Glas Trust Company Llc vs Byju Raveendran on 23 October, 2024

Author: Dhananjaya Y Chandrachud

Bench: Dhananjaya Y Chandrachud

Reportabl

2024 INSC 811

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 9986 of 2024

GLAS Trust Company LLC …Appellant

Versus

BYJU Raveendran & Ors. …Respondents

And With Special Leave Petition (C) No. 21023 of 2024 JUDGMENT Dr Dhananjaya Y Chandrachud, CJI Table of Contents A. Background ..... 5 i. Parties before this Court..... 5 ii. Proceedings before the US Courts ..... 6 iii. Insolvency proceedings against the first respondent ..... 8 iv. Settlement between the parties and proceedings before the NCLAT .. 9 v. Impugned Judgement ..... 14 vi. Proceedings before this Court and the Delaware Court ..... 16 B. Issues ..... 18 C. Submissions ..... 18 D. Legal Background..... 23 i. Legal context and fundamental principles ..... 23 a. General principles underlying the IBC..... 23 b. Nature of the proceedings after admission of the application ..... 27 ii. Legal framework for withdrawal and settlement of claims..... 31 a. Evolution of the legal framework ..... 31 b. Insights from the evolution of the legal framework ..... 44 iii. Scope of 'Inherent Powers' under Rule 11 ..... 49 E. Application to the instant case ..... 51 i. Locus of the appellant before this Court ..... 52 ii. Approach of the NCLAT in the Impugned Judgement ..... 54 iii. Decisions of this Court cited in the Impugned Judgement ..... 57 F. Conclusion 60

1. This appeal arises from a judgment of the National Company Law Appellate Tribunal, Chennai1 dated 2 August 2024.2 The National Company Law Tribunal, Bengaluru,3 admitted the application instituted by the second respondent under Section 9 of the Insolvency and Bankruptcy Code4 and initiated the corporate insolvency resolution process5 against the third respondent. In the exercise of its powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 20166, the NCLAT approved a settlement in relation to the dues payable to the third respondent by the second respondent and set aside the order of the NCLT.

2. The appellant, who claims to be a Financial Creditor, had moved an application before the NCLAT objecting to the approval of the settlement and questioned the source of the funds for the settlement. The objections of the appellant were rejected by the NCLAT in the Impugned Judgement. The present appeal raises substantial questions about the legal framework governing the withdrawal of a CIRP; the settlement of claims after the admission of an application instituted by a debtor; and the scope of the inherent powers vested in the NCLAT under Rule 11 of the NCLAT Rules.

“NCLAT” “Impugned Judgement” “NCLT” “IBC” “CIRP” “NCLAT Rules” PART A A. Background i. Parties before this Court

3. The third respondent, Think and Learn Pvt Ltd, a company engaged in the business of providing online educational services, is the Corporate Debtor.7 The first respondent, Byju Raveendran and his brother, Riju Raveendran are former directors of the Corporate Debtor.

4. The second respondent, the Board of Control for Cricket in India (BCCI) is an Operational Creditor who executed a ‘Team Sponsor Agreement’ dated 25 July 2019 with the Corporate Debtor, which relates to the sponsorship of the Indian National Cricket Team.

5. The Corporate Debtor has a 100% owned subsidiary, Byju’s Alpha Inc. – a company incorporated in the United States of America. Byju’s Alpha Inc. availed a loan facility aggregating to approximately USD 1,200,000,000 under a credit and guarantee agreement dated 24 November 2021.8 The Appellant, GLAS Trust Company LLC, is the ‘Administrative Agent’ of all the lenders under this agreement and the ‘Collateral Agent’ for the secured parties. Under the terms of the Credit Agreement, the Corporate Debtor acted as a guarantor and issued a guarantee deed dated 24 November 2021 in favour of the appellant.

“Corporate Debtor”

“Credit Agreement”

PART A

ii. Proceedings before the Delaware Court

6. On account of an alleged default under the Credit Agreement, the appellant enforced the security in respect of the loan and took a series of steps that resulted in the removal of all pre-existing directors of Byju's Alpha Inc., including Riju Raveendran and the appointment of a new sole director. The appellant contends that despite these measures, defaults persisted in payment of the principal outstanding amount and the interest accrued under the Credit Agreement.

7. Accordingly, the appellant, acting as the Administrative Agent of the lenders, issued a notice of demand dated 6 December 2023 to the Corporate Debtor, invoking the guarantee deed and demanding that the Corporate Debtor pay the requisite amount. However, it is the case of the appellant, that the Corporate Debtor too defaulted in its capacity as the guarantor under the Credit Agreement.

8. It is contended that a series of wire transfers were carried out in April and July 2022 by Byju's Alpha Inc., allegedly at the behest of the Corporate Debtor, fraudulently transferring approximately USD 533 million to a hedge fund based in the United States. A motion for preliminary injunctive relief to protect this amount was moved before the United States Bankruptcy Court, District of Delaware9.

"Delaware Court" PART A

9. On 18 March 2024, the Delaware Court issued a preliminary injunction inter alia restraining Riju Raveendran, another wholly owned subsidiary of the Corporate Debtor, the concerned hedge fund, and other similarly placed persons from taking any steps to spend, transfer, exchange, convert, dissipate, liquidate, or otherwise move or modify any rights related to the USD 533 million transferred from Byju's Alpha Inc to the hedge fund. The operative directions of the order passed by the Delaware Court read as follows:

> "Defendants Riju Ravindran, Inspilearn LLC ("Inspilearn"), Camshaft Capital Fund LP, Camshaft Capital Advisors, LLC, Camshaft Capital Management, LLC; 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 this Order, 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 $533,000, I00.00 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 lnspilearn 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 "Alpha Funds").” (emphasis supplied)

10. On 28 May 2024, the Delaware Court passed an order finding that Riju Raveendran was in contempt of the above preliminary injunction order dated 18 March 2024. The Delaware Court directed that “full discovery shall immediately commence concerning Mr Ravindran's financial situation, PART A including, but not limited to, the location and amounts of his assets wherever and however held, including (i) how much money he has, including funds in his personal bank account(s), and (ii) what other assets he holds” and posted the case to a later date to determine the financial penalties to be imposed on Riju Raveendran. Eventually, on 31 July 2024, the Delaware Court imposed financial penalties of USD 10,000 per day on Riju Raveendran, which is payable until the contempt is ”purged by him”.

iii. Insolvency proceedings against the first respondent

11. On 23 September 2023, the second respondent moved a petition under Section 9 of the IBC, in respect of an operational debt of approximately Rs 158 crore payable by the Corporate Debtor under the Team Sponsor Agreement.10 The NCLT admitted the petition on 16 July 2024 and initiated CIRP. 11 A moratorium under Section 14 of IBC was imposed and an Interim Resolution Professional,12 was appointed.

12. Separately, the appellant also filed a petition under Section 7 of the IBC against the Corporate Debtor on 22 January 2024.13 On 16 July 2024, the NCLT disposed of the Section 7 petition, in view of the order passed on the same day admitting the Section 9 petition filed by the second respondent.14 The appellant was granted liberty to file their claims before the IRP appointed pursuant to the Company Petition (IB) No. 149/BB/2023 (“Section 9 Petition”) “Section 9 Order” “IRP” Company Petition (IB) No. 55/BB/2024 (“Section 7 Petition”) “Section 7 Order” PART A Section 9 Order. Significantly, the NCLT also granted liberty to the appellant to seek a revival of its Section 7 petition, “depending on the subsequent developments at the appellate level, if any.” The NCLT directed as follows:

> “3. In view of the order passed today i.e., 16.07.2024 by this Adjudicating Authority in another Company petition bearing C.P (IB) No.149/BB/2023 which 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 same Corporate Debtor herein i.e., Think & Learn Private Limited and since the Corporate Insolvency Resolution Process (CIRP) has been initiated in respect of the Corporate Debtor therein by appointing the IRP, the instant C.P is disposed of by granting liberty to the Petitioner herein to put-forth their claim before the IRP appointed in C.P (IB) No. 149/BB/2023 in accordance with 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." (emphasis supplied)

13. The IRP made a public pronouncement on 17 July 2024 and the appellant filed its claim in the prescribed format on 25 July 2024.

iv. Settlement between the parties and proceedings before the NCLAT

14. Both the appellant and the first respondent moved the NCLAT in appeal against the respective orders of the NCLT. The first respondent challenged the admission of the Section 9 petition by the NCLT.15 On the other hand, the CA (AT) (CH) (Ins) No. 262 of 2024.

PART A appellant challenged the order disposing of the Section 7 petition.16 The appellant also moved an application before the NCLAT for impleadment in the appeal filed by the first respondent, seeking to be heard before any relief was granted.17

15. The appeal instituted by the first respondent was placed before the NCLAT for the first time on 30 July 2024 and adjourned on a request made by the senior counsel for the second respondent. On the next date of the hearing, i.e. 31 July 2024, it was recorded, based on the submissions by the counsel for the first and second respondents, that a sum of INR 50 crore had been transferred to the second respondent as part of a settlement. The counsel for the first respondent further submitted, before the NCLAT, that another sum of Rs 25 crore would be paid by 2 August 2024, and the balance amount of Rs 83 crore would be paid thereafter, on or before 9 September 2024.18

16. The payment was purportedly made pursuant to a settlement offer extended by Riju Raveendran, in his personal capacity, to the second respondent by an email dated July 30, 2024. He proposed to clear the operational debt of Rs 158 crore in three tranches on 30 July 2024,19 2 August 2024 and 9 August 2024, respectively. The second respondent agreed to take steps for withdrawal of the CA (AT) (CH) (Ins) No. 274 of 2024.

I.A. No. 727 of 2024.

Impugned Judgement, paras 9-11.

The settlement offer inadvertently stated "30 June 2024", which was clarified to be a typographical error for 30 July 2024.

PART A petition upon receipt of full payment of the operational debt. Relevant excerpts of the email are as follows:

> "1. We undertake to pay INR. 50 crores upfront today i.e. 30 June 2024, by way of RTGS from the account of its promoter, Mr. Riju Ravindran. We shall forward the UTR details of the same shortly.

2. We further undertake to pay INR. 25 crores on 02 August 2024 through RTGS.

3. The total dues are approximately INR. 158 crores.

4. The balance amount of INR. 83 crores to complete the figures of INR. 158 crores shall be paid on or before 09 August 2024.

5. We shall also hand over post-dated cheques to the tune of INR. 83 crores drawn in favour of "Board of Control for Cricket in India" payable on 09 August 2024.

6. In view of the aforesaid proposed settlement, the parties shall jointly request the Hon'ble NCLAT on 31 July 2024 to suspend the order of admission of Think & Learn Pvt. Ltd passed by the NCLT until 09 August 2024.

7. Further, once the payment of complete INR. 158 crores to BCCI is made, BCCI shall make statement to withdraw the Company Petition and take necessary steps towards the same."

17. It is common ground that on 31 July 2024, when the parties sought to place the settlement on record, although CIRP had been initiated and an IRP had been appointed, the CoC had not been constituted. Before the NCLAT, the second respondent stated that in view of the money being generated in India and coming through a banking channel, it shall be accepted and was in favour of the withdrawal of CIRP. The appellant, however, raised several objections, including inter alia that the alleged payment made by Riju Raveendran would constitute a preferential payment to an operational creditor. Further, the appellant contended that the source of the funds is not clear, and the amount being offered by Riju Raveendran to settle the debt of the second respondent PART A would constitute an act of round-tripping. The appellant apprehended that the funds of Byjus's Alpha Inc. were being offered to settle dues in India, in contravention of the preliminary injunction issued by the Delaware Court on 18 March 2024.

18. On 1 August 2024, an affidavit was filed along with an undertaking by Riju Raveendran. The affidavit of Riju Raveendran could purportedly not be filed in time as he was not in India and thus, the undertaking was filed through an authorized representative. In the undertaking, Riju Raveendran affirmed that (i) the money being offered for settlement between the Corporate Debtor and the second respondent was being paid from his personal funds, including the sale of shares held by him in the Corporate Debtor; (ii) the money was generated in India and is not linked to the money involved in the proceedings pending in the Delaware Court; (iii) the first respondent (Byju Raveendran) has not transferred any money or extended any security towards raising the sums for payment of the settlement amount. The undertaking reads as follows:

"...

3. I state 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.

4. I have 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 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 PART A 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 I have received any sum of monies disbursed under the Credit Agreement has never been made by GI.AS in any proceeding whatsoever, including the proceeding under Section 7 of the IBC filed by it before the NCLT.

6. I specifically confirm that there has been no violation of the Order dated 18 March 2024 passed by the Delaware Bankruptcy Court, and I have not taken any steps in contravention of the same. I also confirm that I have not directly, indirectly or in any form or manner received any sum of money from disbursements made under the Credit Agreement. In fact, the foreign remittance received by me 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 ...

7. I further confirm 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. 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 TLPL between May 2015 and January 2022. By way of these sales, I had 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 me 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 to ensure that TLPL continues to carry on business PART A 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) to BCCI 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."

19. In view of these developments, on 1 August 2024, the NCLAT passed an interim order staying the constitution of the CoC.

v. Impugned Judgement

20. Before the NCLAT, the appellant contended that (i) Section 12A of the IBC and Regulation 30A of the CIRP Regulations 2016 deal with the settlement of claims after CIRP is initiated, both before and after the CoC is constituted. The first respondent should have, thus, approached the NCLT as mandated by Rule 30A instead of invoking the inherent powers of the NCLAT under Rule 11; (ii) NCLAT should not exercise its discretionary power under Rule 11 of the NCLAT Rules because the directors of the Corporate Debtor and its allied entities are fugitives, living abroad; have defaulted on government dues; Enforcement Directorate proceedings are pending, look out notices have been issued; and there has been a significant drop in the valuation of the Corporate Debtor; and

(iii) the interests of all creditors must be considered while accepting a settlement, including the appellant who has a substantial interest with regard to the Corporate Debtor.

PART A

21. On 2 August 2024, the NCLAT delivered the Impugned Judgement. After recording the factual background and submissions of the parties before it, the NCLAT outlined its reasoning and analysis in paras 44 to 50 of the Impugned Judgement. The NCLAT held the affidavit and undertaking filed by Riju Raveendran made it clear that the money was generated by Riju Raveendran from his own sources; income tax had been paid on the sales of shares from which the amount was generated; and there was no violation of the Order dated 18 March 2024 passed by the Delaware Court either directly or indirectly. Therefore, NCLAT held that in the absence of any evidence to the contrary, there was no reason to believe that the money that was being offered by Riju Raveendran was linked to the money disbursed to Byju's Alpha Inc. under the Credit Agreement or from the coffers of the Corporate Debtor.

22. Further, it was held that the law regarding the settlement of disputes between the parties is in the process of evolution, and this Court has approved the invocation of Rule 11 of the NCLAT Rules to allow such settlements. Reliance was placed on the decisions of this Court in Abhishek Singh vs Huhtamaki PPL Limited20 and Kamal K. Singh v. Dinesh Gupta21, in addition to decisions of the NCLAT on the point. Further, it was held that the NCLT had granted the appellant the liberty to revive its Section 7 petition, in case of any adverse developments in the appellate proceedings in the Section 9 petition and thus, the right of the applicant to enforce its claims was well protected. 2023 SCC Online SC 349 (2022) 8 SCC 330.

PART A

23. Accordingly, the settlement between the parties was approved and the order of the NCLT admitting the Section 9 petition was set aside. The NCLAT directed that in case of a breach of the undertaking and affidavit, the Section 9 Order would automatically be revived. The operative directions are extracted below:

> "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." vi. Proceedings before this Court and the Delaware Court

24. On 1 August 2024, Byju's Alpha Inc. and the appellant instituted a motion before the Delaware Court seeking a temporary restraining order against Riju Raveendran, inter alia restraining him from using his personal assets to satisfy the dues of the second respondent. Before the Delaware Court, the appellant contended that fraudulent payments were being made by Riju Raveendran to pay the operational debt due to the second respondent and dismiss insolvency proceedings against the Corporate Debtor, which is "his older brother's crumbling business enterprise in India". On 8 August 2024, the Delaware Court passed an order rejecting the motion.

25. The appellant instituted the present Civil Appeal before this Court, challenging the Impugned Judgement of the NCLAT. By an Order dated 14 August 2024, this Court issued notice on the appeal and directed that there would be a stay PART A on the operation of the Impugned Judgment. The second respondent was directed to maintain the amount of Rs 158 crores, which has been realized in pursuance of the settlement, in a separate escrow account, to abide by further directions of this Court.

26. In view of the above directions of this Court granting an interim stay on the Impugned Judgement, the CIRP proceedings resumed. On 19 August 2024, the IRP addressed a letter to the appellant noting that the CIRP had revived, verified the claim submitted by the appellant and admitted the appellant as a financial creditor. Accordingly, the IRP constituted the CoC, which consisted of four financial creditors, including the appellant.

27. Subsequently, by a letter dated 1 September 2024, the IRP sought to reconstitute the CoC and reclassify the claim of the appellant as 'contingent'. The IRP stated that the reclassification of the claim as 'contingent' was on account of purported disqualification notices issued by the Corporate Debtor to certain lenders of the loan, which allegedly disqualified more than sixty percent of the lenders and therefore, the appellant no longer had the requisite authorization. From the record and submissions before us, it appears that the first meeting of the CoC took place on 3 September 2024.

28. On 26 September 2024, this Court reserved its judgment and directed that the IRP maintain the status quo and not hold any meeting of the CoC until the judgment is pronounced.

PART B & C B. Issues

29. In view of the above background, the following issues arise for our consideration:

a. Whether the appellant, who is not a party to the settlement between the second respondent and the Corporate Debtor, has locus in the proceedings before this Court;

b. Whether the NCLAT erred in invoking its inherent powers under Rule 11 of the NCLAT Rules 2016 in the presence of a prescribed procedure for withdrawal of CIRP and settlement of claims between parties; and c. Without prejudice to the above, whether the NCLAT adequately addressed the objections raised by the appellant, while exercising its discretionary power under Rule 11 of the NCLAT Rules 2016.

C. Submissions

30. Mr Kapil Sibal and Mr Shyam Divan, Senior Counsel appearing for the appellant broadly advanced the following submissions:

a. NCLAT should have refrained from exercising its discretionary power under Rule 11 of the NCLAT Rules to sanction the settlement when there is a prescribed procedure for withdrawal and settlement under Section 12A of the IBC read with Regulation 30A of the CIRP Regulations 2016;

b. The powers conferred on the NCLAT under Rule 11 of the NCLAT Rules are discretionary and should not be exercised mechanically in cases where the withdrawal of the application would prejudice other stakeholders and PART C may result in numerous other creditors filing insolvency actions against the Corporate Debtors on account of their unpaid dues;

c. NCLAT failed to deal with the objections raised by the appellant about the source of the funds and the conduct of the first respondent and his brother, Mr Riju Raveendran. Facts such as – the purported fraudulent transfer of USD 533 million to a hedge fund in the United States; the orders of the US Court restraining the brothers from transferring or dissipating the amount;

the contempt proceedings against Mr Riju Raveendran; the ongoing investigation by the Enforcement Directorate against the first respondent and the Corporate Debtor; attempts by the Corporate Debtor to dissipate assets – were not adequately dealt with in the Impugned Judgement;

d. There are clear indications that the Corporate Debtor cannot service its outstanding debts to its financial creditors. There has been a 99% drop in the valuation of the Corporate Debtor, defaults in paying employees' salaries, the exit of key managerial persons, failure to file financial statements, and oppression and

mismanagement petitions by the shareholders against the promoters, all of which indicate that insolvency proceedings are inevitable;

e. Setting aside the CIRP merely because one of the creditors has recovered its dues by way of a settlement agreement, runs contrary to the settled position that the IBC cannot be used as a recovery mechanism. Upon initiation of insolvency, third-party rights are created in all creditors of the corporate debtor; and PART C f. Riju Raveendran failed to provide the details of the source of funds by way of an affidavit. His undertaking was accompanied by an affidavit of a third party who claims to be a power of attorney holder of Riju Raveendran. The declaration in the undertaking is ambiguous and the figures mentioned do not add up so as to enable him to make payments under the settlement agreement.

31. Dr Abhishek Manu Singhvi and Mr Neeraj Kishan Kaul, Senior Counsel for the first respondent advanced the following submissions:

a. The inherent powers of the NCLAT, under Rule 11 of the NCLAT Rules, include the power to pass orders permitting the withdrawal of the CIRP. In several judgements, after Section 12A was inserted in the IBC, the NCLAT has invoked Rule 11 to permit the withdrawal of CIRP;

b. The appellant has no locus to maintain the present proceedings before this Court. In a case of settlement between a corporate debtor and an individual creditor, there is no scope for hearing any third-party creditor, as such a creditor is free to adopt other remedies for its claims;

c. Despite liberty being granted to the appellant to revive its Section 7 petition, the appellant has failed to do so, because a revival would lead to scrutiny of the maintainability of the Section 7 petition. As the appellant has a weak case on maintainability, it is seeking to piggyback on the Section 9 NCLT Order and is opposing the settlement;

d. The appellant is indulging in forum shopping. Despite specific liberty to revive its Section 7 petition, the appellant chose to move an appeal against PART C the order of disposal and intervened in the proceedings before the NCLAT instituted by the second respondent. In parallel, the appellant also initiated proceedings before the Delaware Bankruptcy Court to stall the settlement;

e. The Corporate Debtor is an ed-tech services business, whose revenue is generated from its intellectual property and subscriptions from students.

Revenues are likely to be hit with each day that the Corporate Debtor continues into insolvency, which could lead to classes shutting down, disruption of services, teachers resigning, and students dropping out; and f. The Corporate Debtor is a solvent

company with a running business of 27,000 employees and 150 million students. A viable company capable of repaying its debts must not be admitted into CIRP.

32. Mr Tushar Mehta, the learned Solicitor General appearing for the second respondent, supported the arguments of the first respondent in support of the Impugned Judgement and also advanced the following submissions:

a. The IBC aims to prevent the economic death of entities, which involves encouraging settlement between the parties. NCLAT passed the Impugned Judgement after hearing all concerned parties. Thus, there was no infirmity in invoking inherent powers under Rule 11 of the NCLAT Rules 2016;

b. Regulation 30A was a statutory response to the decision of this Court in Swiss Ribbons (P) Ltd. v. Union of India22 and the intent is to encourage settlement. The provision is directory as no consequence of non-

compliance is stipulated. It does not contemplate adjudication about the (2019) 4 SCC 17.

PART C factum of settlement, the mode/method of settlement or any specific legal ground by the NCLT;

c. Regulation 30A, even if applicable can have no application when the settlement is made using personal funds and not the funds of the corporate debtor; and d. The payment to BCCI does not prejudice other creditors or stakeholders of the Corporate Debtor as it is not made from the possible insolvency estate that would be created if the Corporate Debtor goes through CIRP.

33. We also had an opportunity to hear the learned Senior Counsel who appeared for the intervenors. Mr Gopal Sankarnarayan appeared for an entity that claims to be another Operational Creditor. Another intervention application was moved by several shareholders of the Corporate Debtor, who purportedly hold 16.75% of its issued and the paid-up share capital. These shareholders have also instituted proceedings under Sections 241, 242 and 244 of the Companies Act 2013 for oppression and mismanagement against the erstwhile management of the Corporate Debtor, including the first respondent and Riju Raveendran. The counsel for the intervenors advanced submissions broadly on the same lines as the appellant. They assailed the acceptance of the settlement agreement by the NCLAT and contended that insolvency proceedings against the Corporate Debtor are inevitable.

PART D

D. Legal Background

i. Legal context and fundamental principles

a. General principles underlying the IBC

34. Before delving into the provisions which constitute the legal framework for the withdrawal of CIRP, it is crucial to delineate some of the underlying aims and objectives which guide the IBC. These principles will assume relevance while analyzing the locus of the appellant and the course of action adopted by the NCLAT in the Impugned Judgement.

35. The Statement of Objects and Reasons for the IBC reads as follows:

> "Statement of Objects and Reasons.—There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals.

Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.

2.The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganisation and insolvency resolution PART D of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

[...]

5. The Code seeks to achieve the above objectives.'"

36. The long title of the IBC provides that it is "an Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."

37. The objectives discernible from the long title and the Statement of Objects and Reasons of the IBC were discussed in a decision of a two-judge bench of this Court in Swiss Ribbons (P) Ltd. v. Union of India.23 This Court observed that (2019) 4 SCC 17.

PART D the IBC is a beneficial legislation which attempts to put the Corporate Debtor back on its feet. According to this Court, this would involve considering the interests of all concerned stakeholders rather than viewing the IBC as a mere recovery legislation for individual creditors. This Court, speaking through Justice RF Nariman, observed as follows:

> "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." (emphasis supplied)

38. A two-judge Bench of this Court, speaking through one of us (DY Chandrachud, J), in Arun Kumar Jagatramka v Jindal Steel & Power Ltd24 also had occasion to observe the quantum change in corporate governance and the rule of law brought in by the enactment of the IBC. This Court observed as follows:

> (2021) 7 SCC 474.

PART D "41. ... First and foremost, the IBC perceives good corporate governance, respect for and adherence to the rule of law as central to the resolution of corporate insolvencies. Second, the IBC perceives corporate insolvency not as an isolated problem faced by individual business entities but places it in the context of a framework which is founded on public interest in facilitating economic growth by balancing diverse stakeholder interests.

Third, the IBC attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that the timely resolution of corporate insolvency is necessary to ensure the growth of credit markets and encourage investment. Fourth, in its diverse provisions, the IBC ensures that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements. These salutary objectives of the IBC can be achieved if the integrity of the resolution process is placed at the forefront. Primarily, the IBC is a legislation aimed at reorganisation and resolution of insolvencies. Liquidation is a matter of last resort. These objectives can be achieved only through a purposive interpretation which requires courts, while infusing meaning and content to its provisions, to ensure that the problems which beset the earlier regime do not enter through the backdoor through disingenuous stratagems." (emphasis supplied)

39. From the above, the following guiding principles emerge, which we must keep in mind while determining the issues raised in the present appeal:

> a. A significant change brought about by the IBC was the consolidation of the pre-existing fragmented insolvency framework, The aim was to eliminate parallel proceedings by various creditors before different fora, given that all creditors would be a part of a single insolvency process under the IBC;
>
> b. The above consolidation also sought to implement the principle of 'collective distribution', where the interests of all stakeholders were considered. The PART D CIRP envisaged by the IBC is premised on the principle that each creditor of the same class should receive a share that is proportionate to the debt owed to him;
>
> c. IBC must not be used as a tool for coercion and debt recovery by individual creditors. Improper use of the IBC mechanism by a creditor includes using insolvency as a substitute for debt enforcement or attempting to obtain preferential payments by coercing the debtor using insolvency proceedings.
>
> That the mechanism under the IBC must not be used as a money recovery mechanism has been reiterated in a consistent line of precedent by this Court;25 and
> d. The interests of the corporate debtor must be detached from those of its promoters/those who are in management. A "recalcitrant management"26 must be prevented from taking advantage of undue delays and preventing an inevitable insolvency. In other words, as noted by this Court in Arun Kumar Jagatramka (supra), the economic value of corporate structures is broader than the partisan interests of their management.
>
> b. Nature of the proceedings after admission of the application

40. Chapter II of the IBC provides that CIRP can be invoked in three ways: (i) by a financial creditor under Section 7; (ii) by an operational creditor under Section 9; and (iii) by a corporate debtor itself under Section 10.27 Section 5(11) of the Swiss Ribbons, para 28;

Mobilox, para 36.

Section 6, IBC reads: "6. Persons who may initiate corporate insolvency resolution process. – Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor PART D IBC defines the "initiation date" as the date on which the financial creditor, operational creditor or corporate applicant makes an application to the NCLT for initiating insolvency proceedings, including CIRP. This is distinct from the "insolvency commencement date" which is defined in Section 5(12) of the IBC as the date of admission of an application for initiating CIRP by the NCLT under Sections 7, 9 or 10, as the case may be.

41. Once the application is admitted, the CIRP commences and the NCLT inter alia declares a moratorium; issues a public pronouncement of the initiation of CIRP and a call for submission of claims; and appoints an IRP.28 Once an IRP is appointed, the affairs of the corporate debtor are managed by the IRP,29 who inter alia receives and collates all the claims submitted by the creditors pursuant to the public announcement of the CIRP.30 After the collation of claims received itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter." Sections 13, 14, 15, 16, IBC.

Section 17, IBC reads "17. Management of affairs of corporate debtor by interim resolution professional. - (1) From the date of appointment of the interim resolution professional, -

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional. (2) The interim resolution professional vested with the management of the corporate debtor, shall-

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b)take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c)have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d)have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor." Section 18(b), IBC.

PART D and the determination of the financial position of the corporate debtor, the IRP shall constitute a CoC, which consists of all the financial creditors of the corporate debtor.31 The CoC appoints a Resolution Professional32 and the CIRP process continues, as prescribed.

42. From this scheme of Chapter II of the IBC, it appears that the admission of an application is a significant event that alters the nature of the proceedings, and the stakeholders involved. Initially, when the petition is filed by the financial creditor, operational creditor or corporate applicant, as the case may be, the proceedings are in personam and the only relevant stakeholders are the applicant creditor and the corporate debtor. However, once the petition is admitted and CIRP is initiated, several significant changes take place, including the transfer of the management of the affairs of the corporate debtor to the IRP, the declaration of the moratorium, and the collation of the claims against the corporate debtor. Therefore, the proceedings now change character – they become in rem and are no longer the preserve of only the applicant creditor and the corporate debtor and even creditors who were not the original applicants, become necessary stakeholders.

43. A three-judge Bench of this Court in Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund33 adjudicated on the question of the stage at which the proceedings under the IBC attain the status of in rem and create third-party Section 21, IBC.

"RP" (2021) 6 SCC 436.

PART D rights for all creditors. This Court held that the trigger point is not the filing of the application, but the admission of the application, and observed as follows:

> "17. The procedure contemplated will indicate that before the adjudicating authority is satisfied as to whether the default has occurred or not, in addition to the material placed by the financial creditor, the corporate debtor is entitled to point out that the default has not occurred and that the debt is not due, consequently to satisfy the adjudicating authority that there is no default. In such exercise undertaken by the adjudicating authority if it is found that there is default, the process as contemplated under sub- section (5) of Section 7 of IB Code is to be followed as provided under sub-section (5)(a); or if there is no default the adjudicating authority shall reject the application as provided under sub-section (5)(b) to Section 7 of IB Code. In that circumstance if the finding of default is recorded and the adjudicating authority

> proceeds to admit the application, the corporate insolvency resolution process commences as provided under sub-section (6) and is required to be processed further. In such event, it becomes a proceeding in rem on the date of admission and from that point onwards the matter would not be arbitrable. The only course to be followed thereafter is the resolution process under IB Code. Therefore, the trigger point is not the filing of the application under Section 7 of IB Code but admission of the same on determining default.
>
> 26. [...] On admission, third-party right is created in all the creditors of the corporate debtors and will have erga omnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be construed as the triggering of a proceeding in rem. Hence, the admission of the petition for consideration of the corporate insolvency resolution process is the relevant stage which would decide the status and the nature of the pendency of the proceedings and the mere filing cannot be taken as the triggering of the insolvency process." PART D

44. In summary, the scheme of the IBC under Chapter II gives rise to two significant principles:

> a. Once the petition is admitted, the proceedings are no longer the preserve of the applicant creditor and the debtor. They now become in rem and all creditors of the corporate debtor become stakeholders in the process; and b. Once the petition is admitted, the management of the affairs of the corporate debtor is vested in the IRP and eventually, in the RP. Thus, the corporate debtor no longer exists in the form that it did, before the admission of the petition. Once CIRP is initiated, the interests of the erstwhile management of the corporate debtor must be distinguished from the interests of the corporate debtor.
>
> ii. Legal framework for withdrawal and settlement of claims a. Evolution of the legal framework

45. Introduced less than a decade ago, the IBC and the various rules and regulations promulgated under the Act constitute a relatively nascent legal framework. On several occasions, the legislature and the executive have responded to the lacunae in the framework identified by this Court and sought to fill the gaps by legislating, in the form of amendments to the IBC or promulgating rules or regulations, if necessary. The evolution of the legal framework in relation to the withdrawal of CIRP after the admission of an application moved by a creditor is a classic example of this delicate coordination.

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46. Under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 201634, the NCLT may permit the withdrawal of applications made by a creditor (under Sections 7, 9 or 10) on a request by the applicant before the admission of the application.35 When the IBC was originally enacted in 2016, it did not contain any provisions, in the text of the Act or its allied rules

and regulations, for the withdrawal of CIRP after the application had been admitted. Although there was no express provision in this regard, in several instances, this Court invoked its powers under Article 142 of the Constitution and permitted withdrawal of the CIRP on account of a settlement between the creditor and the corporate debtor after the application had been admitted by the NCLT.36

47. In one such decision of this Court, namely, Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP,37 a two-judge bench of this Court invoked its power under Article 142 to record the settlement of the parties and allow the compromise between the creditor and the corporate debtor after the admission of the concerned application. While doing so, this Court also prima facie agreed with the proposition that in view of Rule 8 of the CIRP Rules, the NCLAT cannot use its inherent powers under Rule 11 of the NCALT Rules 2016 to allow a settlement or withdrawal after the admission of the application.

"CIRP Rules" "8. Withdrawal of application. —The Adjudicating Authority may permit withdrawal of the application made under rules 4, 6 or 7, as the case may be, on a request made by the applicant before its admission." Mothers Pride Dairy India Private Limited v. Portrait Advertising and Marketing Private Limited, 2017 SCC OnLine SC 1789; Uttara Foods & Feeds (P) Ltd. v. Mona Pharmachem, (2018) 15 SCC 587. (2018) 15 SCC 589.

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48. The above position was followed by the same Bench of this Court in Uttara Foods & Feeds (P) Ltd. v. Mona Pharmachem,38 while allowing another settlement between the parties under Article 142. However, on this occasion, the bench also observed that instead of all such orders coming to this Court to utilize its powers under Article 142, the relevant rules may be amended to account for cases where an agreement has been reached after admission of the application. This Court observed as follows:

> "2. ... this Bench had observed that in view of Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the National Company Law Appellate Tribunal prima facie could not avail of the inherent powers recognised by Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 to allow a compromise to take effect after admission of the insolvency petition. We are of the view that instead of all such orders coming to the Supreme Court as only the Supreme Court may utilise its powers under Article 142 of the Constitution of India, the relevant Rules be amended by the competent authority so as to include such inherent powers. This will obviate unnecessary appeals being filed before this Court in matters where such agreement has been reached. On the facts of the present case, we take on record the settlement between the parties and set aside the NCLT order ..."

49. Against this backdrop, the Ministry of Corporate Affairs of the Government of India set up the Insolvency Law Committee,39 to address the early teething challenges arising from the

implementation of the IBC.40 The ILC Report, submitted on 26 March 2018, also dealt with the issue of withdrawal of CIRP proceedings and discussed the existing practice of this Court of granting (2018) 15 SCC 587.

"ILC" "ILC Report" PART D "judicial permission" for withdrawal of CIRP after the admission of the application of the creditor. In this context, the report discussed the objectives of the IBC, drawing from the report of the Bankruptcy Law Reforms Committee which preceded the enactment of the IBC, and concluded that:

> "29.1 ...it was agreed that once the CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. The intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors." (emphasis supplied)

50. The ILC Report found that in several cases, a settlement may be reached amongst "all creditors and the debtor" for withdrawal, and not only between the individual applicant creditor and the debtor. In light of this, the ILC unanimously agreed that the relevant rules may be amended to provide for withdrawal post- admission if the CoC approved of such an action by a voting share of ninety per cent. Significantly, the report states that the ILC specifically discussed and concluded that Rule 11 of the NCLAT Rules, 2016 may not be adopted for withdrawal of CIRP, and instead Rule 8 of the CIRP Rules may be appropriately amended. The observations in the ILC Report on this aspect are as follows:

> "29.2. On a review of the multiple NCLT and NCLAT judgments in this regard, the consistent pattern that emerged was that a settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor. On this basis read with the intent of the Code, the Committee unanimously agreed that the relevant rules may be amended to provide for withdrawal post admission if the CoC approves of such action by a voting share of ninety per cent. It was specifically discussed that PART D rule 11 of the National Company Law Tribunal Rules, 2016 may not be adopted for this aspect of CIRP at this stage (as observed by the Hon'ble Supreme Court in the case of Uttara Foods and Feeds Private Limited v. Mona Pharmacem) and even otherwise, as the issue can be specifically addressed by amending rule 8 of the CIRP Rules."

51. Accepting the recommendation of the ILC, the legislature introduced Section 12A in the IBC by the Insolvency and Bankruptcy (Second Amendment) Act, 2018 with effect from 6 June 2018.41. It reads as follows:

> "12A. Withdrawal of application admitted under section 7, 9 or 10. – The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such

manner as may be specified." (emphasis supplied)

52. The provision provides for the withdrawal of an application under Sections 7, 9 and 10 after it has been admitted, with the approval of ninety-percent voting share of the CoC. Evidently, Section 12A was made more stringent in comparison to Section 30(4) of the IBC, which pertains to approval of the Resolution Plan by the CoC. Whereas under Section 30(4) of the IBC, the voting share of the CoC for approving the Resolution Plan is sixty-six percent, the requirement under Section 12A of the IBC for withdrawal of CIRP is ninety percent. The reason for this divergence and high threshold appears to be rooted in the reasoning provided in the ILC report that once an application is admitted it is no longer a proceeding only between the applicant creditor and the Act No. 26 of 2018.

PART D corporate debtor but is a proceeding involving all creditors of the debtor. Significantly, the text of Section 12A only details the procedure for the withdrawal of the application after the formation of the CoC (with ninety percent of the voting share), but is silent about the withdrawal of an application after the application is admitted, but before the CoC is formed.

53. With the introduction of Section 12A in the IBC, the CIRP Regulations were also amended to include Regulation 30A which delineated the detailed procedure to withdraw an application under Section 12A.42 At the time of its introduction, the regulation read as follows:

> "30-A. Withdrawal of application.— (1) An application for withdrawal under Section 12-A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under Regulation 36-A. (2) The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of Regulation 31 till the date of application. (3) The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.
>
> (4) Where the application is approved by the committee with ninety per cent voting share, the resolution professional shall submit the application under sub-regulation (1) to the adjudicating authority on behalf of the applicant, within three days of such approval.
>
> (5) The adjudicating authority may, by order, approve the application submitted under sub-

regulation (4)." IBBI (CIRP) (Third Amendment) Regulations, 2018 vide Notification No. IBBI/2018-19/GN/REG031, dated 3rd July, 2018, w.e.f. 04.07.2018.

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54. Regulation 30A(1), as it stood originally, required that an application for withdrawal shall be submitted to the IRP or the RP in the prescribed form, before the invitation for expression of interest under Regulation 30A. It did not provide the procedure for withdrawal after the invitation of expression of interest had been issued. Regulation 30A(2) provided that the application for withdrawal shall be accompanied by a bank guarantee towards the specified estimated costs. Regulation 30A(3) mandated that the CoC must consider the application within seven days of its constitution or the receipt of the application, whichever is later. Finally, Regulation 30A(4) provided that once the CoC approved the application with ninety percent voting share, the RP shall submit the application to the NCLT on behalf of the applicant, within three days of the approval. Finally, under Regulation 30A(5), the NCLT could approve the application submitted by an order.

55. Notably, akin to Section 12A, Regulation 30A in its original form, was silent about withdrawal in cases where the application had been admitted, but the CoC had not been formed. Similarly, Regulation 30A(1) only spoke of withdrawal before the invitation of expression of interest had been issued and there was no provision which provided for withdrawal after it had been issued. Both these gaps were identified in subsequent judgements of this Court.

56. In Brilliant Alloy Private Limited vs S Rajagopal and Ors43, a two-judge bench of this Court observed that the requirement in Regulation 30A, as it stood (2022) 2 SCC 544.

PART D then, that the application must be made before the issuance of an invitation for expression of interest was only directory. The regulation, it was held, has to be read along with Section 12A, which does not contain any bar on withdrawal after the issuance of an invitation for expression of interest.

57. The constitutional validity of various provisions of the IBC, including Section 12A was challenged before this Court. In Swiss Ribbons (supra), a two-judge bench of this Court, speaking through Justice Rohinton Fali Nariman, inter alia upheld the constitutionality of Section 12A. One of the questions that arose before this Court, in this context, was what happens if withdrawal is sought after admission of the application, but before the CoC is constituted. This Court observed:

> “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.

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83. The main thrust against the provision of Section 12-A 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, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster." (emphasis supplied)

58. From the above observations of this Court in Swiss Ribbons (supra), the following positions of law may be deduced:

a. Once the petition instituted by a creditor is admitted, the proceedings before the NCLT become a 'collective proceeding' or a proceeding in rem. Thus, the body which oversees the resolution process, i.e. CoC must be consulted before allowing the claim to be settled;

b. This Court recognized that there was a lacuna in relation to cases where the CoC had not been formed. Accordingly, it was held that, in such cases, the party can approach the NCLT directly, and the NCLT may exercise its inherent powers under Rule 11 to allow or disallow the application for settlement/withdrawal. However, given the in rem nature of the PART D proceedings, such an application must be decided only after hearing all the parties concerned and considering the relevant factors in the case;

c. This high threshold of a ninety-percent voting share of the CoC is not arbitrary. The idea is that the financial creditors have to put their heads together to allow such withdrawal; and d. Under Section 60 of the IBC, the decision of the CoC to reject or accept the settlement claim can be challenged before the NCLT and then, the NCLAT.

59. In response to the lacunae identified by this Court in Swiss Ribbons (supra) and Brilliant Alloy Private Limited (supra), an amendment was made to Regulation 30A of the CIRP Regulations.44 This amendment came into effect on 25 July 2019 and Regulation 30A in its present form reads as follows:

"30A. Withdrawal of application.

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule-I accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub- regulation (1); or Notification No. IBBI/2019-20/GN/REG048, dated 25th July, 2019 (w.e.f. 25-07-2019) PART D

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-

regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under sub-

regulation (3) or (5).

(7) Where the application is approved under sub-

regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-

regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code."

60. Regulation 30A (1) now provides for the procedure to make an application for withdrawal before the NCLT under Section 12A, both before and after the constitution of the CoC. Sub-clause (a) of Regulation 30A (1) states that in PART D cases where the CoC has not been constituted, the applicant may place an application for withdrawal before the NCLT, through the IRP. Similarly, sub-clause (b) of Regulation 30A (1) states that in cases where the CoC is constituted, the applicant may place an application for withdrawal before the NCLT, through the IRP or the RP, as the case may be. In essence, at both stages – before and after the constitution of the CoC – the application for withdrawal may only be made through the person appointed to oversee the insolvency proceedings, i.e. the IRP or the RP.

61. The proviso to Regulation 30A (1) provides that when the application is made after the CoC has been constituted and after the invitation for expression of interest has been issued, the applicant shall state the reasons for withdrawal at this stage. In essence, the regulation in its amended form, deviates from its earlier form by also responding to the decision of this Court in Brilliant Alloy Private Limited (supra). Unlike the unamended regulation, the regulation acknowledges the possibility of withdrawal even after the invitation for expression has been issued. However, it mandates that an application for withdrawal in such cases must be accompanied by reasons. PART D

62. Regulation 30A (2) provides that the application must be made in the manner prescribed in Form FA of Schedule-I,45 and must be accompanied by a bank guarantee towards the specified expenses. Regulation 30A(3) provides that in cases where the application for withdrawal is moved before the constitution of the CoC, the IRP shall submit the application to the NCLT on behalf of the applicant within three days of receipt. Regulations 30A (4) and (5) deal with the situation where the CoC has already been constituted. They provide that the CoC shall consider the application within seven days of receipt, and subsequently, if the application is approved by the CoC with a ninety-percent voting share, the RP must submit the application with the approval to the NCLT within three days of the approval. Finally, regulation 30A(6) provides that on the receipt of the application under both mechanisms (before the CoC and after), PART D the NCLT may pass an order approving the application submitted by the RP or IRP, as the case may be.

b. Insights from the evolution of the legal framework

63. In essence, after a series of deliberations by the legislature, the executive and nudges by this Court, the framework created by Rule 8 of the NCLT Rules and Section 12A of the IBC read with

Rule 30A of the CIRP Regulations lays down an exhaustive procedure for the withdrawal of an application filed by creditors under Sections 7, 9, or 10 of the IBC. Withdrawal may be sought at four stages, all of which have a procedure prescribed under the existing framework. These may be summarized as follows:

i. Before the application under Sections 7, 9 or 10 is admitted by the NCLT: Such cases are squarely covered by Rule 8 of the NCLT Rules, which requires that the applicant approach the NCLT directly. The NCLT may then pass an order permitting the withdrawal of the application. At this stage, as the CIRP process has not been initiated, the proceedings are still in personam, as between the applicant creditor and the corporate debtor.

Therefore, while approving the withdrawal at this stage, the NCLT may restrict its enquiry to only hear the applicant creditor and corporate debtor, and other potential creditors are not stakeholders at this stage.

ii. After an application under Sections 7, 9, or 10 is admitted, but before the CoC has been constituted: Although Section 12A continues to be PART D silent on this aspect, after the decision in Swiss Ribbons (supra), Regulation 30A was amended to provide for this eventuality. An application for withdrawal in such cases may be made by the applicant through the IRP.46 The IRP will then place the application before the NCLT, which may pass an order either approving or rejecting the application. As noted above, once the application has been admitted, the proceedings are no longer the sole preserve of the applicant creditor and the corporate debtor. They are now in rem and at this stage, the NCLT must hear the concerned parties and consider all relevant factors before approving or rejecting the application for withdrawal. The NCLT being a quasi-judicial body, must not act as a mere post office, which stamps and approves every settlement agreement, without application of judicial mind.

iii. After an application under Section 7, 9 or 10 is admitted, the CoC has been constituted and the invitation for expression of interest has not been issued: Section 12A read with Regulation 30A provides exhaustively for this scenario. In such cases, the application for withdrawal is to be placed before the NCLT, through the IRP or the RP. The application is first placed before the CoC and after ascertaining approval with a ninety percent voting share, the RP shall submit the application to the NCLT.

iv. After an application under Section 7, 9 or 10 is admitted, the CoC has been formed and the invitation for expression of interest has been Regulation 30A (1), CIRP Regulations, 2016.

PART D issued: The procedure is the same as that detailed in (iii) above, with the added requirement stemming from the proviso to Regulation 30A (1). in such cases, the applicant must state the reasons for withdrawal at this belated stage.

64. Not only is there an exhaustive framework to deal with withdrawal and settlement, but the evolution of the law and the creation of an comprehensive framework indicates an attempt to reduce reliance on discretionary powers. As detailed above, the IBC and the allied rules and regulations, in their original form did not provide any procedure for the settlement/withdrawal of claims after admission of the application by the creditor. This Court was compelled to invoke Article 142 in decisions such as Lokhandwala Kataria Construction (supra) and Uttara Foods & Feeds (P) Ltd. (supra). To reduce reliance on Article 142, Section 12A and Regulation 30A were introduced to provide a detailed procedure for such cases. In fact, the ILC report which led to the inclusion of Section 12A specifically discussed and rejected the proposition that Rule 11 can instead be used for this purpose. Next, this Court in Swiss Ribbons (supra) held that since there was no prescribed framework to allow settlement/withdrawal of claims after admission of the application but before the CoC was constituted, Rule 11 of the NCLT Rules may be invoked. In response to this, to reduce reliance on the inherent powers under Rule 11 and provide certainty, necessary amendments were made to Regulation 30A. There is now a detailed procedure to deal with withdrawal or settlement at both stages post admission – before and after the CoC is constituted. In view of this detailed PART D framework, the requirement to invoke discretionary power such as Rule 11 of the NCLT Rules, or Rule 11 of the NCLAT Rules or even the power of this Court under Article 142 no longer arises.

65. Mr Tushar Mehta, Senior Counsel for the second respondent, has sought to contend that the requirement under Regulation 30A (1) to move an application before the NCLT through the IRP, in cases where the CoC is not constituted, is a mere technicality which can be dispensed with. The logic he advances is that the regulation does not require adjudication by the NCLT about the factum of the settlement, the mode of settlement or adjudication on any other ground. His submission is that Regulation 30A (1) only requires that the withdrawal application be submitted to the IRP in the prescribed Form FA, which is then forwarded to the NCLT to mechanically approve the settlement. At this stage, according to him, the NCLT is not required to hear any other parties, but only approve the application and thus, whether the application is submitted through the IRP or whether it is before the NCLT or the NCLAT, is a mere technicality.

66. We do not concur with the above understanding for two broad reasons. a. Firstly, that the application is to be submitted by the IRP rather than the parties themselves is not a distinction without difference. As noted above, once the application is admitted and CIRP is initiated, it is the IRP who takes charge of the affairs of the corporate debtor. The proceedings become collective proceedings and the interests of the former management of the corporate debtor, become disjunct from the interest of the corporate debtor. PART D Therefore, the parties (such as the former management of the corporate debtor) must submit their application for withdrawal through the IRP who is now the person in control of the insolvency proceedings. To subvert this requirement would run contrary to the scheme of the IBC and the underlying principles discussed in this judgment; and b. Secondly, the NCLT cannot be considered a post office that merely puts a stamp on the withdrawal application submitted by the parties through the IRP. The ILC Report, in response to which, the parent provision, i.e. Section 12A was introduced in the IBC specifically discussed the possibility of the creditors, apart from the applicant creditor agreeing to a settlement as the underlying reason to permit withdrawal even after initiation of the CIRP. It was never fathomed by the ILC that withdrawal of claims would remain a unilateral process, even though the application is

admitted and CIRP has been initiated. Similarly, this Court in Swiss Ribbons (supra), in response to which Regulation 30A was amended, specifically observed that in cases where withdrawal is sought after initiation of CIRP, but before the CoC is constituted, the NCLT must decide on the application after "hearing all the parties concerned and considering all relevant factors on the facts of each case." Therefore, the NCLT does conduct an adjudicatory exercise when the application for withdrawal is placed before it, and the procedure is not a mere technicality.

PART D

iii. Scope of 'Inherent Powers' under Rule 11

67. Section 151 of the Code of Civil Procedure47 reads as follows:

> "151. Saving of inherent powers of Court.— Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

68. Rule 11 of the NCLT Rules 2016 and Rule 11 of the NCLAT Rules 2016, which preserve the inherent powers of the NCLT and the NCLAT respectively, mirror Section 151 of the CPC and read as follows:

> "11. Inherent powers.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal."

69. In a consistent line of precedent, this Court has held that 'inherent powers' may be exercised in cases where there is no express provision under the legal framework. However, such powers cannot be exercised in contravention of, conflict with or in ignorance of express provisions of law. We may helpfully refer to the observations of a two-judge bench of this Court in one such case. In Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava,48 a two-judge bench of this Court, speaking through Justice K Subba Rao (as the learned chief Justice then was), opined:

> "5. ... Having regard to the said decisions, the scope of the inherent power of a court under Section 151 of the Code may be defined thus: The inherent "CPC" 1966 SCC OnLine SC 215.
>
> PART D power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its

> exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the Court." (emphasis supplied)

70. When a procedure has been prescribed for a particular purpose exhaustively, no power shall be exercised otherwise than in the manner prescribed by the said provisions. In such cases, the court must be circumspect in invoking its 'inherent powers' to deviate from the prescribed procedure. If such deviation is made, the court must justify why this was necessary to "prevent the abuse of the process of the Court".

71. The need to be circumspect while invoking "inherent powers", when there is an exhaustive legal framework is amplified in the context of a legislation like the IBC. In Ebix Singapore (P) Ltd. vs. Educomp Solutions Ltd. (CoC),49 a two- judge bench of this Court, speaking through one of us (DY Chandrachud, J), affirmed this position and observed as follows:

> "Any claim seeking an exercise of the adjudicating authority's residuary powers under Section 60(5)(c) IBC, NCLT's inherent powers under Rule 11 of the NCLT Rules or even the powers of this Court under (2022) 2 SCC 401.

PART E Article 142 of the Constitution must be closely scrutinized for broader compliance with the insolvency framework and its underlying objective. The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC. Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed by the IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a Corporate Debtor." (emphasis supplied) E. Application to the instant case

72. In the preceding section, we have analyzed the law with regard to (i) the principles governing IBC relevant to contextualize the consequences of withdrawing CIRP; (ii) the nature of the proceedings after admission of an application by a creditor; (iii) the evolution of the legal framework for the withdrawal of CIRP or settlement of claims; and (iv) the scope of Rule 11 of the NCLAT Rules 2016. We will now apply the above discussion to the specific issues before this Court in the present factual context, namely, the locus of the appellant to institute the present proceedings and the approach of the NCLAT in the Impugned Judgment.

i. Locus of the appellant before this Court

73. The counsel for the respondents sought to argue that the appellant does not have the locus to maintain the present proceedings before this Court. They contend that in a case for settlement between the Corporate Debtor and the second respondent, there is no scope for hearing any other creditors, such as the appellant. We do not find merit in this submission.

74. Section 62 of the IBC governs statutory appeals to the Supreme Court from the orders of the NCLAT. The provision reads as follows:

> "62. Appeal to Supreme Court – (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.
>
> (2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days." (emphasis supplied)

75. The provision stipulates that "any person" who is aggrieved by the order of the NCLAT may file an appeal before the Supreme Court within the prescribed limitation period. Similar language is used in Section 61 of the IBC, which provides for appeals to NCLAT from orders of the NCLT.50 The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement "61. Appeals and Appellate Authority.-

(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

[…]" PART E to institute an appeal challenging an order of the NCLT, before the NCLAT or an order of the NCLAT, before this Court. Any person who is aggrieved by the order may institute an appeal, and nothing in the provision restricts the phrase to only the applicant creditor and the corporate debtor. As noted above, once the CIRP is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor but rather become collective proceedings (in rem), where all creditors, such as the appellant, are necessary stakeholders. 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 19 August 2024. The appellant who claims to be a Financial Creditor, has expressed reasonable apprehensions about the prejudice it would face if there were roundtripping of the funds,

and the prioritization of the debts of the second respondent, an operational creditor.

76. In any event, the appellant had moved an application before the NCLAT seeking impleadment as a respondent and the objections of the appellant were specifically recorded and addressed in the Impugned Judgement. Therefore, there is no doubt that the appellant falls within the ambit of the phrase "any person aggrieved" and has the locus standi to institute the present Civil Appeal before this Court.

PART E ii. Approach of the NCLAT in the Impugned Judgement

77. The appellant contends that the NCLAT erred in invoking its inherent powers under Rule 11 of the NCLAT Rules in the presence of a prescribed procedure dealing with the withdrawal of CIRP. The respondent, on the other hand, contends that at the time of executing the settlement agreement, the CoC was not formed and in such situations, Rule 11 of the NCLAT Rules may be invoked to allow the settlement. In view of the detailed discussion in Part D of this judgement, we find considerable force in the submissions of the appellant on this point.

78. In paragraph 63 of this judgement, we identified the four stages at which a procedure for the withdrawal of CIRP or settlement of claims is contemplated in the existing legal framework. The situation before the NCLAT in the present case fell within serial number (ii), that is, when the application of a creditor has been admitted and CIRP has been initiated, however, the CoC has not been formed. When settlement was sought by the first respondent before the NCLAT, the Section 9 petition had been admitted and the Section 7 petition had also been disposed of on that basis. However, admittedly, on this date, i.e. 31 July 2024, the CoC had not been constituted and the NCLAT subsequently stayed the formation of the CoC.

79. In such cases, the legal framework mandates that an (i) application for withdrawal be moved; (ii) the application has to be moved through the IRP; and

(iii) it be placed before the NCLT for approval. None of these requirements were PART E met in the present case. First and foremost, there was no formal application instituted to seek the withdrawal of the CIRP. The settlement agreement was taken on record and approved by the NCLAT based on the submissions and assurances of the counsel before it and the affidavits/undertakings filed by the parties. Further, the first respondent, who is a former director of the Corporate Debtor, did not move the application through the IRP and instead approached the NCLAT directly. Finally, the request to approve the settlement was moved before the NCLAT during appellate proceedings, instead of being placed before the NCLT. Despite these grave deviations, the NCLAT still proceeded with approving the settlement and setting aside the CIRP by invoking its inherent power under Rule 11 of the NCLAT Rules.

80. We are of the view that recourse to Rule 11 of the NCLAT Rules was not warranted in the present circumstances. As noted above, 'inherent powers' cannot be used to subvert legal provisions, which exhaustively provide for a procedure. To permit the NCLAT to circumvent this detailed procedure by invoking its inherent powers under Rule 11 would run contrary to the carefully crafted procedure for

withdrawal. In the Impugned Judgement, the NCLAT does not provide any reasons for deviating from this procedure or the urgency to approve the settlement without following the procedure. The correct course of action by the NCLAT would have been to stay the constitution of the CoC and direct the parties to follow the course of action in Section 12A read with Regulation 30A of the CIRP Regulations 2016. This legal framework for such PART E withdrawal was formulated after giving due consideration to the appropriate procedure for withdrawal and balancing it with the objectives of the IBC.

81. Even if the procedural infirmity is kept aside, once the CIRP was admitted, the proceedings became collective, and all creditors of the Corporate Debtor became stakeholders. As noted in Swiss Ribbons (supra), even while invoking Rule 11 to allow withdrawal, the NCLT must hear all the concerned parties and consider all relevant factors on the facts of each case. The appellant raised detailed objections before the NCLAT to the source of the funds for the settlement and a reasonable apprehension that there was round tripping of funds, in violation of the order passed by the Delaware Court on 18 March 2024. These objections were summarily dismissed by the NCLAT, relying solely on the undertaking filed by Riju Raveendran. The only finding in this regard is found in paragraph 44. The NCLAT relies entirely on the undertaking filed by Riju Raveendran and states that “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.” Alleged facts such as the fraudulent transfer of USD 533 million to a hedge fund in the United States; the orders of the US Court restraining the brothers from transferring or dissipating the amount; the contempt proceedings against Mr Riju Raveendran; the ongoing investigation by the Enforcement Directorate against the first respondent and the Corporate Debtor; and other attempts by the Corporate Debtor to dissipate assets, were not adequately addressed by the NCLAT. PART E iii. Decisions of this Court cited in the Impugned Judgement

82. The respondents relied on the decisions of this Court in Ashok G. Rajani v.

Beacon Trusteeship Ltd.51, and Abhishek Kumar (supra) to argue that before the CoC is formed, the proceedings are between the applicant creditor and the debtor and thus, Rule 11 can be invoked to allow the settlement. In the Impugned Judgement too, the NCLAT relies on the decisions of this Court in Abhishek Kumar (supra) and Kamal K Singh (supra), to justify the invocation of Rule 11 of the NCLAT Rules and observe that there has been “a change in the law on settlement”. The respondents are correct to contend that each of these decisions was rendered after Section 12A was inserted and Regulation 30A was amended. However, it is important to understand the context in which this Court upheld the invocation of Rule 11 of the NCLAT Rules and whether these decisions considered the prescribed procedure under Section 12A and the amended Regulation 30A. We are of the considered view that these judgements do not advance the case of the respondents.

83. In Kamal Singh (supra), a two-judge bench of this Court passed a brief order setting aside an order of the NCLT, which dismissed an application filed under Rule 11 of the NCLT Rules 2016 for withdrawal of CIRP based on a settlement arrived at before the constitution of the CoC. This Court

relied on the observations in para 82 of Swiss Ribbons (supra) referred to above, wherein this Court stated that at the stage when the CoC has not been constituted, the 2022 SCC OnLine SC 1275.

PART E NCLT may exercise its inherent powers under Rule 11 to allow or disallow an application for withdrawal or settlement. It may be noted that there is no reference in this order to the prescribed procedure under Section 12A read with Regulation 30A, although the proceedings took place well after their insertion. As noted above, in response to the decision of this Court in Swiss Ribbons (supra), there was a change in the legal framework and Regulation 30A was amended to specifically provide for a procedure for withdrawal before the CoC is constituted. The intention was to account for the lacuna identified in Swiss Ribbons (supra) and at the same time, reduce the reliance on 'inherent powers' by prescribing a procedure for withdrawal at this stage. In our view, as the order overlooks the relevant legal provisions and fails to even refer to the existing legal framework under Regulation 30A, it would be per incuriam and is not binding on this Court.

84. The same infirmity is found in Ashok G. Rajani (supra), a judgement rendered by a two-judge bench of this Court. In this case, too, the petition filed by a creditor against a corporate debtor had been admitted, but the CoC had not been constituted. The decision refers to Section 12A of the IBC but fails to even acknowledge the amendment to Regulation 30A, which specifically provided for such an eventuality. Instead, this Court proceeded to hold while Section 12A of the IBC permits withdrawal after admission of the application by the creditor, it only provides for the procedure for withdrawal after the CoC has been constituted, without laying down a bar on withdrawal before the constitution of the CoC. According to the two-judge bench, the question of approval of the CoC by the requisite percentage of votes can only arise after the CoC is constituted PART E and thus, Rule 11 must be invoked to allow withdrawal. This observation was made without as much as a passing reference to Regulation 30A, which specifically governs such a situation.

85. The decision of this Court in Abhishek Kumar (supra) rendered by a two-judge bench of this Court speaking through Justice Vikram Nath, correctly identifies the legal framework. However, it is distinguishable from the present factual situation and the findings of this Court do not support the case of the respondents. The facts are comparable vis-à-vis the stage of the proceedings – the petition had been admitted, but the CoC had not been constituted. However, in that case, the IRP had moved an application under Regulation 30A of the CIRP Regulations. Instead of adjudicating upon the application under Regulation 30A, the NCLT took the view that Regulation 30A is a mere directory provision and dismissed the application. The NCLT vacated the stay on the constitution of the CoC and directed that the application under 12A be decided directly (i.e. including for compliance with the requirement of a ninety-percent voting share of the CoC). This Court set aside the order of the NCLT on the ground that Regulation 30A provides a complete mechanism for dealing with the applications filed under such a provision, and it is not necessary to get the approval of a ninety percent voting share of the CoC if the application for withdrawal is moved before the constitution of the CoC. On the other hand, in the present case, there was no application filed through the IRP before the NCLT under Regulation 30A at all. Therefore, this decision is not applicable to the present case.

PART F F. Conclusion

86. For the above reasons, we allow the present appeal and set aside the impugned judgment of the NCLAT dated 2 August 2024 in the above terms. At this stage, it would not be appropriate for this Court to adjudicate on the objections of the appellant to the settlement agreement on merits. The issues raised are the subject matter of several litigations in different fora, including the Delaware Court and investigation by various authorities, including the Enforcement Directorate, which are pending.

87. During the course of the proceedings before this Court, the CoC has been constituted. The parties are at liberty to invoke their remedies, to seek a withdrawal or settlement of claims, in compliance with the legal framework governing the withdrawal of CIRP. Nothing in this judgment should be construed as a finding on the conduct of any of the parties or other stakeholders involved in the insolvency proceedings.

88. The amount of Rs 158 crore, along with accrued interest, if any, which has been maintained in a separate escrow account pursuant to the Order of this Court dated 14 August 2024, is to be deposited with the CoC. The CoC is directed to maintain this amount in an escrow account until further developments and to abide by the further directions of the NCLT.

89. The civil appeal and special leave petition shall stand disposed of accordingly. PART F

90. Pending applications, if any, stand disposed of.

. . .. CJI [Dr Dhananjaya Y Chandrachud] .....J [J B Pardiwala] .....J [Manoj Misra] New Delhi;

October 23, 2024.