



Date: 27.01.2025

The Secretary Listing Department BSE Limited PJ Towers, Dalal Street, Mumbai - 400 001 <b>Script Code: 532696</b>	The Secretary Listing Department National Stock Exchange of India Limited Exchange Plaza, 5th Floor, Plot No. C/1, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051 <b>Script Code: EDUCOMP</b>
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**Sub: Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

Dear Sir/Madam,

This is to inform you that, in accordance with Regulations 30 and other provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR"), we hereby inform you that both SBI Singapore, {App. (AT) (Ins) No. 1351 of 2023} and Shantanu Prakash {Comp. App. (AT) (Ins) No. 1609 of 2024} had filed appeal before the Hon'ble NCLAT against certain portion of the NCLT order dated 25.08.23. The appeal preferred by SBI Singapore has been allowed and appeal preferred by Shantanu Prakash has been dismissed

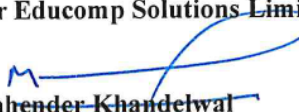
The Hon'ble NCLAT in its judgment stated that directions mentioned in paragraph 27(a) and (b) of the Impugned Order dated 25.08.2023 asking for the valuation of shares of The Learning Limited to be carried out, are set aside. Further the directions in the second sentence of paragraph 27(c) of the Impugned Order ordering that the secured financial claim of State Bank of India, Singapore qua the CD would be subject to the outcome of the valuation result/report, are also set aside.

The Impugned Order, apart from these directions of the Hon'ble NCLAT, remains operative and is not aside. A copy of the Hon'ble NCLAT order is enclosed with this letter.

You are requested to acknowledge and update the same in your records.

Thanking You,

Yours Truly,  
For Educomp Solutions Limited

  
**Mahender Khandelwal**  
Caretaker Resolution Professional in the matter of Educomp Solutions Limited  
Email: [mkpeducomp@bdo.in]  
[IBBI Registration No.: [IBBI/IPA-001/IP-P00033/2016-17/ 10086]



*Encl.: As above*

*Note: As informed earlier also vide various communications, had ordered the commencement of CIRP in respect of the Company under the provisions of Code. Thereafter, in accordance with Section 17 of the Code, the powers of the Board stood suspended and Dr. Sanjeev Aggarwal was appointed as interim resolution professional of the Company. The IRP carried out his duties from May 30, 2017 till Mr. Mahender Khandelwal was appointed as Resolution Professional ("RP") vide the order of NCLT dated September 12, 2017 and took over the management of the affairs of the Company. On 9<sup>th</sup> October, 2023 the resolution plan is approved by the NCLT which is yet to be implemented. Thereafter, on November 23, 2023 the NCLT has ordered that the RP would act as caretaker qua the CD and in such capacity, he would discharge all those functions as are required to be discharged by an IP as RP.*

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 1351 of 2023**  
**& I.A. No. 4802, 4803, 4804, 4805, 6007 of 2023**

**(Arising out of the Order dated 25.08.2023 passed by the National Company Law Tribunal, New Delhi Bench (Court-II), in IA. No. 187/ND/2022 IN Company Petition No. (IB)-101/(PB)/2017.)**

**IN THE MATTER OF:**

**State Bank of India, Singapore Branch**

#27-01, 80 Rabinson Road,

Singapore, 068898

Email: [svpca@sbising.com](mailto:svpca@sbising.com)

**...Appellant**

**Versus**

**1. Shantanu Prakash.**

R/O C-11, DDLF City Phase 1,

Gurgaon, Haryana.

**...Respondent No. 1**

**2. Mahendar Singh Khandelwal**

Resolution Professional, Educomp Solution Limited.

IBBI/IPA-01/IP-00033/2016/17/10086.

E-mail: [mahenderkhandelwal@bdo.in](mailto:mahenderkhandelwal@bdo.in)

BDO India LLP

The Palm Springs Plaza,

Office No. 1501-8, 15<sup>th</sup> Floor,

Sector- 54, Golf Course Road

Gurgaon – 122001.

**...Respondent No. 2**

**3. Committee of Creditors**

Educomp Solutions Limited

Corporate Office At 514, Udyog Vihar,

Phase III, Gurgaon – 122001, Haryana.

**...Respondent No. 3**

**4. State Bank of India**

SBI House, 3<sup>rd</sup> Floor,

1211, Padma tower I,

5, Rajendra Place, New Delhi – 110008.

**...Respondent No. 4**

**Present**

**For Appellants: Mr. Ankur Mittal & Ms. Yashika Sharma, Advocates.**

**For Respondents: Mr. Sunil Fernandes, Sr. Advocate along with Mr. Malak Bhatt, Ms. Rajshree Chaudhary, Ms, Diksha Dadu & Ms. Somya Saxena, for R-1.**

**Mr. Abhishek Sharma, Kritiya Sinha, Ms. Shruti Poddar, for R-2.**

**Ms. Moulshree Shukla & Ms. Gayathri, for R-3.**

**Mr. Ashim Sood & Mr. Aditya Vardhan Sharma, Applicant in IA No. 6007 of 2023.**

**J U D G E M E N T**

**(23.01.2025)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. The present appeal has been filed by the Appellant i.e., State Bank of India, Singapore Branch against the Impugned Order 25.08.2023 under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016 ('Code') passed by the National Company Law Tribunal, New Delhi Bench (Court-II) ('Adjudicating Authority') in IA. No. 187/ND/2022 in Company Petition No. (IB)-101/(PB)/2017.

2. Mr. Shantanu Prakash who is the Suspended Director of Educomp Solutions Limited ('Corporate Debtor') is the Respondent No. 1 herein.

Mr. Mahendar Singh Khandelwal who is Resolution Professional of the Corporate Debtor is the Respondent No. 2 herein.

Committee of Creditors ('CoC') of the Corporate Debtor is the Respondent No. 3 herein.

State Bank of India is the Respondent No. 4.

**3.** The Appellant submitted that on 16.05.2008, Educomp Asia Pacific Pte. Ltd. ("**EAPPL**"), a wholly-owned subsidiary of the Corporate Debtor, obtained loan facilities from the Appellant amounting to USD 20 million ("Loan Facility"). This funding was utilized to acquire a 51% stake in the US-based company, The Learning Internet Inc.

**4.** The Appellant submitted that on 22.05.2008, the Corporate Debtor executed a Deed of Guarantee in favor of the Appellant to secure the Loan Facility. Following the granting of this Loan Facility to EAPPL, the latter proceeded to acquire shares in The Learning Internet Inc. through a Purchase Agreement dated 16.05.2008. Furthermore, on 23.07.2008, EAPPL entered into a Stock Pledge Agreement, pledging 18,173 unlisted shares (representing a 51% stake) of The Learning Internet Inc. as collateral with the Appellant.

**5.** The Appellant stated that on 05.08.2014, EAPPL sought the Appellant's approval for the restructuring of the Loan Facility, which was approved on 03.11.2014, resulting in outstanding dues of USD 14.72 million. In the meantime, the Corporate Debtor entered into the Corporate Insolvency Resolution Process ('**CIRP**') following an order dated 30.05.2017 passed by the Adjudicating Authority issued in the Company Petition No. (IB)-101/(PB)/2017 under Section 10 of the code.

6. The Appellant submitted that on 30.06.2017, EAPPL was ordered into liquidation by the High Court of Singapore, resulting in the appointment of Mr. Wong Joo Wan and Mr. Yong Chor Ken as liquidators ("**Liquidators**") for EAPPL. During the liquidation proceedings, the Liquidators provided The Learning Internet Inc. with the first option to repurchase its own shares by submitting a suitable offer. The offer made by The Learning Internet Inc. was deemed not acceptable, being on the lower side.

7. The Appellant submitted that a reputable valuation firm was subsequently engaged to assess the value of the shares of The Learning Internet Inc. The valuation provided by the firm was as follows:

a) USD 6.78 million (with a low estimate of USD 5.41 million and a high estimate of USD 8.16 million) on a controlling, non-marketable basis.

b) USD 5.31 million (with a low estimate of USD 4.40 million and a high estimate of USD 6.22 million) on a non-marketable basis, in the event that the company exercised partial Right of First Refusal (ROFR).

8. The Appellant submits that the Liquidators confirmed via email on 12.02.2020 that there were no better offers available with Liquidators and expressed no objection to the sale of shares.

9. The Appellant submitted that, as a result of multiple rounds of negotiations with the purchaser, an increased offer was ultimately reached. Consequently, the shares were sold to the purchaser through an agreement dated 03.09.2021, which

was also signed by the liquidators of EAPPL. According to the sale agreement, the shares were sold for a price of USD 7.10 million.

**10.** The Appellant submitted that, through the Impugned Order dated 25.08.2023, the Adjudicating Authority disposed of the application of the Respondent No 1 filed vide IA. No. 187/ND/2022 in Company Petition No. (IB)-101/(PB)/2017 and made the following determinations in favour of the Appellant:

a) The Adjudicating Authority acknowledged that the assets of a subsidiary company differ from those of its holding company, clarifying that shareholders do not acquire an interest in the assets of the company.

b) It was held that the shares of The Learning Internet Inc. do not constitute part of the assets of the Corporate Debtor.

c) The Resolution Professional (RP) was found to have no obligation to preserve the value of the shares of The Learning Internet Inc. held by EAPPL.

d) The scope of undervalued transactions under the Code pertains to the assets of the Corporate Debtor, and thus no declaration regarding shares as an undervalued transaction could be granted.

e) Lastly, it was determined that no moratorium applies to the shares held by EAPPL.

**11.** The Appellant stated that, after rendering along findings favorable to the Appellant on all material aspects, the Adjudicating Authority did not dismiss the Application but instead directed the Respondent No. 2 for fresh valuation of shares and referred to the Insolvency and Bankruptcy Board of India (Liquidation

Process) Regulations, 2016 (**‘Liquidation Regulations’**) for fresh valuation. The Appellant contends that these regulations are not applicable to the Company Petition, which pertains to the ongoing insolvency proceedings of the Corporate Debtor before the Adjudicating Authority.

**12.** The Appellant submitted that despite the Adjudicating Authority's findings in favor of the Appellant on all significant aspects, the Adjudicating Authority issued the directions contrary to legal provisions that upon the deposit of valuation fees, to be determined by the IBBI, by the Corporate Debtor, the RP shall approach the IBBI within one week from the date of the order for the appointment of two Registered Valuers to assess the valuation of shares of The Learning Internet Inc. owned by EAPPL and pledged with State Bank of India, Singapore, as of 03.09.2021. The appointed Valuers shall submit their valuation report to the IBBI and the Resolution Professional within one month of their appointment, adhering to internationally accepted valuation standards. If there is a significant difference (10% or more) between the average estimates provided by the two Registered Valuers, the Resolution Professional may consult with the IBBI to appoint a third Registered Valuer for further assessment. Should the valuation conducted by any of these valuers exceed USD 7.10 million the price at which the shares were sold on 03.09.2021—the claim of State Bank of India (Singapore) against the Corporate Debtor would be reduced accordingly.

The Appellant stated that the Adjudicating Authority also stipulated that the CIRP concerning the Corporate Debtor shall continue without interruption or influence from these directions and the secured financial claim of State Bank of India (Singapore) against the Corporate Debtor will be contingent upon the outcome of the valuation report.

**13.** The Appellant stated that the Adjudicating Authority while passing the Impugned Order has erred in not appreciating the fact that there was no pleading or prayer made from either of the parties giving effect to valuation of shares that could lead to such directions from the Adjudicating Authority.

**14.** It is the case of the Appellant that the Impugned Order has erred by not providing any reason to show how even a prima facie case is made out with respect to the undervalued transaction of the said sale of shares, when neither the EAPPL nor its liquidator raised objections to the said sale of shares.

**15.** The Appellant further submitted that the Adjudicating Authority while passing the Impugned Order has erred in not appreciating the fact that EAPPL, who is the principal borrower and is in liquidation, did not at any stage of its liquidation process or sale of shares objected to the said sale. To the contrary, the liquidators admitted to the fact that with respect to the said sale of shares, the liquidator had no better offer.

**16.** The Appellant submitted that the Impugned Order after giving findings passed in favour of the Appellant on majority of aspects, the Adjudicating



Authority should have dismissed the Application of the Respondent No. 1, instead of going ahead to make reference to the Liquidation Regulations, which has no applicability in the Company Petition which is an insolvency proceeding of the Corporate Debtor and not liquidation proceedings.

**17.** The Appellant stated that Regulation 21 A Liquidation Regulations has no applicability to the present case, which is not even a case of liquidation. The Appellant clarified that the Resolution Plan is still pending approval of the Adjudicating Authority. The provisions regarding relinquishment of security have no relation to the issue that was pending before the Adjudicating Authority. Therefore, the findings in para **27** of the Impugned Order are perverse and liable to be set aside.

**18.** The Appellant stated that the Adjudicating Authority ignored the vital fact that the valuation of shares of EAPPL took place under the supervision of Liquidator appointed by the High Court of Singapore, who had no objection to the sale of shares at all. In view of such no objection, the Adjudicating Authority had no jurisdiction or factual basis to direct any such exercise to be carried out at this juncture.

**19.** The Appellant submitted that while guarantor can be vigilant about value of collateral security, yet it gives no statutory right to a guarantor in law to interfere in the proceedings against the borrower by way of sale of certain securities. The guarantor i.e., Corporate Debtor, in any case did not raise any such question ever.

**20.** The Appellant alleged that the Impugned Order merely results into a roving enquiry into the valuation of the shares as in the Company Petition which is an insolvency proceeding of the Corporate Debtor, the Respondent No. 1 had no locus to file the said Application which is related to the Liquidation proceeding of the EAPPL and therefore, application was liable to be dismissed on its very threshold.

**21.** The Appellant explained that the Shares of The Learning Internet Inc. do not belong to or are owned by the Corporate Debtor as the shares were owned by EAPPL which is a subsidiary company of the Corporate Debtor and were pledged with the Appellant for the said Loan Facility obtained by EAPPL and by virtue of Section 18(1) of the code, the resolution professional of the Corporate Debtor had no jurisdiction to take over any asset of the subsidiary company of Debtor.

**22.** The Appellant further submitted that in the event of CIRP of the Corporate Debtor its resolution professional under Section 18 of the code cannot assess the assets of the EAPPL which is a subsidiary company of the Corporate Debtor. The Resolution Professional, as per the Explanation (b) of Section 18 of the Code has no right whatsoever to take control of the assets of EAPPL.

**23.** The Appellant assailed the conduct of the Respondent No.1 who has raised frivolous contentions with respect to sale of shares of The Learning Internet Inc. with the intention to convolute the CIRP of the Corporate Debtor. The Appellant explained that provisions of the Code make clear distinction between the assets and liabilities of the holding company and its subsidiary company during CIRP.

**24.** The Appellant submitted that the Respondent No. 1 has wrongly alleged that the sale of shares of The Learning Internet Inc. held by the EAPPL was executed by the Appellant and the Appellant explained that the said sale of shares of The Learning Internet Inc. was actually conducted by the Liquidators in the court monitored liquidation proceedings in Singapore, therefore, the validity or invalidity of the sale of shares is a matter on which the Courts at Singapore alone would have jurisdiction to look into, and the same cannot be made a subject matter of dispute in the Indian Courts. The Appellant mentioned that the Liquidation order has been adjudicated as per the laws of Singapore and do not fall under the purview of the CIRP of the Corporate Debtor and the Liquidators were appointed therein, under the laws of Singapore and therefore the entire Liquidation Process falls outside the scope of jurisdiction of the Adjudicating Authority.

**25.** It is the case of the Appellant that the provisions of Section 45 of the code states that a transaction would be undervalued where the Corporate Debtor enters into a transaction for the transfer of one or more assets by the Corporate Debtor. The Appellant emphasised that the asset forming part of the undervalued transaction must be transferred by the Corporate Debtor, which is admittedly not the case herein and even otherwise, the sale of shares of The Learning Internet Inc. has not taken place within the "Relevant Period" under Section 46 of the code.

**26.** The Appellant elaborated that the Insolvency Commencement Date of the Corporate Debtor is 30.05.2017 whereas the sale of shares of The Learning

Internet Inc. was executed by the Liquidators in favour of the Appellant on 03.09.2021. The application of Section 46(1)(ii) of the Code requires the resolution professional to scrutinize the transactions two years prior to the Insolvency Commencement Date which falls from 30.05.2015 to 30.05.2017 therefore, the present case, by no stretch of imagination falls within the scope of Section 45 or Section 46 of the Code.

**27.** The Appellant stated that as per the provisions of Section 14 of the code moratorium applies to transfer, encumbrance, and alienation, disposal "by the corporate debtor and any of its assets" however, pledged shares of The Learning Internet Inc. are neither assets of Corporate Debtor, nor any sale thereof has been conducted by the Corporate Debtor, therefore, the rigors of Section 14 of the Code do not apply to the said sale.

**28.** Concluding his arguments, the Appellant urged this Appellate Tribunal to dismiss the Impugned Order and allow his appeal.

**29.** Per contra, the Respondent No. 1 denied all the averments made by the Appellant in the present appeal.

**30.** The Respondent No.1 submitted that in the Impugned Order, the Adjudicating Authority accepted the IA No. 187/2022 filed by the Respondent No. 1 and directed the Resolution Professional of the Corporate Debtor to approach the IBBI for the appointment of Registered Valuers to assess the value of the shares of The Learning Internet Inc. and also stipulated that if the valuation of these shares exceeds USD 7.1 million—the amount for which they were sold

by SBI Singapore—the claim of SBI Singapore would be reduced accordingly to that extent. The Respondent No.1 pleaded that the directive underscores the importance of accurate valuation in determining the financial obligations of the Corporate Debtor and its implications for SBI Singapore's claims.

**31.** The Respondent No. 1 submitted that the basis for challenging the Impugned Order is that the Adjudicating Authority directed the valuation of the shares of The Learning Internet Inc., which were pledged to SBI Singapore under a Pledge Agreement dated 23.07.2008. The Appellant contended that SBI Singapore sold these shares at an undervalued price in a clandestine manner, resulting in substantial losses to the Creditors of the Corporate Debtor. The Appellant argued that had the shares been sold at their rightful valuation, it would have benefitted the stakeholders and contributed to the revival of the Corporate Debtor. The Respondent No.1 argues that the Impugned Order, which merely directs a fresh valuation, aligns with the spirit and objectives of the Code, particularly with respect to value maximization and this directive is essential for ensuring that all stakeholders receive fair treatment and that the financial interests of the Corporate Debtor are adequately protected during the insolvency process.

**32.** The Respondent No. 1 submitted that the Corporate Debtor through its wholly-owned subsidiary EAPPL, availed a loan facility of USD 20 million from SBI Singapore to acquire a 51% stake in The Learning Internet Inc.. To secure this loan, Corporate Debtor entered into a Deed of Guarantee with SBI Singapore, and EAPPL pledged the shares of The Learning Internet Inc. under a Share Pledge

Agreement dated 23.07.2008. Subsequently, the shares were valued by registered valuers, M/s Mazars, at USD 42.049 million. The Respondent No.1 tried to impress upon that following the global pandemic (COVID-19), the valuation of The Learning Internet Inc.'s shares significantly increased to approximately USD 250 million and alleged that despite this substantial increase in value, SBI Singapore sold the shares at an undervalued rate of USD 7.1 million resulting in considerable losses for the creditors.

**33.** The Respondent No. 1 asserts that had the shares been sold at their correct valuation, it would have generated sufficient funds to nearly extinguish the claims of the Creditors and facilitate the revival of the Corporate Debtor. The Appellant alleged that undervalued sale not only harmed the financial interests of Corporate Debtor but also undermined the objectives of the insolvency proceedings aimed at maximizing value for all stakeholders involved.

**34.** The Respondent No. 1 submitted that the Impugned Order issued by the Adjudicating Authority is valid and serves the interests of all creditors and stakeholders involved. The order mandates a proper valuation of the shares by valuers appointed by the IBBI, which is essential for clarifying share valuation and impacting the resolution proceedings and potential revival of the Corporate Debtor. The Respondent No.1 stated that Impugned Order does not impose coercive measures against SBI Singapore if the valuation does not indicate that the sale of The Learning Internet Inc. shares was undervalued and only aims to

assure value maximization of the Corporate Debtor and protect the creditors interests.

**35.** The Respondent No. 1 stated that the Application filed before the Adjudicating Authority addresses the issue of the undervalued sale of shares of The Learning Internet Inc., which directly impacts the resolution proceedings of the Corporate Debtor and the effective implementation of the Resolution Plan for all stakeholders involved. The Application highlights critical issues, facts, and questions of law that affect both the Corporate Debtor and the Creditors as the undervalued sale of The Learning Internet Inc. shares results in lesser funds being available for implementing the Resolution Plan, thereby extinguishing creditor claims and undermining their financial recovery.

**36.** The Respondent No. 1 stated that judicial pronouncements by the Supreme Court and this Appellate Tribunal have clarified the scope of Section 60(5) of the Code, which grants jurisdiction to the Adjudicating Authority to adjudicate disputes arising from or related to insolvency proceedings. In "*Gujarat Urja Vikas Nigam Limited Vs. Amit Kumar Gupta & Ors.*" [(2021) 7 SCC 209], it was held that the Adjudicating Authority has jurisdiction to adjudicate disputes that arise solely from or relate to a corporate debtor's insolvency, establishing a necessary nexus with the insolvency process, therefore, addressing the undervalued sale is essential to ensure adequate funds are utilized for resolution efforts, maximizing stakeholder benefits and upholding the integrity of the insolvency proceedings.

**37.** The Respondent No. 1 emphasizes that wide discrepancies in valuation raises serious concerns about the legitimacy of the sale process conducted by SBI Singapore. The undervalued transaction reflects a lack of due diligence and proper application of mind, which undermines the financial integrity of the resolution proceedings. It is crucial that these issues are addressed to ensure that all stakeholders receive fair treatment and that the interests of the creditors are protected during the insolvency process. The Respondent No. 1 asserts that rectifying this undervalued sale is essential for maximizing asset value and ensuring adequate funds are available for the Corporate Debtor's revival efforts.

**38.** The Respondent No. 1 submitted that upon the initiation of the CIRP and the appointment of the Resolution Professional, a comprehensive set of responsibilities and duties are conferred upon the Resolution Professional under Section 20 of the code, but the Resolution Professional failed to exercise this.

**39.** The Respondent No. 1 submitted that the shares of The Learning Internet Inc. are classified as contingent property of the Corporate Debtor under Section 3(27) of the Code. Consequently, the Resolution Professional is obligated to protect all assets of the Corporate Debtor, including these contingent assets. A combined reading of Section 3(27) and Section 20 of the Code clearly indicates that the shares held through Educomp belong to Educomp Solutions Limited/ Corporate Debtor. Therefore, both the Resolution Professional and the CoC have a duty to safeguard Corporate Debtor's properties and assets.



**40.** The Respondent No. 1 submitted that despite making representations during the 21<sup>st</sup> and 22<sup>nd</sup> meetings of the CoC regarding the unfair and non-transparent divestment process by SBI Singapore, no action was taken by either the CoC or the Resolution Professional. The Respondent No. 1's effort to highlight these concerns went unacknowledged, and it is surprising that both the CoC and the Resolution Professional have remained silent on this matter since being informed in 2021. Instead, they are opposing the current application, even though any funds generated from a genuine and transparent sale of The Learning Internet Inc. shares would have benefitted all stakeholders involved.

**41.** The Respondent No. 1 submitted that, without prejudice to the statements made herein, Section 47 of the Code addresses undervalued transactions and grants the right to a creditor or partner of the Corporate Debtor to report such transactions to the Adjudicating Authority. However, the Code does not permit an undervalued transaction or asset sale to be executed at the behest of a creditor; it specifically allows for such transactions to be conducted by the Corporate Debtor itself.

**42.** Concluding his arguments, the Respondent No.1 urged this Appellate Tribunal to dismiss this appeal with costs.

**43.** The Respondent No.2 stated that he as an officer of the court is duty bound to assist this Appellate Tribunal by bringing on record the relevant facts and circumstances for the adjudication of the present Appeal.

**44.** The Respondent No.2 submitted that the Shares held by EAPPL in The Learning Internet Inc. do not form the assets of the Corporate Debtor and are therefore, beyond the remit of the Resolution Professional in terms of Section 18 and 23 of the code. The Respondent No.2 elaborated that in terms of Section 18 read with Section 23 of the Code, the Resolution Professional is duty bound to take custody and control of all the assets over which the Corporate Debtor has ownership rights. While Section 18 of Code clearly sets out the list of assets over which the Resolution Professional can exercise control, the explanation to Section 18 also lists down the assets which shall not form part of the assets of the Corporate Debtor which includes assets of any Indian or foreign subsidiary of the Corporate Debtor.

**45.** The Respondent No.2 submitted that since the shares held by Educomp Asia in The Learning Internet Inc. are assets of Educomp Asia (a subsidiary of the Corporate Debtor) and not of the Corporate Debtor, the Resolution Professional cannot take custody and control over such shares. The Respondent No. 2 submitted that Section 18(f) of the Code lays down the duty of the Resolution to take control and custody of the assets owned by the Corporate Debtor and the Explanation (b) to Section 18 expressly excludes assets of a subsidiary, Indian or foreign, from its purview. Similarly, in terms of Section 36(4) of the code, the assets of any subsidiary of a Corporate Debtor are not to be considered as the assets of the Corporate Debtor and consequently, not to be included within the liquidation estate of the Corporate Debtor. Therefore, the

Respondent No.2 has no obligation to preserve such assets which fall outside the purview of Section 18(f) of the code.

**46.** The Respondent No. 2 submitted that for invocation of Section 45 or Section 47 of the Code and declare any transaction as undervalued, it must be shown that the Corporate Debtor has entered into a transaction which involves the transfer of assets by the Corporate Debtor at a lower value. Admittedly, the sale of shares has taken place between EAPPL and the Appellant, and not by the Corporate Debtor, therefore, IA No. 187 of 2022 is not maintainable under Section 47 of the Code and the Adjudicating Authority has correctly held this settled legal position in Para 20 of the Impugned Order.

**47.** The Respondent No.2 stated that moratorium is inapplicable in respect of the shares held by EAPPL and the shares of EAPPL in The Learning Internet Inc. are not an asset of the Corporate Debtor and neither have the shares been transferred or disposed of by the Corporate Debtor, thus moratorium will not be applicable to the said shares in terms of Section 14 of the Code. This position has been correctly articulated in Paras 21 to 23 of the Impugned Order.

**48.** Concluding his arguments, the Respondent No.2 submitted that he has brought out correct factual and legal position of the case.

## **Findings**

**49.** We have already noted the facts of the case during pleading so the Appellant and the Respondents, hence we shall not repeat the same. Suffice to

note that the Impugned Order has been challenged by the Appellant on limited grounds regarding fresh valuation of shares of The Learning Internet Inc. held by EAPPL ordered by the Adjudicating Authority in Para 27 (a) and (b) and part portion of para 27 (c) of the Impugned Order dated 25.08.2023.

**50.** The Appellant has stated that he is not aggrieved by the remaining part of the Impugned Order and therefore requested us to set aside only perverse directions contained in Para 27 (a) and (b) and part portion of para 27 (c) of the Impugned Order.

**51.** Thus, it would be desirable to take into consideration the relevant portion of the Impugned Order which has been challenged by the Appellant, which reads as under :-

*“27. In view of the aforementioned, the present application is disposed of with the following directions: -*

*a) On deposit of the fees of valuation to be determined by the IBBI, by the Applicant herein, the RP shall approach IBBI within one week from today for the appointment of two Registered Valuers to do the valuation of shares of The Learning Internet Inc. owned by the Educomp Asia Pacific Pte Limited and pledged with State Bank of India, Singapore as on 03.09.2021. The Valuers so appointed shall submit to the IBBI and Resolution Professional valuation of the shares (ibid) computed in accordance with internationally accepted valuation standards within a period of 01 (one) month of their appointment.*

b) If the average of the two estimates of the valuations of the shares as on 03.09.2021 to be done by the Registered Valuers to be appointed<sup>65</sup> as above are significantly different (the difference being 10% or more), the Resolution Professional may, in consultation with IBBI, appoint a third registered valuer to do the valuation of shares (ibid) as on 03.09.2021. If the valuation done by the two valuers or third valuator so appointed, as the case may be is found more than the value of USD 7.1 million for which the shares were sold on 03.09.2021, the claim of SBI Singapore against the Corporate Debtor would stand reduced to the equal or that extent.

c) The CIRP qua the Educomp Solution Limited (CD) would continue unhindered and uninfluenced by the aforementioned direction (a & b) The secured financial claim of the State Bank of India (Singapore) qua the CD would be subject to the outcome of the valuation result/report. No costs.”

*(Emphasis Supplied)*

**52.** The Appellant has taken the following grounds for challenging above portion in Para 27 of the Impugned Order:-

- (a) The direction given by the Adjudicating Authority for fresh valuation is beyond the scope of the Adjudicating Authority in the present case.
- (b) The assets of the subsidiary company are different from the assets of the holding company and therefore, the issues raised by the Respondent No. 1 herein are beyond the scope of the Code.

(c) The Resolution Professional was not under any application to preserve the values of shares of EAPPL, which is a subsidiary company of the Corporate Debtor.

(d) No reasoning for under valuation has been recorded.

(e) The three valuation reports quoted by the Respondent No. 1 to justify the revaluation are out of context and not relevant.

**53.** We would like to take into consideration the relevant sections of the Code and Regulations governing the issues raised in the application including Regulation 21A of the Liquidation Regulations, which reads as under:-

*"21A. (1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:*

*Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.*

*(2) Where a secured creditor proceeds to realise its security interest, it shall pay-*

*(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished security interest, to the liquidator within ninety days from the liquidation commencement date; and*

*(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:*

*Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:*

*Provided further that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.*

*(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.*

*Explanation- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019."*

*(Emphasis Supplied)*

**54.** Relevant portion of Section 18 of the Code is reproduced below:

*"18 Duties of interim resolution professional*

*The interim resolution professional shall perform the following duties, namely, take control and custody of any*

asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including-

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
- (ii) assets that may or may not be in possession of the corporate debtor;
- (iii) tangible assets, whether movable or immovable;
- (iv) intangible assets including intellectual property;
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
- (vi) assets subject to the determination of ownership by a court or authority:

Explanation. - For the purposes of this section, the term "assets" shall not include the following, namely: -

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
- (b) assets of any Indian or foreign subsidiary of the corporate debtor, and
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.
- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –



- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- (ii) assets that may or may not be in possession of the corporate debtor;*
- (iii) tangible assets, whether movable or immovable;*
- (iv) intangible assets including intellectual property;*
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) assets subject to the determination of ownership by a court or authority;”*

*(Emphasis Supplied)*

**55.** We note that the Corporate Debtor i.e., ESL had one subsidiary i.e., EAPPL who had taken loan of USD 20 million from the Appellant on 14.05.2008 and entered into various loan and pledge agreements.

**56.** EAPPL subsequently purchased 18,173 shares of The Learning Internet Inc., US incorporated company vide purchase agreement dated 16.05.2008 and to support this, the Corporate Debtor executed a guarantee deed on 22.05.2008 in favour of the appellant for securing loan facilities. In addition, the EAPPL also pledged its 18,173 shares (51%) shares in The Learning Internet Inc. with the Appellant vide stock pledge agreement dated 23.07.2008.

**57.** We have noted from the pleadings that EAPPL could not service its repayment and therefore, it approached the Appellant for restructuring of its loan

on 05.08.2014 and the Appellant allowed the restructuring of its loan facility vide sanction letter dated 03.11.2014.

**58.** In the meantime, the Corporate Debtor went into CIRP vide order dated 30.05.2017 filed by the Adjudicating Authority in CP (IB) No. 101/(PB)/2017 filed under Section 7 of the Code.

**59.** In an independent move, the EAPPL also went into liquidation after passing of suitable order for liquidation passed by the High Court of Singapore and two liquidators were appointed, namely, Mr. Wong Joo Wan and Mr. Yong Chor Ken by the High Court of Singapore on liquidation of EAPPL.

**60.** It has been brought out that during pendency of liquidation proceedings, the liquidators gave first option and to The Learning Internet Inc. itself to buy back its own shares by making suitable offers. However, the offer made by the The Learning Internet Inc. was not acceptable as it was on a lower side.

**61.** The Appellant, therefore, got valuation of shares done through independent firms and the Appellant wrote an e-mail to the liquidators on 12.02.2020 informing that it has an offer of USD 7.1 millions and sought confirmation from the liquidator if they have got any better counter offer from any interested party. We also note that liquidators vide reply dated 12.02.2020 confirmed that liquidators did not have any better offer and gave its NOC to sale of shares of The Learning Internet Inc. by the Appellant.

**62.** Accordingly, the Appellant sold its 18,173 shares of The Learning Internet Inc. vide sale agreement dated 03.09.2021 at higher negotiated price of USD 7.1 million prices then estimated by the valuers.

**63.** In this background, we note that Respondent No. 1 i.e., Mr. Shantanu Prakash, the Suspended Director of the Corporate Debtor filed an IA. No. 187/ND/2022 in C.P (IB) No. 187 (PB)/2017 under Section 60(5) r/w Section 47 of the Code before the Adjudicating Authority alleging an under-valued transaction of the shares by the Appellant and further sought directions against the Respondent No. 2 to file an appropriate application and to annul sale of shares by the Appellant.

**64.** We observe that the Adjudicating Authority disposed IA. No. 187/ND/2022 holding that shares are not assets of Corporate Debtor, however, directed the Respondent No. 2 to approach the IBBI for appointment of valuers for conducting a fresh valuation of 18,173 shares of The Learning Internet Inc. vide Impugned Order dated 25.08.2023 as contained in Para 27 (a) and (b) of the Impugned Order despite the fact that the shares were already sold on 03.09.2021 after negotiated deal by the Appellant and after obtaining NOC from the Liquidators of EAPPL in Singapore.

**65.** We observe that during the case was being heard by this Appellate Tribunal in the present appeal filed by the Appellant, this Appellate Tribunal stayed directions contained in Para 27(a) & (b) of the Impugned Order of the Adjudicating Authority on 18.10.2023.

66. The limited point to decide in this appeal is therefore is whether the Adjudicating Authority could have passed the directions to the Respondent No 2 to approach the IBBI for appointment of valuers for valuation of shares The Learning Internet Inc. based on the alleged under valuation of shares by the Respondent No. 1. In this connection, we will further like to note the relevant portions of the Impugned Order which is reproduced as under :-

*“17. Though, the CD i.e., Educomp Solutions Limited owned 100% shares of the Educomp Asia Pacific Pte Limited, but it does not entitle it to have any interest in the assets of the Educomp Asia Pacific Pte Limited.....*

*Thus, we are left with no doubt that the assets of Educomp Asia Pacific Pte Limited cannot be treated as part of assets of Educomp Solutions Limited i.e., the CD in the present proceedings.....The Learning Internet Inc. could not have formed part of assets or property of the CD in any manner. Once the holding and subsidiary company are different and distinct legal persons and the shareholder is not entitled to claim any right or interest qua the assets of a company, the percentage of shareholding would not make any difference in this regard. Thus, even the 100% shareholding by the Educomp Solutions Ltd. in Educomp Asia Pacific Pte Limited would not entitle the Educomp Solutions Limited i.e., the CD herein to claim the assets of Educomp Asia Pacific Pte Limited as that of its own.Maybe Mr. Saurabh Kripal Ld. Sr. Counsel for the Applicant is right in espousing that the explanation below clause (g) of Section 18 of IBC, 2016 restricts the exclusion of assets of a*

subsidiary of a corporate debtor only to said section (Section 18) i.e., for the purpose of taking the control and custody of any asset over which the corporate debtor has ownership right, but when in terms of the view taken by Hon'ble Supreme Court (ibid), the asset of subsidiary cannot be treated as that of holding company, it cannot be viewed that the IRP or RP was under obligation to preserve the value of the shares held by Educomp Asia Pacific Pte Limited in The Learning Internet Inc., in terms of the provisions of Section 20(1) or Section 25(1) of IBC, 2016.....

19. Apparently, the shares of The Learning Internet Inc. (TLI) is an asset/property of the subsidiary of the CD, thus, we are unable to countenance the plea espoused on behalf of the Applicant that the Respondent Nos. 1 & 2 failed to discharge their legal obligations, in not taking steps to prevent the Respondent No. 4 from disposing off the shares held by Educomp Asia Pacific Pte Limited qua The Learning Internet Inc. (TLI) kept as a security with Respondent No. 4.

20. .....It is apparent from above that an under-valued transaction can be alleged only against the Corporate Debtor. The sale of shares owned by a subsidiary of CD, by the lender/financial creditor of the subsidiary of CD, with whom the same stood pledged as security for repayment of debt cannot be termed as a transaction by the CD (Corporate Debtor), thus there is no question of treating the same as an under-valued transaction. Thus, the plea raised on behalf of the Applicant for declaring the sale of the shares of The Learning Internet Inc. (TLI), owned by Educomp Asia Pacific Pte Limited, by the Respondent No. 4 with whom the shares

were pleaded as security for repayment of loan is not tenable and is nixed.

21. .....The Applicant is unable to show any contract, arrangement or any other instrument to establish that the CD had any entitlement either alone or together with any other person to exercise or cause to be exercised any or all of the rights or to receive or participate in any dividend or other distribution attached to/in respect of the shares of The Learning Internet Inc. owned by Educomp Asia Pacific Pte Limited.

23. .....As the Applicant herein is unable to show that either the CD or Educomp Asia Pacific Pte Limited filed Form No. MGT-5 or MGT-4, we are unable to accept the plea espoused by the Ld. Sr. Counsel that there being a beneficial interest of the CD qua the shares of The Learning Internet Inc. owned by Educomp Asia Pacific Pte Limited, by operation of Section 14 of IBC, 2016, Moratorium in respect of the shares could apply with the commencement of CIRP for the CD.

25.....A contract of guarantee creates some rights and liabilities between the lender and the guarantor. A Guarantor is technically a debtor because when the principal debtor fails to pay his debt, the Guarantor is called upon to pay the money owed. The liability of the guarantor crystallizes the moment a default occurs on the part of the borrower.”

(Emphasis Supplied)

**67.** We note that vide Impugned Order dated 25.08.2023, the Adjudicating Authority framed five questions in para 15. The relevant portion of this para reads as under :-

*“15. In the wake of the pleas and submissions raised by the counsels for the parties, following aspects emerge to be analysed and adjudicated by us: -*

*(i) Whether the shares held by Educomp Asia Pacific Pte Limited i.e., a subsidiary of the CD herein viz. Educomp Solutions Limited in The Learning Internet Inc. can be treated as an asset of the CD.*

*(ii) Whether in the wake of 100% shares of Educomp Asia Pacific Pte Limited being held by the CD in the present proceedings, the shares held by Educomp Asia Pacific Pte Limited in The Learning Internet Inc. can be treated as assets of the CD.*

*(iii) Whether the plea of under-valuation raised by the Applicant in terms of the provisions of Section 47 of IBC is tenable.*

*(iv) Whether Moratorium could be applied to the shares held by Educomp Asia Pacific Pte Limited, a subsidiary of Educomp Solutions Limited in The Learning Internet Inc.*

*(v) When the Corporate Guarantor is liable to discharge such debt of a creditor for which it stands as security/executed Deed of Guarantee, whether it can question the valuation and sale price of the security pledged by the Corporate Debtor with the secured financial creditor as collateral/security.”*

*(Emphasis Supplied)*

Suffice to note that the four issues in Para 15(i), (ii), (iii) & (iv) were affirmed in favour of the Appellant i.e, SBI Singapore, however, the Adjudicating Authority gave a different view rejecting issues framed by the Adjudicating Authority in Para 15 (v).

**68.** In para 26 of the Impugned Order, the Adjudicating Authority had discussed regarding contract of guarantee between the Appellant and the Respondent No. 1 and also discussed the impact of Section 141 of the Indian Contract Act, 1872. The Para 26 of the Impugned Order reads as under :-

*“26. Upon the execution of a contract of guarantee, there exists a separate contract between the Creditor and the Guarantor, which can be enforced by the Creditor, when there is a breach without recourse to the borrower, who is the Principal Debtor. Once a debt has accrued and the Guarantor is called upon by the Creditor, the Guarantor is directly liable to the Creditor independent of the borrower’s liability to the Creditor. Similarly, the Guarantor is directly liable to the Principal Borrower, in the event, the Principal Borrower defaults or refuses to honour his repayment obligations. In such situations, definitely a question would arise that what steps a Guarantor must take to protect his right in a contract of guarantee. It would not be inappropriate for every Guarantor to take certain steps so as to protect himself to reduce the risk of standing as a Guarantor. One of such steps, the Guarantor may take is to diligently identify the assets which the borrower intends to*



*nominate as security/collateral for the borrower's loan. Similarly, it would not be impermissible or improper for a Guarantor to be vigilant about the valuation of the securities/collateral pledged by the debtor to secure loan sought to be disposed of by the secured creditor, as the same would have direct bearing on the liability of debtor to discharge the loan. Section 128 of the Indian Contract Act 1872, clearly provides that the liability of the surety is co-extensive with that principal debtor unless it is otherwise provided by the contract. It would not be gain said that the liability of the borrower and the guarantor to discharge the debt is almost a joint liability. In terms of the provisions of Section 141 of the Act (Indian Contract Act, 1872) a surety is entitled to the benefit of every security which the Creditor has against the principal debtor at the time when the contract of suretyship is entered into 64 whether the surety knows the existence of each security or not and if the Creditor losses or without the consent of the surety, part with such surety, the surety is discharged to the extent of the value of the security. Section 2(f) of the SARFAESI Act treats the Guarantor as Borrower. Section 13(11) of SARFAESI Act give option to creditor either to proceeds against the Guarantor or pledged asset. In the wake, particularly the provisions of Section 141 of the Indian Contract Act (ibid), which entitle a surety to benefit of every security, the creditor has against the principal debtor, we have no hesitation in taking a view that the Guarantor/Surety can raise the question about the valuation of the security pledged by the Principal Debtor/Borrower with the secured creditor.”*

*(Emphasis Supplied)*

**69.** Thus, it becomes quite apparent that the Adjudicating Authority has rightly held that in terms of the Code and the Regulation, the Corporate Debtor and its subsidiary are two legally distinct entities. It has also been correctly held that the assets of the subsidiary company cannot be treated as part of the assets of the Corporate Debtor. The Adjudicating Authority further rightly held that it is not the duty of the Respondent No. 2 to preserve the assets of the subsidiary company which are not under control of the Corporate Debtor or which are not part of estate of the Corporate Debtor. The Adjudicating Authority has also not found anything wrong in the selling of the shares of The Learning Internet Inc.

**70.** However, the Adjudicating Authority has held that the Respondent No. 1 being the corporate guarantor of the principal borrower i.e., EAPPL (subsidiary of the Corporate Debtor) has right to protect its interest in corporate guarantee and therefore the Respondent No. 1 can take certain step to protect himself to reduce risk of standing as guarantor to EAPPL.

**71.** Further the Adjudicating Authority discussed Section 128 and Section 141 of the Indian Contract Act, 1872 as well as Section 2(f) and Section 13 (11) of SARFAESI Act, and held that like rights of surety under Section 141 of Indian Contract Act, 1872, the Corporate Debtor can raise the question regarding valuation of security pledged by EAPPL with the Appellant. Based on this premise, the Adjudicating Authority ordered for fresh valuation to be done by two

valuers appointed determined by IBBI on payment of the fee by the Appellant herein.

**72.** We have already noted that the order on liquidation on EAPPL was passed by the High Court of Singapore, therefore, any issue regarding the liquidation proceedings including sale value of the shares in The Learning Internet Inc. sold by the Appellant with the consent of the liquidators of EAPPL could have been raised in liquidation proceedings of EAPPL before the High Court of Singapore as the assets in question were owned by EAPPL (formed in Singapore) and not by the Corporate Debtor. We wonder, on what basis the Adjudicating Authority could have intervened in matter directly connected with the liquidation process of EAPPL in Singapore, albeit the subsidiary of the Corporate Debtor when it has got no jurisdiction in the subject matter of EAPPL.

**73.** The Respondent No. 1 aggrieved due to alleged under valuation shares of The Learning Internet Inc., could have approached the liquidators or could have invoked the suitable jurisdiction, if any, in accordance with the relevant insolvency law of the Singapore before the High Court of Singapore, which he has not done as confirmed by the Respondent No. 1 in reply put by this Appellate Tribunal to Respondent No. 1 during the pleadings before us.

**74.** We hold that it does not give any right to the Respondent No. 1 to approach the Adjudicating Authority on this issue and without any doubt, the Adjudicating Authority did not has any jurisdiction to give such directions w.r.t. fresh valuation in this regard as contained in Para 27 of the Impugned Order.

**75.** We also note that the Appellant in fact has categorically and in transparent manner wrote to the liquidators about the offer received by him and only after getting confirmation from the liquidators that the liquidators did not have better value than received by the Appellant, the Appellant went ahead to realise its security interest by sale of shares in The Learning Internet Inc.

**76.** We note that the Adjudicating Authority has referred to Regulation 21A of the Liquidation Regulations while ordering for a fresh valuation as contained in Para 27 of the Impugned Order. The Adjudicating Authority in its earlier para 25 discussed about Regulation 21 A of the Liquidation Regulations. We consciously note that the present case is regarding CIRP of the Corporate Debtor and not of the liquidation and therefore, in such case the Regulation 21 A of the Liquidation Regulations is not applicable.

**77.** Incidentally, we note that the Respondent No. 1 referred to valuation report i.e. SBI capital valuation of shares on USD deed 23.24 million somewhere in the year 2008. Similarly, the Respondent No. 1 has referred to valuation report of M/s Mazars conducted an equity valuation in March, 2014 at USD 42.049 million and finally the Appellant referred the higher valuation figures determined by Sapient Services Pvt. Ltd. We note that the Appellant, in his Written Submissions (given to us on 14.12.2024 after order was reserved on 12.12.2024) brought out that the aforesaid valuation reports by the Respondent No. 1 are documents placed on record for the first time without seeking the permission of this Appellate Tribunal.

**78.** We observe that the valuations were done at different time periods and in different context on different issues and we are, therefore, of opinion that such valuation reports could not have been relied upon by the Adjudicating Authority. In any case such valuation reports were done long back in 2008 and 2014-2021 which would have been conducted based on the estimates and future projections relevant at that times and cannot be relied upon now.

**79.** We note that the actual sale was conducted on 03.09.2021 i.e., during COVID-19 pandemic period, affecting the economic valuation of all enterprises globally and certainly valuation of shares of The Learning Network Inc. could not have remained unaffected. As such we do not find any merit in the contention of the Respondent No. 1 raising issue regarding alleged under valuation of shares of The Learning Network Inc. sold by the Appellant with the content of the Liquidator of EAPPL, Singapore governed by the Singapore Insolvency/Liquidation laws.

**80.** We also note that the Respondent No. 1 has alleged connivance of the concerned parties in selling of shares of The Learning Network Inc. at unrealistic low prices. It tantamount that there would have been connivance between lenders along with the liquidators appointed by the High Court of Singapore laws and other stakeholders, for which the Respondent No. 1 could not furnish any concrete evidence.

**81.** It is also noted that Respondent No. 1 through clause of corporate guarantee waived its rights to any disputes or by creditors in any law related to as contained in Clause 5 which reads as under :-

*“5. WAIVERS*

*The Guarantor shall not be released by any act or omission on the part of the Lender or by any other matter or thing whatsoever which under the law relating to sureties would have the effect of so releasing the Guarantor AND the Guarantor hereby waives in favour of the Lender so far as may be necessary to give effect to any of the provisions of this Guarantee, all the suretyship and other rights which the Guarantor might otherwise be entitled to enforce.”*

*(Emphasis Supplied)*

**82.** We find merit in the contention of the Appellant and therefore, do not find logic with the reasoning given in Para 26 of the Impugned Order.

**83.** We have also gone through the pleadings of the Respondent No. 2 i.e., RP who has brought out all the facts including that after selling the shares of The Learning Network Inc. by the Appellant, the Appellant himself has updated claims in form C dated 13.10.2021 and reduced its claim from Rs. 112,82,42,159.97 (USD 17,455,969,65) to Rs. 67,17,18,480.81 (USD 10,392,713.40).

**84.** The Respondent No. 2/ RP brought to our notice vide para 4.15 of the Reply to the Appeal that IBBI has also filed Reply a reply dated 30.10.2023 before the Adjudicating Authority in CP No. (B) 101/2017 and asserted that it is not in the domain of IBBI in terms of applicable rules of CIRP and IBBI liquidation valuation to appoint registered valuers. The relevant part of the reply of the Respondent No. 2 contained in Para 4.15 which reads as under :-

*“4.15. Pertinently, IBBI has also filed a reply dated 30.10.2023 before the Hon'ble Tribunal in C.P. No. (IB) 101/2017. It has been asserted in their reply that while the Impugned Order directs the IBBI to appoint registered valuers to do the valuation of shares, it is not in the domain of the IBBI in terms of the applicable CIRP Regulations and the IBBI (Liquidation Process) Regulations 2016, to appoint registered valuers. Accordingly, it has been submitted that the Hon'ble Tribunal may pass appropriate in light of the reply submitted on behalf of IBBI.”*

*(Emphasis Supplied)*

We find merit in the contention of the IBBI which also does not support the directives contained in para 27(a) & (b) of the impugned order which are under challenge before this Appellate Tribunal.

**85.** We hold that Regulation 21A of the Liquidation Regulations has no applicability in the present Company Petition which is for insolvency proceeding of the Corporate Debtor.

**86.** Now, we will like to take into account decision of Hon'ble Supreme Court of India held in case of *Greater Noida Industrial Development Authority (GNIDA) v. Roma Unicon Designex Consortium, Company Appeal (AT) (Insolvency) No. 180 of 2022*. The relevant portion is reproduced below:

*"44. Section 18, sub-section (1), Explanation further clarifies the law when it says that assets shall include the assets, meaning thereby assets of the Corporate Debtor shall not include assets of any Indian subsidiary. In the CIRP of Corporate Debtor, thus, assets of subsidiary Company, te., Earth Towne were not to be taken into consideration or treated as the assets of the Corporate Debtor. As regards, the law relating to resolution process of a corporate person is concerned, the law is concerned with assets of the Corporate Debtor and its liabilities, so as to focus the resolution on the assets of the Corporate Debtor. The natural corollary to the above provision is that the assets of the subsidiary Company cannot be dealt with, in CIRP of a holding Company. Holding Company and subsidiary Company have separate legal status and the assets of subsidiary Company cannot be taken into consideration."*

*(Emphasis Supplied)*

This judgement also makes situation quite clear.

**87.** In view of above detailed analysis, we find merits in the arguments of the Appellant. The appeal succeeds and the Impugned Order contained in para 27 (a) & (b) and second line of 27 (c) i.e., "*The secured financial claim of the State Bank*



*of India (Singapore) qua the CD would be subject to the outcome of the valuation result/report” is set aside. We make it clear that the remaining Impugned Order shall survive and shall stand applicable. No costs. I.A., if any, are closed.*

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Mr. Naresh Salecha]  
Member (Technical)**

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