

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.120/2025 (IA Nos.329 , 330,
381,406 & 405 /2025)

IN THE MATTER OF:

Byju Raveendran, Suspended Director
and Promoter of M/s. Think and Learn Pvt. Ltd. ...Appellant

Vs.

Aditya Birla Finance Ltd. & 3 Ors. ...Respondents

Present :

For Appellant : Mr. Guru Krishnakumar, Senior Advocate Mr. Abhijit Sinha, Advocate Mr. V. Shyamohan, Advocate Ms. Sradhaxna Mudrika, Advocate Ms. Isha Ghai, Advocate Ms. Anshika Bajpai, Advocate Ms. Vrinda Baheti, Advocate Ms. Riya Sara Renchen, Advocate Mr. Vishesh Goel, Advocate

For Respondents : Mr. Aparajith Vishwantath & Ms. Sneha Parthasarathy, Advocates for R1

Mr. Abhinav Vasisht, Senior Advocate Ms. Pooja Mahajan Mr. Arveena Sharma Mr. Savar Mahajan Mr. Ichchha Kalash Ms. Samridhi Shrimali Ms. Lakshana Viravalli Ms. S. Madhusmitha Ms. Akshita Sachdeva Jaitly, Advocates for R2

Mr Krishnendu Datta, Senior Advocate with Prateek Kumar, Raveena Rai, Moha Paranjpe, Mr. Sidhant Grover, Adv. for Respondent No. 3

Ms. Haripriya Padmanabhan, Senior Advocate Ms. Pooja Dhar, Advocate Mr. Vishal Sinha, Advocate Ms. Shreya Nair, Advocate Mr. Pratul Pratap Singh, Advocate for IA No. 405/2025

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by Byju Raveendran, suspended director and promoter of M/s Think and Learn Pvt. Ltd. under Section 61 of the Insolvency and Bankruptcy Code, 2016 to assail the validity of the order passed by the NCLT, Bengaluru Bench dated 29.01.2025 by which it had disposed of two

applications bearing I.A No. 660 of 2024 and I.A No. 820 of 2024 by a common order, on the ground that identical issues are raised in these applications, with the following directions:-

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

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

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

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

e. Accordingly, consequential prayers are dealt with.”

2. I.A No. 660 of 2024 was filed by Aditya Birla Finance Limited/ Respondent No. 1 on 10.09.2024 under Section 60(5) of the Code with the following prayers:-

“a) set aside the decision made by the Respondent in respect of the Applicant's classification as an Operational Creditor;

b) direct Respondent to exclude the Applicant from Annexure S List of Operational Creditors dated 30th August 2024 and to consider the Applicant's claim as a ‘financial debt’ within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016;

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

3. The basic facts leading to the filing of the aforesaid application are that CP (IB) No. 149/BB/2023 filed by the Board of Control for Cricket in India (BCCI)/Respondent No. 4/Operational Creditor against M/s Think and Learn Pvt. Ltd. (CD) was admitted on 16.07.2024 and Pankaj Srivastava (Respondent No. 2) was appointed as the IRP.

4. The IRP after having been appointed as such, made public announcement on 17.07.2024 to invite claims from the creditors of the CD. Respondent No. 1 submitted its claim of Rs. 47,12,00,000/- in Form C as financial creditor in terms of Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (in short ‘Regulations’).

5. In the meantime, the order of admission dated 16.07.2024 came to be challenged in appeal before the Appellate Authority.

6. The Respondent No. 2, vide its email dated 02.08.2024, asked Respondent No. 1 to provide the details of the bank guarantee documents, details of security realisation and other relevant agreements and documents in support of their claim whereas on the same date i.e. 02.08.2024 CA (AT) (CH) (Ins) No. 262 of 2024 was allowed by the Appellate Authority on the basis of a settlement arrived at between the parties therein.

7. The Respondent No. 3 (Glass Trust Company LLC) challenged the order dated 02.08.2024 in appeal before the Hon’ble Supreme Court in which, vide

order dated 14.08.2024, operation and effect of the order dated 02.08.2024 was stayed and as a result thereof, the CIRP proceedings were restored. The amount paid by the CD to Respondent No. 4 was further directed to be kept in an escrow account.

8. The Respondent No. 2, vide email dated 21.08.2024, informed both Respondent No. 1 and 3 about the constitution of the CoC with the following members, namely, Glass Trust Company LLC, Aditya Birla Finance Ltd., Incred Financial Services Ltd. and ICICI Bank Ltd.

9. The Respondent No. 2 informed the members of the CoC that 1st meeting of CoC of the CD shall take place on 27.08.2024 and informed Respondent No. 1 vide letter dated 21.08.2024 that its claim of Rs. 47.12 Cr. is verified subject to submission of certain documents and queries.

10. The Respondent No. 1, vide its mail dated 02.09.2024, responded to the queries raised by Respondent No. 2 and submitted that amount claimed is the Financial debt.

11. The Respondent No. 2, vide mail dated 26.08.2024 cancelled the first meeting of the CoC which was scheduled to be held on 27.08.2024, on the request of one of the members of the CoC and postponed it to 30.08.2024. Simultaneously, Respondent No. 2 (IRP) reclassified Respondent No. 1 as an operational creditor which was reflected in the revised notice and agenda of the first meeting of the CoC dated 01.09.2024.

12. Aggrieved by this action of Respondent No. 2, application bearing I.A No. 660 of 2024 was filed by Respondent No. 1 with the prayers made therein which have already been reproduced herein before.

13. The Application was contested by Respondent No. 2 who contended that the claim of Respondent No. 1 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 and that since all the relevant documents were not received, therefore, he again wrote to Respondent No. 1 on 02.08.2024 to furnish them and then based on his analysis of the documents that were provided, found that Respondent No. 1 should have been classified as an operational creditor and not as a financial creditor.

14. It is further alleged that the IRP issued a fresh notice of first meeting of the CoC which was scheduled to be held on 03.09.2024 and since Respondent No. 1 was reclassified as an operational creditor on 02.09.2024, he shared certain documents to substantiate his claim as a financial creditor.

15. It is further alleged that Respondent No.1, vide letter dated 05.09.2024, objected to its reclassification. The Respondent No. 1 filed the rejoinder and alleged that business agreement dated 28.10.2020 and its subsequent addendum and amendments were entered into to procure finance from it in connection with the purchase of CD services and products and not mere services as alleged by the Respondent No. 2 to classify it as an operational creditor under Section 5(21) of the Code. It is also alleged that documents submitted vide mail dated 02.09.2024 and 06.09.2024 support their contention that the amount claimed by Respondent No. 1 was a financial debt and not the operational debt.

16. I.A No. 880 of 2024 was filed by Respondent No. 3 under Section 60(5) of the Code in which the following prayers were made by it:-

“(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.”

17. According to Respondent No. 3, after the admission of the application on 16.07.2024 and pursuant to public announcement dated 17.07.2024 it had submitted its claim of Rs. 11432,98,87,753/- on 27.07.2024. However, the order dated 16.07.2024 was set aside on 02.08.2024 which was stayed in appeal on 14.08.2024 by the Hon’ble Supreme court. The claim of Respondent No. 3 was verified on 19.08.2024 by Respondent No. 2 with the advice to submit the notarized/apostilled documents in due course which were hand delivered on 20.08.2024. The CoC was constituted on 21.08.2024 with Respondent No. 3 as a member besides other three members, namely, Respondent No. 1, Incred Financial Services Ltd. and ICICI Bank Limited and the first meeting of the CoC was fixed for 27.08.2024. The said meeting dated 27.08.2024 was rescheduled to 30.08.2024 which was further adjourned to 03.09.2024 by Respondent No. 2.

18. It was alleged that by Respondent No. 3 that they received a letter backdated as 01.09.2024 from Respondent No. 2 informing that their claim has been classified as contingent and hence they are removed from the CoC and that on 03.09.2024 it was submitted on behalf of the Respondent No. 2 before the Tribunal that first meeting of the reconstituted COC was convened and the only action taken in the meeting was that Respondent No. 2 was confirmed as RP of the CD.

19. This application was also contested by the Respondent No. 2 by filing the reply in which he alleged that Respondent No. 3 had filed an application I.A No. 657 of 2024 on 02.09.2024 before the Tribunal seeking the replacement of the RP and subsequently on 06.09.2024 filed complaint with IBBI against him alleging about his fraudulent act regarding reconstitution of CoC. In respect of the issue of replacement of RP, he has alleged that only IBBI has the jurisdiction to investigate into the facts by way of disciplinary proceedings and once the proceedings have been initiated before the IBBI, the Respondent No. 3 cannot be permitted to initiate parallel proceedings before the Tribunal on the same cause of action. He also contended in his counter that claim of Respondent No. 3 is a contingent claim because the claims submitted are subject to adjudication in multiple proceedings and therefore, Respondent No. 3 was removed from the CoC and was accordingly reconstituted.

20. The Respondent No. 3 filed the rejoinder to the counter of Respondent No. 2 stating that Respondent No. 2 had no authority to adjudicate and to reclassify a claim after verification, after validly constituting CoC, on 21.08.2024 as per law.

21. On the basis of the aforesaid pleadings, the Tribunal framed two issues, namely, (i) whether the IRP has the power to reconstitute the CoC, without the leave of the Adjudicating Authority? and (ii) whether the Respondent No. 2 has exceeded his authority conferred under law?

22. In so far as the first question is concerned, the Tribunal has referred to email dated 21.08.2024 sent by the Respondent No. 2 to both Respondent No.

1 and 3. The extract of the said email has also been reproduced in the impugned order which is also reproduced hereinunder for a quick reference :-

“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.”

23. It has also been recorded by the Tribunal that Respondent No. 2 had filed an application I.A No. 942 of 2024 dated 22.08.2024 in which the following averments were made:-

That on the basis of verification basis available information, the Applicant has constituted the Committee 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 (%)
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%

24. It was thus observed that the Respondent No. 2 had constituted the CoC on 21.08.2024 and had reported the same to the Tribunal on 22.08.2024 vide his I.A No. 942 of 2024.

25. The controversy in this case has arisen when the Respondent No. 2 decided to reconstitute the CoC by striking off two major financial creditors, namely, Respondent No. 1 and Respondent No. 3 who were having 0.41% voting share and 99.41% voting share respectively.

26. The Reconstituted CoC dated 31.08.2024 had only one financial creditor, namely, Incred Financial Services Ltd. with 100% voting share, even though it was having 0.18% share earlier. The said table is also reproduced as under:-

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

27. The Tribunal made a reference to a decision of this court in the case of Mr. K. N. Rajkumar Vs. V Nagarajan, (2021) ibclaw.in 223 NCLAT which was affirmed by the Hon'ble Supreme court and reported as (2021) ibclaw.in 150 SC in which it has been 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'

28. The Tribunal has also discussed Regulation 14, relied upon by the Respondent No. 2 and referred to a decision of this Appellate Tribunal in the case of Union Bank of India Vs. Rajdeep Clothing & Advisory Pvt. Ltd. & Ors., CA (AT) (Ins) No. 399 of 2021 in which it has been held that there is no provision in the Code or Regulations which permit review of status of a creditor as the provision focuses only on the amount of claim. Thus, IRP/RP, on its own cannot review and reverse his own earlier decision without approval of AA.

29. In the aforesaid judgment, it has further been held that scope of updating exercise is limited and confined 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 the creditor.

30. The Tribunal after detailed discussion, disposed of both the applications with direction that CoC which was constituted on 21.08.2024 shall remain in effect, that status of Respondent No. 1 was restored to financial creditor and that the conduct of the Respondent No. 2 was fully deprecated.

31. Counsel for the Appellant has argued that since the Tribunal has recorded a categorical finding of misconduct and violation of the duties by the IRP and has also ordered for disciplinary proceedings to be taken against him by the IBBI, therefore, all action taken by him including that of the constitution of the CoC on 21.08.2024 shall have to be declared void. He has

further submitted that the claim of Respondent No. 3 was only provisionally assessed based upon incomplete documents at the time when the CoC was first constituted on 21.08.2024 that in respect of Respondent No. 1, the IRP had also failed to examine the claim of Respondent No. 1 before declaring its status as financial creditor because the relationship between the CD and Respondent No. 1 has arisen from a service agreement and did not involve a financial facility and therefore, there has been no error in reconstitution of the CoC on 31.08.2024. He has further submitted that the Tribunal has violated the principle of natural justice because I.A No. 841 of 2024 was still pending and the Appellant was not heard before passing the impugned order. He has also submitted that the purported constitution of CoC on 31.08.2024 is not a reconstitution but merely an updation based on proper verification because the constitution of CoC on 21.08.2024 was provisional as Respondent No. 2 did not have all the documents to verify the claim and the information sought was not provided, that I.A No. 942 of 2024 was filed by IRP because the constitution of CoC on 21.08.2024 has to be reported and approved by the Tribunal in terms of Regulation 17 of the Regulations but no order was passed by the Tribunal on the same and in any case, the CoC constituted on 21.08.2024 was, in any case, a properly constituted CoC because ICICI Bank was included in it despite having nil claim.

32. During the pendency of this appeal, I.A No. 405 of 2025 has been filed by Riju Ravindran who is also a suspended director of the CD for his impleadment as Respondent No. 5.

33. Counsel for the Applicant has submitted that the payment towards the settlement of the dues of the OC was made by the Applicant. It is further

submitted that the Applicant had also filed an impleadment application I.A No. 842 of 2024 on 15.11.2024 before the Tribunal which remained pending. It is also submitted that the Tribunal should not have passed the impugned order without deciding I.A No. 942 of 2024 and 671 of 2024 dealing with the constitution of the CoC.

34. On the other hand, Counsel appearing on behalf of Respondent No. 1 has submitted that the Appellant has no locus standi to challenge the impugned order and has referred to a decision of this Tribunal in the case of Gurdeep Singh Sahni Vs. Berger Paints India Ltd., (2017) SCC OnLine NCLAT 437. He has further submitted that the Application no. 405 of 2025 seeking impleadment of Riju Ravindran in this appeal is not maintainable because he had filed the appeal i.e. CA (AT) (Ins) No. 58 of 2025 against the very same impugned order in which a different relief was sought but the same was dismissed on 07.02.2025. He has also submitted that the issue being agitated in this case is qua the reconstitution of CoC for which the IRP had no jurisdiction / power as has been held by this Appellate Tribunal in the case of Union Bank of India Vs. Rajdeep Clothing & Advisory Pvt. Ltd., 2022 SCC NCLAT 4699 and that the role of the IRP is administrative in nature and not adjudicatory who works as facilitator and the adjudicatory functions are overseen by the CoC and the AA. Reliance has been placed in this regard upon the case of Swiss Ribbons Pvt. Ltd. Vs. Union of India, 2019 4 SCC 17 and also Ajay Kumar Goenka Vs. Toursim Finance Corporation of India, (2023) 10 SCC 545 and a decision of this Appellate Tribunal in the case of NPGCL & Anr. Vs. Ram Ratan Modi, 2023 SCC OnLine NCLAT 1168 in which it has

been held that the role of RP is administrative in contrast to the quasi judicial role of the liquidator.

35. He has further submitted that as per Regulation 17 of the Regulations, the IRP is required to submit a report to the AA certifying the constitution of the CoC within two days from the verification of the claim and after such submission, to hold a meeting of the CoC within 7 days of filing of such report. He has submitted that the constitution of CoC is an administrative ministerial act which does not require adjudication. He has also submitted that Respondent No. 2, after constitution of the CoC on 21.08.2024, filed his report on 21.08.2024 by way of an application I.A No. 942 of 2024 but deliberately chose not to cure the defects in the said application which carried the report of constitution of the first CoC and instead, in a clandestine manner, moved another application subsequently on 31.08.2024 on the same subject and pursued the said application in place of the application which was filed on 21.08.2024. It is submitted that this discrepancy on the part of the IRP was specifically mentioned by the Tribunal in the impugned order after a detailed discussion of the material on record and his conduct has been deprecated. It is further submitted that Respondent No. 2 on the basis of material available with him at that time, made Respondent No. 1 member of the CoC as Financial Creditor and excluded him in the second CoC on the pretext that it was an operational creditor.

36. Counsel for Respondent No. 3 has also submitted that Respondent No. 2 could not have reclassified its claim after constitution of the CoC on 21.08.2024 on the ground that its claim is contingent and could not have excluded him from the CoC which was constituted on 31.08.2024. It is also

submitted that after the impugned order was passed, I.A No. 942 of 2024 was disposed of after taking the report of the first CoC which was constituted on 21.08.2024. The order passed in I.A No. 942 of 2024 is as under:-

“This application is filed by the Applicant / RP under Section 18(C) and 21(1) of the Code r/w Regulation 17(1) of the Regulations to place on record the document certifying the constitution of the CD. The report is taken on record. Accordingly, I.A No. 942 of 2024 is disposed of”

37. It is also submitted that I.A No. 671 of 2024 which was also filed by Respondent No. 2 for taking on record the status report of the constitution of 2nd CoC was disposed of as infructuous. The said order is also reproduced as under:-

“This application is filed by the Applicant/RP under Regulation 18(C) and 21(1) of the Code r/w Regulation 17(1) of the Regulations seeking to take on record the report certifying the constitution of CoCs of CD. In light of the order dated 29.01.2025 by this AA in I.A No. 660 and 820 of 2024, the present application becomes infructuous. Therefore, I.A No. 671 of 2024 is disposed of as infructuous.”

38. Both the orders were passed on 17.02.2025 which were produced during the course of hearing of this appeal.

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

40. It is needless to mention that Respondent No. 2 had constituted the CoC on 21.08.2024 which may be referred to as the first CoC in which he

included four financial creditors, namely, Glass Trust Company LLC, Aditya Birla Finance Limited, Incred Financial Services and ICICI Bank Ltd.

41. It is also not in dispute that out of the four financial creditors, Respondent No. 3, namely, Glass Trust Company LLC raised a claim of Rs. 11,432,98,87,753/- which was verified as it is and was given voting share of 99.41%. Similarly, Respondent No. 1 claimed Rs. 47,12,00,000/- which was also verified as it is and was given a voting share of 0.41%. The Respondent No. 2 on the very next date i.e. 22.08.2024 filed the application bearing I.A No. 942 of 2024 as per Regulation 17 of the Regulation but when the registry of the Tribunal raised certain objections in the application, the IRP did not rectify it and as a result thereof, the application was not numbered.

42. On the other hand, Respondent No. 1, on his own accord, changed the constitution of CoC on 31.08.2024, showing it to have been constituted on 21.08.2024, in which he kept Incred Financial Services as the sole financial creditor with the claim amount of Rs. 20,34,52,440/- which was verified as such and with a voting share of 100% as against its voting share of 0.18% as reflected in the first CoC.

43. Respondent No. 2 filed an application on 31.08.2024, to place before the Tribunal, as per Regulation 17 of the Regulations, the reconstitution of the CoC and pursued this application which was numbered as I.A No. 671 of 2024 so that constitution of 2nd CoC gets approval of the Tribunal by taking it on record and deliberately did not mention about the first CoC which was constituted by him on 21.08.2024 and about the application already filed

under Regulation 17 of the Regulations about the said status of the CoC on record.

44. All these facts have been clearly noticed by the Tribunal in para 21 to 23 of the impugned order. The said paras read as under:-

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 1st 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 1st 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 2nd September 2024 at 05:19 AM and backdated by the IRP as 1st 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.

45. The Tribunal has also ordered for disciplinary proceedings by the IBBI against Respondent No. 2 and in this regard made the following observations in para 26 of the impugned order which are reproduced as under:-

“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.”

46. Although, Counsel for the Appellant and even the Applicant have argued vehemently that the impugned order is illegal and deserves to be set aside yet they have failed to cite any provision in the Code nor any precedent to the effect that the status of a creditor who has been made part of the CoC, can be reviewed by the RP on his own. In this regard, the observations made

by this Appellate Tribunal in the case of Union Bank of India (Supra) which has also been noticed by the Tribunal are required to be reproduced again which read as under:-

“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 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.....”

47. Similarly, the argument of the Appellant about the provisional constitution of the CoC can not be accepted because there is no provision in the Code. In this regard, we do not find any error in the finding recorded by the Tribunal in para 16 of the impugned order which read as under:-

“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.”

48. In so far as the reclassification of the status of the financial creditor is concerned, the Tribunal has relied upon a decision of this Court in the case of Rajnish Jain Vs. BVN Traders & ors., CA (AT) (Ins) No. 519 of 2020 in which it has been 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.”

49. The argument of the Appellant that if the IRP has been found lacking in discharge of his duties and his act and conduct is deprecated by the Tribunal then the entire exercise undertaken by him qua the constitution and reconstitution has to be set aside cannot be accepted because Respondent No. 2, on the basis of the collation of the claims submitted by Respondent No. 1 and 3 had duly constituted the CoC on 21.08.2024 and even filed an application in terms of Regulation 17 of the Regulations but later on, for the reason best known to him, reconstituted the CoC with only one member with 0.18% voting share in the originally constituted CoC, by excluding Respondent No. 1 and 3 in a manner that can only be termed mischievous which has been duly commented upon by the Tribunal in para 21 to 23 of the impugned order.

50. In so far as Riju Ravindran, who has filed an application I.A No. 405 of 2025 before this Court and I.A No. 841 of 2024 is concerned, he has nothing to add to the appeal which has been filed by non-else than his real brother who is also similarly placed.

51. Thus, on the basis of the aforesaid discussion and looking from any angle, it is not a case which requires any interference by this Appellate Tribunal to tinker with the well-considered order of the Tribunal who has taken into consideration all aspects of the matter before disposing of the

application bearing I.A No. 660 and 820 of 2024 and issuing necessary direction.

52. Hence, we do not find any merit in the present appeal and the same is thus hereby dismissed. The parties to the lis shall bear their on costs.

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

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

12th August, 2025

Sheetal