

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**
**(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)**
[Through Physical hearing/VC Mode (Hybrid)]

CP (IB) No.149/BB/2023
I.A No. 106/2024
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

THE BOARD OF CONTROL FOR CRICKET IN INDIA

4TH Floor, Cricket Centre, Wankhede Stadium,
D Road, Churchgate, Mumbai,
Maharashtra - 400020

... Operational Creditor

Versus

THINK & LEARN PRIVATE LIMITED

4/1, 6TH Floor, Tower D, IBC Knowledge Park
Bannerghatta Road Bangalore,
Karnataka - 560029

... Corporate Debtor

Order delivered on:16/07/2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri C.K. Nandakumar, Sr. Adv, Adv. Bhavya Mohan
& Adv. Ann Pereira

For the Respondent : Shri Pramod Nair, Sr. Adv, Adv. Waseem Pangarkar,
Adv. Nadiya Sarguroh, Adv. Yashowardhan Dixit,
Adv. Aditi Tiwari, Adv. Arunima Kumari i/b MZM
Legal LLP

**CP (IB) No.149/BB/2023
& IA 106/2024**

ORDER**Per: Manoj Kumar Dubey Member (Technical)**

1. The present petition is filed on 23/09/2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **The Board of Control for Cricket in India** (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Professional Process against **Think & Learn Private Limited** (hereinafter referred as 'Corporate Debtor'/Respondent) for a default of total outstanding amount of Rs. 1,58,90,92,400/- (Rupees One Hundred Fifty Eight Crore Ninety Lakhs, Ninety-Two Thousand Four Hundred). In Part IV of Form No.5 filed with the application, the following information is given:

2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED	Amount in Default: Rs 1,58,90,92,400/- (Rupees One Hundred Fifty-Eight Crore Ninety Lakhs Ninety Two Thousand Four Hundred) excluding the Tax Deducted at Source deposited by the Corporate Debtor and applicable Interest. Date of Default: 21/08/2022
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The Record of Default in Form D issued by NESL is annexed at Page 184, which reflects 21/08/2022 as the Date of Default. Affidavit U/s 9(3) (b) is placed at Page 55 of the Petition & Demand Notice under Section 8(1) of the Code, in Form 4 was attached at Page 154 onwards.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner in the Petition, Form No.5 and subsequent written submissions are as follows:

- i) The Operational Creditor and the Corporate Debtor entered into a 'Team Sponsor Agreement' dated 25/07/2019. As per the said agreement the Operational Creditor provided the Corporate Debtor the exclusive right to, inter alia, (a) marketing related services by way of the exclusive right to be the team sponsor of the Indian cricket teams and to display the Respondent's trademarks / brand names on the specified portion of the team kit worn by the Indian cricket teams; (b) advertising related services by way of a platform to display its brand through the use of video footage from cricket series and events organized and administered by the Petitioner; (c) promotional services by way of the network to engage with players of the Indian cricket teams for and in connection with advertising campaigns of the Respondent; (d) the permission to use the intellectual property of the Petitioner such as its logo and other official trademarks in its marketing materials; and (e) hospitality and non-hospitality tickets for every ticketed match organized by the Petitioner (collectively, the "**Services**"). As consideration, the Corporate Debtor was required to pay a fee to the Operational Creditor. The Corporate Debtor was the Sponsor of the Indian cricket team as per the above arrangements and availed the Services for a period up until 31/03/2023.
- ii) The term of the Agreement dated 25/07/2019 was till 31/03/2022; however, even after 31/03/2022, pending execution of formal document, the Corporate Debtor and Operational Creditor agreed to continue the arrangement in relation to Services. The Corporate Debtor was the Sponsor of the Indian cricket teams as per the above arrangement and availed the Services for a period up until 31/03/2023.
- iii) The Corporate Debtor was required to pay a sum equivalent to 50% of aggregate Fee pertaining to a series, not later than 30 days prior to the first scheduled match of such series; and the balance 50% was to be paid within a period of 5 days of the last match of such series.

- iv) After 31/03/2022, the Corporate Debtor has made payment in full only against one invoice for the year 2022-2023, i.e for India – South Africa cricket series held in June 2022 amounting to Rs 25,35,50,000/- vide invoice No BCCI/22-23/008 dated 20/05/2022. However, the CD failed to make payments against the remaining invoices raised by the Operational Creditor for the financial year 2022-23. Further, in pursuance of Correspondence between the parties, the Corporate Debtor, vide its email dated 06/01/2023 gave its consent to the Petitioner to encash the Bank Guarantee of Rs 143,00,00,000/-for dues till ICC WC 2022 which was encashed subsequently. However the amount was not sufficient to cover the entire amount, and this Bank guarantee was adjusted against Invoices No.1 to Invoice No.8 and Invoice No. 10,12 & 14 as explained in item 1 in part IV of Form No.5. Therefore, even after encashment of the Bank Guarantee, the following invoices aggregating to an amount of Rs. 1,58,90,92,400/- remained unpaid:

Cricket series/Tour details	Invoice Number	Invoice Amount (in INR)	TDS reflecting in Form 26 AS (in INR)	Amount Unpaid (in INR)	Date on which 50% amount was payable and default occurred	Date of default for balance 50% amount payable
South Africa, Australia, Srilanka, New Zealand	Invoice 9	1,38,30,000	2,76,600	1,35,53,400	Aug 21, 2022	Sept 30, 2022
South Africa, Australia, Srilanka, New Zealand	Invoice 11	1,38,30,000	2,76,600	1,35,53,400	Aug 29, 2022	Oct 9, 2022
South Africa, Australia, Srilanka, New Zealand	Invoice 13	1,38,30,000	2,76,600	1,35,53,400	Sept 6, 2022	Oct 16, 2022
Asia Cup ICC T20 World Cup	Invoice 15	8,30,50,000		4,12,80,400	Sept 23, 2022	Nov 11, 2022
New Zealand & Bangladesh	Invoice 16	30,42,60,000	60,85,200	29,81,74,800	Oct 19, 2022	Dec 5, 2022
New Zealand & Bangladesh	Invoice 17	25,35,50,000	50,71,000	24,84,79,000	Nov 4, 2022	Dec 31, 2022

ICC T20 WC semi final , Srilanka And New Zealand Tour to India	Invoice 18	1,66,10,000	3,32,200	1,62,77,800	Oct 11, 2022	Nov 15, 2022	
ICC T20 WC semi final , Srilanka And New Zealand Tour to India	Invoice 19	27,66,00,000	55,32,000	27,10,68,000	Dec 4, 2022	Jan 20, 2023	
South Africa, Australia, Srilanka, New Zealand	Invoice 20	2,76,60,000	5,53,200	2,71,06,800			
ICC T20 WC semi final , Srilanka And New Zealand Tour to India	Invoice 21	27,66,00,000	55,32,000	27,10,68,000	Dec 19, 2022	Feb 6, 2023	
South Africa, Australia, Srilanka, New Zealand	Invoice 22	2,76,60,000	5,53,200	2,71,06,800			
Australia tour to India	Invoice 23	35,49,70,000	70,99,400	34,78,70,600	Jan 10, 2023	Mar 27, 2023	
GRAND TOTAL		Rs. 1,58,90,92,400/-					This

outstanding amount of Rs 1,58,90,92,400/- (Rupees One Hundred Fifty-Eight Crore Ninety Lakhs Ninety Two Thousand Four Hundred) related to the above listed twelve invoices, has been reflected in Part IV of Form No.5 as the amount claimed to be in Default. The Corporate Debtor has also deducted TDS with respect to the amounts owed to the Operational Creditor under the above referred to invoices raised for the financial year 2022-2023.

- v) It cannot be disputed that the Corporate Debtor has availed the services of Operational Creditor. By an email dated 11/06/2022, the Corporate Debtor wrote to the Operational Creditor directing the latter to handover all the march tickets to an authorised person, evidencing that the Corporate Debtor was actively availing the services of the Operational Creditor.

- vi) Corporate Debtor had never disputed the fact that it was required to pay the agreed Fee as per the arrangement between the parties. However, despite having acknowledged the dues, the Corporate Debtor has failed to pay and instead, the Corporate Debtor repeatedly kept requesting the Operational Creditor for extension of time for payment as evidenced by the email dated 17/04/2023, wherein the Corporate Debtor requested extension of time upto May 2023; contending that the payments to be made in May 2023 and June of 2023 would be made in the respective months. By another email dated 15/05/2023 the Corporate Debtor again requested the Operational Creditor for accepting the payment of its dues between June 12, 2023 to June 15, 2023, since the fund raising for the former had gotten delayed till June 2023. **It is contented that these emails were the admission of the Debt owed by the Corporate Debtor and the default had occurred since there was request for extension of the time repeatedly. The Respondent never disputed the invoices raised during the F.Y 2022-23 which have been listed above, and in fact also duly paid the invoice no BCCI/22-23/008 dated 20/05/2022; in full amounting to Rs 25,35,50,000/-(Rupees Twenty Five Crore Thirty Five Lakh Fifty Thousand), pertaining to the Invoice of the India South Africa series.**
- vii) On 19/07/2023, the Operational Creditor sent a 'Demand notice' under Rule 5 of the Insolvency & Bankruptcy (Application to Adjudicating Authority Rules), 2016 to the Corporate Debtor, calling upon the Corporate Debtor to pay Rs. 1,58,90,92,400/- (which excluded the TDS deducted) against the above mentioned invoices along with the interest due on them as on date thereof.
- viii) In response to the abovementioned Demand Notice, the Corporate Debtor sent a notice ("Reply") dated 29/07/2023, to the Operational Creditor. It was contended that there was no contract in force and the claim did not constitute an "operational debt." It is stated that the said Reply is without any basis. The Reply does not refer to a pre-existing

dispute in relation to the unpaid operational debt. Since the Corporate Debtor has not repaid the operational debt till date, hence the present Petition has been filed.

3. The Ld Counsel for the Respondents filed objections vide diary No.352, dated 17/01/2024 and contended as under:

The Absence of any "Operational Debt"

- i. The term of the Agreement dated 25/07/2019, between the above parties was upto 31/03/2022 as per Clause 2 of the Agreement. Under the agreement the Respondent obtained sponsorship rights from the Petitioner. The said agreement provided various Rights to the Respondent under Clause 1.1 (xxvii) and (xxviii). Apart from the Rights Fee to be paid by the Respondent, the Respondent also had certain responsibilities under the Agreement including preparing advertisement content for the promotional activities and seeking approval of BCCI on same as per clause 3(1)(k) of the Agreement.
- ii. In terms of reciprocal obligations, the Respondent was obligated to make payment of the 'Rights Fees' (as agreed under Schedule VI of the Agreement) (Clause 4.1 (a)) and furnish an irrevocable and unconditional bank guarantee (Clause 4.2). Under the Agreement, the alleged Operational Creditor obtained sponsorship rights from the Respondent, which financially facilitated various national and international tours of the national cricket team; thereby enabling (i) higher revenue for BCCI, (ii) promotion of sports, (iii) national and international tours of the National Cricket Team, and (iv) representation of India across international cricket circuits for almost 3 (three) years (i.e., from 25.07.2019 to 31.03.2022). A Mere grant of rights to the Respondent pertaining to a Sponsorship cannot be said to be the provision of a 'service' from the BCCI to the Respondent. No service was ever provided by the BCCI which was not a 'service provider' and the Respondent is not a 'service receiver' or recipient of any service from the BCCI.

- iii. That Section 5(20) & (21) of the Code, an ‘operational creditor’ can file an application seeking initiation of the CIRP process against a corporate debtor on account of non-payment of any ‘operational debt’. On account of the reciprocal rights and obligations between the parties, BCCI merely granted certain ‘Rights’ and no ‘services’ were ever provided to BYJU’S under the Agreement. Since no service has been provided by the BCCI, it cannot be termed as a service provider and further does not fall under the definition of “Operational Creditor.”
- iv. Even assuming that the alleged Claim is due and payable, the right to issue a demand notice and initiate CIRP under Section 9 of the code vests only with an ‘operational creditor’ as defined under Section 5(21) of the Code, which limits it to being a claim in respect of i) provision of goods; ii) provision of services, including employment iii) Government dues. It is submitted the term ‘goods or services’ has not been specifically defined under the Code, however, the congruent term-‘goods or services’- has also been used in the definition of ‘Transaction’ as defined under Section 3(33) of the Code. In view of the contextual meaning of ‘goods & services’ there exists no contract/agreement between the parties that can be termed as “Operational Debt.”
- v. The case of *M. Ravindranath Reddy v G Kisha & Ors, [(AT) (Insolvency No. 331 of 2019)]* underscores that for a claim to be categorised as an operational debt, it must align with the specific categories enumerated in the relevant sections of the IBC. In the absence of such alignment, even if there exists a liability or obligation, the claimant cannot unilaterally classify itself as an operational creditor under the Code.
- vi. The Hon’ble NCLAT, in *Jaipur Trade Expocentre Pvt Ltd v Metro Jet Airways Training Pvt Ltd (2022 SCC OnLine NCLAT 263)* examined the definition of transaction under Section 3(33) and held that an ‘operational debt’ is one that arises in the course of conducting the principle activities of an enterprise. Moreover in, *Jaipur Trade Expocentre (Supra)* the quantum of ‘Operational Debt’ was already

crystallised but however in the present case there was a negotiation with respect to 'Schedule of Rights fees' as well. Hence since the sponsorship is not the principle activity of BYJU'S, the claim of the Petitioner is purported and not maintainable.

No contractual Arrangement between the parties

- vii. That soon after entering into the Agreement, the COVID-19 pandemic outbreak was announced and due to which the Respondent lost the ability to monetize on the rights granted under the Agreement and suffered heavy commercial and business loss.
- viii. Thus due to inability to fully benefit from the Agreement, **the Respondent through email 23/11/2021, requested BCCI for an extension of the Agreement (which was due to expire on 31/03/2022) till 2025. The parties began negotiating the terms of the Draft Amendment Agreement and obligation of payment of right fee (Clause 4 of the Agreement). In this regard there were multiple rounds of discussions, in which the Respondents herein proposed extensions** and various deals several times all of which was denied by the Operational Creditor.
- ix. It is pertinent that the proposed extension agreement was never finalised and consequently never executed. Therefore, it is an admitted position that as of 31/03/2022 and till date there exists no formal written agreement between the parties. Therefore, the alleged Operational Creditor has no right to claim that the purported invoices raised during the financial year 2022-23 were under the Agreement.
- x. The Respondent has relied on the following cases for the same;
 - a. *Stoughton Street Tech Labs Pvt Ltd v. Jet Skyesports Gaming Pvt Ltd*[Appeal(L)No.16492 of 2022}
 - b. *Hardesh Ores Pvt v. Hede and Company, ((2007) 5 SCC 61)*
 - c. *Joshi Technologies International Inc. v. Union of India (UOI) and Ors ((2015) 7 SCC 728) etc*

Pre-existing Dispute between the parties

- xi. The Respondents contend that since the negotiations of the Sponsorship were still in process and the same was contended by the Respondents in reply to the Demand Notice dated 18/07/2023, despite the existence of a dispute, the Petitioner has filed the present Application. It is stated that the Respondent, in the said Reply, raised disputes with respect to (i) no contractual basis for the alleged claim, (ii) the alleged claim not being an 'Operational Claim' as per the provisions of the code. Despite the existence of a dispute on these aspects, the present Application (which is not maintainable) has been filed.

Payment of TDS does not amount to an Admission of Debt

- xii. The Operational Creditor has sought to portray that the Respondent had acknowledged the debt by relying on TDS deposited by Respondent. In this regard it is submitted that form 26AS merely provides a record that TDS was deducted and deposited by the Respondent. In this regard reliance is placed on the various judgements of Hon'ble NCLAT in *Prayag Polytech Pvt Ltd v. Gem Batteries Pvt Ltd* in CA(AT)(Ins.) No. 713/2019, *Gajendra Investment v Bleu Noir* in CA(AT)(Ins.) No.990/2021 and the case of *PM Storage Private Limited v. Gouksheer Farm Fresh Private Limited* CA(AT)(Ins.) No. 615/2020, wherein it was held that the deposit of TDS cannot be construed as an acknowledgement of liability.
- xiii. The Petition is non-maintainable before this Hon'ble Tribunal on account of being ultra vires to the Memorandum Documents of BCCI itself. The MOA, 2018 of BCCI was brought into effect pursuant to the order dated 09/08/2018 of the Hon'ble Supreme Court, and Clause 15 therein outlines the exclusive powers and functions of the Apex Council to '(t)o institute or defend any action or proceedings for or against the BCCI or against any Office-Bearer or employee of the BCCI.' Subsequently, the aforesaid MOA, 2018 of BCCI was amended pursuant to the Hon'ble Supreme Court's order dated 14/09/2022. The prevailing 2022 MOA amended the above Clause 15 to provide a specific obligation on the Apex Council to 'institute or defend, through the Secretary, any action or proceedings for or against the BCCI or against any Office-

Bearer or employee of the BCCI.’ In view of the above, the amendment carried out in 2022 under Clause 15(4)(d) of the MOA was with the sole aim of delegating a specific function to the Secretary in the context of filling and/or defending legal matters on or against BCCI, with no power to either the Apex Council or the Secretary to sub-delegate such specific functionality. Therefore, the present Petition filed by a legal manager of BCCI, without any specific authority permitting the same, is not maintainable under the law and is hence liable to be dismissed.

xiv. Further the Respondent herein has filed IA 106/2024 seeking directing under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the parties to arbitration proceedings, since the Clause 19 of the Agreement stipulated that all disputes arising out of or in relation to the Agreement are mandatorily required to be adjudicated by way of Arbitration. Further it is also the contention of the Respondent that a number of substantial questions with respect to status of the alleged Creditor and legitimacy of contract etc have to be adjudicated upon, which cannot be undertaken in summary proceedings before the NCLT and must be relegated to Arbitration.

4. The Learned Counsel for the Petitioner have filed Rejoinder vide Diary No 791 dated 05/02/2024, and Written Submissions vide Diary No. 2568 dated 30/04/2024 contending as hereunder:

i. The term of the Agreement was originally till 31/03/2022, even after the said term of the Agreement, the Respondent availed the Services of the Petitioner including without demur up until March 2023. Further, the Respondent never disputed the invoices raised by the Petitioner for the Services provided and in fact paid one invoice issued on 20/05/2022 in full. For the subsequent invoices, the Respondent had kept requesting for more time to make the payments for the Invoices, without disputing any of the invoices.

- ii. That there were several instances in the period between April 2022 and March 2023 in which the Respondent actively sought to enforce its contractual rights. For example, **the Respondent had authorised its representative to collect match tickets from the Petitioner in June 2022, which was a service that the Petitioner was providing to the Respondent under the Team Sponsor Agreement dated 25/07/2019. The Respondent also advertised on the Indian team's Jerseys.**
- iii. The Respondent has taken a misleading contention that the benefits granted to the Respondent under the Agreement are mere rights and not 'services' and as there is no provision of good or service from the Petitioner to the Respondent and no quid pro quo between the Parties, any amount owed by the Respondent to the Petitioner is not an 'Operational Debt' and the Petitioner is not an 'Operational Creditor'. **The Respondent's reliance on the judgment in *M. Ravindaranath Reddy v. G Kisha & Ors., (AT) (Insolvency) No. 331 of 201 ("Ravindranath Reddy")*, to contend that the term 'service' must be defined in a restrictive manner is misplaced, as the said judgement has been held to be incorrect on precisely this aspect by a larger bench of the Hon'ble NCLAT in *Jaipur Trade Expocentre Private Limited v. Metro Jet Airways Training Private Limited 2022 SCC OnLine NCLAT 263* [at Paras 41 and 42 page 39 of judgment compilation filed by the Petitioner on March 11, 2024].**
- iv. Secondly, under the Agreement, the Petitioner licensed to the Respondent advertising and promotional rights [Clause 1.1 (a) (xxvii) of the Agreement at page 67 of the section 9 petition defines 'Rights'] for which the Respondent was required to pay a 'Rights Fee' [Clause 1.1 (a) (xxviii) of the Agreement at page 67 defines 'Rights Fee'].
- v. Several judicial precedents have held that advertising and promotional rights /services similar to the Services availed by the Respondent from the Petitioner are 'services' for the purposes of IBC. *In Rapid Metro Rail Gurgaon Limited v. Icons Project India Private Limited*

MANU/NC/6200/2022, the NCLT, New Delhi held that an outstanding payment / debt pertaining to an outdoor advertisement right agreement wherein the sole and exclusive advertising rights for outdoor advertisements work on Rapid Metrorail Gurgaon line was granted to the corporate debtor falls within the definition of an ‘Operational Debt’ [Para 13 at page 6 of the judgment compilation filed by the Petitioner on March 11, 2024].

- vi. Similarly, in *Somesh Choudhary, Suspended Director at Global Fragrances Private Limited v. Knight Riders Sports Private Limited and Ors. MANU/NL/0619/2022* (“Somesh Choudhary”), the Hon’ble NCLAT, New Delhi held that as the corporate debtor was permitted to use the trademark ‘KKR’ in relation to the licensed products, it constitutes ‘provision of service’ and any amount due and payable arising out of such service is an Operational Debt.
- vii. In *Chitra Publicity Company v. Sarkar Leisure Ltd., 2019 SCC OnLine NCLT 9905*, the NCLT, Ahmedabad, recognized that the applicant providing hoarding space to the respondent company for advertising its water park/amusement park constituted a “service” and made the applicant an “operational creditor” under the IBC.
- viii. Claims arising in respect of advertising services by airing advertising campaign on television channels and agreement for display of hoardings have also been held to be an operational debt for the purposes of section 9 of the IBC [*TV 18 Broadcast Limited v. Amrapali Media Vision Private Limited, 2017 SCC OnLine NCLT 539*; and *Deepak Advertising Marketing v. Gourmet Renaissance Private Limited, 2019 SCC OnLine NCLT 7778*].
- ix. Furthermore, clause 3 of the Agreement which sets out the rights granted by the Petitioner to the Respondent also evidences that there was a quid pro quo between the Parties; for instance, the Petitioner was obligated to provide certain match tickets to the Respondent, take Respondent’s inputs on marketing materials, display Respondent’s logo on their website, etc. **The Respondent has, in fact, conceded in para**

11 at page 5 of its Statement of Objections that under the Agreement, both Parties were “mutually providing services to each other”. As such, the Respondent cannot now take a contrary plea that it has not received a service from the Petitioner.

- x. Furthermore, as per clause 4.1(d) of the Agreement, all payments under the Agreement are to be paid together with such goods and services and entertainment tax or equivalent as may be applicable. Even the invoices raised by the Petitioner have accounted for IGST, **The Hon’ble NCLAT, New Delhi in Somesh Choudhary (supra) have held that the payment of GST is contemplated only for ‘goods’ and ‘services’ and the definition of ‘services’ and the definition of ‘service’ under the Central Goods and Services Tax Act, 2017 is applicable to IBC proceedings.**
- xi. Further, it is submitted that **the Respondents continues to avail the Services from the Petitioner up until March 2023, and for which the Petitioner raised invoices which were never disputed by the Respondent. It is also undisputed that the Respondent advertised its logo in the cricket matches held up until March 2023 as provided in the Agreement. Moreover, a written contract is not *sine qua non* for an operational debt and consequently for initiating a proceeding under Section 9 of the IBC.** The fact that the (a) Respondent never disputed having availed Services from the Petitioner or its liability to pay when the invoices were being sent by the Petitioner and (b) Respondent has admitted its liability to pay and sought extension of time to make payment towards the pending invoices raised post March 2022 and paid TDS against the invoices, clearly demonstrates that there was a mutually recognized and subsisting arrangement between the Parties.
- xii. That Regulation 7(2) of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the **existence of debt due to the operational creditor under the said regulations may be proved on the basis of** the records available with an information utility, if any,

or other relevant documents, including a contract for the supply of goods and services with corporate debtor **OR an invoice demanding payment for the goods and services supplied to the corporate debtor**, among others. Thus, it is clear from the scheme of IBC that an operational debt can arise on the basis of the invoices alone and does not have to be pursuant to a written agreement. The Respondent in this case has not only accepted the invoices raised by the Petitioner without demur, but has also paid TDS against each of them.

- xiii. In the oral arguments, the Respondent sought to rely on its email dated 24/05/2022 in which the Respondent had stated that it was unable to process the invoice raised by the Petitioner for the forthcoming South Africa tour to India due to non-availability of the contract, to contend that the Operational Debt had been disputed before the Demand Notice was received. **However, the Respondent failed to point out that it subsequently paid the said invoice in full September 2022 without any protest. Thus, the Respondent can't rely upon this e-mail to argue about pre-existing dispute.**
- xiv. The Respondent has not pleaded about or shown any pre-existing dispute between the Parties as regards its obligation to pay the Operational Debt before the receipt of the statutory Demand Notice, which must be established for a valid defence in a proceeding under Section 9 of the IBC (*Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd, 2017 SCC OnLine SC 1154*). In fact, as submitted above, the Respondent has on multiple occasions through correspondence and its conduct, admitted and acknowledged the Operational Debt owed to the Petitioner. Further, **the Respondent's failure to produce a list of purported correspondences before the issuance of the Demand Notice showing a dispute between the Parties, despite a specific direction in this regard by this Hon'ble Tribunal in its order dated 13/03/2024, further demonstrates that its defence of an alleged pre-existing dispute as regards the Operational Debt is unsupportable, hypothetical and illusory.**

- xv. Further, Under the Bye-Laws, the Apex Council of the Petitioner **has the power to institute or defend, through the Secretary, any action or proceedings for or against the Petitioner or against any office-bearer or employee of the Petitioner [Rule 15(4)(d) at page 713 of the compendium filed by the Respondent on March 13, 2024].** **Further, the Secretary of the Petitioner has the power to delegate any work to the Honorary Joint Secretary or any person in management [Rule 7(3)(f) at page 699 of the compendium filed by the Respondent on March 13, 2024].** Thus, it is clear from rule 7 (3) (f) that the Secretary / Honorary Secretary of the Petitioner [*Rule 1(A)(bb) at page 681 of the compendium filed by the Respondent on March 13, 2024*] has the power to delegate / sub-delegate any work, including the institution of proceedings for the Petitioner, under its Bye-laws
- xvi. In accordance with the Petitioner's Bye-laws, the Apex Council *vide* resolution dated October 27, 2022, appointed Mr. Jay Shah, Honorary Secretary of BCCI, as the authorized representative of the Petitioner *inter alia* to institute all legal proceedings. **The resolution further authorized the Honorary Secretary to delegate the powers vested on him to any officer(s) of the Petitioner. [Resolution of the Apex Council is produced at page 193 of the section 9 petition].** **The Honorary Secretary *vide* authority letter dated October 27, 2022, further authorized Mr. Biswa Patnaik, General Counsel of BCCI and / or Ms. Melinda Colaco, Senior Manager (legal) of BCCI to execute all documents to make necessary filings in legal proceedings. [Authority letter is produced at page 192 of the section 9 petition].** As such, the authority given to Senior Manager (legal) to initiate all legal proceedings is proper and in accordance with the Bye-laws governing the Petitioner and the resolution of the Apex Council, the principal body of BCCI. The Petition has been duly instituted.
- xvii. Further, with respect to the IA 106/2024, it was contended that, it is settled law that reliefs in the nature of winding up / insolvency resolution being actions *in rem* cannot be granted by a contractually created adjudicating body such as an arbitral tribunal. The Hon'ble

Supreme Court in *Booz Allen & Hamilton Inc. v. SBJ Home Finance Ltd.* (2011) 5 SCC 532 [Para 22 at page 49 of the judgment compilation filed by the Petitioner on March 11, 2024] and in *Vidya Drolia and Others v. Durga Trading Corporation* (2021) 2 SCC 1 [Para 46 at page 81 of the judgment compilation filed by the Petitioner on March 11, 2024] has categorically clarified that insolvency matters are not arbitral disputes. As such, the present section 9 petition filed by the Petitioner seeking initiation of CIRP of the Respondent has to be decided by this Hon'ble Tribunal and the Parties cannot be referred to arbitration as this is not an arbitrable matter / relief that can be granted by an arbitral tribunal under Indian law. Further, the Adjudicating Authority, when considering an application for admission to CIRP against a corporate debtor, must either admit or dismiss the application, and that there is no third option or course postulated by law (such as reference of the parties to arbitration / alternate dispute resolutions fora) [*Sodexo India Services Pvt. Ltd. v. Chemizol Additives Pvt.* MANU/NL/0055/2021 at Para 3 at page 166 of the judgment compilation filed by the Petitioner on March 11, 2024; *White Stock Limited v. Prajay Holdings Private Limited* MANU/NL/0677/2022, at Paras 35 and 36 at page 181 of the judgment compilation filed by the Petitioner on March 11, 2024].

5. The Counsels for Petitioner have filed Compilation of Judgements vide Diary No.1557 dated 11/03/2024 and the same is taken on record.
6. The Ld. Counsel for the Respondent has filed Written Submissions vide Diary No.2576 dated 30/04/2024, in which the Objections filed earlier were reiterated. Further the compilation of Judgments was filed vide Diary No 2573 dated 30/04/2024 and the same are taken on record.
7. We have pursued the records available and also heard the Learned Counsels.

ANALYSIS & DECISION:

On a careful perusal of the Objections raised by the Respondent Corporate Debtor and the pleadings on record, we proceed to analyse the following issues emerging in this case:

7.1. Whether the Petitioner herein is an “Operational Creditor”?

- a) The paramount question which arises in the present Petition is whether there is an ‘Operational Debt’ to be claimed as defined under the Code. Section 5(21) of the Code defines ‘Operational Debt’ as follows:

5 Definitions**(1)******(2)****

..

..

(21) *"operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

The main argument of the Respondents is that the ‘Team Sponsor’ Agreement between the parties was a mutual set-up for gains and that the Petitioner merely granted certain ‘Rights’ and no ‘services’ were ever provided to Respondent under the Agreement. In this regard it is essential to note the term ‘Rights’ as per clause 1.1 (xxvii) of the agreement:

xxvii) “Rights” shall mean the advertising and promotional rights licensed to the Sponsor under this Agreement.

Further, under Clause 3 “*Rights granted under the Agreement*” states various rights granted to the ‘Sponsor’ like i) right to have the Logo displayed on the Indian National Team Kit, right chest of the shirt, and leading arm sleeves, ii) the right to use BCCI Archive footage and stills of players for the promotional purposes, iii) right to feature a group of at least 3 players in connections with sponsor’s promotional campaigns to promote association with the Team sports. The Corporate Debtor was liable to pay a sum agreed as the “Rights fee” to the Operational Creditor. As a result, it is noted that phrases like "promotional campaigns of sponsor," "promote association as Team Sponsor," and "brand category of sponsor" are frequently used in the rights granted to the Sponsor. That even though the terms used are “Rights” and “Rights fee”, these phrases by definition & by their characteristics mainly refer to the exclusive **advertising rights** licensed to the Corporate Debtor. Moreover, as discussed above in Para 2 (i), the scope of the Sponsorship agreement included marketing related services, advertisement related services and promotional services by way of networking with the players, the permission to use the intellectual property rights of BCCI including its logo and trademark, and availing hospitality and non-hospitality tickets for various International matches. Thus, the scope of sponsorship agreement covers wide range of services. Granting of the License for the Advertisement and Promotional rights itself amounts to providing of services. In this regard reliance is placed on the judgment dated 18/08/2022 of **Hon’ble NCLAT in the case of Somesh Choudhary, Suspended Director at M/s. Global Fragrances Pvt. Ltd. Vs. Knight Riders Sports Pvt. Ltd. (2022) ibclaw.in 603 NCLAT** wherein it was held that:

“15We hold that granting an exclusive right and license to the ‘Corporate Debtor’, to use manufacture, sell, distribute and advertise the licensed products and to use the trademark in association with the licensed products as well as on packaging, promotional advertising material has a direct nexus with the business operations and sales and also with the actual product supplied by the ‘Corporate Debtor.’ Hence, we hold that the ‘Claim’ in respect of such provisions

of ‘goods and services’, under the terms of the Agreement, fall within the ambit of the definition of ‘Operational Debt’ as defined under Section 5(21) of the Code.”

b) Hence, in the present case also an exclusive Sponsorship Right was licensed to the Respondents for a ‘Rights fee’ to be paid to the Petitioner. Moreover, the invoices raised against the Corporate Debtor also contemplate the due payment of GST for the services rendered. We have considered the principles laid down in **Somesh Choudhary, (supra)** and **Jaipur Trades Export Centre Pvt Ltd v M/s Metro Jet Airways Training Pvt Ltd, (2022) ibclaw.in 478 NCLAT**. The Hon’ble NCLAT in these decisions has duly considered the implication of payment of GST; which is contemplated only for providing for ‘goods’ and ‘services.’ As per the Agreement, the payment of the fees was liable to levying of GST, hence it is implied that the Sponsor Agreement licensed is in respect of the ‘services’, and the ‘rights fee’ for which the Operational Creditor is liable to be paid by the Corporate Debtor does fall within the definition of ‘Operational Debt’ within the meaning of Section 5(21) of the Code. Accordingly, the Respondent’s arguments in this regard are not legally tenable.

7.2 Whether there was any contractual arrangement/ agreement between the parties, evidencing the existence of Operational Debt:

a) It is the argument of the Respondents that the Agreement came to an end on 31/03/2022 and since there was no functioning agreement/contract existing between the parties, the said petition is void of maintainability. In this connection, reliance is placed on the judgement of NCLAT in **Manoj Stone Infra Pvt. Ltd. Vs. Railsys Engineers Pvt. Ltd, (2023) ibclaw.in 444 NCLAT, order dated 24/03/2023** wherein it was held as under:

“11. From a plain reading of the above provisions, it is clear that the primary and operative requirement of Section 5(21) is that the claim

*must bear some nexus with a provision of goods or services irrespective of who is to be the supplier or receiver. The expression “operational debt” has been defined by Code and it must fulfil following substantive elements, namely: debt arising out of provisions of goods or services or out of employment or dues payable to Central Government, any State Government or any local authority. Further the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 under Rule 5(1) provides that any operational creditor can issue a notice in relation to an operational debt either through a demand notice or copy of invoices. **Also, an operational creditor who is seeking to claim an operational debt in a CIRP can rely either on a contract or on an invoice for the supply of goods and services with the corporate debtor under Regulation 7(2)(b)(i) and (ii) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.”***

[Emphasis Supplied]

For the sake of convenience, the Regulation 7(2)(b)(i) and (ii) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 is reproduced here:

7.Claims by operational creditors.

(1)***

(2) *The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-*

(a) the records available with an information utility, if any; or

(b) other relevant documents, including –

(i) a contract for the supply of goods and services with corporate debtor;

(ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;

.....”

It is a settled principle under Section 9(3) read with Regulation 7(2)(b)(i) and (ii) of the Regulations 2016, that the Operational Creditor can substantiate its claim either with contracts or invoices. Further, it is not

in dispute that the Respondent itself has duly availed the Rights granted under the Agreement even after the date of expiry of the Agreement and the Respondent has availed the entire benefits of the “Rights” provided under the same agreement and owing to such benefits availed, the Petitioner has raised invoices in pursuant to the same “Rights Fees”. In fact, even after the original agreement coming to an end on 31/03/2022; BCCI and the Corporate Debtor exchanged correspondences to the effect that the arrangement was to continue pending the execution of the formal document.

- b) **Moreover, it is apparent from the admission of the Respondent that the even after the expiry of the agreement, the bank guarantee was amended to postpone the expiry date to 15/09/2023.** A perusal of the Bank Guarantee given by the Corporate Debtor filed at page 97 of the objections reveals that it was duly extended on 16/09/2022 for a period upto 15/09/2023. The renewal of Bank Guarantee as late as 16/09/2022 for a further period of one year by the Corporate Debtor establishes it beyond doubt that the Sponsorship arrangement and related services were still in force; Further, the Respondent cannot contend the issue of lack of proper agreement, when the same was not raised during the time when such services were duly availed by the Respondent, and the benefits arising therefrom duly accrued to it. Hence, the objection raised in this regard is liable to be rejected
- c) This Tribunal also notes that the Parties were in constant communication and in negotiation for a new contract which is evident in the series of emails attached by both parties in their respective submissions. It is mentioned by the Petitioner at Para-1 of Part-IV of Form-5 that the arrangement was continued even after 31.03.2022, pending execution of the formal document; for which the BCCI and the Corporate Debtor had also agreed for revised fees per match for F.Y 2022-23 (Page-14 of the C.P). It is noticed that these email correspondences dated 10.02.2022, 28.02.2022 and 01.03.2022 have been duly enclosed by the Corporate Debtor at Page-80 & 81 of their objections under the heading ‘Term

Sponsorship Extension'. A perusal of these emails exchanged between two parties establishes that the revised fees for F.Y 2022-2023 was proposed by the Corporate Debtor and duly approved by the BCCI, as mentioned by the Petitioner in Part-IV of Form-5. Thus, the terms and conditions for extension of the Sponsorship Agreement including the increase of fees as agreed on negotiations between the parties is revealed from these email exchanges. **Further, the email written by the Respondent on 06/01/2023 clearly shows that the Respondent herein had acknowledged the debt owed to the Petitioner.** Considering all the mail exchanges as observed above, it is clear that, the Parties were here in an understanding to continue with the previous Sponsorship Agreement until the conclusion of the negotiations between them. Even during the period when the said agreement had come to an end, the Corporate Debtor herein continued to avail all the services/rights of being a sponsor like (a) marketing related services by way of the exclusive right to be the team sponsor of the Indian cricket teams and to display the Respondent's trademarks / brand names on the specified portion of the team kit worn by the Indian cricket teams; (b) advertising related services by way of a platform to display its brand through the use of video footage from cricket series and events organized and administered by the Petitioner; (c) promotional services by way of the network to engage with players of the Indian cricket teams for and in connection with advertising campaigns of the Respondent; (d) the permission to use the intellectual property of the Petitioner such as its logo and other official trademarks in its marketing materials; and (e) hospitality and non-hospitality tickets for every ticketed match organized by the Petitioner.

- d) In this regard, it is pertinent to refer to the Order of NCLT, Delhi, Principal Bench in the case of **Daily Diary Essentials V. Goodhealth Industries Private Limited in CP (IB) No.628/(PB)/2023, order dated 02/04/2023**, wherein it was held that,

"16. In Part IV of the Form-5 as extracted above, the OC mentions the Date of Default as 05.03.2022 being the date of first defaulted

invoice. In this regard it is pertinent to mention that there is no formal agreement between the parties. However, the business arrangement was carried based on mutual terms of the parties. Based on the mutual terms of the parties, the OC supplied the above mentioned goods to the CD, and thereby raised invoices for the same. It is stated that the invoices dated 05.03.2022 (partly paid) and 10.03.2022 are not paid. For the sake of issue at hand it is relevant to mention invoice dated 05.03.2022 which is annexed as Annexure A-5.

17. It is observed from the invoice annexed that there is no specific date mentioned, for the payment against the supply of goods. In this regard, it is pertinent to observe that the payment against the said invoice was partly obligated by the CD therefore it can be said that the CD partly defaulted in the payment obligation against the invoice dated 05.03.2022.

[Emphasis supplied]

- e) Considering the facts as stated above, is naïve to assume and argue on the part of the Corporate Debtor that for so many services the Corporate Debtor were allowed to continue as the Sponsor and also availed all the rights/services, without having any liability towards the Operational Creditor for the payment of requisite fees for the same. We are aware of the Commercial and Revenue implications inherent in International Cricket series including the T-20 World Cup and the Asia Cup Cricket tournaments to which the invoices related. Therefore, the Corporate Debtor's claim amounted to availing the Sponsorship and allied services licensed to it by the Operational Creditor without having any liability of payment towards the Operational Creditor; which is not acceptable and legally untenable. **Accordingly, we are of the view that the Respondent's objection in this regard is liable to be rejected.**

7.3 Whether the Corporate Debtor has defaulted as per Section 3(12) of the IBC?

- a) For the purposes of examining whether the Corporate Debtor has defaulted in the payment of the Debt owed to the Operational Creditor, we refer to the definition of default as provided under Section 3(12) of the Code; which is as under:

3. Definitions

(1)***

(2)***

..

..

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become **due and payable** and is not [paid] by the debtor or the corporate debtor, as the case may be;”

The Hon’ble Supreme Court in the case of *Innoventive Industries Ltd. b. ICICI Bank (2018) 1 SCC 407* has held as under:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a **debt becomes due and is not paid**, the insolvency resolution process begins. **Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.** For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).....”

[Emphasis Supplied]

- b) Now, it is relevant to refer to the email correspondences pertaining to the invoices for which the payment remained outstanding inspite of multiple reminders by the Operational Creditor. These emails reflect that there

was a clear cut acknowledgement of the debt along with part payment of the invoices raised after 31.03.2022, which are all related to the International cricket events which took place after 31.03.2022 only. We proceed to discuss the contents of the following emails, which would lead to the conclusive finding that the debt was duly acknowledged and only requests for extension of time for payment of the same was being made repeatedly by the Corporate Debtor. Several invoices were raised by the Operational Creditor, which became due and payable as per the clause 4 (c) of the Agreement i.e within period of 5 days from the last chargeable Match of each Chargeable Series/Event. In Part IV of the Form-5 as extracted above, the Operational Creditor mentions the Date of Default as 21/08/2022 being the date of first default i.e date on which 50% amount was payable and default occurred. Thus, there is no dispute, in so far as the facts of this case are concerned that the amount raised by the invoices are due and payable, constituting “default” under Section 3(12) of the IBC.

c) The emails referred to above are as under:

i) Email dated 06/01/2023, from Atit (Byjus-Respondent) to Hemang (BCCI-Petitioner) (@Annexure 29 of the Petition),

Dear Hemang .

*Further to the trail mail, we have had many conversations with you and your team over the last few months. On your request/recommendation to agree to extend the deal period till March'23, we have discussed and recommended the same to our board. **You would be pleased to note that we have received in-principle approval to go ahead subject to BCCI agreeing to permit us the flexibility to clear the dues as per the below payment schedule.***

1. BY JU'S would clear all dues until 31st March'23 in three equal instalments payable in between 1st April 2023 to 30th June'2023. For the avoidance of doubt, BYJU'S shall not be making any payments until 1st April'23. BYJU'S will not be in a position to provide any new BG to BCCI.

2. BCCI currently holds a BG of value 143 Cr arranged by BYJU's. BCCI may encash this BG and adjust the same against the current dues till ICC WC'2022. In case of such encashment, BCCI will share the reconciliation of the pending dues after adjusting the payment received pursuant to the BG.

3. After adjusting the payment from encashing the BG, any remaining dues till ICC WC'2022 and additional dues until 31st March'2023 would be paid by BYJU'S between 1st April'2023 and 30th June'2023. We reiterate that the above proposal to extend the deal period till March'2023 is subject to BCCI accepting the above mentioned payment schedule which allows BYJU'S to clear all the dues by making payments during the period 1st April'23 till 30' June'2023. This decision has been difficult for us but we acknowledge your request and appreciate the contribution of the BCCI to our growth story and we intend to conclude our partnership on amicable terms that are mutually satisfactory. Look forward to hearing from you on the way forward on the above.

[Emphasis Supplied]

- ii) **Email dated 17/04/2023, from Atit (Byjus-Respondent) to Hemang (BCCI-Petitioner) (@Annexure 30 of the Petition)**

Dear Hemang,

“As discussed over the call today, we are expecting a few weeks delay in our fund raise. Our April 2023 payout to BCCI is running behind schedule and we anticipate April 2023 payout to be released in May 2023. The agreed plan of releasing the balance payment is in line as per our understanding. May 2023 and June 2023 payouts will be done in the respective months. We are committed to close the entire payment before June 2023”

[Emphasis Supplied]

- iii) **Email dated 15/05/2023, from Atit (Byjus-Respondent) to Hemang (BCCI-Petitioner), (@Annexure 31 of the Petition)**

Dear Hemang

As per the earlier email dated 17th April 2023, we were expecting our fund raise to happen in May 2023, however that has got extended to June 2023 and the funds will hit our accounts in the first week of June 2023. Requesting to accept payment between 12-15th June 2023. While the delay is unprecedented, we are committed to close all payouts as per our understanding.

[Emphasis Supplied]

- d) Now we proceed to examine the factual position pertaining to the outstanding invoices, and the subsequent payment made by the Corporate Debtor, for which the Corporate Debtor has duly given its

consent by the email dated 06.01.2023 for the same to be adjusted by encashment of Bank Guarantee. From Para-1- of Part-IV of Form-5 it is seen that the first invoice was raised for India-South Africa series held in June 2022, which was duly paid by the Corporate Debtor. However, for the Invoices bearing Nos. 1 to 8, 10, 12, 14 & 15 between June 2022 and September 2022 for the events taking place after 31.03.2022, it is noticed that the payment was covered by the Encashment of Bank Guarantee to the tune of Rs. 143 crores, which was duly consented by the Corporate Debtor vide its email dated 06.01.2023 reproduced above. In this email at Para -2 it is stated as under:

“2. BCCI currently holds a BG of value 143 Cr arranged by BYJU's. BCCI may encash this BG and adjust the same against the current dues till ICC WC'2022. In case of such encashment, BCCI will share the reconciliation of the pending dues after adjusting the payment received pursuant to the BG.”

- e) Therefore, once the payment has been made and consent is given for the same for recovering of the dues against the encashment of the Bank Guarantee, as on 06.01.2023, this establishes that there is an acknowledgement for the debt and the default in payment of debt, for which part payment has also been made by the Corporate Debtor through Encashment of Bank Guarantee. It is only for remaining twelve invoices, also listed in Part-IV of Form-5 and reproduced in this order at Para 2.iv), the total outstanding amount of Rs.158,90,92,400/- was duly reflected in the Form-5 as the 'amount in default'. In the same email dated 06.01.2023, there is a commitment from the Corporate Debtor that after the adjustment of encashment of Bank Guarantee, the remaining outstanding dues until 31.03.2023 would be paid by Byjus between 01.04.2023 and 30.06.2023. This commitment was reiterated by the Corporate Debtor in the email dated 17.04.2023 and 15.05.2023, reproduced above. The contents of these email therefore clearly establish that there is an outstanding debt owed to the Operational creditor and there is a default on the part of the Corporate Debtor as provided under Section 3 (12) of the Code; which the Corporate Debtor has duly

acknowledged by way of these three emails. The contents and the veracity of these email communications have not been disputed by the Respondent Corporate Debtor in this case.

- f) Thus since, the Respondent herein has time and again acknowledged and duly planned a repayment schedule for the outstanding dues by sending the above mentioned emails; the condition of there being a 'Debt' and a 'Default' for the purposes of Section 9 of the IBC is held to be satisfied.

7.4 Whether there was any pre-existing dispute between the parties:

- a) Another objection raised by the Corporate Debtor is there being a 'Pre-existing dispute' in the matter. For this we have to examine whether there was any pre-existing dispute raised prior to issuance of Demand Notice as envisaged under Section 8 of the IBC, 2016. For the sake of convenience, Section 8 of the Code is reproduced below:

8.(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor— (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

.....”

- b) Further, the Hon'ble Supreme Court in the landmark judgment of **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (2017) ibclaw.in 01 SC 21-Sep-2017** has observed as under;

“33.....What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case maybe. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that an operational creditor has encashed a cheque or otherwise received payment from the corporate debt [Section 8(2) (b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2).....”

[Emphasis supplied]

- c) Therefore the Hon’ble Apex Court has laid down the principle that under Section 8(2), for a pre-existing dispute to be the ground for dismissal of section 9, the same must exist before the receipt of the Demand notice, or the Invoice, as the case may be. The same was further reiterated by the Hon’ble NCLAT in the case of **Mr. Rajpal Singh Solanki, Ex-Director of Minarch Overseas Pvt. Ltd. Vs. M/s. Quazar Infrastructure Pvt. Ltd. (2021) ibclaw.in 297 NCLAT**, order dated 02/07/2021; as under

“15. The judgments of the Hon’ble Apex Court in *Mobilox Innovations Private Limited and Innovative Industries Limited civil appeals* are basically about pre-existing dispute and that the Adjudicating Authority should be **prima facie convinced about the pre-existence of a dispute before notice under Section 8 was sent**, and not involve itself into examining the pre-existing dispute on merits.....”

- d) It is seen that the Respondents herein has relied upon the email dated 24/05/2022 to support the contention of pre-existing dispute. We refer to the contents of the said email, which is reproduced below:

{From Atit (Byjus-Respondent) to Anmol BCCI-Petitioner), dated 24/05/2022}

“Hi Anmol

We will not be able to process the invoice for the forthcoming South Africa tour of India due to non-availability of the contract. Request you to forward the contract extension documents for us to submit to our internal finance department and auditors to release payment.”

However, it is a matter of record that this invoice dated 20/05/2022 related to the South Africa tour, and was duly paid by the Corporate Debtor as discussed above at para 2(iv). Thus, this objection on the part of the Respondents is not tenable. In fact, this was the first invoice after the written agreement had come to an end on 31/03/2022, and for an event which took place after 31/03/2022; but was duly paid by the Corporate Debtor based on the mutual arrangement. Thus it cannot be accepted to be a reflection of any dispute.

- e) We have carefully considered the contents of the email dated 06/01/2023, which is discussed above at para 7.3. There was a clear cut acceptance by the Corporate Debtor of agreeing to continue with the arrangement; and they had merely asked for time upto 30th June 2023 for payment of outstanding dues. In fact, the Corporate Debtor also gave its go ahead to BCCI, the Operational Creditor, to encash the Bank Guarantee of Rs 143 Crores against the pending invoices; and for the balance outstanding; they have requested for time upto 30/06/2023. Thus there is not even an iota of any dispute being raised by the Corporate Debtor till as late as 06/01/2023, being the date of issue of this email. **Thus, this email clearly establishes the acknowledgement of the debt. Further, the communication dated 17/04/2023 and 15/05/2023 reveal that the Respondents have again accepted the**

liability and reiterated the commitment to clear out all the outstanding invoices by 30/06/2023.

- f) It was only after the Corporate Debtor failed to clear the outstanding amount by 30/06/2023; which was committed by its emails dated 06/01/2023 and 17/04/2023 reproduced above, that the Operational Creditor issued a Demand Notice as envisaged under Section 8(1) of the Code, read with Rule 5(1) of IBBI(Application to the Adjudication Authority) Rules, 2016 on 29/07/2023.
- g) Considering the above discussion, the allegation of the Corporate Debtor raised now that there is no formal contract between the parties is just to somehow put forward a defence which is legally unsustainable as discussed above. Moreover, the Respondent herein has continued to be entitled of all the sponsorship rights even after 31/03/2022 and has also availed several benefits of being a Sponsor under the Agreement. Further, while from 24/05/2022 onwards the Petitioner have raised several invoices, the Respondent did not raise any specific disputes in respect of any particular invoice. The pre-existing dispute which may be the ground to reject an Application under Section 9 has to be a real dispute or a conflict or a controversy, a conflict of claims or rights should be apparent from the reply as contemplated under Section 8(2) of IBC, 2016. **We do not find any document furnished by the Respondent that might show that there was any controversy/conflict between the parties so as to show the existence of dispute prior to the receipt of the demand notice/invoice** in so far as the payment of the claims raised by the invoices are concerned. **Therefore, the requirement of Section 8(2)(a) of IBC is not fulfilled.**
- h) Further, in their reply to the Demand Notice dated 29/07/2023 the Respondent has not contested the existence of Debt or raised any dispute on the particular amount of the invoices, which is mandatory in accordance with the provisions of Section 8(2)(a) of the Code. The reply ought to bring to the notice the “existence of the dispute, record of the

pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;” as per Section 8(2)(a) of the IBC Code. Such notice has to be for a real dispute or a conflict or a controversy, and a conflict of claims or rights should be apparent from the reply as contemplated by Section 8(2). However, the Corporate Debtor failed to point out any such issue of the pre-existing dispute in the reply. The reply given by the Respondent herein is only in respect to maintainability of Demand Notice of the Petitioner and does not show any notice of pre-existing dispute. Such a reply cannot be considered to be in adherence to Section 8(2) of IBC. **Hence, it is held that there was no pre-existing dispute between the parties at the time of receipt of the Demand Notice.** In this regard we refer to the Order of NCLT, Delhi, Principal Bench in the case of *Daily Diary Essentials*, (supra).

*“22. The dictum laid down in Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 has also been followed by Hon’ble NCLAT in catena of judgments wherein it is clearly held that **the existence of the dispute must be pre-existing i.e., it must exist before the receipt of the demand notice or invoice.** In the absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice, the application cannot be rejected under section 9 and is required to be admitted. Further, it is clear that the said dispute is not to rest on weak defences or based on affirmation of facts, unsupported by material evidence. **In short, there shall be a ‘Genuine Dispute.’ Dispute’ is not to be a just denial of the due payment.** An ‘Adjudicating Authority’ is to be subjectively satisfied that there exists a ‘Dispute’ and the same is not a frivolous or vexatious one.”*

7.5 Whether the instant Application is not maintainable due to lack of Proper Authorisation:

In so far as the argument of the Respondent regarding the maintainability due to lack of proper authority is concerned, we have examined the MOA of the BCCI and it is clear that as per Rule 7(3)(f) that the Secretary has the power to delegate any work to any person of the management. Hence we are satisfied with the explanation given by the Petitioner that the authority letter dated 27/10/2022, authorising the General Counsel of BCCI and Senior manager (Legal) to execute all the documents and initiate the present proceedings is proper and in accordance with the Bye-laws. Thus the objection in this regard is not acceptable.

8. Accordingly, this Adjudicating Authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor, since the existence of a debt and a default in the payment of debt is clearly established. Therefore, the instant Company Petition bearing **CP (IB) No. 149/2023 is admitted** against the Corporate Debtor and moratorium is declared in terms of Section 14 of the Code.

9. As a necessary consequences of the moratorium in terms of Section 14 of the Code, the following prohibitions are imposed, which must be followed by all and sundry:
 - a. The institution of suits or continuation of pending suits or proceedings against the Project of Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

- e. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- f. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- g. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

- 10.** This bench appoints Shri Pankaj Srivastava, **Registration No:** IBBI/IPA-001/IP-P00245/2017-2018/10474, having registered **address:** No: 58, 3rd Cross Vinayaka Nagar, Hebbal, Bangalore -560024, Bangalore, Karnataka **Contact No:** +918023902344, **e-mail:** rpal@psri.in; psri@live.com as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.
- 11.** The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 12.** The Interim Resolution Professional shall after collation of all the claims received against Think and Learn Pvt Ltd the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee

within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

13. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

I.A 106/2024

1. The Corporate Debtor herein has filed **IA.106/2024** on 18/01/2024 against the Operational Creditor *inter alia* praying this Tribunal to pass directions under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the Parties in the present dispute to arbitration. It is the contention of the Applicant that since the claims of BCCI arise out of a purported Agreement and the said Agreement consists of a valid Arbitration clause under Section 19 of the Agreement the same ought to be referred to Arbitration by this Adjudicating Authority.
2. The Respondents to the present application have filed their reply vide Diary No. 1556 dated 11/03/2024 wherein it is stated that this Adjudicating Authority cannot refer the parties to the Arbitration. When a petition under Section 9 of the Code is present before the Adjudicating Authority, the Adjudicating Authority may either admit or dismiss the petition and that insolvency matters are not arbitral. The Respondent has relied on the following judgements for this effect:

- I. ***Sodexo India Services Pvt Ltd. v. Chemizol Additives Pvt.Ltd***
(MANU/NL/0055/2021)
- II. ***White Stock Limited v. Prajay Holdings Private Limited***
(MANU/NL/0677/2022)

III. Indus Biotech Private Limited v. Kotak India Venture(Offshore) Fund and Ors.(MANU/SC/0231/2021)

3. We have considered the application and the objection filed. We have followed the ratio of the Hon'ble Apex Court judgement in **Indus Biotech Pvt. Ltd.v.Kotak India Venture (Offshore) Fund & Ors. (2021) ibclaw.in 52 SC** wherein it was held that

“25. As noted, the issue which is posed for our consideration is arising in a petition filed under Section 7 of IB Code, before it is admitted and therefore not yet an action in rem. In such application, the course to be adopted by the Adjudicating Authority if an application under Section 8 of the Act, 1996 is filed seeking reference to arbitration is what requires consideration. The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no elaboration. In that view, notwithstanding the fact that the alleged corporate debtor filed an application under Section 8 of the Act, 1996, the independent consideration of the same dehors the application filed under Section 7 of IB Code and materials produced therewith will not arise. The Adjudicating Authority is duty bound to advert to the material available before him as made available along with the application under Section 7 of IB Code by the financial creditor to indicate default along with the version of the corporate debtor. This is for the reason that, keeping in perspective the scope of the proceedings under the IB Code and there being a timeline for the consideration to be made by the Adjudicating Authority, the process cannot be defeated by a corporate debtor by raising moonshine defence only to delay the process. In that view, even if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority has a duty to advert to contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by the corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default. If the irresistible conclusion by the Adjudicating Authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause.”

Hence, it is abundantly clear as laid down by the Hon'ble Apex Court that the Adjudicating Authority has to either reject or Admit the Application and cannot postulate a third option. In this matter, the application U/s 9 of the IBC has been admitted by the Order passed today, therefore, the application for referring the matter for Arbitration is not maintainable. Hence **I.A 106/2024 is dismissed.**

Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

Sd/-

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