SC**, the Hon'ble Supreme Court has held that the jurisdiction under Section 60(5)(c) is confined to matters having a direct nexus with the insolvency resolution process and cannot be invoked for adjudication of disputes falling outside such nexus. The relevant para is extracted below:

“67. ... Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”

13. In the present case, the reliefs sought are not limited to supervision of CIRP actions or directions connected with or incidental to the insolvency process. Rather, the Applicant seeks a determination of whether the funds raised are compliant with FEMA; a classification of financial instruments under the regulatory framework; and a declaration regarding permissibility of utilisation of such funds. This Adjudicating Authority, exercising jurisdiction under the

IBC, 2016, cannot assume the role of a regulatory authority under FEMA or undertake determination of the legality or “colour” of funds which can be done only under such specialised statutory regime.

14. The contention of the Applicant that the transaction forms part of the CIRP and is therefore amenable to scrutiny under Section 60(5) cannot be accepted in the present form. While actions of the RP and CoC are subject to supervisory jurisdiction of this Adjudicating Authority, such jurisdiction cannot be stretched to adjudicate upon independent statutory compliances under other enactments. To do otherwise would result in this Adjudicating Authority assuming jurisdiction over matters reserved for specialised regulatory authorities, which is impermissible in law and We respectfully decline to enter into such an exercise.
15. In view of the above discussion, the present Interlocutory Application bearing **I.A. No. 1111/2025 in C.P. (IB) No. 149/BB/2023** is **dismissed**. However, liberty is granted to the Applicant to seek appropriate remedies before the competent regulatory/statutory authorities in accordance with law.

-Sd-

(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)

-Sd-

(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)