

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

28.10.2025

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
MR. JATINDRANATH SWAIN, MEMBER (TECHNICAL)

I.A. No.1514 of 2025

in

Company Appeal (AT) (CH) (Ins) No.139 of 2025

GLAS Trust Company LLC

...Appellant/Applicant

Vs.

**1. Shailendra Ajmera,
resolution professional of Think and Learn
Private Limited**

2. Aakash Educational Services Limited and Others ...Respondents

For Appellant:

Mr. C. Aryama Sundaram, Senior Advocate
Mr. Krishnendu Datta, Senior Advocate
For Mr. Prateek Kumar, Advocate
Ms. Raveena Rai, Advocate
Mr. Siddhant Grover, Advocate
Ms. Moha Paranjpe, Advocate

Mr. Abhi Udai Singh Gautam, Advocate
 Mr. Mr. Abhishek P., Advocate
 Ms. Niharika Sharma, Advocate &
 Mr. Kevin Joseph, Advocate

For Respondents : Mr. Abhinav Vashisht, Senior Advocate
 For Ms. Pooja Mahajan, Advocate
 Ms. Arveena Sharma, Advocate
 Mr. Savar Mahajan, Advocate
 Mr. Ichchha Kalash, Advocate
 Ms. Samridhi Shrimali, Advocate
 Ms. Akshita Sachdeva Jaitly, Advocate
 & Mr. Sparsh Jain, Advocate
 for R1 (Shailendra Ajmera, RP of Think and Learn
 Private Limited)

Mr. Gopal Subramaniam, Senior Advocate
 Dr. UK Chaudhary, Senior Advocate
 Mr. Arun Kathpalia, Senior Advocate
 Mr. R Chandrachud, Advocate
 Mr. Vishnu Mohan, Advocate
 for R-2 (Aakash Educational Services Limited)

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1.1 M/s Think and Learn Pvt. Ltd (henceforth would be referred to as TLPL) was holding about 25.41% shares in M/s Akash Education Services Ltd., (henceforth would be referred to as Akash). TLPL is now being exposed to a CIRP vide an Order of the Adjudicating Authority, dated 16.07.2024 in C.P.149/BB/2023. The RP has since been appointed. The CoC of TLPL is principally constituted of M/s Glas Trust Company, the appellant herein (henceforth would be referred to as Glas Trust), and it is stated to have 99.41% voting share.

1.2 Be that as it may Akash now proposes to hold an extraordinary General Body meeting to increase its authorised share capital. Alleging that the increase in the share capital of Akash would reduce the percentage of shareholding of TLPL from about 25% to about 5% and dilute its value of the shares, Glas Trust, the principal member of the CoC of the TLPL, has approached this tribunal with the present application seeking an order of interim injunction *inter alia* to (a) restrain Akash from convening its proposed extraordinary General Body meeting on 29.10.2025 and also (b) prevent reduction of the percentage of shareholding of TLPL in Akash or reduction of the value of those shares.

The Back Drop

2.1 The facts are complex and to the extent they are now required, are stated as below:

- a) As stated above, TLPL has a share holding of 25.41% in Akash. In the Disclosure of General Information for the financial year 2022-2023, Akash has disclosed that TLPL as its holding company, and that as a holding company, TLPL ‘controls the composition of the Board of Directors’ of Akash. Indeed, Article 118 of the Articles of Association of Akash provides that TLPL “shall at all times, have the right to nominate the majority of Directors on the Board”. This apart Article 119(b) stipulates that TLPL should ensure that Akash does not take any decision in respect of any of the Reserved Matter unless investors consent to it. Article 119(c) which deals with the quorum for the meeting, of the Board of Akash, insists that at least one TLPL director

must be present throughout the meeting, and Article 119(d) mandates that no agenda should be tabled for discussion in the absence of the Director of TLPL. So far as voting goes, Article 119(e) mandates that adoption or approval of each resolution by the Board must have an affirmative vote of at least one TLPL Director. In other words, TLPL has been endowed with considerable power from the constitution of the Board of Akash to the passing of any resolution by it.

- b) Be that as it may, on 22.04.2023 the Board of Akash resolved to raise funds by issue debentures. And it resulted in the execution of the Debenture Trust Deed on 25.04.2023. It *inter alia* required amendment to Articles of Association within 60 days from the first disbursement date.

2.2 It is in this backdrop, on 16.07.2024, TLPL was admitted to CIRP vide the Order of the Adjudicating Authority in C.P.149 of 2023. Subsequent to this event, on 21.10.2024, the Board of Akash passed a resolution for amending its Articles of Association. The RP of TLPL did not attend this meeting, but according to Glas Trust he is entitled to participate in it in terms of the AoA. The proposed amendment of the AoA involved dropping of those articles which granted certain pivotal authority to TLPL in the affairs of Akash.

2.3 Glas Trust, the major financial creditor of TLPL would now file I.A.835 of 2024 in the C.P.149/BB/2023 (vide Order in which TLPL was admitted to CIRP) against the RP of TLPL (and without Akash in the party array) seeking *inter alia* a direction to the RP to maintain status quo and to direct that RP should not cast any affirmative vote for the approval of any of the proposed

amendment to the Articles of Association of Akash. On 19.11.2024, the Adjudicating Authority had passed an order to the effect that “*no consequential action can be taken according to the Board meeting held on 21.10.2024*”. This Order is now under challenge in C.A.50 of 2025 by Akash, principally on the ground that it was not heard in the matter.

2.4 Subsequent to the passing of the board resolution dated 21.10.2024 for amending its AoA, Akash convened its General Body meeting on 20.10.2024, notwithstanding the order of the Adjudicating Authority passed on the previous day (19.10.2024) directing not to give effect to the said resolution, but it may be understood that it was directed only against the RP of TLPL and in the absence of Akash.

2.5 It may also be relevant to mention that some of the shareholders of Akash also approached the NCLT with C.P.106 of 2024 under Sec.241 and 242 of the Companies Act. The same NCLT (which on the previous date has passed the Order that the Board resolution of Akash dated 21.10.2024 should not be given effect to) has now passed an interim Order dated 20.11.2024, refusing to injunct Akash from convening the Extraordinary general Body meeting on that date, but directed that the respondents before it, which included Akash, not to give effect to the any resolution, if passed by the General Body vis-à-vis agenda 8, which relates to amendment to Articles of Association of Akash. Aggrieved by the same Akash had moved the Karnataka High Court with W.P.31572 of 2024 with a challenge to the said Order of the NCLT, presumably on the ground that the order of the NCLT, was a non-speaking order. On 25.11.2024, the High Court passed an interim Order directing that

the Order of the NCLT should not be given effect to. This Order was challenged by the petitioning shareholders in C.P.106 of 2024 before the Hon'ble Supreme Court and the Supreme Court has directed that inasmuch as the order of NCLT is appealable to the NCLAT, an appeal might be preferred before it. This gave rise to two appeals before the NCLAT, one by a shareholder of Akash in C.A.81 of 2024 and another by Akash itself in C.A.82 of 2024. On 06.12.2024, the NCLAT directed the parties to approach the NCLT to vacate the interim Order passed by it. While things stood thus, C.P.106 of 2024 itself was came to be withdrawn.

2.6 In the meantime, Glas Trust had moved the Adjudicating Authority with I.A.940 of 2024 inter alia to declare that the resolution passed by the Extraordinary General Body Meeting of Akash on 20.11.2024 as invalid and not binding on the TLPL and for certain other reliefs. However, the Adjudicating Authority vide its order dated 24.02.2025 indicated its disinclination to take up I.A.940 of 2025 in view of the pendency of C.A.50 of 2025 referred to above. Aggrieved by the same, Glas Trust has filed C.A.139 of 2025 where it requires only a direction that its I.A.940 of 2024 be heard.

3. While things stood thus, a different bench of this tribunal had heard both C.A.50 of 2025 and C.A.139 of 2025 and on 18.09.2025, it reserved these appeals for pronouncement of Orders. However, owing to the superannuation of the judicial member of that bench, no Order in these appeals could be delivered, and these appeals are now pending before us for fresh hearing.

4. Now, on 04.10.2025, the Board of Akash has passed two separate resolutions. Cumulatively taken, these two resolutions show that the Board

of Akash has resolved to increase the share capital through right issue at the face value of the shares and that Board “*can decide how to deal with the unsubscribed portion of the right issue.*” On the same date, notice was also came to be issued calling for an extraordinary general body meeting of the shareholders of Akash which is scheduled to take place on 29.10.2025.

5. One another fact that requires a mention is that TLPL has in the meantime laid at least two petitions under Sec.241 and 242 of the Companies Act through its RP against Akash alleging that there are issues of oppression and mismanagement. One of the petitions is C.P.46 of 2025, in which TLPL sought an order that its shareholding in Akash should not be diluted. On 27.03.2025, the NCLT has passed an interim order of *status quo* and that order continues till date.

6. It is in these circumstances, Glas Trust has taken out the present application in I.A.1514 of 2025 inter alia from restraining Akash from convening its extraordinary general meeting on 29.10.2025 and also to restrain it from reducing the percentage of the shareholding of TLPL, the CD, in Akash.

Arguments:

7.1 Supported by the RP of TLPL, the contention of Glas Trust is as below:

- a) Inasmuch as the resolution of the Board of directors of Akash dated 24.10.2024 was directed not to be given effect to vide the Order of the Adjudicating Authority dated 19.11.2024 in I.A. 835 of 2025, the resolution of the General Body to give effect to the Board resolution dated 24.10.2024 is bad in law and consequently the amendment of

AoA of Akash cannot be taken cognizance of. Indeed, even in C.A.50 of 2024 which Akash has filed, no interim order has been passed to stay the operation of the order impugned therein. It would imply that in terms of the AOA of Akash as it was prior to the amendment, TLPL should have been in the Board of Akash to vet the agenda and to decide on the resolution on increase of share capital. However, neither the nominee of TLPL as nominated by its CoC, nor the RP as representing TLPL have been invited to participate when the Board of Akash chose to resolve on the increase of its share capital.

- b) Secondly, under the scheme of IBC, the asset value of the CD has to be protected and inasmuch as TLPL is the holding company even according to Akash, its percentage of share capital in Akash cannot be diluted, for it will adversely impact the value of TLPL's share in Akash. Indeed, Akash has not even produced its financial statements for the year 2023-2024 to show that it faces an imminent urgency to raise its share capital to justify its present intent to do what it now proposes to do. On the contrary, its financial health prior to it can bring more smiles to its shareholders. This would imply that the promoters of TLPL engineer the increase in the share capital of Akash to let the value of TLPL to bleed.
- c) The proposal is to go for a right issue, and TLPL, which is now under CIRP, obviously cannot purchase such shares as may be offered to it for purchase. Here there are two issues: firstly, in C.P.46 of 2025 which TLPL has filed through the RP against Akash under Sec.241 and 242 of the Companies Act, on 27.03.2025, to a prayer by TLPL that its

shareholding should not be diluted, the NCLT has passed an interim order of *status quo* and that order continues till date. This implies that the present move of Akash to increase the share capital through right issue will be in violation of the said order of *status quo*; and secondly, given the circumstance where TLPL renouncing the shares that it might be offered is a stark reality, the Board of Akash has decided that it would deal with such shares which were so renounced. This can directly affect the shareholding of TLPL in Akash.

- d) Thirdly, Sec.60(5) of the IBC enables the Tribunal constituted thereunder to proceed even against the subsidiaries of CD.

8. Per contra, Akash would argue:

- a) That the decision to amend the Articles of Association of Akash was necessitated pursuant to the Debenture Trustee Agreement dated 25.04.2023, when Akash chose to raise finance through issuance of debentures. In other words, amendment to AOA as has been undertaken by the Board and the General Body of Akash was not designed to deplete the asset value of TLPL, but intend to protect its own interest, and in pursuance of its commitment under the Debenture Trust Deed executed at least a year prior to admission of TLPL to CIRP. Indeed, after the execution of Debenture Trust Deed, there arose certain issues of default etc, between the debenture trustee and Akash, and it was resolved when TLPL executed two *Stand Still Agreements* dated 04.07.2023 and 16.08.2023, both of which were taken note of by the Karnataka High Court in certain proceedings which the debenture

trustee had instituted inter alia against Akash and TLPL. Indeed, Clause 8.2(e) of the Debenture Trust deed provides that in the eventuality of default, the debenture trustee will acquire the right to take over the management of the issuer, meaning thereby Akash, and also to convert '*the Debenture Obligations or part thereof into paid-up equity share capital of the issuer*'. This term in the DTD will be rendered ineffective if TLPL were to continue to hold on to its right to pull the strings of Akash from behind. Therefore, amending the Articles of Association is an existential compulsion for Akash, and the Board of Akash is under an obligation to ensure it.

- b) So far as the alleged breach of the Order of the Adjudicating Authority not to give effect to the resolution dated 24.10.2024 vide its Order dated 19.11.2024 is concerned, indisputably Akash is not a party to the proceeding. Indeed, the same NCLT which passed an order on 19.11.2024 has allowed Akash to convene its General Body Meeting on 20.11.2024 when some of its shareholders moved the NCLT to stall the said meeting. Therefore, holding the meeting on 20.11.2024 and the resolution passed to amend the articles of association of Akash are per se not illegal, more so when there is an earlier commitment to amend the articles of association under the debenture trust deed. In this scenario to canvass a case on the presumption that the articles of association of Akash continues to remain unamended and to plead for the right of the CoC and RP of TLPL to participate in the decision-making process of Akash is farfetched.

- c) The nominee of TLPL is free to participate in the General body meeting of Akash scheduled to take place on 29.10.2025 and in the eventuality of the General body approving the increase in the share capital of Akash through right issue to the existing shareholders, TLPL indeed will be offered proportionate number of shares.

9. The learned counsel for the RP of TLPL would now submit that when CD comes under the scanner of IBC, what becomes significant is that no decision taken by the subsidiary company to increase its share capital cannot be related to any event that might have taken place before the CD was admitted to CIRP.

Discussion & Decision

10. The General body meeting of Akash is scheduled to take place on 29.10.2025, and the arguments of the counsel on either side were heard at length on 27.10.2025, which extended well beyond the sitting time of this tribunal. The point is whether Glas Trust and the RP of TLPL have established the triple criteria necessary for stalling the General body meeting of Akash on 29.10.2024?

11. First to the existence of a strong prima facie case to support the relief now sought:

- a) When the Adjudicating Authority passed its Order on 19.11.2024 directing that the Board resolution of Akash to go for the amendment of its Articles, the extent to which it may bind Akash needs to be considered in the pending C.A.50 of 2025. Admittedly Akash was not

a party to that proceeding. And inasmuch as Akash has its corporate personality well in tact and distinct from its shareholders and its own board of directors, prima facie it appears to have a case to canvass. Therefore, Akash holding its General body meeting on 20.11.2024 prima facie does not appear to be illegally convened, more so when on the very day on which the said meeting was convened, the same NCLT has taken cognizance of the same in a petition which some of the shareholders of Akash had moved to prevent the holding of the said meeting.

- b) Turning to the contention that if a resolution is passed in the proposed meeting of the general body of Akash for increase of its share capital it will be in violation of the order of status quo passed by the NCLT vide its order dated 27.03.2025 and 30.04.2025 in C.P.46 of 2025 (which TLPL has instituted through the RP raising issues of oppression and mismanagement) is concerned, even though this tribunal finds that this argument makes a strong initial impression, yet on a deeper consideration it reveals the fallacy hidden beneath it. What is now proposed to be done by Akash is to increase its share capital through right issue and not through public offer. This would imply TLPL as a shareholder of Akash will be offered such number of shares in proportion to its existing shareholding of 25.41% in Akash. If TLPL, now under CIRP, considers that if it is necessary for it to sustain the value of its shares in Akash and also to retain whatever control its shareholding in Akash may grant it, then it is well within its right to purchase the shares when they are offered for purchase. If it chooses to

purchase the shares that might be offered in proportion to its existing shareholding, then it is least likely that its percentage of shareholding in Akash may suffer a setback. Therefore, the ball will be plainly in the court of TLPL to take such necessary decision as it may consider advantageous and in the best of interest of TLPL. This has to be decided by the CoC and within the framework and spirit of CIRP. If the CoC of TLPL chooses not to purchase any shares that will be in offer, it will be its decision – to emphasis, the decision of TLPL, that may eventually alter its shareholding in Akash where Akash does not play a role. Therefore, notwithstanding the order of status quo passed by the NCLT, in C.P.46 of 2025, the decision to alter the shareholding of TLPL in Akash rests with it and not with Akash.

- c) Turning to the contention of the RP that once CIRP against TLPL has commenced, then no matter what the earlier events which may justify a decision such as the one Akash has taken for amending its articles should not be taken note of is concerned, it attempts to stretch the scheme of IBC excessively. It can be explained. Akash has its existence as a juristic person and has its independent right to survive commercially. Jurisprudentially a company and its controlling entities are not the same. If a company has a right to commercial existence to benefit its shareholders, the fact that some among those who held the controlling power is exposed to CIRP cannot be stretched to the extent of enabling the right of such company to protect its right to commercial existence. And for any company, its commercial existence is a journey through the tides of time which its navigators – the board of directors,

would monitor. Accordingly, when the board of Akash opted to issue debentures to raise finance more than a year before TLPL was admitted to CIRP, it was one of the decisions which its board has taken in its journey for survival commercially. And, if it eventually necessitated amending the articles of association, it can never be taken in isolation and can be analysed without reference to that which has led to the need for taking the subsequent decision. To state it differently, it might be that the nominees of holding company would have been in the Board of the subsidiary company when Debenture Trust deed was executed. However, certain obligations under the Trust Deed cannot be whittled down merely because such shareholder is affected by the performance of the obligations due to its exposure to CIRP. Accordingly Akash amending its Articles of Association and its decision to go for right issue appears more as a direct sequel to the debenture trust deed and does not appear to be an independent decision aimed solely to affect the value of the shares that TLPL has in it.

To conclude on this point, this tribunal hardly finds a reason to hold that Glas Trust has established a prima facie case for granting injunction.

12. Moving to the next criteria for granting interim injunction, this tribunal would now consider whose interest would be irreparably affected if injunction is granted:

- a) According to the Glas Trust, if the share capital is allowed to be increased it would reduce the value of shares of TLPL besides reducing the percentage of shares of TLPL in Akash. This argument pre-

supposes that the scheme of IBC enables the CoC and the RP to spread its tentacles to interfere with internal management of every company in which the CD has some shares. While it is true that IBC aims to maximise the asset value of the CD, it has not sanctioned the idea that every company in which the CD has a shareholding should sacrifice its own interest to stay, grow and sustain itself commercially for the benefit of the CD. After all value of the shares depends on multiple factors. What if the value of CD's share in a company falls due to market conditions? Can the CoC or the RP of the CD complain then, or can the Adjudicating Authority worry over it? Under Sec.20 of the IBC, the RP is only required to ensure that the CD continues as a going concern and Sec.25 of the IBC authorises him to take such decisions with the concurrence of the CoC in order CD runs, but there is nothing in the IBC to show that it is blood thirsty to authorise interference in the internal affairs of a company in which CD may hold some shares. Nor does the statutory scheme of the IBC enables an understanding that every such company in which CD has shares should expose themselves to the peril of subjecting themselves to a CIRP proceeding.

- b) A subsidiary cannot act in anticipation of its holding company facing a CIRP on some distant day. As long as a company is not a 100% holding company of another company, a subsidiary company has its other shareholders. In the present case TLPL has only about 25% shareholding in Akash, but is it not necessary to protect the interest of remaining shareholders?

The decision on this point is to state the obvious: This tribunal does not find that TLPL could be saved from any irreparable injury only if Akash's right to commercial existence is interfered with.

13. Thirdly to the issue of balance of convenience. Obviously, it is not in aid of grant of an order of interim injunction. Indeed, the value of TLPL's shares in Akash can never be preserved if Akash is commercially killed. Therefore, the spirit of IBC is best served when the companies in which CD has some shares are allowed to prosper, irrespective of who has the controlling power. The issues pertaining to controlling power of a corporate entity and the decision to go for increase in the share capital without the concurrence of all may be relevant in a proceeding for oppression and mismanagement of a company at the instance of the minority shareholders of such company, but they definitely are not the kind of issues IBC concerns itself with. Indeed, the RP is stated to have filed at least two petitions for initiating proceedings under Sec.241, 242 of the Companies Act. This tribunal is therefore, is cautious, not tread into areas which is earmarked for the consideration of the NCLT under the Companies Act. In effect, the last of the triple criteria is also against grant of an order of injunction.

14. Now, what if this tribunal eventually find that the resolution of the general body of Akash to amend its articles is bad in law for violating the order of the Adjudicating Authority dated 19.11.2024? The situation can be mitigated since reliefs could still be suitably moulded and NCLT has ample powers within the framework of Companies Act to do it.

Conclusion

15. We do not find that I.A.1514 of 2025 deserved to be allowed. It is hence, dismissed. No costs.

[Justice N Seshasayee]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)