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## BACKGROUND NOTE

The Insolvency and Bankruptcy Code (IBC), 2016 was introduced to establish a clear framework for addressing insolvency and bankruptcy in India. Its primary goal is to facilitate the timely resolution of financial distress and maximize the value of assets for the benefit of all stakeholders.<sup>1</sup> A core element of the Code is the Corporate Insolvency Resolution Process (CIRP), which allows companies facing financial difficulties to either resolve their issues through a resolution plan or, if resolution fails, enter liquidation.<sup>2</sup>

Once the CIRP is triggered, the Resolution Professional takes over the management of the debtor company, and the process becomes *in rem*, meaning that it affects all creditors. However, when the Code was first enacted, there was no clear procedure for withdrawing a CIRP application after its admission. Before 2018, once an insolvency application was accepted, it could not easily be reversed, even if the debtor and creditors reached a settlement. This created problems, especially when debtors or their promoters managed to settle with creditors before the resolution process was completed. The law did not provide a clear mechanism for such cases, leaving the adjudicating authorities, like the National Company Law Tribunal (NCLT), with limited options to allow withdrawals after admission. Though Rule 8 of Application to Adjudicating Authority Rules<sup>3</sup> (“AAA Rules”) allowed for the withdrawal of an application before it was admitted, it did not address the situation after an application was already accepted (i.e., at post-admission stage). In such cases, debtors or suspended directors attempted to negotiate settlements, but the law did not clearly empower authorities to approve these settlements and allow the withdrawal of the case. This lack of clarity led to calls for reform, especially given the growing number of instances where settlements could resolve the issue without the need for a prolonged resolution process.

While the IBC was silent on post-admission withdrawals, there was a provision in Rule 11 of the NCLAT Rules, 2016, which granted the NCLT and NCLAT inherent powers to pass orders

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<sup>1</sup> Insolvency and Bankruptcy Board of India, *Discussion Paper on Strengthening the Regulatory Framework of Liquidators Under the Insolvency and Bankruptcy Code*, <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>. (last visited Dec. 20, 2024).

<sup>2</sup> INSOL India, *Interpreting the Code: Corporate Insolvency in India*, [https://www.insolindia.com/uploads\\_insol/resources/files/interpreting-the-code-corporate-insolvency-in-india-1025.pdf](https://www.insolindia.com/uploads_insol/resources/files/interpreting-the-code-corporate-insolvency-in-india-1025.pdf) (last visited Dec. 18, 2024).

<sup>3</sup> Application to Adjudicating Authority Rules, 2016, Rule 8, Gazette of India (June 1, 2016).

necessary to prevent the abuse of their processes or to further justice.<sup>4</sup> This was similar to the powers granted to High Courts under Section 151 of the Civil Procedure Code, which allows them to intervene in cases where no specific procedure exists.<sup>5</sup> However, the scope of these powers was not well defined, leading to confusion about how and when they could be used.

Over these years many judgments have tried to define the boundaries of the inherent powers given under Rule 11 in order to prevent arbitrary exercise of power by the authorities. Eventually the apex court made few observations in the judgement of *Uttara Foods and Feeds Pvt. Ltd. v. Mona Pharmachem*,<sup>6</sup> where the Court recognized the gaps in the law and suggested the need for a formal procedure for withdrawing CIRP applications after they had been admitted. Based on these observations the Insolvency Law Committee, submitted a report on March 26, 2018 recommending an amendment for withdrawal post admission. Accepting these recommendations, Section 12A of the IBC<sup>7</sup> and Regulation 30-A<sup>8</sup> was introduced.<sup>9</sup> The provisions provided clarity and a clearly laid down framework for withdrawal of such applications. But there were a couple of cases where the adjudicating authority exercised its inherent powers granted under Rule 11 and allowed withdrawal of such application without even following the procedure established under Sec 12A or 30A and one such judgement is *Swiss Ribbons v. UOI*<sup>10</sup> but ultimately the court held that the authority can exercise its powers under Rule 11 without meeting the requirements given under Sec 12A or 30A. Over time there came many commentaries on the Swiss Ribbons judgement which also focused on the wide scope of inherent powers decided by that judgment.

The apex court once again dealt with the same question in the most recent judgement *GLAS Trust v. Byju Raveendran*<sup>11</sup>. The court had to answer that whether the adjudicating authority (NCLAT) was right while invoking its inherent powers under Rule 11 in the presence of a

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<sup>4</sup> National Company Law Appellate Tribunal (NCLAT) Rules, 2016, Rule 11, Gazette of India (May 26, 2016).

<sup>5</sup> CODE CIV. PROC. § 151.

<sup>6</sup> *Uttara Foods and Feeds Pvt. Ltd. v. Mona Pharmachem*, (2018) 15 SCC 587.

<sup>7</sup> Insolvency and Bankruptcy Code, 2016, § 12A.

<sup>8</sup> Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019.

<sup>9</sup> Insolvency and Bankruptcy Board of India,

[https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/CIRP%2025072019\\_2019-07-25%2020:15:02.pdf](https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/CIRP%2025072019_2019-07-25%2020:15:02.pdf) (last visited Dec. 18, 2024).

<sup>10</sup> *Swiss Ribbons v. UOI*, (2019) 4 SCC 17.

<sup>11</sup> *GLAS Trust Company LLC v. BYJU Raveendran*, 2024 SCC OnLine SC 3032.

prescribed procedure for the withdrawal of CIRP and this time the court clearly laid down that the inherent powers provided to the authority cannot overpower or circumvent the framework provided in the provisions of the Code and thus the apex court ultimately strengthened the procedural rigor of IBC. This paper delves into the analysis of all these three judgments which has an interplay between the Inherent powers and the procedural rigor (Sec 12A & 30A) provided under IBC for the withdrawal of application. The analysis has been done from a legal as well as an economic lens to look into the economic efficiency of the decisions of the court.

**Facts of the case:**

Mona Pharmachem (Operational Creditor) supplied pharmaceutical products to Uttara Foods and Feeds Pvt. Ltd. (Corporate Debtor) between June 10, 2014, and April 25, 2015. The first invoice, dated June 10, 2014, was due on August 9, 2014, but remained unpaid. Although part payments were made on three subsequent invoices, a principal amount of ₹22,26,672 still remained outstanding. The invoices also mentioned an interest rate of 24% per annum on delayed payments, which Mona Pharmachem claimed along with the principal amount. On March 15, 2017, Mona Pharmachem sent a demand notice to Uttara Foods under the Insolvency and Bankruptcy Code (IBC), 2016. Since no response was received, Mona Pharmachem filed a petition before the National Company Law Tribunal (NCLT) on June 9, 2017, providing all necessary evidence, including invoices and bank statements. The NCLT, after reviewing the evidence, admitted the case. It also restrained Uttara Foods from altering or transferring its assets until the debt was paid and initiated the insolvency resolution process.

However, both parties later expressed a desire to settle the matter out of court. The NCLT approved the settlement and allowed the petition to be withdrawn. Uttara Foods challenged this decision before the Supreme Court.

**Legal Issue:**

Whether the NCLT had authority to allow the withdrawal of an insolvency petition post-admission, when the parties reached an out-of-court settlement?

**Arguments by Petitioner:**

The Petitioner contended that the NCLT has admitted their insolvency petition after thorough examination of evidence. They stressed that the Respondent's repeated failure to settle outstanding dues, despite several notices, warranted the initiation of insolvency proceedings. The petitioner argued that the NCLT has the authority to permit settlements between parties. Because such agreements could expedite resolution and eliminate lengthy litigation, especially in the case when both parties are willing to resolve the dispute amicably.

**Arguments by Respondent:**

The Respondent argued that the NCLT did not possess the authority to approve the withdrawal of CIRP application post its admission. It was argued that IBC did not allow for such withdrawals at the post-admission stage, as doing so could compromise the integrity and objective of entire insolvency process.

**Judgment:**

The Supreme Court decided in favour of Uttara Foods and Feeds Pvt. Ltd. and stated that once a petition is initiated under the IBC, the NCLT cannot allow it to be withdrawn based on an out-of-court settlement. Nonetheless, the Hon'ble High Court exercised its extraordinary powers under Article 142 of the Constitution to permit the withdrawal of CIRP application.

**Ratio:**

The Court clarified that neither the NCLT nor the NCLAT is authorized to approve the withdrawal of a CIRP once it has been admitted. At the time, the Insolvency and Bankruptcy Code, 2016, did not include provisions for withdrawing a CIRP application at post-admission stage. Rule 11 of the NCLT Rules, which provides tribunals with inherent powers, was deemed insufficient for this purpose.

**Case Comment:**

The Court recognized a procedural gap in the law. It observed that the absence of a statutory mechanism to permit withdrawals post-admission created rigidity in situations where settlements were already reached. Without a formal provision, such withdrawals required intervention by the Supreme Court time and again. This framework was unsustainable in the long term. The Court also noted that a balanced withdrawal mechanism was needed to protect the rights of all stakeholders, particularly operational creditors, who might otherwise be left out of private settlements. To address these issues, the Supreme Court instructed the competent authority to make necessary amendments to the Code.

**Insolvency Law Committee Report, 2018:**

The Insolvency Law Committee (ILC) was formed. It noted that once CIRP is initiated, it affects all creditors, not only the applicant creditor. The ultimate goal of IBC to discourage individual enforcement actions at the expense of the common good would be undermined if withdrawals were only authorised on the basis of individual settlements. Instead, the resolution process must guarantee that all creditors' interests are recognised and evaluated in a systematic



manner. After evaluating different NCLT and NCLAT decisions, the Committee came to a conclusion that post-admission withdrawals should only be permitted with the approval of all parties concerned. To protect the collective interests of all creditors, the Committee proposed that withdrawal of claim post- admission need the permission of at least 90% of the voting shares from CoC. As a result, the committee suggested a legislative reform to formalise the process. This recommendation laid the groundwork for the subsequent introduction of Section 12A in the IBC.

### **Section 12A and Regulation 30A:**

Section 12A of the Indian Insolvency and Bankruptcy Code, 2016 (IBC), permits the withdrawal of an insolvency application against a corporate debtor if at least 90% of the committee of creditors (CoC) approves it. This provision applies to cases admitted under Sections 7, 9, or 10. The Adjudicating Authority may allow such withdrawal in accordance with the procedures outlined in this section. In conjunction with Section 12A, Regulation 30A of the Corporate Insolvency Resolution Process (CIRP) Regulations, 2016, specifies the process for withdrawal. An application for withdrawal can be filed by the applicant through the interim resolution professional (IRP) before the CoC is constituted, or through the IRP or resolution professional after the CoC has been formed, depending on the stage of the process.

### **Economic Analysis:**

The theory of collective action introduced by Mancur Olson discuss the challenges that groups face when pursuing common goals.<sup>12</sup> It states that the problem of collective action occurs when individuals within a group fail to act together to achieve shared goals. This often happens because personal interests conflict with the collective good. In the case of insolvency proceedings, for example, an individual creditor might prefer a private settlement with the debtor to recover their dues quickly. While this may serve the creditor's immediate interest, it can undermine the collective process designed to ensure fair treatment for all creditors. Such behavior is known as 'free-riding' where an individual benefits from the group's efforts without contributing to the collective goal or, worse, by acting against it. To prevent such situations, mechanism such as Section 12A was introduced to guarantee that decisions are taken

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<sup>12</sup> MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS (Harvard University Press 1965).

collaboratively, and safeguarding the interests of all parties involved. This framework ensures that the group process functions as intended for the benefit of all creditors.<sup>13</sup>

The term ‘moral hazard’ in economics refers to a situation where one party is able to take risks because they do not have to bear the full consequences of those risks.<sup>14</sup> In the case of insolvency proceedings, it arises when creditors or other stakeholders might act in ways that are beneficial to them in the short term, but detrimental to the overall process or to other parties, because they don't face the full cost of their decisions. The amendments introduced in the IBC help mitigate this moral hazard. It requires a majority to agree on any decision, therefore risk of individual creditors acting in their self-interest is reduced. If a creditor were to push for a private settlement that benefits them but harms others, they would not be able to do so without the consent of the majority. The collective decision-making process also helps to prevent the dissipation of the corporate debtor's value. In the absence of majority consent, disjointed or self-serving activities could result in a scenario where individual creditors attempt to collect as much as they can, leaving less for other creditors or lowering the potential value of the debtor's assets. The insolvency procedure, through above mentioned amendments, is made more efficient by considering the interests of all creditors. It lessens the possibility that a single creditor's choice will jeopardize the recovery process for all other creditors, which frequently occurs when moral hazard is allowed to continue unchecked.

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<sup>13</sup> IBC Law, *Analysis of Withdrawal of CIRP Proceedings Pursuant to Settlement Under Section 12A of the IBC*, <https://ibclaw.in/analysis-of-withdrawal-of-cirp-proceeding-pursuant-to-settlement-under-section-12a-of-the-ibc/> (last visited Dec. 20, 2024).

<sup>14</sup> PAUL KRUGMAN, *THE RETURN OF DEPRESSION ECONOMICS AND THE CRISIS OF 2008* (W.W. Norton Company Limited 2009).

**Facts of the case:**

Several petitions were filed, which included 10 distinct writ petitions along with a Special Leave Petition in the Hon'ble Supreme Court, questioning the constitutional validity of various provisions of the Insolvency and Bankruptcy Code, 2016. Since the Court has examined matters related to the constitutional validity of the different provisions of the IBC, it refrained from exploring the specific facts and circumstances of any individual case.

**Legal Issue:**

Can a party under Rule 11 of the NCLT Rules, 2016 directly approach the Adjudicating Authority (NCLT) to allow or disallow a withdrawal or settlement application of the Corporate Insolvency Resolution Process even before the constitution of the Committee of Creditors, if the procedure for withdrawal is already outlined in Sec 12A and 30A?

**Judgment & Ratio:**

The apex court laid down that, *“at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.”*<sup>15</sup>

**Case Comment:**

The Supreme Court ruled that, prior to the establishment of the Committee of Creditors (CoC), a party has the option to directly approach the NCLT for the withdrawal or settlement of a Corporate Insolvency Resolution Process (CIRP) application. The Tribunal can use its inherent powers to approve or reject such applications depending on the facts of the case and after hearing from all relevant parties. Although this judgement gives stakeholders more freedom in settling insolvency issues early on – we believe – it deviates from the structured framework

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<sup>15</sup> Swiss Ribbons v. UOI, (2019) 4 SCC 17.

established by Sections 12A and 30A of the Code. These provisions are intended to foster uniformity and group decision-making. It reduces transaction costs and improves economic efficiency. Therefore, it must be adhered to.

### **Economic Analysis:**

The Insolvency and Bankruptcy Code, 2016, was framed to ensure the timely resolution of various insolvency and bankruptcy cases nationwide. Consequently, the provisions of the code and subsequent adherence to the legal framework were designed to achieve this objective. Therefore, deviation from such provisions or the framework laid down by the code would ultimately hinder parties seeking relief from reaching an efficient outcome.

Section 12A of the code lays down a clear-cut framework regarding the withdrawal of the CIRP initiation application admitted under Sec 7,9, or 10. The rule laid down under this section is the withdrawal of such application shall be permitted or approved by the Adjudication Authority<sup>16</sup> after getting approval of 90% of the voting share of the Committee of Creditors (CoC). The CoC consists of all the financial creditors of the debtor and the purpose of such a governing body is to maximize the value of a corporation and/or promote the interests of all stakeholders simultaneously or equitably.<sup>17</sup> On the other hand, we have Sec 30-A of IBBI regulations that lays down the framework for procedure of withdrawal of application before the constitution of CoC. The position and role of both these provisions were clarified by the SC in the very recent case of *Abhishek Singh v. Huhtamaki PPL Ltd*<sup>18</sup>. Rule 11 empowers the adjudicating authorities with inherent powers. The scope and extent of inherent powers are not clearly laid down within the code or the rules henceforth, it remains the exercise of such a power remains ad-hoc in nature. The apex court in this ruling laid down that at any stage where the CoC is not yet constituted, a party can approach the NCLT directly, which the Tribunal may, in the exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This decision of the court clearly shows a deviation from the procedural framework for the withdrawal of an application laid down under Sec 12A and 30-A.

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<sup>16</sup> Insolvency and Bankruptcy Code, 2016, § 12A, No. 31, Acts of Parliament, 2016 (India).

<sup>17</sup> IBBI Newsletter, Balancing the Interests of Stakeholders (July-Sept. 2017), [Article Balancing the Interests of Stakeholders in IBBI Newsletter July-September 2017.pdf](#).

<sup>18</sup> *Abhishek Singh v. Huhtamaki PPL Ltd.*, 2023 SCC OnLine SC 349.

The theory of efficiency in economics focuses on the optimal use of resources to maximize output and minimize waste.<sup>19</sup> Application of the efficiency theory in order to evaluate this ruling would depict the intricacies of deviation from the regulatory framework and in this case, it is a diversion from following Sec 12A and 30A. To evaluate the efficiency of an outcome within a regulatory framework we focus on various costs, one of which is transaction cost. Transaction cost is the most basic unit of measure and focuses on how much effort, resources, or cost is necessary for two parties to complete an exchange<sup>20</sup>. In the present scenario, the transaction costs that could be foreseen in order to withdraw an application are the negotiation costs which are mainly the ex-ante costs incurred before an agreement (withdrawal) is reached, enforcement costs as part of ex-post costs to ensure compliance such as litigation, monitoring, etc. and lastly uncertainty costs which are the costs incurred when the outcome is unpredictable. The same is illustrated by the following expression where TC = Total Cost, and C = Cost of:

$$TC = C_{negotiation} + C_{enforcement} + C_{uncertainty}^{21}$$

The economic efficiency of the structured procedures laid down under Sec 12A and 30-A versus the ad-hoc approach of withdrawal of an application can be evaluated through a comparison between the total cost incurred in each case. A thorough comparison of the costs incurred leads us to the conclusion that total transaction costs incurred while reaching a withdrawal under Rule 11 are much greater compared to the procedure given under Sec 12A or 30-A as the structured process here minimizes the extra costs to be incurred reducing the overall costs and leading to an efficiently effective withdrawal outcome. Let's see how –

Negotiation costs (*C negotiation*) involve the costs incurred by the stakeholders (creditors, debtor) while trying to negotiate and arrive at a withdrawal. This might involve the cost of meetings, drafting agreements, consultations, etc. Sec 12A states that withdrawal of application is successful after approval of 90% of the members of the CoC and 30-A states that for withdrawal before the formation of CoC, an interim resolution professional is to be appointed to evaluate such a withdrawal application. This approach fosters collective decision-making as

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<sup>19</sup> ULRICH SCHWALBE & DANIEL ZIMMER, *LAW AND ECONOMICS IN EUROPEAN MERGER CONTROL* (Oxford University Press 2009).

<sup>20</sup> Oliver E. Williamson, *The Economics of Organization: The Transaction Cost Approach* (1981), <https://www.jstor.org/stable/2778934>.

<sup>21</sup> ROBERT COOTER & THOMAS ULEN, *LAW AND ECONOMICS* 384-386 (Berkeley Law Books 2016).

a ninety percent voting threshold ensures that no single creditor can dominate or influence the decision. This eliminates the costs that are incurred under individual negotiations between the debtors and creditors which takes place when the stakeholders approach the NCLT under Rule 11. Individual negotiations increase the timeline for the resolution or withdrawal and add up the cost for legal consultation costs, separate agreements increase the administrative costs as well as the due diligence work of the financial reports of the debtors for all separate agreements of negotiations.

Enforcement Costs (*C enforcement*) and Uncertainty Costs (*C uncertainty*) are another set of transaction costs incurred when the parties try to arrive at a specific outcome (withdrawal). Enforcement costs are basically the expenses incurred by the stakeholders to ensure proper compliance with the agreements and legal rulings regarding the withdrawal process. Such costs are usually incurred when there is diversion from the agreed terms or procedure decided by the stakeholders. The ad-hoc approach given by Rule 11 in reality would increase such costs. In reality would increase such costs. As it does not enforce collective decision-making between the stakeholders which ultimately results in fragmented agreements. Such fragmented agreements increase the overall enforcement costs as it becomes harder to enforce them uniformly. And if any breach of such agreements takes place which results in appeals increasing the cost of enforcement through courts. Since there are fragmented agreements the legal cost for each appeal increases the total legal cost incurred. On the other hand, Sec 12A or 30-A provides a centralized enforcement plan through CoC which plays the role of a single decision-making authority. There is enforcement of a single collectively decided resolution plan or withdrawal which ultimately cuts off the enforcements charges and also significantly reduces the changes of disputes which in return cuts off the legal costs.

Uncertainty Costs (*C uncertainty*) are incurred by stakeholders in order to hedge future risks or minimize the damages that can be caused by unintended or unpredictable outcomes. The uncertainty or level of risk is quite higher under Rule 11. Because it relies heavily on judicial discretion, as we already discussed earlier the scope or extent of the inherent powers granted under Rule 11 is not specified in the code thus the boundaries keep getting refined by judicial rulings from time to time. And since the uncertainty level is higher the risk mitigation costs increase swiftly. Stakeholders would have to spend more on legal advice, contingency planning, and due diligence to protect themselves against adverse outcomes. While the standardized approach provided by Sec 12A or 30-A ensures consistency and transparency in

outcomes. This reduces the guesswork as the stakeholders know the exact steps to follow which ultimately minimizes or eradicates the risk of disputes or procedural errors. Such a clarity ensures that the stakeholders involved need not to spend time, efforts or money preparing for unforeseen scenarios.

**Facts of the case:**

In 2023, the Board of Control for Cricket in India (BCCI) filed a petition under Section 9 of IBC against Byju's (Think and Learn Pvt Ltd) for default in payment of ₹158 crore under a sponsorship agreement. NCLT Bengaluru, admitted the petition and initiated a Corporate Insolvency Resolution Process (CIRP) by appointing an Interim Resolution Professional (IRP). Subsequently, Byju's entered into a settlement agreement with the BCCI to resolve the outstanding dues. However, instead of following the prescribed procedure for withdrawal of CIRP under Section 12A of the Insolvency and Bankruptcy Code (IBC) - Byju's approached the National Company Law Appellate Tribunal (NCLAT) under Rule 11 of the NCLAT Rules, 2016, invoking inherent powers of the tribunal to pass necessary orders.

The NCLAT approved the withdrawal of the insolvency proceedings based on the settlement. This decision was made without constituting a Committee of Creditors (CoC). GLAS Trust Company LLC, a U.S.-based lender to Byju's, challenged this decision contending that the NCLAT bypassed statutory procedures and ignored the 'collective interest' of other creditors. The appeal is, therefore, before the Hon'ble Supreme Court of India.

**Legal Issue:**

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?

**Arguments by the Appellant:**

The appellant contended that the NCLAT's decision to approve the withdrawal of the CIRP without following the prescribed procedure under Section 12A of the IBC was unfair. Section 12A requires that any withdrawal from the CIRP once it has been initiated be approved by 90% of the Committee of Creditors. The NCLAT violated the safeguards intended to protect the collective interests of all creditors by avoiding this legislative procedure. According to Rule 11 of the NCLAT Rules, 2016, the appellant argued that the NCLAT had misused its inherent



authority. The tribunal has the authority to make the necessary orders under Rule 11. It cannot be used to circumvent the statutory provisions of IBC. The appellant further argued that the use of Rule 11 in this instance was an “improper attempt to override the established statutory framework” as Section 12A expressly provides a procedure for withdrawal. Because the settlement between Byju's and the BCCI only benefited one creditor and left out others, including the appellant, the appellant questioned whether it was fair. The goal of the IBC is to maximize value for all creditors through a collective settlement of insolvency. If an individual creditor is granted permission for withdrawal without taking into account the interests of other creditors, it would violate the core principles and objectives of IBC. Therefore, such settlement should be invalidated.

### **Arguments by the Respondent:**

The respondent contended that the NCLAT acted within its power when it issued an order for withdrawal under Rule 11 of the NCLAT Rules, 2016. They argued that Rule 11 gives the tribunal the authority to make judgements in the interest of justice. In this case, the parties have already reached an agreement. The decision was given to expedite the matter with minimal procedural delays. Therefore, continuing with the insolvency processes would be futile and would only add to the financial burden. The respondents also pointed out that Byju's is a big ed-tech company. It has a sizable number of staff and students who rely on its services. If the insolvency proceedings be continued, it would further disrupt the operations of the company, and result in severe repercussions for its workers, customers and creditors. On the other hand, if the CIRP application is withdrawn, that would allow Byju's to concentrate on stabilising its business and meeting its obligations. In this case, the respondent contended that the settlement with the BCCI was the most efficient and fair approach, and that the NCLAT acted correctly to promote this resolution.

### **Judgment**

The Supreme Court of India overruled the NCLAT decision that permitted Byju's (Think and Learn Pvt Ltd) to withdraw from CIRP at the post-admission stage. The Supreme Court held that the NCLAT erred when it used its inherent powers under Rule 11 to enable the withdrawal of the insolvency proceedings. The Court stated that such withdrawal is only possible through the procedure established in Section 12A of the Insolvency and Bankruptcy Code. The Court observed that the NCLAT had made attempt to circumvent the statutory procedure, and hence its ruling was overturned.

## **Ratio**

The Supreme Court established an important legal precedent in this case – that any withdrawal from CIRP at the post-admission stage must strictly adhere to the legislative procedure outlined in Section 12A of the IBC. The Court noted that Rule 11 of the NCLAT Rules, 2016, which provides the NCLAT inherent powers, cannot be used to circumvent the legislative requirements outlined in IBC.

## **Case Comment**

The respondent in this case attempted to invoke inherent powers under Rule 11 of NCLAT to authorise the withdrawal of CIRP after reaching to a settlement with one creditor (BCCI) – while raising concerns about the collective interests of other creditors. The Supreme Court correctly caught this mischief and emphasised that the Insolvency and Bankruptcy Code is not a tool for individual debt recovery. Rather, it intended to be a collective procedure that considers the rights and demands of all creditors.

## **Economic Analysis:**

The Coase Theorem posits that in the presence of well-defined property rights and low transaction costs, parties can negotiate and settle disputes efficiently without requiring government intervention.<sup>22</sup> However, when transaction costs are high (as in the case of insolvency proceedings), the need for legal intervention becomes crucial.

Byju's sought a settlement with one creditor (BCCI) under the assumption that it would efficiently resolve the outstanding dues. By bypassing the collective process and approaching the NCLAT under Rule 11, Byju's acted based on the premise that a settlement with one creditor could resolve the issue and provide a quick exit from the insolvency process. However, this situation ignores the broader concept of collective action—that the interests of all creditors, not just one, should be considered in a collective decision-making process. The IBC framework, as seen in this case, encourages the formation of a Committee of Creditors (CoC) to ensure that all creditors' interests are accounted for, not just those of individual parties. The Supreme Court's decision is in line with the economic concept of collective action, where the

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<sup>22</sup> RONALD H. COASE, THE PROBLEM OF SOCIAL COST (1960).

interests of all stakeholders are balanced and the process ensures efficiency by not allowing one party to dominate the decision-making process at the expense of others.

Agency theory explains the relationship between principals (creditors) and agents (the management of the debtor company).<sup>23</sup> In insolvency proceedings, the management of the company is seen as the agent, while the creditors are the principals who have the financial stake in the company's resolution. The agency problem arises when the management may act in their own interests, potentially at the expense of creditors, who are supposed to be the ultimate beneficiaries of the resolution. In this case, Byju's management—represented by the company's promoters—sought to exit the insolvency process by negotiating a settlement with one creditor, BCCI. By doing so, they were essentially acting in their own interest, trying to avoid the insolvency process's scrutiny and its potential adverse effects on their management and control of the company. This behavior can be seen as a classic agency problem, where the management is looking for a quick resolution that benefits them in the short term (through avoiding the formal insolvency process) rather than following the procedures that would ensure fair treatment for all creditors. The Committee of Creditors (CoC) is designed to mitigate the agency problem by placing decision-making in the hands of creditors, who, as principals, have an economic incentive to act in the collective interest.

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<sup>23</sup> MICHAEL C. JENSEN & WILLIAM H. MECKLING, THEORY OF THE FIRM: MANAGERIAL BEHAVIOR, AGENCY COSTS AND OWNERSHIP STRUCTURE (1976).

## CONCLUSION

Initially, the Insolvency and Bankruptcy Code (IBC) lacked clear provisions for withdrawals at post-admission stage. This created difficulties when parties negotiated settlements after the CIRP had been admitted. To remedy this vacuum, courts frequently used inherent powers under Rule 11 of the NCLT Rules. However, this dependency resulted in unpredictability and inconsistency. The implementation of Section 12A and Regulation 30A were a turning point in this regard. These regulations created a structured procedure for withdrawals. It required approval from 90% of the Committee of Creditors (CoC). This way, it ensured joint decision-making and discouraged private arrangements that may benefit certain creditors over others.

Indian courts have played an important role in determining how these regulations work. In *Swiss Ribbons v. Union of India*, the Supreme Court permitted the use of inherent powers to close procedural gaps. However, in the recent case of *GLAS Trust Company LLC v. Byju Raveendran and Ors.*, it reinforced the relevance of Section 12A. The Court held that inherent powers cannot overrule statutory provisions.

From an economic perspective, the structured approach under Section 12A promotes efficiency. It reduces the transaction costs by reducing ambiguity. When the CoC makes decisions jointly, it decreases the possibility of fragmented agreements. The transparency of the process helps all parties. On the other hand, relying on inherent powers adds uncertainty. The idea of moral hazard is specifically applicable here. Section 12A reduces such hazards. It guarantees that choices are accountable and equitable.

However, this is not to say that Rule 11 is completely irrelevant. The inherent powers under Rule 11 are just as vital, but they should be exercised cautiously. They are needed in instances where rigid adherence to legal standards may result in injustice. Excessive use of such power risks compromising the aims and objectives of IBC. It might also result in inconsistent outcomes and erode trust in the process. Courts must invoke these authorities with reasoned discretion and ensure that they complement rather than contradict the IBC framework. As a road ahead, there is a clear need for legislative intervention to strengthen the whole process that can clarify the scope of inherent powers. This will ensure that flexibility does not come at the price of justice.

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