NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.262/2024
(IA Nos.699, 700&727/2024)

In the matter of:

Mr. Byju Raveendran
Suspended Director, Promoter & Shareholder
Of Think & Learn Private Limited,
Through Its Constituted Attorney
Mr. Shaji Puthalath, Residing At:
43, Yoganarasimha, 14th Main, 15th Cross,
HSR Layout, Sector 4, Bangalore, (Kar) - 560 I 02
byjuraveendran@gmail.com **… Appellant**

V

Think & Learn Pvt. Ltd.
Through IRP Mr. Pankaj Srivastava,
Registration No: IBBI/IPA-001/IP-P00245/2017- 2018/10474,
4/1, 6th Floor, Tower D,
IBC Knowledge Park Bannerghatta Road,
Bangalore 560029. **...Respondent No. 1**

The Board of Control for Cricket in India
["BCCI"] Registered Office At:
Cricket Center, Wankhede Stadium,
D Road, Churchgate, Mumbai,
Maharashtra - 400 020 **...Respondent No. 2**

Present :

For Appellant Mr. Arun Kathpalia, Senior Advocate
Mr. Puneet Bali, Senior Advocate
Mr. Dhyan Chinnappa, Sr. Advocate
Mr. Rishash Gupta, Advocate
Mr. Zulfiguar Memon, Advocate
Mr. Waseem Pangankar, Advocate

Ms. Nadiya Sargureh, Advocate
Mr.Avishkar Singhvi, Advocate
Mr. Swapnil Srivastava, Advocate
Mr. Yashowandhan Dixit, Advocate
Mr. Gargi Patil, Advocate
Mr. Aditi Tiwari,
Mr. Allan David, Advocate
Mr. Jayesh Srivastava, Advocate and
Mr. Yashita Bhardwaj, Advocate
Mr. Kunal Vajani, Adv.

For Respondents Mr. Pooja Mahajan, Advocate
Mr. Mahima Singh,Advocate
Mr. Avinash Amarnath, Advocate
Mr. Zubin Joseph,Advocate
Mr. Naman Golechha, Advocate and
Mr. Samridhi Shrimali, Advocates for R1
Mr. Tushar Mehta, Sr. Adv.
Mr. Satish Parasaran, Sr. Adv.
for Mr. Krishnava Dutt,Advocate
Ms.Aditi Chaudhury, Advocate
Ms. Bhavya Mohan, Advocate
Mr. Ann Finiya Pereira, Advocate
Ms. Mili Baxi, Advocate
Mr. Tanmay Mehta, Advocate
Mr. Kanu Agarwal, Advocate
Mr. Ashwini Vaidlialingam, Advocate
Mr. Gowri MS Advocate for R2 (BCCI)

Mr. Mukul Rohatgi, Sr. Advocate
Mr. Krishnendu Datta, Sr. Advocate
Mr. P.H. Arvindh Pandian, Sr. Advocate
For Mr. Avinash Balakrishna, Advocate
Mr. Prateek Kumar, Advocate
Mr. Ashwin Bishwi, Advocate
Mr. Nikhilesh Rao, Advocate
Mr. Thriyambak Kannan, Advocate
Mr. Raveena Rai, Advocate
Mr. Gautam Mudgal, Advocate
Mr. Kevin Joseph, Advocate
Ms. Tejas Shetty, Advocate
Ms. Smrithi Nair, Advocate
Mr. Abhishek, Advocate for Intervenor
For Applicant in I.A.727/2024

ORDER
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (Oral)

02.08.2024: The Board of Control for Cricket in India (in short 'BCCI") filed a Company Petition (IB) No. 149/BB/2023 on 23.09.20223 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') against Think and Learn Pvt. Ltd. (Corporate Debtor) before the Adjudicating Authority (National Company Law Tribunal, Bengaluru Bench, Bengaluru) for the resolution of an amount of Rs. 1,58,90,92,400/-.

2. The company petition was admitted on 16.07.2024, Moratorium under Section 14 of the Code was imposed and Pankaj Srivastava was appointed as the Interim Resolution Professional (in short 'IRP').

3. The order dated 16.07.2024 is subject matter of this appeal, challenged by the Suspended Director of the Corporate Debtor, impleading the Corporate Debtor as Respondent No. 1 and the Operational Creditor as Respondent No. 2.

4. In this appeal, an application bearing I.A. No. 727 of 2024 has been filed by Glas Trust Company LLC, based in USA, as the administrative agent and collateral agent of the secured parties on the basis of a credit agreement executed on 24.11.2021 between Morgan Stanley and JP Morgan Chase Bank, N.A (JP Morgan) (as Joint Lead Arrangers and Joint Bookrunners) in which the Corporate Debtor is the Parent Guarantor of Byju's Alpha, Inc, a Delaware Corporation

(the Borrower), to be impleaded as Respondent (hereinafter referred to as the 'Applicant').

5. The Applicant also filed a company petition (IB) No. 55/BB/2024 under Section 7 of the Code on 22.01.2024 which was disposed off on 16.07.2024 by the Adjudicating Authority with the following order:-

> "1. The present petition is filed on 22.01.2024 under Section 7 of theInsolvency and Bankruptcy Code, 2016 (for brevity 'IBC/ Code), r/wRule 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 CorporateDebtor/Respondent).
>
> 2. Heard the Learned Senior Counsel for the Petitioner and Learned SeniorCounsel for the Respondent.
>
> 3.In view of the order passed today i.e., 16.07.2024 by this AdjudicatingAuthority in another Company petition bearing C.P (IB) No.149/BB/2023which is filed by The Board and Control for Cricket in India under Section 9of the I & B Code 2016 r/w Rule 6 of the Insolvency & Bankruptcy（Application to Adjudicating Authority) Rules 2016, against the sameCorporate Debtor herein i.e., Think & Learn Private Limited and since theCorporate Insolvency Resolution Process (CIRP) has been initiated in respectof the Corporate Debtor therein by appointing the IRP, the instant C.P isdisposed of by granting liberty to the Petitioner herein to put-forth theirclaim before the IRP appointed in C.P (IB) No. 149/BB/2023 in accordancewith 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. As per the above order, the Applicant has been given liberty to put forth their claim before the IRP, appointed in the present case, in terms of the provisions of the Code and has also been given liberty to seek restoration/revival of the petition bearing CP (IB) No. 55/BB/2024 depending upon the subsequent developments in the matter at the Appellate level.

7. The Applicant has also challenged the order dated 16.07.2024 passed by the Adjudicating Authority by way of an appeal bearing CA (AT) (CH) (Ins) No. 274 of 2024 titled as Glas Trust Company LLC Vs. Think & Learn Pvt. Ltd.

8. After the order dated 16.07.2024 was passed in the present case, the IRP made the public announcement on 17.07.2024 and the Applicant filed its claim in Form-C on 25.07.2024.

9. This appeal was put up before this Bench for the first time on 30.07.2024, to be heard in the post lunch session, by order dated 29.07.2024 and it was adjourned to 31.07.2024 on the request made by Mr. Tushar Mehta, Ld. Sr. Counsel appearing on behalf of Respondent No. 2.

10. On the next date of hearing i.e. 31.07.2024, Ld. Sr. Counsel for the Appellant submitted that a sum of Rs. 50 Cr. has been transferred to the account of Respondent No. 2 through RTGS UTR No. ICICR52024073000412272 on 30.07.2024 as part of the settlement. Ld. Sr. Counsel for Respondent No. 2 accepted the statement to be correct.

11. Counsel for the Appellant had submitted that another sum of Rs. 25 Cr. shall be paid on 02.08.2024 through RTGS and further balance amount of Rs. 83 Cr. shall also be paid on or before 09.08.2024 again through RTGS. This payment has been undertaken by Riju Raveendran who is the Ex-Promoter, Director and largest shareholder of the Corporate Debtor and younger brother of the Appellant.

12. Counsel for the Appellant has submitted that this undertaking be taken on record and based on this, constitution of CoC may be stayed and the impugned order may be suspended subject to its revival in case the undertaking fails.

13. It is pertinent to mention that the CoC was not constituted till 31.07.2024.

14. At this stage, Ld. Sr. Counsel for the Applicant submitted that the alleged payment being made by Riju Raveendran on behalf of the Corporate Debtor would constitute a preferential payment to an operational creditor as it is being paid superseding the payment due to a Financial Creditor who has already filed its claim.

15. It is further submitted that Byju's Alpha, Inc of which Riju Raveendran was the sole director borrowed USD I,200,000,000 (United States Dollar One Billion Two Hundred Million) by way of credit agreement executed between Morgan Stanley and JP Morgan Chase Bank, N.A. (as Joint Lead Arrangers and Joint Book runners). According to this credit agreement, an aggregate of USD 1,182,000,000/- were disbursed on 24.11.2021 after deduction of the agreed original issue discount of USD 18,000,000.

16. As per the credit agreement, the Corporate Debtor issued a guarantee deed dated 24.11.2021 (the Onshore Guarantee) in favour of the Applicant for the benefit of the secured parties pursuant to its approval by the Reserve Bank of India on 29.03.2022.

17. The parties also executed forbearance agreement on 06.01.2023 whereby the Corporate Debtor acknowledged and agreed that the amount due under the term loan constitutes a financial debt and the Applicant is a Financial Creditor for the purposes of the Code. This Forbearance agreement came into effect from 13.01.2023 as stated.

18. The borrower of the Applicant made default in payment and after the expiration of the forbearance period, the Applicant issued a notice of default and acceleration, inter alia, to the Borrower and the Corporate Debtor on 03.03.2023. The issuance of the default and acceleration notice also constituted a Trigger event which entitled the Applicant immediately to enforce the security provided by parties under the loan documents after which the Applicant removed all pre-existing director(s) and officer(s) of the Borrower including Riju Raveendran and appointed of Mr. Timothy R. Pohl (Mr. Pohl) as the sole Director of the Borrower. Mr. Pohl then appointed himself as sole officer, specifically CEO and Secretary of the Borrower.

19. It is alleged that on 03.05.2023, the Applicant (acting on the instructions of the lenders) and Mr. Pohl filed a Suit No. 24-10140 (JTD) in the United States Bankruptcy Court for the District of Delaware in which Byju's Alpha, Inc., was

the plaintiff and Camshaft Capital Fund, LP, Camshaft Capital Advisors, LLC, Camshaft Capital Management, LLC, Riju Ravindran, Inspilearn LLC, were the defendants.

20. It was urged in the suit that after taking the loan by the Borrower in November, 2021 it defaulted in four months thereafter. It is alleged that in April, 2022 shortly after the initial default, Riju Raveendran authorised six transfers to Camshaft, totalling USD 533,000,100.00 in exchange for ownership of Camshaft. The prayer made in the suit was for grant of prohibitory/mandatory injunction but the Delaware Court vide its order dated 18.03.2024 passed the following order:-

> "1. Defendants Riju Ravindran, Inspilearn LL.C ("Inspilearn"), Camshaft Capital Fund LP. Camshaft Capital Advisors, LLC. Camshaft Capital Management. LI.C; and any of such parties' officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with the foregoing, including, Byju Raveendran and Divya Gokulnath (collectively, the "Enjoined Parties") are immediately enjoined upon entry of thisOrder, from taking any steps to spend, transfer, exchange, convert, dissipate, liquidate or otherwise move or modify any rights related to: (i) the funds that in the approximate amount of USD 533,000,100.00 transferred from the Debtor to Camshaft Capital Fund, LP in April and July 2022 (ii) the funds (or other assets) transferred to and/or redeemed by a non-U.S, trust on behalf of Inspilearn on or about February 1, 2024, and (iii) the funds (or other assets) that were purportedly subsequently transferred to a "non-US based 100% subsidiary of BYJU"S," along with any associated accrued interest or proceeds. in each case ((i). (ii), and (iii) collectively. The AlphaFunds).
>
> 2.Defendant Ravindran shall: (i) within one calendar day of this Order, provide a copy of this Order to Byju Raveendran and Divya Gokulnath, and the treasury department of Think & Learn Private Limited: (ii) by 5:00 P.M.E.T. on March 21, 2024, take all necessary steps to determine the location, amount, and composition of the Alpha Funds, including

but not limited to(a) the identity, address and domicile of the entity that is the beneficial owner of the Alpha Funds(whether a"non-US based 100% subsidiary of BYJU"S" or otherwise). (b) theidentity, address, and domicile of each bank, institution or other entity in which the Alpha Funds are deposited held or otherwise located and (c) a line-item breakdown of the assets (whether cash or cash equivalents, securities, loans, derivatives, or otherwise) composing the Alpha Funds; and (iii) by5:00 P.M. E.T. on March 21.2024. disclose the information required by Section 2(ii) of this Order to the Debtor and GLAS Trust Company LLC(“GLAS").

3.By 5:00 P.M. E.T. on March 21,2024 counsel for Defendant Ravindran shall file in the Adversary Proceeding a certification of counsel attesting to the compliance of Ravindran with Sections 1 and 2 of this Order, and enclosing (under seal as appropriate) the information disclosed to the Debtor and GLAS.

4.This Order shall promptly be filed in the Clerk's office and entered in the record. The terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

5.This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order”

21. It is stated by Ld. Sr. Counsel for the Appellant that the order dated 18.03.2024, referred to hereinabove, was challenged by Riju Raveendran through notice of appeal on 26.03.2024 in the United States for the District of Delaware pursuant to 28USC,158(A), 158(C) (2) and 1292(A)(1) and Rules 8002 and 8003 of the Federal Rule of Bankruptcy Procedure.

22. On the basis of the aforesaid facts and circumstances, the Applicant has submitted that the amount being offered by the Riju Raveendran to settle the debt of Respondent No. 2 is an act of round tripping with the funds of the borrower that

is Byjus's Alpha Inc which is wholly owned subsidiary of the Corporate Debtor as the source of money being offered by Riju Raveendran is not forth coming.

23. At this stage, this appeal was adjourned to 01.08.2024 on the request of Sr. Counsel for the Appellant who argued that the amount being offered by Riju Raveendran is not the money involved in the Delaware Court case and he will offer evidence for the same.

24. On the adjourned date i.e. 01.08.2024, Mr. Puneet Bali, Sr. Counsel appeared for Riju Raveendran and submitted that he has filed an affidavit through Mr. Srihari Marri Sreepathy, authorised representative of Mr. Riju Raveendran dated 01.08.2024 and an undertaking by Riju Raveendran dated 01.08.2024 wherein it is submitted that the money being offered, for the purpose of settlement between the Corporate Debtor and the Operational Creditor by Riju Raveendran is being paid from his own sources generated by sale of shares held by him in the CD, sold between May, 2015 to January 2022 on which income tax has been paid and thus this money is generated in India and that he is not using the money involved in the proceedings pending in the US Court. The affidavit of Shrihari Marri Sreepathy dated 01.08.2024 and undertaking of Riju Raveendran are reproduced as under:-

> "UNDERTAKING OF RUU RAVINDRAN, SUSPENDED DIRECTOR/PROMOTER OF RESPONDENT NO.1
>
> 1, Riju Ravindran, suspended director/ promoter of Respondent No. 1, aged about 43 years, S/o Ravindran Kunnaruvath, presently at London, United Kingdom, do hereby undertake to this Hon'bleTribunal as under:

1. I say that on 31 July 2024, I tendered before the Hon'ble National Company Law AppellateTribunal, Chennai an undertaking (the "Undertaking") stating a settlement has been arrived atwith the Board of Cricket Control of India (the "BCCI") and that I would discharge the entireamount of INR 158 crores (the "Settlement Amount") claimed by BCCI. The Undertaking readsas follows:

"I shall in discharge of the entire amount in the sum of Rs.158,00,00,000/-[Rupees One Hundred and Fifty Eight Crore Only], due and payable by Respondent No.1 to Respondent No. 2 i.e. The Board of Control for Cricket in India ("BCCI"), in terms of the settlement arrived at, pay to BCCI the same in the following manner-

(a) Rs.50,00,00,000/- [Rupees Fifty Crore Only] paid on 30.06.2024 by way of RTGSbearing the UTR No. ICICR52024073000412272;

(b) Rs.25,00,00,000/- [Rupees Twenty-Five Crore Only] to be paid on 02.08.2024 through RTGS; and

(c) Rs.83,00,00,000/- [Rupees Eighty-Three Crore Only] to be paid on or before09.08.2024 through RTGS.

2. In order to secure the balance payment of Rs. 83,00,00,000/-, I shall handover a postdated cheque bearing no. 234496 drawn on ICICI Bank, HSR Layout Branch in the sum of Rs.83,00,00,000/-[Rupees Eighty Three Crore Only] in favour of the BCCI.

3.I shall be bound by the undertakings given herein and in the event of any default. I understand that the order of admission dated 16.07.2024 passed by the Hon'ble National Company Law Tribunal, Bengaluru in Company Petition (IB) No. 149/BB/2023 shall stand restored with immediate effect and without any further recourse."

2. I say that the BCCI has agreed to and accepted the Undertaking.

3. I state and confirm that no part of the Settlement Amount is being paid in violation of any orderpassed by any court or tribunal, including orders passed by the Delaware Bankruptcy Court.

4. I have not received any portion of the USD 533 million that are the subject matter of theproceedings before the Delaware Bankruptcy Court and, accordingly, no part of those funds havebeen, or will be, used to pay the BCCI. In fact, the funds forming part ofthe Settlement Amountare being paid out of my personal funds, as explained in paragraph 8 below.

5. To clarify, under the terms of the Credit Agreement dated 24 November 2021 (the “Credit Agreement"), a group of lenders represented by GLAS Trust LLC (GLAS) disbursed an amount ofUSD 1.2 billion to Byju's Alpha, Inc. (a step-down subsidiary of Think & Learn Pvt. Ltd. (TLPL)).Under the Credit Agreement, monies disbursed thereunder could not be brought into India.Therefore, none of the monies disbursed under the Credit Agreement (of which the USD 533million forms a part) has ever been brought into India. Indeed, the allegation that I have receivedany sum of monies disbursed under the Credit Agreement has never been made by GLAS in anyproceeding whatsoever, including the proceeding under Section 7 of the IBC filed by it before theNCLT.

6. I specifically confirm that there has been no violation of the Order dated 18 March 2024 passedby the Delaware Bankruptcy Court, and I have not taken any steps in contravention of the same.1also confirm that I have not directly, indirectly or in any form or manner received any sum ofmoney from disbursements made under the Credit Agreement. In fact, the only foreignremittance received by me since execution of the Credit Agreement is from two secondary salesof my shareholding in TLPL in January and November 2022 totalling approximately USD 109 million, as demonstrated by the SH-4 annexed hereto at pages and respectively.

7. I further confirm that Byju Raveendran has not transferred any money or extended any security ofhis assets towards raising the sums for payment of the Settlement Amount to the BCCI.

8. I further state and confirm that the Settlement Amount comprises funds raised by me personally:

a. from the sale and the gains/income on such sale of shares held personally by me in TLPLbetween May 2015 and January 2022. By way of these sales, I had accumulatedapproximately INR 3600 crores. The forms SH-4 evidencing these sales are hereto annexedand marked Exhibit A. Out of the aforementioned amount, approximately INR 1050 crores was paid as income tax. The IT returns filed by me over the relevant period and which wouldreflect these amounts are hereto annexed and marked Exhibit B. The remaining amounts of approximately INR 2600 crores was infused back into TLPL due to its operational needs and to ensure that TLPL continues to carry on

business as a going concern, including paying salaries to its 27000 employees and sustaining the platform which has over 150 million students worldwide (which is a matter of record). The amounts that remained with me were used to pay the first tranche of the Settlement Amount (in the amount of INR 50 crores) toBCCI on 30 June 2024; and

b. from liquidation of personal assets in India, which will be used to pay the balance amount of the Settlement Amount.

Date: 1 August 2024”

AFFIDAVIT-cum-UNDERTAKING

I, Mr. Srihari Marri Sreepathy, aged 30 years, Indian national, residing at Shakti Park Apartments. Flat No. 501, 5th Floor (Old no. 3, New No. 20), 4th Cross Road, Wilson Garden, Bangalore, the Constituted Attorney/Authorized Representative of Mr. Riju Ravindran (suspended director/promoter of Respondent No.1), through Specific Power of Attorney dated 06.05.2024 do hereby solemnly undertake and state on behalf of Mr. Riju Ravindran by way of this Affidavit-cum-Undertaking before this Hon'ble Tribunal as under:

1. I state that on 31 July 2024, Riju tendered before this Special Bench of the Hon'ble National Company Law Appellate Tribunal, an undertaking (the “Undertaking") stating a settlement has been arrived at with the Board of Cricket Control of India (the “BCCI") and that Riju would discharge the entire amount of INR 158 crores (the "Settlement Amount") claimed by BCCI. The Undertaking reads as follows:

1. Riju shall in discharge of the entire amount in the sum of Rs.158,00.00,000/- [Rupees One Hundred und Fifty-Eight Crore Only], due and payable by Respondent No. 1 to Respondent No.2 i.e. The Board of Control for Cricket in India ("BCCI'), in terms of the settlement arrived at, pay to BCCI the same in the following manner;-

（a) Rs.50,00,00,000/- [Rupees Fifty Crore Only] paid on 30.06.2024 by way of RTGS bearing the UTR No. ICICR52024073000412272;

（b) Rs.25,00,00,000-[Rupees Twenty Five Crore Only] to be paid on 02.08.2024 through RTGS; and

（c) Rs,83,00,00,000/-(Rupees Eighty-Three Crore Only) to be paid on or before 09.08.2024 through RTGS.

2. In order to secure the balance payment of Rs.83,00,00,000/-[Rupees Eighty Three Crore Only. Riju shall handover a postdated cheque

bearing No. 234496 drawn on ICICI Bank, HSR Layout Branch for the sum of Rs.83,00.00,000/-/Rupees Eighty-Three Crore Only in favour of the BCCI.

3. Riju shall be bound by the undertakings given herein and in the event of any default, the order of admission dated 16.07.202f passed by the Hon'ble National Company Law Tribunal, Bengaluru in Company Petition (IB) No. 149/BB/2023 shall stand restored with immediate effect and without any further recourse."

Riju states that the BCCI has agreed to and accepted the Undertaking.

Riju states and confirm that no part of the Settlement Amount is being paid in violation of any order passed by any court or tribunal, including orders passed by the Delaware Bankruptcy Court.

Riju states that he has not received any portion of the USD 533 million that are the subject matter of the proceedings before the Delaware Bankruptcy Court and, accordingly, no part of those funds have been, or will be, used to pay the BCCI. In fact, the funds forming part of the Settlement Amount are being paid out from his personal funds, as explained in paragraph 8 below.

To clarify, under the terms of the Credit Agreement dated 24 November 2021 (the "Credit Agreement"), a group of lenders represented by GLAS Trust LLC (GLAS) disbursed an amount of USD 1.2 billion to Byju's Alpha, Inc. (a step-down subsidiary of Think & Learn Pvt. Ltd. (TLPL)). Under the Credit Agreement, monies disbursed thereunder could not be brought into India. Therefore, none of the monies disbursed under the Credit Agreement (of which the USD 533 million forms a part) has ever been brought into India. Indeed, the allegation that Riju has received any sum of monies disbursed under the Credit Agreement has never been made by GLAS in any proceeding whatsoever, including the proceeding under Section 7 of the IBC filed by it before the NCLT.

Riju specifically confirms that there has been no violation of the Order dated 18 March 2024 passed by Delaware Bankruptcy Court, and Riju has not taken any steps in contravention of the same. Riju also confirms that he has not directly, indirectly or in any form or manner received

any sum of money from disbursements made under the Credit Agreement. In fact, the only foreign remittance received by him since execution of the Credit Agreement is from two secondary sales of my shareholding in TLPL in January and November 2022 totalling approximately USD 109 million, as demonstrated by the SH-4 annexed hereto at pages and respectively.

7. Riju further confirms that Byju Raveendran has not transferred any money or extended any security of his assets towards raising the sums for payment of the Settlement Amount to the BCCI.

8. Riju further states and confirm that the Settlement Amount comprises funds raised by him personally:

a. from the sale and the gains/income on such sale of shares held personally by him in TLPL between May 2015 and January 2022. By way of these sales, he has accumulated approximately INR 3600 crores. The forms SH-4 evidencing these sales are hereto annexed and marked Exhibit A. Out of the aforementioned amount, approximately INR 1050 crores was paid as income tax. The IT returns filed by him over the relevant period and which would reflect these amounts are hereto annexed and marked Exhibit B. The remaining amounts of approximately INR 2600 crores was infused back into TLPL due to its operational needs and o ensure that TLPL continues to carry on business as a going concern, including paying salaries to its 27000 employees and sustaining the platform which has over 150 million students worldwide (which is a matter of record). The amounts that remained with Riju wre used to pay the first tranche of the Settlement Amount (in the amount of INR 50 crores) to BCCI on 30 June 2024; and

b. from liquidation of Riju's personal assets in India, which will be used to pay the balance amount of the Settlement Amount.

9. The content of the present Affidavit-cum-Undertaking is true and correct.

Place: Chennai

Date: 1 August 2024

25. Mr. Tushar Mehta, Ld. Sr. Counsel appearing on behalf of Respondent No. 2 has submitted that Respondent No. 2 would not accept any tainted money for settlement but since the money being offered by Riju Raveendran, former Promoter Director, is generated in India on which income tax has duly been paid and is coming through banking channel, therefore, the same shall be accepted. Mr. Arun Kathpalia, Sr. Counsel appearing on behalf of the Appellant also submitted that the issue of round tripping is not pleaded in the application and now Respondent No. 2 has also not raised any objection in accepting this money.

26. Mr. Mukul Rahtogi, Ld. Sr. Counsel for the Applicant has vehemently argued that Section 12A of the Code and Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'Regulations') deals with the settlement. He has argued that Section 12A of the Code talks of a settlement after the CoC is constituted and the approval of 90% voting share of the CoC is sine qua non.

27. He has further submitted that Regulation 30A(1)(a) of the Regulations provides for withdrawal before the constitution of the CoC but for that purpose the application has to be filed through the IRP.

28. He has further argued that the Appellate Authority can accept the settlement by invoking Rule 11 of the NCLAT Rules, 2016 (in short 'Rules') but this is not a case where discretion should be exercised by this court because both the directors of the CD and the Borrower are fugitive, according to him, they are

living aboard, they are defaulters of the Govt. dues, Enforcement Directorate proceedings are pending against them, look out notice has been issued and because of their mis-adventures valuation of the CD has drastically been reduced and the money offered in the undertaking is mismatched. He also referred to a further order passed by the Delaware Court on 31.07.2024 by which penalty of 10,000 USD per day has been imposed upon Riju Raveendran regarding his non-cooperation in respect of earlier order passed by it on 18.03.2024.

29. He has further submitted that in the normal circumstances Rule 11 may be invoked but in such circumstance where the CD and the Borrower both are non-cooperative and have not paid dues of the US Lenders, the discretion of this Court should not be exercised in their favour. In this regard, he has referred to Para 82 of the decision of the Hon'ble Supreme Court in the case of Swiss Ribbons Pvt.Ltd. &Ors. Vs. Union of India & Ors., (2019) 4 SCC 17 which read as under:-

> "82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date ofappointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will

be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case."

30. As a matter of fact, it is sought to be argued that the Appellant should have approached the NCLT instead of invoking the inherent powers of the Appellate Tribunal under Rule 11 of the Rules.

31. Mr. Krishnendu Datta, Ld. Sr. Counsel also appearing on behalf of the Applicant too has referred to Para 27 and 28 of the same judgment i.e. Swiss Ribbons (Supra) which are reproduced as under:-

"27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. [See ArcelorMittal (supra) at paragraph 83, footnote 3].

> 28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

32. It is argued by him that the interest of all stakeholders should be looked into and since the Applicant has a substantial interest in so far as the CD is concerned, who stood as parent guarantor, invocation of Rule 11 should be avoided.

33. He has referred to certain news items appended with the application to contend that the senior functionaries of the CD have either left or been removed, offices have been vacated, auditor resigned and financial statements have not been filed for the year 2022-23.

34. He has further referred to two decisions of this Court rendered in the cases of Bhaskar Biswas Vs. M/s Devi Trading and Holding Pvt. Ltd. CA (AT) (Ins) No. 823 of 2019 decided on 03.01.2019 and Sintex Plastics Vs. Mahatva Plastic Products and Building Material Pvt. Ltd., CA (AT) (Ins) No. 729 of 2022 to contend that this Court had declined to exercise jurisdiction under Rule 11 of

the Rules and rather allowed the Appellant to move an application under Section 12A for settling the claim of all the creditors particularly the allottees.

35. Mr. Arvindh Pandian, Ld. Sr. Counsel also appearing on behalf of the Applicant referred only to Para 83 of the Swiss Ribbons (Supra) which is reproduced as under:-

> "3. The main thrust against the provision of Section 12A is the fact that ninety per cent of the committee of creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the committee of creditors do not have the last word on the subject. If the committee of creditors arbitrarily rejects a just settlement and/or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12A also passes constitutional muster. "

36. In reply, Mr. Arun Kathpalia, Ld. Sr. Counsel appearing on behalf of the Appellant has vehemently argued that firstly the prohibitory injunction issued by the Delaware Court has nothing to do with the settlement being arrived at between the parties in India as Riju Raveendran who is offering the money for the purpose of settlement has categorically stated in his undertaking as well as the affidavit filed on his behalf that he has not violated the order dated

18.03.2024 and has not transferred any money from the account of the Borrower for raising money for payment of settlement amount to Respondent No. 2. He further submitted that the money which is being offered by the ex-promoter and largest shareholder of the CD is not coming either from the US creditors or from the CD, therefore, no creditors could have any grievance and thus, this application filed by the Applicant is misplaced and deserves to be dismissed. He has further submitted that Rule 11 of the Rules is akin to Section 151 of the CPC which gives power to the Court to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process. He has further submitted that the judgment relied upon by Mr. Krishnendu Datta, Ld. Sr. Counsel for the Applicant, in the case of Bhaskar Biswas (Supra) is of the year 2019 whereas there is a change in law of settlement which has been gradually evolved by the Courts. It is submitted that initially there was no provision for settlement in the Code but Section 12A of the Code was inserted by Act No. 26 of 2018 w.e.f. 06.06.2018 and Regulation 30A of the Regulations was inserted by IBBI/2018-19/GN/Reg048 w.e.f 25.07.2019 and the Courts are now inclined to invoke Rule 11 of the Rules for the purpose of settling the dispute between the parties before the CoC is constituted. In this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of Abhishek Singh Vs. Huhtamaki PPL Ltd. &Ors. Civil Appeal No. 2241 of 2023 decided on 28.03.2023 and referred to Paras 27, 35 to 37, 43 and 44 which are reproduced as under:-

"27. With respect to the said objection, it only needs to be mentioned that other creditors would have their own right to avail such legal remedies as may be available to them under law with respect to their claims. The rights of the creditors for their respective claims do not get whittled down or adversely affected if the settlement with the OC in the present case is accepted and the proceedings allowed to be withdrawn.

35. Section 12A of IBC permits withdrawal of applications admitted under sections 7, 9 and 10 of IBC. It permits withdrawal of such applications with approval of 90 percent voting share of CoC in such manner as may be specified. The role of CoC and 90 percent of its voting share approving the said withdrawal would come into play only when CoC has been constituted. Section 12A did not specifically mention withdrawal of such applications where CoC had not been constituted but at the same time it does not debar entertaining applications for withdrawal even before constitution of CoC. Therefore, the application under section 12A for withdrawal cannot be said to be kept pending for constitution of CoC, even where such application was filed before constitution of CoC. The IBBI which had the power to frame Regulations wherever required and in particular section 240 of IBC for the subjects covered therein had accordingly substituted Regulation 30A dealing with the procedure for disposal of application for withdrawal filed under section 12A of IBC. The substituted Regulation 30A of IBC as it stands today clearly provided for withdrawal applications being entertained before constitution of CoC. It does not in any way conflicts or is in violation of section 12A of IBC. There is no inconsistency in the two provisions. It only furthers the cause introduced vide section 12A of IBC. Thus, NCLT fell in error in taking a contrary view.

36. In Kamal K. Singh (supra), relying upon paragraph 82 of the report in the case of Swiss Ribbons (supra), the Supreme Court, which was dealing with a similar situation where the settlement had been arrived before constitution of CoC allowed the proceedings to be withdrawn and held that the applications filed under Rule 11 of the NCLT Rules would be maintainable and the OCs therein was justified in moving such application.

37. In the case of Ashok G. Rajani (supra), the settlement had been arrived at between the parties on08.08.2021, after the NCLT had admitted the application under section 7 of IBC vide order dated

03.08.2021. On appeal, the NCLAT vide order dated 18.08.2021 stayed the formation of CoC but declined to exercise its powers under Rule 11 of the NCLAT Rules. The said order was challenged before this Court. This Court in its order in paragraphs 29 and 30 gave reasons as to why the applications for withdrawal cannot be stifled before the constitution of CoC by third parties. The said paragraphs are reproduced below:

"29. Considering the investments made by the Corporate Debtor and considering the number of people dependant on the Corporate Debtor for theirsurvival and livelihood, there is no reason why the applicant for the CIRP, should not be allowed to withdraw its application once its disputes have been settled.

30. The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement.

43. Accordingly, the appeal is allowed and the impugned order of NCLT is set aside. Further, the Application No. 196 of 2021 also deserves to be allowed along with the application under Regulation 30A of IBBI Regulations. The Application under section 9 of IBC filed by the OCs shall stand withdrawn. It is further provided that any claim for expenses incurred may be dealt with by the NCLT in accordance with law.

44. We make it clear that any observations made in this judgment will not, in any manner, affect the claim of other creditors of whatever category and they would befree to raise their own independent claims in appropriate proceedings which would be dealt with in accordance with law."

37. He has also relied upon a decision of this Court in the case of Vishwajeet Subhash Jhavar Vs. IDFC First Bank Limited &Ors., CA (AT) (Ins) No. 08 of 2023 decided on 15.05.2023 and has referred to Para 18 to 22 which are reproduced as under:-

"18. A categorical observation made by the Hon'ble Supreme Court in the above case is that Settlement cannot be stifled before the Constitution of Creditors in anticipation of the claims against the Corporate Debtor from 3rd Persons.

19. In another recent Judgment of the Hon'ble Supreme Court in 2023 SCC OnLine SC 349 – Abhishek Singh v. Huhtamaki PPL Ltd. &Anr., Hon'ble Supreme Court again referring to the Judgment of Ashok G. Rajani again reiterated the same preposition. In the above case, Appeal was filed against the Order of NCLT by which an Application under Section 12A filed for withdrawal of the CIRP was rejected by the NCLT. The Application filed under Section 12A was opposed by intervener who claimed to have raised their claim before the IRP. In paragraph 37 to 39, following has been observed:

"37. In Kamal K. Singh (supra), relying upon paragraph 82 of the report in the case of Swiss Ribbons (supra), the Supreme Court, which was dealing with a similar situation where the settlement had been arrived before constitution of CoC allowed the proceedings to be withdrawn and held that the applications filed under Rule 11 of the NCLT Rules would be maintainable and the OCs therein was justified in moving such application.

38. In the case of Ashok G. Rajani (supra), the settlement had been arrived at between the parties on 08.08.2021, after the NCLT had admitted the application under section 7 of IBC vide order dated 03.08.2021. On appeal, the NCLAT vide order dated 18.08.2021 stayed the formation of CoC but declined to exercise its powers under Rule 11 of the NCLAT Rules. The said order was challenged before this Court. This Court in its order in paragraphs 29 and 30 gave reasons as to why the applications for withdrawal cannot be stifled before the constitution of CoC by third parties. The said paragraphs are reproduced below:

"29. Considering the investments made by the Corporate Debtor and considering the number of people dependant on the Corporate Debtor for their 30 survival and livelihood, there is no reason why the applicant for the CIRP, should not be allowed to withdraw its application once its disputes have been settled.

30. The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP

by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement."

39. This Court relying upon the order in the case of Kamal K. Singh (supra) issued directions in paragraph 32 to the NCLT to take up the settlement application and decide the same in the light of observations made therein. The said paragraph is reproduced hereunder: "32. The application for settlement under Section 12A of the IBC is pending before the Adjudicating Authority (NCLT). The NCLAT has stayed the constitution of the Committee of Creditors. The order impugned is only an interim order which does not call for interference. In an appeal under Section 62 of the IBC, there is no question of law which requires determination by this Court. The appeal is, accordingly, dismissed. The NCLT is directed to take up the settlement application and decide the same in the light of the observations made above.""

20. Appeal was allowed by Hon'ble Supreme Court and Application under Section 12-A was allowed observing that other creditors may raise their independent claims in appropriate proceedings. In paragraph 43-45, following has been observed:

"43. For all the reasons recorded above, the impugned order of the NCLT cannot be sustained. The application filed under Regulation 30A of IBBI Regulations deserves to be allowed.

44. Accordingly, the appeal is allowed and the impugned order of NCLT is set aside. Further, the Application No. 196 of 2021 also deserves to be allowed along with the application under Regulation 30A of IBBI Regulations. The Application under section 9 of IBC filed by the OCs shall stand withdrawn. It is further provided that any claim for expenses incurred may be dealt with by the NCLT in accordance with law.

45. We make it clear that any observations made in this judgment will not, in any manner, affect the claim of other creditors of whatever category and they would be 34 free to raise their own independent claims in appropriate proceedings which would be dealt with in accordance with law."

21. The above judgement of the Hon'ble Supreme Court in Ashok G Rajani and Abhishek Singh (supra) where the cases were Application

for withdrawal was filed before the Committee of Creditors was constituted. Present is also a case where Settlement has been entered between the parties and prayer is being made to withdraw the CIRP in exercise of jurisdiction under Rule 11 of NCLAT Rule, 2016. The Financial Creditor having settled the matter with the Corporate Debtor and Settlement letter dated 08th May, 2023 having been brought on record, we find it a fit case to exercise jurisdiction under Rule 11 of NCLAT Rules, 2016 to close the CIRP. We are of the view that on account of objection raised by the intervener of his filing claim before the IRP, the CIRP can not be allowed to proceed since the debt for which CIRP has been initiated, has been settled with the Financial Creditor. The Intervener is free to take such legal proceedings as may be advised to protect his interest.

22. In view of the foregoing discussions, we take the settlement letter dated 08th May, 2023 on record, close the CIRP against the Corporate Debtor setting aside the Order dated 23.12.2022. Intervener is at liberty to take its own proceeding in accordance with law to protect its interest. The Appeal is disposed of, accordingly."

38. He has also relied upon a decision of the Hon'ble Supreme Court in the case of Ashok G. Rajani Vs. Beacon Trusteeship Ltd. & Ors., 2022 SCC OnLine SC 1275 and has referred to para 30 which is reproduced as under:-

"30. The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement."

39. He has also relied upon a decision of this Court in the case of Nippon Life India AIF Management Ltd. &Ors. Vs. Ashapura Options Pvt. Ltd., CA (AT)

(Ins) No. 711 of 2023 and referred to Para 19 to 25 which are reproduced as under:-

> "19. Although, Counsel appearing on behalf of the secured financial creditors in the second appeal has submitted that as per Swiss Ribbons (supra), judgment of the Hon'ble Supreme Court, the proceedings before the Adjudicating Authority, triggered by Section 7 or 9 is a collective proceeding, a proceeding in rem and it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. But in Judgment relied upon by the Appellant in the case of Abhishek Singh (Supra), the petition was filed by an Operational Creditor (OC) which was admitted on 01.03.2021 by the Tribunal and thereafter the settlement was arrived at between the OC and the CD, prior to the constitution of CoC and in terms of the settlement the amount was paid. The IRP filed the application in terms of the Code and the Regulations for withdrawal of the CIRP against the CD and also an application under Section 12A of the Code. In the meanwhile, appeal was filed by the CD against the order of admission before the Tribunal on the ground that Section 9 application was not maintainable because there was a pre-existing dispute. But the said appeal was withdrawn with liberty to apply for revival of the appeal in case the settlement fails.
>
> 20. The application under Section 12A was dismissed by the Tribunal on 13.04.2021, appeal preferred against it was dismissed by this court. The Tribunal recorded the following findings. i. The facts relating to the settlement and the fulfilment of the terms of the settlement are not disputed; ii. The suspended directors of the CD despite the moratorium having commenced with effect from 01.03.2021 have not only made transactions of deposit but also withdrawal from the account of the CD. They have thus violated the directions contained in the admission order dated 01.03.2021; iii. Although the IRP had made submissions that the suspended director having transferred huge amount from the account of the company to his personal account and from there having made the payment to the OC under the settlement but the same was not conclusively proved; iv. The suspended director and their counsel made frivolous arguments before the NCLT which were contrary to record in order to obtain favourable orders; v. As many as 35 claims of creditors

both operational and financial have been filed in the meantime. As such withdrawal of the proceedings would adversely affect their rights; vi. The proceedings once admitted and IRP having initiated, such proceedings are in rem and all stake holders can participate in the proceedings with their respective claims; and vii. Regulation 30A of IBBI Regulations was not binding upon it and such provision would not be of any help to the CD or its suspended Directors;

21. The finding recorded by the Ld. Tribunal was that there were 35 claims of the creditors both operational and financial have been filed in the meanwhile, therefore, withdrawal of the proceedings would adversely affect their rights. It was also an objection that proceedings initiating the CIRP are proceedings in rem and all the stakeholders can participate in the proceedings with their respective claims. However, in this regard, the Hon'ble Supreme Court recorded a finding in para no. 27, 28 which are reproduced as under: "27. With respect to the said objection, it only needs to be mentioned that other creditors would have their own right to avail such legal remedies as may be available to them under law with respect to their claims. The rights of the creditors for their respective claims do not get whittled down or adversely affected if the settlement with the OC in the present case is accepted and the proceedings allowed to be withdrawn. Claims for expenses for IRP 28. Any amount spent by the IRP legally admissible to him could always be recovered in the same proceedings and the NCLT or the Adjudicating Authority would be well within its power to get the same cleared Under Clause 7 of Regulation 30A of IBBI Regulations".

22. In paragraph 27 it has been observed by the Hon'ble Supreme Court that other creditors would have their own right to avail such legal remedies as may be available to them under law with respect to their claims. In so far as the expenses of the IRP are concerned, it has been held that it can be recovered by approaching the Tribunal. The Hon'ble Supreme Court has also recorded the following finding which read as under:

"35. Section 12A of IBC permits withdrawal of applications admitted Under Sections 7, 9 and 10 of IBC. It permits withdrawal of such applications with approval of 90 percent voting share of CoC in such manner as may be specified. The role of CoC and 90 percent of its voting share approving the said withdrawal would come into play only when CoC has been constituted. Section 12A did not specifically

mention withdrawal of such applications where CoC had not been constituted but at the same time it does not debar entertaining applications for withdrawal even before constitution of CoC. Therefore, the application Under Section 12A for withdrawal cannot be said to be kept pending for constitution of CoC, even where such application was filed before constitution of CoC. The IBBI which had the power to frame Regulations wherever required and in particular Section 240 of IBC for the subjects covered therein had accordingly substituted Regulation 30A dealing with the procedure for disposal of application for withdrawal filed Under Section 12A of IBC. The substituted Regulation 30A of IBC as it stands today clearly provided for withdrawal applications being entertained before constitution of CoC. It does not in any way conflicts or is in violation of Section 124 of 1BC. There is no inconsistency in the two provisions. It only furthers the cause introduced vide Section 12A of IBC. Thus, NCLT fell in error in taking a contrary view".

23. Ultimately, the following findings have been recorded at para 40 to 44 which are reproduced as under: "40. Both the parties have relied upon paragraph 82 of the judgment in the case of Swiss Ribbons (supra). According to the Appellant, the NCLT ought to have exercised its inherent powers Under Rule 11 of the NCLT Rules whereas for the intervenors it is submitted that this Court had observed that power Under Rule 11 would be exercised after hearing all concerned parties. It may be noted that at the time when the application for withdrawal of the proceedings was filed the CoC was not constituted as such there could not have been any other concerned parties except the OC, CD and IRP. It was only because of the delay caused by the NCLT in disposing of the applications Under Section 12A of IBC and Regulation 30A of IBBI Regulations that large number of creditors filed their claims. The inherent powers are to be invoked in order to meet the ends of justice which, in our opinion, the NCLT failed to invoke. 41. Regulation 30A of IBBI Regulations provide a complete mechanism for dealing with the applications filed under such provision. The issue raised by the IRP regarding its claim for expenses is well taken care of under the said provision. Various safeguards have been provided in Regulation 30A of IBBI Regulations to be fulfilled by the OC which apparently have been fulfilled as there is no complaint in that regard either by the IRP nor it is apparent from the impugned order of the NCLT. Thus, the

objection raised by the IRP does not merit any consideration in this appeal. 42. For all the reasons recorded above, the impugned order of the NCLT cannot be sustained. The application filed Under Regulation 30A of IBBI Regulations deserves to be allowed. 43. Accordingly, the appeal is allowed and the impugned order of NCLT is set aside. Further, the Application No. 196 of 2021 also deserves to be allowed along with the application Under Regulation 30A of IBBI Regulations. The Application Under Section 9 of IBC filed by the OCs shall stand withdrawn. It is further provided that any claim for expenses incurred may be dealt with by the NCLT in accordance with law. 44. We make it clear that any observations made in this judgment will not, in any manner, affect the claim of other creditors of whatever category and they would be free to raise their own independent claims in appropriate proceedings which would be dealt with in accordance with law".

24. The facts of this case are almost akin to the facts of the case of Abhishek Singh (Supra) because in both the cases the CoC was not constituted and settlement was arrived at but the only distinguishing feature is that in the case of Abhishek Singh (Supra) the proceedings of settlement were taken up immediately whereas in the present case it took some time and the moratorium remained operative to the benefit of the CD. However, in our considered opinion the facts of the present case are squarely covered by the decision of the case of the Abhishek Singh (supra).

25. Consequently, in view of the settlement arrived at and the money having been paid, duly received by the creditor (Omkara asset Reconstruction Company Pvt. Ltd.), order of admission passed against the CD in CP (IB) No. 1089 of 2022 does not survive and hence CA (AT) (Ins) No. 711 of 2023 is hereby allowed. CP (IB) No. 439 of 2022 has been disposed of as infructuous because of the admission of CP (IB) No. 1089 of 2022, can be revived for pursuing their remedy against the corporate debtor for the resolution of their claim/debt. In so far as, issue regarding the dues of the IRP are concerned, it can be taken care of by the Adjudicating Authority, if 18 CA (AT) (Ins) Nos. 711, 478 of 2023 and when the IRP file an application on form FA and put up his claim for the CIRP cost."

40. He has also relied upon a decision of the Hon'ble Supreme Court in the case of Kamal K. Singh Vs. Dinesh Gupta, (2022) 8 SCC 330 which is reproduced as under:-

> "Leave granted.
>
> (2) This appeal arises out of a judgment and order dated 06.08.2021 passed by the National Company Law Tribunal, Mumbai Bench, in I.A. NO.1196 of 2021 in Company Petition (IB) No.1069 of 2020, rejecting the application filed by the respondent no.1 under Rule 11 of the National Company Law Tribunal Rules, 2016 (for short, "the NCLT Rules") praying inter alia for withdrawal of company petition and to set aside the initiation of Corporate Insolvency Resolution Process (CIRP) based on the settlement between the parties arrived before the constitution of Committee of Creditors (CoC).
>
> (3) We have heard learned counsel for the parties. It is not in dispute that CoC has not been constituted so far. This Court in Swiss Ribbons Private Limited and Anr. v. Union of India and Others – (2019) 4 SCC 17 has held that at any stage, before a Committee of Creditors is constituted, a party can approach National Company Law Tribunal (NCLT) directly and that the Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, allow or disallow an application for withdrawal or settlement. It was held thus :
>
> "82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will

be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case." (emphasis supplied)

(4) In the instant case, as noticed earlier, the applicant-respondent no.1 had made an application before the NCLT, Mumbai Bench, under Rule 11 of the NCLT Rules for withdrawal of company petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) on the ground that the matter has been settled between the Corporate debtor and the applicant-respondent no.1.

(5) Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, we are of the view that the applicant-respondent no.1 was justified in filing the application under Rule 11 of the NCLT Rules for withdrawal of the company petition on the ground that the matter has been settled between the parties.

(6) The appeal is accordingly allowed. The order of the NCLT dated 06.08.2021 is hereby set aside and the company petition, for which withdrawal application was filed under Rule 11 of the NCLT Rules, is ordered to be withdrawn. No costs."

41. It is pertinent to mention that since the hearing of this case could not conclude on 01.08.2024, therefore, on the request of Counsel for the parties, it was adjourned for today and the constitution of CoC was stayed.

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

43. From the narration of the aforesaid facts and the law which we are not repeating for the sake of brevity it becomes clear that after the order was passed on 16.07.2024 by the Adjudicating Authority against the Corporate Debtor, the Suspended Director of the CD filed the present appeal to contest the same on merits, however, when the matter was listed before this Bench on 30.07.2024, Counsel for the Appellant informed the Court that an amount of Rs. 50 Cr. out

of 158 Cr. (payable) has been paid on 30.07.2024 (inadvertently mentioned as 30.06.2024 in the undertakings).

44. The Applicant raised a hue and cry that the amount which is being paid is from the money borrowed by the borrower in US, therefore, it is a case of round tripping. It was also the case of the Applicant that since the Applicant is the Financial Creditor, therefore, the amount being paid to the OC would make a dent in their ultimate claim as they have the preferential right. It is also the case of the Applicant that there is a prohibitory injunction against Riju Raveendran by the Delaware Court not to use in any manner USD 533,000,100.00. Because of this, the case was adjourned from 31.07.2024 to 01.08.2024 because Counsel for the Appellant had submitted that allegation made in the application of round tripping is totally incorrect as the money being paid by Riju Raveendran is not from the money of the creditors nor it belongs to CD but it is being paid by him from his own funds as ex-promoter, director and being the largest shareholders. Therefore, the case was adjourned to 01.08.2023 on the asking of the Appellant to show the source of money. Thereafter, the Appellant filed the undertaking of Riju Raveendran and also an affidavit of Shrihari Mari Sreepathy and submitted that the affidavit of Riju Raveendran could not be filed due to paucity of time as he is not in India. We have perused the affidavit and undertaking and found that the money has been generated by Riju Raveendran from his own sources by sale of his shares held in the CD and income tax has been paid on such sale of such shares. In the undertaking, he has categorically stated that he is not violating the

order dated 18.03.2024 passed by the Delaware Court and confirmed that he has not directly, indirectly or in any form or manner received any sum of money from disbursements made under the Credit agreement. Although, the Applicant is not satisfied about the undertaking but the Applicant has also not brought on record any evidence to the contrary that the money which is being offered has actually been brought by Riju Raveendran from the money disbursed to the borrower in terms of credit agreement or has been taken out of the coffers of the CD.

45. Mr. Tushar Mehta, Ld. Sr. Counsel appearing on behalf of Respondent No. 2 today as well has categorically argued that Respondent No. 2 would be the last authority to receive any tainted money but now this money offered by Riju Raveendran is being accepted by Respondent No. 2 because it is generated in India, coming from proper channel, source is disclosed, tax has been paid and it is coming through banking transactions.

46. In view of the aforesaid facts and circumstances, the only issue which remains to be addressed to as to whether this Court should invoke Rule 11 of the Rules for the purpose of accepting the settlement?

47. It is needless to mention that borrower has already approached the Bankruptcy Court in US and obtained a prohibitory injunction against the Companies to whom the borrowed money stated to have been transferred. It is altogether a different situation that the US Court has imposed a cost of USD 10,000 per day upon Riju Raveendran for the not cooperating with the order

passed by it on 18.03.2024 because it is not relevant for the purpose of decision of this case. As Mr. Arun Kathpalia, Ld. Sr. Counsel appearing on behalf of the Appellant has rightly submitted that the law regarding the settlement of dispute between the parties before the Court is in the process of evolution and in this regard, the Courts much less the Hon'ble Supreme Court has approved the invoking of Rule 11 of the Rules in the case of Abhishek Singh (Supra) in which the Hon'ble Supreme Court has observed that even if there were multiple OCs who also have their claim against the CD, the other creditors would have their own right to avail such legal remedies as may be available to them under the law with respect to their claims. The same decision has been taken by the Hon'ble Supreme Court in the case of Kamal K. Singh (Supra) and this Court in the case of Nippon Life India (Supra).

48. Moreover, as we have already mentioned in the narration of the facts that on the application filed by the Applicant under Section 7 of the Code, the Adjudicating Authority has given liberty to file the claim in the CIRP proceeding initiated under Section 9 or in case something happens in the proceedings under Section 9 at the Appellate level, the Applicant has a right to file an application for restoration/revival of its petition filed under Section 7 and initiate CIRP proceedings for the purpose of recovery of their dues in accordance with law and thus the right of the Applicant is well protected.

49. In so far as the present proceedings are concerned, the settlement has been arrived at between the parties before the CoC could have been constituted,

source of money being offered by one of the ex-promoters / directors (shareholder of the CD) is disclosed and the interest of the Applicant has already been watched and safeguarded by the Adjudicating Authority vide order dated 16.07.2024.

50. As it has been generally said that the first hour of justice is the hour of compromise and when the offer has been made by one of the ex-promoter, suspended director, at the behest of the CD to bury the hatchet forever with the OC, the Court can invoke Rule 11 for the purpose of exploring the settlement between the parties.

51. Thus, in view of the aforesaid facts and circumstances, in view of the undertaking given and affidavit filed, the settlement between the parties is hereby approved and as a result thereof, the present appeal succeeds and the impugned order is set aside, however, with a caveat that in case there is a breach in the undertaking given and the affidavit filed, the order dated 16.07.2024 passed against the present Appellant, shall automatically revive.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

Sheetal/Ravi/Trimurti