



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under  
The Insolvency and Bankruptcy Code, 2016)**  
**(Through Web-Based Video Conferencing)**

**IA No. 660, 820 of 2024**

in

**C.P. (IB) No. 149/BB/2023**

Application U/s. 60(5) of the Insolvency and Bankruptcy Code, 2016  
R/w Rule 11 and Rule 32 of National Company Law Tribunal Rules, 2016

**IN THE DECIDED MATTER OF:**

**Board of Control for Cricket in India**

...Petitioner/Operational Creditor

**Versus**

**Think & Learn Private Limited**

... Respondent/Corporate Debtor

**IN THE MATTER OF I.A NO. 660 OF 2024:**

**Aditya Birla Finance Limited**

Represented herein by its duly

Authorised Representative

Mr Akash N

Indian Rayon Compound,

Veraval, Gujarat — 362 266;

...Applicant

**Versus**

**Mr. Pankaj Srivastava**

Resolution Professional of

Think and Learn Private Limited

IBBI/IPA-001/IP-N00245/2017-18/10474

IBC Knowledge Park, 4/1,

2<sup>nd</sup> Floor, Tower D, Bannerghatta Main Road,

Bengaluru, Karnataka -560 029

... Respondent

**And**

**IN THE MATTER OF I.A. NO. 820 OF 2024:**

**GLAS Trust Company LLC**

Limited liability company under the laws of the

State of New Hampshire, United States of America

Represented by its Authorized Representative Mr. Sunil Thomas



3, Second Street, Suite 206, Jersey City,  
New Jersey - 07311, United States of America

...Applicant

**Versus**

**1. Mr. Pankaj Srivastava**

Resolution Professional of  
Think and Learn Private Limited  
IBBI/IPA-001/IP-N00245/2017-18/10474  
Having his office at  
#58, 3rd Cross, Vinayaknagar,  
Hebbal, Bengaluru- 560064, Karnataka,

...Respondent No.1

**2. Board of Control for Cricket in India**

4<sup>th</sup> Floor, Cricket Centre, Wankhede Stadium  
'D' Road, Churchgate, Mumbai  
Maharashtra- 400020

...Respondent No. 2

**Order Delivered on: 29/01/2025**

**Coram:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Ravichandran Ramasamy, Member (Technical),

**Parties/Counsels Present:**

For the Applicant in IA 820/2024: Shri Udaya Holla, Sr. Adv. with Shri V. Srinivasa Raghavan, Sr. Adv; Shri Nikhilesh Rao, Shri Avinash Balakrishna Shri Tejas Shetty and Shri Sheshachala Joshi.

For the Applicants in IA 660/2024: Shri Pramod Nair, Sr. Adv., a/w Ms. Aishwarya M, Shri Lalit Kataria and Shri Ahaan Mohan.

For the RP in IA 660/2024 & 820/2024: Shri Ramji Srinivasan, Sr. Adv. And Shri Raheel Patel.

For the Respondent No.2 in IA 660/2024: Shri C.K. Nandakumar, Sr. Adv., with Ms. Ann Pereira, Ms. Anjali K. & Ms. Bhavya Mohan.



## COMMON ORDER

### FACTS:

Since both the present Applications have been preferred in the main Company Petition bearing C.P (IB) No. 149/2023 and identical issues have been raised in these Applications, both the Applications have been disposed by common order.

### IN IA 660/2024:

1. The Present IA 660/2024 in Company Petition (IB) No. 149/2023, has been filed by Aditya Birla Finance Limited (herein after as '**Applicant No. 1**') on 10/09/2024 under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 r/w Rules 11 and 32 of the National Company Law Rules, 2016 inter-alia praying this Hon'ble Tribunal to:

- a) set aside the decision made by the Respondent in respect of the Applicant's classification as an Operational Creditor;
- b) direct Respondent to exclude the Applicant from Annexure S List of Operational Creditors dated 30<sup>th</sup> August 2024 and to consider the Applicant's claim as a 'financial debt' within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016;
- c) direct the Respondent to appropriately reconstitute the Committee of Creditors with the Applicant classified as a Financial Creditor with the proportionate voting accruing in light of the financial debt owed to it by the Corporate Debtor

2. The facts of the case are mentioned below:

- a) This Tribunal vide order dated 16.07.2024 in C.P.(IB) No. 149/BB/2023 admitted Think and Learn Private Limited ("**Corporate Debtor**") into Corporate Insolvency Resolution Process ("**CIRP**") under Section 9 of the Insolvency and Bankruptcy Code ("Code/IBC") and appointed Mr. Pankaj Srivatsava ("**Respondent No.1**") as the Interim Resolution Professional of the Corporate Debtor.
- b) The Corporate Debtor aggrieved by the admission order dated 16.07.2024 filed an Appeal against it before the National Company Law Appellate Tribunal, Chennai. ("**NCLAT**"). Meanwhile, Applicant



No.1 submitted its claim to Interim Resolution Professional/Respondent No.1 amounting to Rs. 47,12,00,000/-in Form- C in its capacity as Financial Creditor under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) pursuant to Public Announcement dated 17.07.2024 made by the Respondent No. 1.

- c) The Respondent No.1 vide email dated 02.08.2024 asked the Applicant to provide him with the details of the Bank Guarantee Documents, details of security realisation and other relevant agreements and documents to support and validate their claim. In the meanwhile, the Hon'ble NCLAT vide order dated 02.08.2024 in Company Appeal (AT) (CH) (Ins.) No. 262/2024 set aside the initiation of CIRP against the Corporate Debtor due to settlement arrived at between Suspended Directors of the Corporate Debtor and the Respondent No.2.
- d) The Glass Trust Company LLC aggrieved by the order of Hon'ble NCLAT in Company Appeal (AT) (CH) (Ins.) No.262/2024 dated 02.08.2024 filed an appeal against the said order before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide order dated 14.08.2024 in Civil Appeal Diary No.- 35406/2024 stayed the operation and effect of the Order dated 02.08.2024 passed by the Hon'ble NCLAT and thus reinstated the CIRP proceedings of the Corporate Debtor. Further, the Hon'ble Supreme Court of India directed the Respondent No.2 to hold the amount received towards settlement in an escrow account.
- e) The Respondent No.1 vide mail dated 21.08.2024 informed the Applicant No.1 and Applicant No.2 that he has constituted the Committee of Creditors of the Corporate Debtor in accordance with the Provisions of the Code and the Regulations made thereunder and comprising of the following members:

S.No	Name of the Committee of Creditor
1	Glass Trust Company LLC
2	Aditya Birla Finance Limited
3	Incred Financial Services Limited



- f) The Respondent No.1 informed that the members of the Committee of Creditors which included the Applicant No.1 and the Applicant No.2 that 1<sup>st</sup> meeting of Committee of Creditors (“CoC”) of the Corporate Debtor will be held on 27<sup>th</sup> August, 2024. The Respondent No.1 vide its Letter dated 21.08.2024 informed the Applicant No.1 that their claim amounting to Rs. 47.12 Crore is verified subject to submission of certain documents and queries to the Applicant.
- g) The Applicant No.1 vide mail dated 02.09.2024 responded to the above queries made by Respondent No.1 and amongst other things submitted that its claim should be justifiably classified as ‘financial debt’ based on the nature of the arrangement with the Corporate Debtor and the Applicant.
- h) The Respondent No.1 vide email dated – 26.08.2024 cancelled the first COC meeting of the Corporate Debtor on the request of one of the members of the COC, and the meeting was postponed to 30<sup>th</sup> August 2024. Thereafter, the Respondent, without assigning any prior notice or any reasons or any application of mind, reclassified the Applicant as an Operational Creditor in revised Notice and Agenda of the First Meeting of the COC dated 01<sup>st</sup> September 2024. The present Application is moved challenging this misclassification of the Applicant as an Operational Creditor and the deprivation of its rights as a Financial Creditor in the COC.
3. The Respondent No.1 filed objections vide Diary No. 5604 dated 27/09/24 contending that:
- a) The email dated 21.08.2024 from the Respondent No.1/IRP constituting the CoC, the Respondent submits that the claim of the Applicant and other parties who had applied to be a part of the CoC was only ***provisionally accepted based on the limited documents sent by each party at the time of applying to be a member and was subject to further revision and modification***, Since the Respondent No.1/ IRP had not received the documents requested from



the Applicant on 02.08.2024, the Respondent once again wrote to the Applicant vide its Letter dated 21.08.2024 requesting for further information regarding their claim, including their agreement with the Corporate Debtor, etc. Despite repeated requests by the Respondent, the Applicant failed to substantiate its claim with necessary documents/information. Thereafter, the Respondent, based on his analysis of the documents that were provided to him, found that, prima facie, the Applicant should not be classified as a “financial creditor” and would instead be an operational creditor.

- b) Therefore, on 30.08.2024, upon review of these documents, the Respondent determined that the relationship between the Applicant and the Corporate Debtor stemmed from their Business Agreement which is a service agreement and therefore the Respondent reclassified the **Applicant’s claim as an “operational debt”** with observer rights on the CoC. On 01.09.2024, the Respondent issued a fresh notice of first meeting of the CoC which was scheduled to be held on 03.09.2024 at 11 am IST. It is only after the Applicant was reclassified as an “operational creditor”, on 02.09.2024, the Applicant shared certain documents with the Respondent in order to substantiate its claims as a financial creditor.
- c) On 05.09.2024, the Applicant No.1 wrote to the Respondent No.1 inter alia objecting to its reclassification and the manner in which the first CoC meeting was conducted and Respondent No.1 vide letter dated 05.09.2024 to the Applicant explaining that since the agreement between the Corporate Debtor and the Applicant was a service agreement, where under the Applicant provided loans to the customers of the Corporate Debtor at the Applicant’s discretion, and as the Corporate Debtor had not availed any financing from the Applicant, its claim had been reclassified as **operational debt** and on 06.09.2024, the Respondent once again wrote to the Applicant explaining that (i) the claim had been classified as operational debt based on the documents received from the Applicant as on the date of reclassification; and (ii) the first CoC meeting had been conducted as prescribed by law.



- d) Despite the above-mentioned reasons, on 09.09.2024, the Applicant filed the captioned Application. Therefore, the Respondent states that the present petition is entirely misconceived and is devoid of any merit and it is liable to be dismissed.
4. In response to the above Reply of Respondent No. 1, Applicant No.1 has filed a rejoinder diary no. 5934 dated 21.10.2024 by inter-alia contending as follows:
- a) The contention of Respondent No.1 that the Agreement dated 28th October, 2020 and its subsequent Addendum and Amendments dated 29th September, 2021, 27th January, 2023 and 1<sup>st</sup> March, 2023 is a service agreement is totally baseless and mis-conceived. The Business Agreement in question was entered into in order to procure finance from the Applicant in connection to the purchase of CD services and products and not mere services as contended by the Respondent No.1 in order to classify it as Operational Creditor U/s 5(21) of IBC. Further the definition of the outstanding amount under this Agreement specifically includes interest due and it also provide EMIs payable by the Customer/students. In this regard, the Applicant has relied upon the judgement of Apex Court rendered in *Global Credit Capital Vs. SACH Marketing Limited – 2024 SCC online SC 649* . The CD has provided service to its Customers and the Applicant has played a pivotal role by financing the transactions of CD as third party and it has disbursed loan into current account of CD, which is ultimate end-beneficiary of the transaction. The student/customer would be liable to re-pay the Applicant through EMIs computed including both the principal sum and interest, and in case of default of customer, the CD would be liable to discharge this debt. Therefore, the real nature of the Agreement is essentially a financing and loan facility and thus it un-doubtedly comes under the definition of Financial Creditor. However, the Respondent No.1 by exceeding the powers conferred on him under law, re-classified it as Operational Creditor, on un-tenable grounds.



b) It is reiterated that the Applicant has submitted all the supporting documents and information as sought by the Respondent No.1 vide e-mail dated 2 & 6th September, 2024. The Applicant has denied the allegation of Respondent No.1 stating that it has failed to respond his communication. And the transactions in question has the commercial effect of borrowing and includes the repayment with interest to the Applicant, which the Hon'ble Supreme Court has held to be consideration for the time value of money. In fact, all the supporting documents in respect of its claim were duly enclosed with claim form and after having verified those documents only, the Respondent No.1 has constituted COC by placing it as Financial Creditor. Therefore, it is urged the Tribunal to allow the Application as prayed for.

**IN IA 820/2024:**

1. The Present IA 820/2024 in Company Petition (IB) No. 149/2023, has been filed by Glas Trust Company LLC (Herein after '**Applicant No. 2**') under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rules 11 and 32 of the NCLT Rules, 2016 inter-alia praying to this Hon'ble Tribunal to:
  - (i) declare that Respondent No.1 does not have the power to re-constitute to the Committee of Creditors ["CoC"] of the Corporate Debtor;
  - (ii) Set aside reconstitution of CoC and restore the CoC as on 21.08.2024 and
  - (iii) Set aside resolutions of the CoC held on 03.09.2024 and all subsequent meetings which may have taken place.
2. Brief facts of this case are mentioned below:
  - a. Applicant No. 2, as the Administrative Agent and Collateral Agent entered into a credit and guaranty agreement dated 24.11.2021 with BYJU's Alpha Inc., as borrower and the Corporate Debtor as the Parent Guarantor. Under said agreement a term loan of USD 1,200,000,000 was advanced to the borrower and Guarantee deed dated 24.11.2021 was executed by the Corporate Debtor.
  - b. After the Section 9 admission was allowed against the Corporate Debtor by this Tribunal on 16.07.2024, Respondent No. 1 issued a public





- announcement on 17.07.2024 and invited claims from creditors, wherein Applicant No.1 submitted its claim on 27.07.2024, for INR 11432,98,87,753.
- c. The admission order dated 16.07.2024 was set aside by the NCLAT by order dated 02.08.2024 in the Company Appeal (AT) (Ch) (INS) No. 262/2024. Aggrieved by the NCLAT Order, Applicant No. 2 appealed to Supreme Court in Civil Appeal No. 9986/2024, which by order dated 14.08.2024 stayed the NCLAT Order and CIRP of Corporate Debtor was resumed.
- d. Accordingly, the claim of Applicant No. 2 was verified by letter dated 19.08.2024 by the Respondent No.1 with only condition of submission notarized/apostilled documents in due course, which were hand delivered to Respondent No.1 on 20.08.2024.
- e. The CoC was then constituted on 21.08.2024 and first meeting of CoC was informed to be held on 27.08.2024 at 7:00 PM, vide email dated 21.08.2024. However, on 27.08.2024, Respondent No.1 vide email to CoC rescheduled the first meeting to 30.08.2024. Further, on 30.08.2024 at 5:45PM, Respondent No.1 further adjourned the meeting to 03.09.2024.
- f. On 31.08.2024, the Applicant learnt from the website of this Tribunal, that the Respondent No.1 had filed an IA 671/2024 on 31.08.2024 without any intimation to the CoC. Due to the substantial and improper derogation of the timelines under this Code, Applicant filed IA 657/2024 seeking to replace the IRP and sought to mention it before this Tribunal on 03.09.2024. On 03.09.2024 at 10:50AM, the Applicant received a letter backdated to 01.09.2024 from the Respondent No.1 classifying the Applicant's claim as contingent and removing him from the CoC, marked as **Annexure U (COLLY)** to the Application.
- g. Thereafter, on 3<sup>rd</sup> September 2024, Senior Advocate appearing for Respondent No.1, submitted to the Court that (a) the first meeting of the reconstituted CoC had been convened at 10:00AM IST on 3<sup>rd</sup> September 2024 and had already concluded and (b) the only action taken in the meeting was that the Respondent No. 1 was confirmed as the RP of the Corporate Debtor. Hence, this Application.



3. The Respondent No.1 filed objections vide Diary No. 6618 dated 22.11.2024 contending that:

- a. Applicant No. 2 on 02.09.2024 and subsequently on 06.09.2024 has filed a complaint with IBBI against Respondent No.1, alleging fraudulent conduct with respect to reconstitution of the CoC. Further, IA 657/2024 seeking replacement of IRP has been filed on the same grounds before this Tribunal. Respondent No.1 submits that only IBBI has the jurisdiction to investigate facts forming the basis for disciplinary proceedings and this Hon'ble Tribunal would not have the jurisdiction. Thus, having elected to initiate proceedings against Respondent No. 1 before the IBBI and ICAI, the Applicant ought not to be permitted to also initiate parallel proceedings against Respondent No. 1 on the same cause of action.
- b. Respondent No.1 has filed a withdrawal application before this Hon'ble Tribunal in view of the liberty granted by the Hon'ble Supreme Court and the directions of this Hon'ble Tribunal in the order dated 12.11.2024. In the event the Withdrawal IA is allowed by this Hon'ble Tribunal and the captioned Company Petition is allowed to be withdrawn, the present Application would become infructuous.
- c. Respondent No. 1 submits that the IRP has the power and authority to reclassify a creditor's claim. Further submits that the IRP retains the authority to verify the authenticity and accuracy of the claims submitted to him. While it is firmly established that the powers of the IRP are not adjudicatory in nature, neither the IBC nor the CIRP Regulations impose any restrictions preventing him from revising the status of the claims upon receiving the additional information to that effect.
- d. Respondent No.1 states that Applicant's claim is a contingent claim, as the Applicant's claims remains un-crystallized and are subject to adjudication in multiple proceedings. Applicant's authority to file claims on behalf of the Lenders remains unclear as the acceleration of the term loan, validity of the Disqualification



Notices is undecided and sub-judice before US Courts. Further, the Corporate Debtor has also challenged the Section 7 application filed by Applicant No.2 on grounds that (a) Applicant No.2 lacks authority to represent the Lenders it claims to represent due to the disqualifications, and (b) the validity of the acceleration of the Term Loan, and therefore the invocation of the Onshore Guarantee, is under challenge.

- e. Respondent No.1 has not acted in a fraudulent manner and that Applicant No.2' conduct is malafide, as it has made frivolous allegations and in view of the aforementioned facts, it is submitted that the present Application maybe dismissed in limine and with costs.
5. The Applicant No.2 by controverting various averments made in the said Reply, has filed Rejoinder dated 02.12.2024 with diary No. 6806,by inter-alia stating as follows:
- a. It is wrong to contend that filing the instant Application amounts to multiple proceedings as Applicant made a complaint before the IBBI and IBBI is empowered to conduct investigation on allegations of misconduct and if the allegations are found to be correct, the Disciplinary Committee constituted under the Regulations, will be empowered U/s 22 of Code R/w Regulations 13 of IBBI Inspection Regulations to suspend Respondent No. 1 registration or other penalties prescribed. However, the authorities constituted under IBBI cannot grant the reliefs as asked for in the present Application.
  - b. The Respondent No.1 has not only breached his statutory duties by failing to comply with timelines mentioned under the Code but has also maliciously acted outside the scope of his powers in an attempt to defraud the Applicant and mislead the Tribunal. In the light of orders of Hon'ble HC of Karnataka passed on 30th October, 2024 in WP No. 28827 of 2024, Withdrawal Application U/s 12 A of Code can be decided only after deciding various IAs filed in this case including present



IAs within prescribed timeline mentioned in the order. And the withdrawal Application filed is in gross violation of the judgement of Apex Court passed in CA No. 9986 of 2024 dated 23 October, 2024. Since the validly constituted COC alone has the authority to take a decision to file withdrawal Application and the Applicant herein holds 99.41 % of voting rights, there cannot be any withdrawal Application filed by first Respondent as per extant law, without consent of the COC. The Applicant No.1 also holds 0.41 % voting share in COC. And both the Applicants have preferred Applications for replacement of firsts Respondent, which is pending disposal.

- c. The Respondent No.1 does not have any authority to adjudicate and reclassify a claim after verification, after validly constituting COC on 21st August, 2024 as per law. It is alleged that the first Respondent was completely not available either to the Applicant or their Senior Counsel since 27th August, 2024. However, he has sent e-mail to the Applicant attaching a letter which purported to re-constitute validly constituted COC and classified its claim as contingent vide his purported letter dated 3rd September 2024. No letter dated 1st September, 2024 was never received. He has filed IA No 671 of 2024 without any notice to the Applicant.
- d. The first Respondent does not have any adjudicatory or quasi-judicial power under the extant provisions of Code and he has only administrative powers. Once the claim of Applicant has been verified and the claim amount was made precise, the first Respondent had no power of authority to consider part of the claim as 'Contingent' much less the entire claim. Filing of the withdrawal Application is grossly in contempt of order of Apex Court and the Hon'ble High court. It is therefore, urged the Tribunal to allow the Application as prayed for.



6. We have heard all the learned Counsels appearing for the Parties, have carefully perused all the pleadings available on record and the various orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Karnataka, as mentioned supra, extant provisions of the Code and rules made by IBBI and the settled position of law on the issue.
7. The learned Senior Counsels along with their junior counsels have once again reiterated their respective stand taken in their pleadings, as briefly stated supra and thus urged the Tribunal to allow their prayers. Since elaborate pleadings and oral arguments made by the respective Senior Counsels, we are not again reiterating those arguments here for brevity of order.
8. Before advertizing specific contentions raised in the instant Applications, the basic facts, which are not in controversy are stated below:
  - a. The Tribunal being Adjudicating Authority, vide its order dated 16.07.2024 passed in C.P.(IB) No. 149/BB/2023 has initiated CIRP against Think and Learn Private Limited/Corporate Debtor, filed U/s 9 of the Code with consequential directions by appointing Mr. Pankaj Srivatsava/ Respondent No.1 as the Interim Resolution Professional of the Corporate Debtor etc. Aggrieved by this order, the Corporate Debtor has filed an appeal in Hon'ble NCLAT, Chennai Bench. In the meanwhile, Applicant No.1 submitted its claim to Interim Resolution Professional/Respondent No.1 amounting to Rs.47,12,00,000/-in Form-C in its capacity as Financial Creditor under Regulation 8 of the IBBI (IRP for Corporate Persons) Regulations, 2016) in pursuant to Public Announcement dated 17.07.2024 made by the Respondent No. 1.
  - b. The Hon'ble NCLAT vide its order dated 02.08.2024 passed in Company Appeal (AT) (CH) (Ins.) No. 262/2024 set aside the initiation of CIRP against the Corporate Debtor due to settlement



between Suspended Directors of the Corporate Debtor and Respondent No.2. Aggrieved by this order, Glass Trust Company LLC has filed an appeal before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India stayed the operation and effect of the Order dated 02.08.2024 passed by the Hon'ble NCLAT vide its order dated 14.08.2024 passed in Civil Appeal Diary No. 35406/2024 by restoring CIRP proceedings in question with directions to IRP/RP to hold the amount received towards settlement in an escrow account. Accordingly, the Respondent No.1 has constituted the Committee of Creditors of the Corporate Debtor in accordance with Provisions of the Code and Regulations made thereunder and comprising of the following members:

Name of the Committee of Creditor

- i. Glass Trust Company LLC
  - ii. Aditya Birla Finance Limited
  - iii. Incred Financial Services Limited
  - iv. ICICI Bank Limited
- c. However, the first Respondent without any proper reasons and the authority and without notice has reclassified the Applicant No.1 as an Operational Creditor instead of Financial Creditor and modified the respective claim of Applicant No.2 as contingent.

**OPERATIVE PART:**

1. After considering various contentions raised by the Parties, the following issues arise for consideration in this present Application :
  - a. *Whether the IRP has the power to reconstitute the COC, without the leave of the Adjudicating Authority?*
  - b. *Whether the Respondent No. 1 has exceeded his authority conferred under law?*
2. As per extant provisions of Code and the settled position of law in catena of judgements rendered by various Courts and ultimately, the



Apex Court, the jurisdiction and powers of AA is broadly summary in nature unlike Civil Courts, where regular trial and adducing relevant evidence takes place to determine the issues in question. In this context, it is relevant to refer to the ingredients of Sections 7 of Code. To file an Application/Petition U/s 7 of Code, it is enough for AA to see primarily as to whether Default of claim has occurred or not and then subject to compliance of other procedure, a final order has to be passed by AA either to admit or reject. Definitions of various terms used in Code like Debt, default services etc., also indicate that the proceedings initiated under the Code are summary in nature. So naturally, the powers of IRP emanated from these broad powers conferred on the Tribunal.

3. There cannot be any dispute that IRP has to conduct CIRP in question in accordance with law, subject to the overall supervision of Adjudicating Authority. When IRP is appointed/approved by AA, the Authority which appoints them will have powers to remove/replace/pass suitable directions in the CIRP in question. It is true that IBBI will supervise the conduct of IRP and conduct investigations and take suitable disciplinary actions in appropriate cases. In any case, appointment or replacement of IRP absolutely vests with the Adjudicating Authority. Therefore, Respondent No. 1's objection to the remedy sought by Applicant No. 2 before the IBBI has no consequence on the proceedings and reliefs sought by the Applicant No. 2 before this Court.
4. The duties and responsibilities of IRP are clearly earmarked under the extant provisions of Code and the rules made by IBBI. The foremost duty of the IRP first is to take the control of the Corporate Debtor and initiate the process of inviting the claims by the Creditors. Once the above said two processes have been completed, in terms of Section 21 of the Code, the Interim Resolution Professional shall after collation of all claims received against the corporate debtor and determination of



the financial position of the corporate debtor, constitute a committee of creditors. Soon after constitution of COC, appropriate report shall be filed by the Adjudicating Authority as per Section 22 read with Regulation 17 of IBBI (IRP for Corporate Persons) Regulations, 2016 within two days after verification of claims received. The interim resolution professional shall hold the first meeting of the committee within seven days of filing the report.

5. For the better perusal of the matter at hand, we find it relevant to first enumerate the procedure & duties of the IRP once the CIRP is initiated. The IRP first is to take the control of the Corporate Debtor and initiate the process of inviting the claims by the Creditors. Once the above said two processes have been completed, the IRP is vested with the following duties under Section 21 of the IBC;

**“Section 21 Committee of Creditors**

*(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.*  
....”

6. That the IRP after collation of all the claims from all the Creditors, shall constitute COC and report the same to the Adjudicating Authority as per Section 22 read with Regulation 17 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

**“17. Constitution of committee.**

*(1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under sub-regulation (1) of regulation 12.*

*(2) The interim resolution professional **shall hold the first meeting of the committee within seven days of filing the report** under this regulation.*





*(3) Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22.”*

7. In the present case, the Hon’ble NCLAT vide its order dated 02/08/2024 in Company Appeal (AT) (Ch) (INS) No. 262/2024 had directed a stay on continuation of the CIRP initiated against the Corporate Debtor. However, the Hon’ble Supreme Court in Civil Appeal No.9986/2024, vide its order dated 14/08/2024, stayed the NCLAT order dated 02/08/2024 resulting in reinstating the CIRP proceedings.
8. When the matter stood thus, the IRP has constituted the CoC on 21/08/2024 in accordance with Section 18 (c) and Section 21 (2) of the Code with the above two Applicants as the Financial Creditors. As per the records at Pg. 437 & 438 of IA 820/2024, an email dated 21/08/2024 was sent by the IRP, the extract as communicated by the IRP is reproduced below:

*“Dear Members of the CoC,*

*This is in reference to the captioned matter. **In this regard, please note that the undersigned has constituted the Committee of Creditors (CoC) of Think & Learn Limited (Corporate Debtor)** in accordance with the provisions of the Insolvency & Bankruptcy Code, 2016 and the Regulations made thereunder, comprising of the following members:*

**1. Glas Trust Company LLC**

**2. Aditya Birla Finance Limited**

*3. Incred Financial Services Limited*

*4. ICICI Bank Limited*

*Accordingly, enclosed is the Notice of the 1st CoC Meeting of the Corporate Debtor which will be held on Tuesday, the 27th day of August 2024 at 7:00 PM IST at the Registered office of Think & Learn Pvt. Ltd. located at 2nd Floor, Tower D, IBC Knowledge Park, 4/1, Bannerghatta Main Road, Bengaluru, Karnataka, India.”*



9. Accordingly, the IRP has filed IA 942/ 2024, vide diary number 01441 dated 22.08.2024, wherein in Para 8 on Pg. 5 the IRP has said and is reproduced below:

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

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

- 10.Hence, it is clear that as on the first instance the IRP herein has constituted the Committee of Creditors and even proceeded to the extent of filing the constitution of CoC report before us in IA 942/2024.

- 11.Subsequently, the IRP herein has proceeded to '**reconstitute**' the CoC and striking the two financial creditors, Applicant No. 1 with 0.41% and Applicant No. 2 with 99.41% in the Corporate Debtor. It is also noted that the IRP has not provided any reasons or explanation to the creditors for reconstituting the Committee. The details of the 2<sup>nd</sup> constituted CoC is reproduced below, as mentioned in the IA 671/2024, filed on 31/08/24 with diary number 01477, filed by the IRP, wherein Para 8 reflects the reconstitution done by the IRP, same is reproduced below:

*"8. That on the basis of verification basis available information, the Applicant has constituted the Committed of Creditors in the matter of Think*



& Learn Private Limited on 21.08.2024 in accordance with Section 18 (c) and Section 21(2) of the Code as follows:

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

12. On perusal of the Rules and Regulations, it is clear that the IRP has been vested with the power to 'collate the claims' and constitute the Committee, however, such constitution has to be reported to the Adjudicating authority under Regulation 17, which in essentiality the approval of such Constitution under the IBC law, has to be from the Tribunal. Moreover, time and again in various judgments of Hon'ble NCLAT and Supreme Court the principle has been made clear that the IRP/RP do not have any 'adjudicating power.' One such finding in the case of *Mr. K.N Rajkumar v V Nagarajan*, (2021) ibclaw.in 223 NCLAT, which was further affirmed by Hon'ble SC in *Mr. K.N Rajkumar v V Nagarajan* [(2021) ibclaw.in 150 SC] wherein it was clearly held that:

*"On a careful consideration of the respective contentions advanced on either side, this Tribunal is of the considered view that **the 'Resolution Professional' has no 'Adjudicatory Power' under the I & B Code, 2016 and further that when once the 'Committee of Creditors' is/was formed, the 'Resolution Professional' cannot change the 'Committee of Creditors'**. Suffice it for this Tribunal to make a pertinent mention that **the Resolution Professional/1st Respondent cannot constitute a 'Committee of Creditors' afresh, in negation of the earlier constituted 'Committee of Creditors'**"*

*[Emphasis Supplied]*

13. Further, it is the argument of the IRP that the initial Committee of the Creditors was formed '**provisionally**'. Reliance is placed on the email



communication of the IRP to the Applicant No. 1, on Pg. 488 of IA 820/2024, the extract as communicated by the IRP is reproduced below:

*“As you are aware the undersigned has been appointed as an Interim Resolution Professional (‘IRP’) by order dated 16 July 2024 passed by the National Company Law Tribunal, Bengaluru (“NCLT”) in CP (IB) No. 149/BB/2023. As the IRP, under Section 18 of the Insolvency and Bankruptcy Code, 2016 (IBC), the undersigned is required to verify the claims of the creditors filed pursuant to the Public Announcement. In the present case, the undersigned received the Claim Form from GLAS on 31.07.2024 and **the undersigned provisionally admitted its Claim subject to further verification.**”*

14. Therefore, it is the argument of the IRP that the Claims were admitted only **‘provisionally’**. Moreover, the IRP relies Regulation 14 arguing that the RP is entitled to revise the Constituted Committee of further findings. The Regulation 14 is reproduced below:

**“Regulation 14: Determination of amount of claim.**

**14.** (1) *Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.*

(2) *The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.”*

15. On a bare reading of the Regulation above, it is clear that this regulation is ‘quantifying’ in nature that is the IRP/RP is only entitled to revise the claims, which is again to be at the leave of the Tribunal and cannot act in his own accord. Reliance is further placed on the order of Hon’ble NCLAT dated 05.12.2022 in *Union Bank of India v. Rajdeep Clothing & Advisory*



*Pvt Ltd and Ors. (CA (AT) (Ins.) No. 399 of 2021, NCLAT Principal Bench), wherein Para 23A and 23B it is explicitly stated that:*

*“23A. .... First and foremost question which needs to be asked is whether in the garb of exercise of such duty IRP/RP can review the status of a creditor i.e., from Financial Creditor to Operational Creditor or vice-versa or a non-related Financial Creditor can be treated as related party without prior approval of Adjudicating Authority. From the perusal of all provisions as well as as regulations it is apparent that no such power exists either with RP or COC.*

*.....*

*Now, coming to the powers of IRP/RP, it is apparent that they are responsible for collating the claims, revising the claims from time to time based upon information coming to their possession or being provided by the creditors. **We have found no provision in the CODE or Regulations which permit for review of status of a creditor as all provisions focus only on the amount of claim. Thus, IRP /RP cannot, on its own, review and reverse his own earlier decision without approval of Adjudicating Authority.***

*.....*

***We are further of the view that scope of updating exercise is limited and confine to the determination of quantum of claim and, by no stretch of imagination it gives any power to the IRP /RP to review the status of a creditor.***

*.....*

*23B. The other important question is whether constitution of COC can be changed by RP and if so, under what circumstances and to what extent. It is an admitted position of law that IRP is required to constitute COC in terms of provisions of Section 21(1) of the CODE. The RP is also entitled to determine the voting share to be assigned to each Financial Creditor, being a member of COC and who is not a related party as per the provisions of Section 24(6), 24(7) r.w. first proviso to Section 21(2) of the CODE. As per Regulation 12(3), if a claim of a Financial Creditor is admitted under Regulation 13(2), such Financial Creditor shall be included in COC from the date of admission of such claim. It is specifically provided in proviso to Regulation 12(3) that any decision taken prior to such inclusion would remain valid in spite of change of constitution of COC because of such re-constitution of COC. Thus, the only situation which has been prescribed in the CODE r.w. Regulation 12 (3) is this one. This re-constitution happens only because of admission of a claim of a Financial Creditor subsequently **meaning thereby the***



**Financial Creditors who have already been included cannot be excluded from COC by RP for any reason of whatsoever nature.....”**

16. In order to reinforce the point and ensure understanding, we make it clear that the role of the IRP and RP is non-adjudicatory in nature, as they are expected to act as **facilitators**, but the NCLT holds the adjudicatory powers. We are reiterating again that as per the IBC there is no provision to ‘provisionally’ constitute the CoC, the CoC once constituted is final and cannot be revised by the IRP/RP without the interference of the Adjudication Authority.

17. In regards to Respondent No.1’s decision to re-classify Applicant No.1 as Financial Creditor and to re-classify the claim of Applicant No.2 as contingent, reference must be made to the case of *Mr Rajnish Jain v. BVN Traders and Others [Company Appeal (Insolvency) No. 519 of 2020]*, wherein Hon’ble NCLAT held that:

*“59. Based on the above discussion, we clarify and hold that during CIRP, the IRP is authorized to collate the claims, and based on that he is empowered to constitute the Committee of Creditors. We hold that the Resolution Professional may add to existing claims of claimants already received, or admit or reject further Claims and update list of Creditors. **But after categorization of a claim by the IRP/Resolution Professional we hold that they cannot change the status of a Creditor.** For example, if the Resolution Professional has accepted a claim as a Financial Debt and Creditor as a Financial Creditor, then he cannot review or change that position in the name of updation of Claim. It is also to be clarified that while updating list of Claims the Resolution Professional, can accept or reject claims which are further received and update list.”*

Further on the issue of reclassification the NCLAT also referred to the judgements of *M/s. Dynepro Private Limited v. Mr. V. Nagarajan [Company Appeal (Insolvency) No. 229 of 2018]*, wherein it was held that a resolution professional lacked the jurisdiction to decide the claim of one or other



creditor or its categorization and *Swiss Ribbons Private Limited and Another v. Union of India and Others* [Writ Petition (Civil) No. 99 of 2018], wherein the Hon'ble Supreme Court held that a resolution professional has no adjudicatory power.

18. It must also be noted that Hon'ble Supreme Court while disposing of the Civil Appeal No. 9986/2024 and the SLP no. 21023/2024, has recognized the claim of Applicant No.2 stating that it was verified by Respondent No.1 on 19<sup>th</sup> August 2024 and observed as follows:

*"The appellant is not an unrelated party to the CIRP, but is in fact, an entity whose claims had been verified by the IRP vide letter dated 19<sup>th</sup> August 2024."*

Hence, in view of the aforementioned, we hold that the re-classification of Applicant No.1 as Operational Creditor and the claim of Applicant No.2 as contingent done by IRP was beyond the powers provided by the Code and therefore not valid.

19. In response to Respondent No. 1's objection regarding the disqualification of lenders and Applicant No. 2's authority to represent the lenders' claim, we note that the claims are currently pending before the US Courts, and no stay has been issued on the disqualification notice, nor has any decision been made declaring it invalid. Consequently, we are of the view that this does not pose an obstacle to the present application. Additionally, the disqualification of the lenders does not alter the liability of the corporate debtor, nor does it extinguish Applicant No. 2's independent right to seek remedial action in the event of a default. Further, the Delaware Supreme Court has upheld the event of default with respect to the Term Loan, as affirmed by the Delaware Chancery Court stating that there is a clear event of default and the Applicant was entitled to accelerate the term loan. The same has also been communicated vide email dated 25/09/24 by the Applicant to the Respondent No. 1.

20. It is observed that the IRP as mentioned above, in the first instance has filed an IA 942/2024 to take on record the 1<sup>st</sup> CoC report, finding that the Glass Trust Company LLC and Aditya Birla Finance Limited were the



Creditors and part of the CoC. The said IA as per Regulation 17 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was filed before this Tribunal on 21/08/24.

21. There were certain objections raised by the Registry of this Tribunal which were not rectified by the IRP, resulting in the non-numbering of the said 1<sup>st</sup> CoC IA. However, the IRP at his own accord has changed the Constituted CoC and filed another IA as 671/2024. On perusal of this IA, it is observed that the IRP has blatantly failed to bring it to the notice of the Tribunal that the present IA 671/2024 is consequent to the reconstitution of CoC done by him. IRP has filed this IA as if the present IA 671/2024 is the only CoC Report filed by the IRP, and there is no mention of IA 942/2024 having been earlier made by the IRP alluding as if the latter application of the IRP does not exist. We find this to be an act of misinformation and misleading this Tribunal and is in gross violation of the Duties of the IRP as an officer of the Court.

22. Section 22 of the Code read with Regulation 17 of IBBI (CIRP) Regulations, 2016, mandates the first CoC meeting to be held within 7 days of Constitution of CoC. In the instant case, the CoC was constituted on 21/08/2024, therefore the statutory deadline for holding the first CoC meeting was 28/08/2024, which was not followed. The IRP's derogation from the mandated timeline under the IBC, 2016 was neither mentioned nor brought to the attention of this Tribunal by the IRP.

23. Another aspect which needs to be paid attention to is, the letter dated 1<sup>st</sup> September 2024, through which the IRP categorized the claims of Applicant No. 2 as contingent. The metadata and document properties of this letter were analyzed by Applicant No. 2 and it was discovered that the letter was in fact created on 2<sup>nd</sup> September 2024 at 05:19 AM and backdated by the IRP as 1<sup>st</sup> September 2024. When pointed out by the Applicants, the IRP in his Statement of Objection, filed on 22/11/24 with diary no. 6618, has replied in Para 34 stating, as reproduced below:





*“34. On the same day, by way of this letter dated 03.09.2024 (mistakenly dated as 01.09.2024), Respondent No.1 wrote to Glas.....”*

It is observed that the IRP despite having multiple opportunities to disclose such information has for the first time admitted this in his objections, almost 10 weeks sending said letter. Sequence of events and actions done by the IRP, specifically making two applications without disclosing the first as well as backdating the aforementioned letter does not appear to have been done inadvertently.

24.Further it was also observed by this Tribunal in Para 4 vide Order dated 18/12/2024, as reproduced below:

*“4. Ld. Sr. Counsel for GLAS Trust also stated that the constitution of the CoC in both the aforementioned I.As are of same date i.e. on 21.08.2024. This has been specifically mentioned by the RP in para 8 at page 5 of I.A.No.942/2024 and again in para 8 of page 5 of I.A.No.671/2024. Therefore, it is reiterated that the RP has filed two different I.As before this Tribunal regarding the constitution of the CoC and these two I.As are entirely different from each other. Therefore, it is stated by the Ld. Sr. Counsel for GLAS Trust that the RP has committed grave irregularity in violation of the provisions of the Code and Regulations, and also has given a false Affidavit regarding the constitution of two different CoC's with different Members, and in the both IA No.942/2024 and IA No.671/2024 in that two CoC's were constituted on same date i.e. 21.08.2024. On the other hand, in the affidavit filed with the two Applications one is dated 22.08.2024 in I.A.No.942/2024, and another is dated 30.08.2024 in I.A.No.671/2024, the RP has confirmed that the facts mentioned in these Applications are correct, and that no part of the affidavit is false, and nothing material has been concealed.”*

25.For better perusal of facts, certain regulations have been reproduced from the code of conduct as specified in the Schedule 1 of the IBBI (Insolvency Professionals) Regulations, 2016:

- i. Clause 1: **An insolvency professional must maintain integrity by being honest, straightforward, and forthright in all professional relationship.***



- ii. **Clause 3:** *An insolvency professional must act with objectivity in its professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.*
- iii. **Clause 11:** *An insolvency professional **must inform such persons under the Code as may be required, of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.***
- iv. **Clause 12:** *An insolvency **professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable.***
- v. **Clause 13:** *An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan its actions, and promptly communicate with all stakeholders involved for the timely discharge of its duties.*
- vi. **Clause 14:** *An insolvency professional must not act with mala fide or be negligent while performing functions and duties under the Code.*

26.Hence, it is clear from the aforementioned that the IRP has a duty to assist the Tribunal with integrity in an honest and fair manner and the conduct of the IRP in the present case has been filed with the intent to mislead the tribunal. The actions and decisions taken by the IRP are prejudicial to the interests of the CIRP process outlined by the IBC, 2016 and to the stakeholders. Further, the conduct of IRP is not fit and proper as expected from an officer of the Tribunal. The above conduct on part of IRP needs to be dealt by way of disciplinary proceeding by the IBBI. Hence, the IBBI may conduct the necessary investigation in this matter.

27.In light of the facts and circumstances set forth above, and upon due consideration of the submissions made by the respective parties, the present Applications **IA 660/2024 and IA 820/2024 in Company**



**Petition (IB) No. 149/BB/2023 stands disposed of.** With the following directions:

- a. The reconstitution of the Committee of Creditors carried out by the Interim Resolution Professional on 31<sup>st</sup> August 2024 is hereby set aside. The Committee of Creditors constituted on 21<sup>st</sup> August 2024 is upheld and shall remain in effect.
- b. The Interim Resolution Professional is directed to convene a meeting of the Committee of Creditors as constituted on 21<sup>st</sup> August 2024 and submit their recommendation on appointment of the Resolution Professional.
- c. The resolution passed by the reconstituted Committee of Creditors on 3rd September 2024, which appointed the Interim Resolution Professional as the Resolution Professional, is hereby set aside. In addition, any subsequent resolutions, if passed by the reconstituted CoC, are also nullified.
- d. The Applicant No. 1, Aditya Birla Finance Limited is hereby restored to the status of a Financial Creditor, with all attendant rights, privileges, and obligations, as envisaged under the Code and letter dated 05/09/2024 re-classifying Applicant No.1 as Operational Creditor is set aside.
- e. Accordingly, consequential prayers are dealt with.

**-Sd-**

**RAVICHANDRAN RAMASAMY**  
**MEMBER (TECHNICAL)**

**-Sd-**

**K.BISWAL**  
**MEMBER (JUDICIAL)**