IN THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. No. 3729 of 2024
IN
C.P. (IB) I.B.C. No. 102 OF 2017

(Order under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

DBS BANK LTD. ...FINANCIAL CREDITOR

Versus

M/S EDU SMART SERVICES
PRIVATE LIMITED ...CORPORATE DEBTOR

AND IN THE MATTER OF IA-3729/2024:

M/S LAKSHDEEP INVESTMENTS AND
FINANCE PVT. LTD. ... APPLICANT

Versus

RITU RASTOGI

.... RESPONDENT

ORDER PRONOUNCED ON: 07.10.2026

CORAM:
JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	:	Mr. Chitranashul A. Sinha, Mr. Sagar Bansal, Mr. Dhruv Parwal, Mr. Shivam Shorewala, Ms. Rakshita Bhargava, Ms. Esha Sharma, Advs.
For the SRA	:	Mr. Abhirup Dasgupta, Mr. Nikhil Beniwal, Ms. Vagisha Tiwari, Ms. Surbhi Sachdeva, Advs.
For the Liquidator	:	Ms. Prachi Johri, Mr. Sachin Jain, Mr. Himanshu Sharma, Advs. with Ms. Ritu Rastogi, Liquidator.

ORDER

1. The instant application, has been filed by **Lakshdeep Investments and Finance Pvt. Ltd.** ("Applicant/Revival Applicant") under **Section 60(5) of the Insolvency and Bankruptcy Code, 2016** (hereinafter referred to as the "IBC"/ "the Code") read with Rule11 of the NCLT Rules 2016, against **Ms. Ritu Rastogi, Liquidator of Edu Smart Services Pvt. Ltd**., Seeking, inter alia, directions to Liquidator for preparation and signing of Special Purpose Financial Statements for the Financial Year 2019-20, 2020-21 and 2021-22 filing of modified Income Tax Returns and Composite Scheme of Arrangement. The Applicant is the entity in whose favour the relevant business undertaking of the Corporate Debtor was demerged pursuant to the sanctioned Revival Plan.

2. Prayer in the Application reads as follows:
   a. *That, directions may be issued to Liquidator for signing the special purpose financial statements for the financial year 2019-20, 2020-21 and 2021-22 and file the modified return as per the provisions of section 170A of the Income Tax Act, 1961 of the Corporate Debtor for Assessment Year (AY) 2020-21, AY 2021-22 and AY 2022-23, as it is critical for*

implementations of the Revival Plan approved by stakeholders and committee and Hon'ble Adjudicating authority.

b. *That, directions may be issued to Liquidator for rectification / filing modified ITR for AY 2023-24 by removing the claim of the past unabsorbed depreciation and business losses form the Schedule UD and Schedule CFL respectively.*
c. *Ad interim relief that during the pendency of the present Application IA/2998 of 2024 should not be disposed-off and liquidator should not be discharged before rectification / filing of modified ITR's.*
d. *Pass any other order(s) that this Hon'ble Adjudicating Authority may deem fit and proper in the interest of justice.*

As a matter of background, it is pertinent to mention at this stage itself that the Business of the Corporate Debtor was essentially connected with digital education products and their implementation/maintenance in schools. During liquidation, the stakeholders contemplated selling the Corporate Debtor as a going concern and, pursuant to the same, Lakshdeep Investments and Finance Pvt. Ltd., the Applicant herein, submitted a Revival Plan in 2022. Revival Plan structured the transaction around a demarcation of its business/assets into two undertakings namely, **Business Undertaking A**, comprising the school software and maintenance business along with the assets, liabilities and tax attributes pertaining thereto, and **Business Undertaking B**, comprising the remaining assets and liabilities of the Corporate Debtor. Undertaking A was transferred to and vested in the Applicant with effect from the Appointed Date, i.e., 01.04.2020, whereas Undertaking B remained with the Corporate Debtor. Undertaking B was also eventually sold as a going concern to another party, namely Mr. Sandeep Garg . The said Revival Plan, together with the Composite Scheme of Arrangement, was sanctioned by this Adjudicating Authority vide order dated 25.04.2023. After the sale of Undertaking B, recovery and distribution of proceeds, and fling of the progress report, the Liquidator is stated to have completed liquidation and filed the final liquidation report vide IA No. 2998/2024.

The present proceedings arise out of a grievance raised by the successful purchaser of Undertaking A, alleged to have occurred on account of difficulties faced in implementation of the revival and demerger scheme.

3. Submissions on behalf of the Applicant:

3.1. The Applicant has stated that the Corporate Debtor was admitted into CIRP vide order dated 27.06.2017 passed by this Adjudicating Authority on an application filed by DBS Bank Limited under Section 7 of the Code. Subsequently, since no resolution plan was received, the Corporate Debtor was ordered to be liquidated vide order dated 23.03.2021 under Section 33(1)(a) of the Code and Ms. Ritu Rastogi was appointed as the Liquidator. Thereafter, at the first meeting of the Stakeholders' Consultation Committee held on 13.07.2021, it was discussed that the first endeavour would be to sell the Corporate Debtor as a going concern.

3.2. It has been averred that, pursuant thereto, the Liquidator received an Expression of Interest from the Applicant on 21.02.2022 and the Applicant thereafter submitted its Revival Plan dated 08.03.2022 for settlement of the liabilities of the Corporate Debtor under the process of sale of the Corporate Debtor as a going concern. The Applicant has stated that the Revival Plan, together with the Composite Scheme of Arrangement forming part thereof, was approved by the Stakeholders' Consultation Committee and subsequently by this Adjudicating Authority.

3.3. The Applicant has placed reliance upon Clause 9.2.6.1 of the Composite Scheme, which provides that, upon the Scheme becoming effective, the Demerged Company and the Resulting Company are expressly permitted to revise their respective tax returns and claim refunds and/or credits, as applicable pursuant to the Scheme. The Applicant has further relied upon Clause 6.7.2.3, which, inter alia,

refers to tax credits, refunds, claims and benefits under the tax laws, including the right to carry forward and set-off accumulated losses and unabsorbed depreciation, if any, and other deductions and benefits under the Income Tax Act or any other taxation statute enjoyed by the Demerged Company with respect to the Demerged Undertaking.

3.4. It has further been submitted that Clause 10.2 of the Revival Plan makes the same binding upon the Corporate Debtor and the stakeholders and requires the concerned persons to use their best efforts to do or cause to be done such further acts, deeds, matters and things and to execute such further documents as may reasonably be required to give full effect to the terms of the Revival Plan.

3.5. The Applicant has further referred to the order dated 25.04.2023 whereby this Adjudicating Authority approved the Revival Plan. It has relied upon the directions contained therein concerning the binding effect of the Revival Plan, the duties of the Liquidator in relation to implementation of the approved plan and the handing over of records and other relevant documents to the Revival Applicant.

3.6. According to the Applicant, after approval of the Revival Plan, it had infused the entire amount of Rs. 20 Crores in terms thereof and had taken steps towards implementation of the plan. It has been averred that a difficulty thereafter arose in relation to the preparation of the Special Purpose Financial Statements for FY 2019-20, FY 2020-21 and FY 2021-22, which according to the Applicant, were necessary for filing the modified Income Tax Returns under Section 170A of the Income Tax Act. The Applicant has stated that the said statements required approval and signatures of the Liquidator.

3.7. The Applicant has thereafter referred to the correspondence exchanged with the Liquidator in this regard. It has stated that the legal opinion regarding signing of the Special Purpose Financial Statements was shared with the Liquidator on 30.10.2023. It has stated that, in view

of the difficulty encountered in implementation of the Scheme, it invoked Clause 25 relating to the removal of difficulties and filed IA 5986/2023 before this Adjudicating Authority. The said application was disposed of on 13.12.2023, wherein the statement made by the counsel appearing for the Liquidator was recorded that the request of the Applicant would be complied with as and when all particulars were provided in accordance with law.

3.8. According to the Applicant, despite the aforesaid proceedings, the Income Tax Return for AY 2023-24 was filed by the Liquidator without giving effect to the Revival Plan. It has further been stated that multiple communications were thereafter exchanged between the parties regarding rectification of the said return and filing of the modified returns. The Applicant has also stated that it had requested that any plan or arrangement in respect of the remaining undertaking should not interfere with the Revival Plan already sanctioned in its favour. The grievance of the Applicant was thereafter specifically raised by its communication dated 11.06.2024; it has stated that, upon examining the Income Tax Return filed by the Corporate Debtor, it noticed that the unabsorbed business losses and unabsorbed depreciation of past years had been carried forward. According to the Applicant, such treatment was contrary to the Revival Plan sanctioned vide order dated 25.04.2023 and the provisions of the Income Tax Act. It has further stated that, instead of carrying out rectification, the Liquidator, vide her reply dated 15.6.2024, informed the Applicant that the liquidation had been carried out in accordance with law and that the remaining entity had already been handed over to the purchaser of Undertaking B, advising the Applicant to take up the issue with the said purchaser.

3.9. The Applicant has accordingly contended that Clause 6.7.2.3 of the Composite Scheme has not been given effect to by the Liquidator, notwithstanding that the issue had earlier been brought to her notice and had also formed the subject matter of I.A. No. 5986/2023. It is the

Applicant's case that the failure to rectify the Income Tax Return has resulted in the unabsorbed business losses and unabsorbed depreciation pertaining to the Demerged Undertaking continuing to be reflected as carried forward by the Corporate Debtor.

3.10. Ld. Counsel for the Applicant has further relied upon Section 170A of the Income Tax Act, 1961 and submitted that the provision specifically contemplates filing of a modified return in a case of business reorganisation involving, inter alia, demerger. According to the Applicant, the statutory mechanism under Section 170A has to be read with Clause 9.2.6.1 of the Composite Scheme, which expressly permits revision of the tax return upon the scheme becoming effective. Reliance has also been placed upon Section 35 of the Code. The Applicant has referred particularly to the power and duty of the Liquidator to take such actions and steps and to sign, execute and verify such documents as may be necessary in discharge of her duties and obligations as Liquidator. On this basis, it has been contended that the Liquidator was required to undertake the necessary acts for implementation of the approved Revival Plan, including signing the Special Purpose Financial Statements.

3.11. The Applicant has further invoked Clauses 25.1 and 23.1 of the Composite Scheme. It has been submitted that Clause 25.1 provides a mechanism for removal of doubts and difficulties arising under or in connection with the Scheme, while Clause 23.1 provides for modification of the Scheme to the extent necessary to comply with applicable law, subject to sanction of the competent authority wherever required.

3.12. On the aforesaid basis, the Applicant has submitted that the Liquidator was required to cooperate and sign the Special Purpose Financial Statements for FY 2019-20, FY 2020-21 and FY 2021-22 and thereafter file modified Income Tax Returns for AY 2020-21, AY 2021-22 and AY 2022-23 under Section 170A of the Income Tax Act. It has further

sought rectification/modification of the Income Tax Return for AY 2023-24 by removing the past unabsorbed depreciation and business losses which, according to the Applicant, were wrongly carried forward by the Corporate Debtor.

3.13. The Applicant has lastly contended that the aforesaid exercise remained incomplete despite its repeated requests and the proceedings in I.A. No. 5986/2023. It therefore seeks directions for the signing of the Special Purpose Financial Statements and filing of the modified returns and has further prayed that the liquidation proceedings not be brought to a close and the Liquidator not be discharged until the requisite rectification and filing of the modified Income Tax Returns is undertaken.

4. The Respondent, in her reply filed on 16.09.2024, has made, inter alia, the following averments:

4.1. The Respondent has stated that the Corporate Debtor was admitted into CIRP vide order dated 27.06.2017 and was subsequently ordered to be liquidated vide order dated 23.03.2021 under Section 33(1) of the Code, whereby Ms. Ritu Rastogi was appointed as the Liquidator. It has further been stated that the Liquidator duly submitted the quarterly progress reports during the liquidation process and thereafter filed I.A. No. 2998/2024 as the final report under Regulation 45 of the Liquidation Process Regulations seeking dissolution of the Corporate Debtor, contending that the liquidation process had been carried out in accordance with law.

4.2. The Respondent has further stated that two separate sale transactions took place during the liquidation. The first related to the sale of the business of the Corporate Debtor to the Applicant, which was approved by this Adjudicating Authority vide order dated 25.04.2023, while the remaining undertaking was subsequently sold and the transaction was

completed by issuance of the Sale Certificate dated 04.04.2024. It has also been stated that a refund of Rs. 5.24 Crores was received from the Income Tax Department in the liquidation account and was thereafter distributed, net of expenses, amongst the secured financial creditors, and that the funds collected in the liquidation process had been distributed amongst the stakeholders.

4.3. With regard to the relief sought in the present application, the Respondent has submitted that the Applicant had acquired only the business of the Corporate Debtor and had specifically not acquired Undertaking B, comprising the other assets and liabilities of the Corporate Debtor. Reliance has been placed upon the clarification dated 02.02.2023 furnished by the Applicant and filed vide affidavit dated 03.02.2023, wherein the Applicant itself had set out the balance sheet of Undertaking B after giving effect to the Revival Plan. The Respondent has reproduced the said balance sheet and pointed out that it comprised, inter alia, MAT Credit, Margin Money and recoverable amounts against corporate guarantee invocable on the assets side and corresponding liabilities on the other side. It has accordingly been contended that, in view of the aforesaid clarification, no changes could be required from the Liquidator beyond the financial position of Undertaking B as specifically set out by the Applicant itself. According to the Respondent, the Applicant has only furnished a legal opinion suggesting that the Special Purpose Financial Statements be signed by the Liquidator, but has failed to furnish the justification for the specific changes which it seeks to have incorporated therein.

4.4. The Respondent has further alleged that the Applicant has not correctly presented the course of correspondence which preceded the filing of the present application. It is stated that the Liquidator held meetings with the Applicant and repeatedly addressed communications seeking the list of changes and the justification therefor, but the Applicant did not provide the requisite particulars.

The Respondent has accordingly maintained that the Liquidator had remained diligent and cooperative, whereas the Applicant did not furnish the explanation sought regarding the proposed modification, particularly as to how, having acquired only a part of the Corporate Debtor, it could claim adjustment of the losses of the Corporate Debtor. It has been stated that, despite repeated communications seeking the proposed list of changes, the Applicant ultimately forwarded certain modified returns on 28.10.2023 without furnishing the justification for the changes. A meeting was thereafter held between the parties on 30.10.2023, in which, the Respondent, raised her concerns regarding the proposed changes. The Respondent subsequently by email dated 31.10.2023 again sought justification for the proposed modifications in accordance with law, but no reply was received from the Applicant.

4.5. The Respondent has further stated on 22.11.2023, the Respondent pointed out that the Applicant had neither furnished the list of changes nor the justification. The Respondent thereafter examined the modified returns furnished by the Applicant and raised, inter alia, the issue that the Appointed date under the Revival Plan was 01.04.2020 and, therefore, the proposed changes relating to FY 2019-20 required justification.

4.6. The Respondent has further submitted that the proposed amended returns showed the borrowings and liabilities of the Corporate Debtor as zero from 01.04.2020 onwards. It was contended that such treatment would have consequences for the rights of the lenders in respect of any assets or recoveries remaining with the Corporate Debtor after implementation of the Revival Plan. The Respondent also raised the concern that reduction of the borrower's liability to zero from the said date could have a bearing upon the rights of the lenders against the personal guarantors, who may seek to contend that the liability of the borrower itself stood reduced to nil from 01.04.2020.

4.7. The Respondent has stated that the entire issue was thereafter placed before the Stakeholders' Consultation Committee in its 6th meeting held on 08.12.2023. According to the Respondent, the SCC considered the effect of the proposed changes whereby the outstanding loans of the secured financial creditors would be reflected as zero. The members questioned against what account the value received under the Revival Plan would then be reflected if nothing remained payable to the lenders as on 31.03.2021, and also noted that no financial creditor had issued any NOC or NDC recording that nothing remained receivable from the Corporate Debtor. The proposed changes reducing the assets and liabilities to zero were accordingly not accepted.

4.8. It has also been stated that, at the same meeting, the issue of the Applicant seeking the tally data and books of the Corporate Debtor was considered. The SCC was informed that the Applicant had acquired only a particular part of the Corporate Debtor and had not taken over the Corporate Debtor as a going concern in its entirety and, therefore, the handing over of the books of the Corporate Debtor to the Applicant was not considered necessary. The SCC members are further stated to have taken the view that retrospective modifications in the financial years 2019-2022, resulting in the assets and liabilities being shown as zero, were not justified.

4.9. The Respondent has further submitted that the financial affairs of the Corporate Debtor were subject to investigations by the SFIO, CBI and ED. In those circumstances, the Liquidator considered it necessary to ascertain whether the proposed revision of the Balance Sheet, Profit and Loss Account and Income Tax Returns from FY 2019-20 to FY 2022-23 was contemplated by the approved Revival Plan and whether audited financial statements already under investigation by the aforesaid agencies could be retrospectively modified. For this purpose, the Liquidator obtained an expert opinion from Lunawat & Co., Chartered Accountants.

4.10. With regard to I.A. No. 5986/2023, the Respondent has stated that, after the order dated 13.12.2023, the Liquidator continued to maintain that she would sign the documents in accordance with law. It has further been stated that the expert opinion of Lunawat & Co., Chartered Accountants, was thereafter received on 18.12.2023. According to the Respondent, since the Applicant did not contact the Liquidator after the order dated 13.12.2023, the Liquidator herself forwarded a copy of the said order to the Applicant on 12.01.2024.

4.11. The Respondent has further referred to the email dated 21.02.2024 sent by the Applicant, whereby the Applicant explained that the demerger fell within the scope of the Income Tax Act and relied upon the observation in the order dated 25.04.2023 concerning the reorganisation and restructuring of the assets and liabilities of Undertaking A and Undertaking B as on 31.03.2020. According to the Respondent, the Applicant sought to contend on this basis that, notwithstanding the wording of the Revival Plan, the changes were required to be made from FY 2019-20 onwards.

4.12. The Respondent, thereafter replied on 26.03.2024 that the requisite details had still not been furnished and that the balance sheets and records had already been submitted to the investigative agencies. It has further been stated that the Liquidator had obtained legal advice that retrospective modification of the financial statements from the back date was not permissible and had called upon the Applicant to furnish any contrary provision of law or judicial decision supporting its position.

4.13. The Respondent has further stated that the matter was again placed before the SCC in its 8th meeting held on 28.03.2024. The Respondent, informed the SCC that, on the basis of the legal opinion obtained, the liabilities of the Corporate Debtor could not be reduced to zero since the Corporate Debtor continued to exist even after the demerger and

the liabilities towards the Bank had not been taken over by the Applicant, which had acquired only a particular business undertaking.

4.14. The Respondent has thereafter carried out liquidation of the remaining undertaking in accordance with the directions contained in the order dated 25.04.2023, and issued the Sale Notice dated 01.03.2024. Four EOIs were received, and the e-auction was conducted on 20.03.2024, in which the highest bid of ₹32 Lakhs was received from Mr. Sandeep Garg. The SCC thereafter consented to the sale of Undertaking B on a going concern basis.

4.15. The Respondent has further submitted that the successful bidder deposited the bid amount on 04.04.2024, whereupon the Liquidator issued the Sale Certificate in favour of Mr. Sandeep Garg and handed over the documents and data relating to Undertaking B. The Respondent has also stated that the recoveries were thereafter distributed, the liquidation costs were settled and the 12th progress report was filed. According to the Respondent, all steps in the liquidation process had consequently been completed and the handing-over confirmation had been issued to the purchaser, following which I.A. No. 2998/2024 was filed for completion of the liquidation process.

4.16. On the aforesaid basis, the Respondent has contended that the present request has to be examined in the light of the demarcation between Undertaking A and Undertaking B which was itself furnished by the Applicant. It has been submitted that, while revision of the Income Tax Return and preparation of Special Purpose Financial Statements may be contemplated in appropriate circumstances, the present case stands on a different footing since the Applicant itself had identified what was to be transferred to it and what was to remain with the Corporate Debtor.

4.17. It is the Respondent's case that the instant application itself was filed without annexing the details of the changes sought and without setting out the appropriate provisions of law so as to address the concerns raised by the Liquidator regarding the proposed reduction of the liabilities of the creditors to zero. The Respondent has reiterated that the crucial distinction is that the Applicant had taken over only the business of the Corporate Debtor and not the Corporate Debtor as a going concern in its entirety.

4.18. The Respondent has further submitted that, by the time the present application was being considered, the remaining entity had already been sold to the successful bidder and handed over. Consequently, the Respondent, was no longer in a position to undertake the changes sought by the Applicant. It has also been stated that, on the basis of the legal opinion obtained, Section 170A of the Income Tax Act would not apply since the Resulting Company had not issued any shares to the shareholders of the Corporate Debtor.

4.19. According to the Respondent, an examination of the Revival Plan further disclosed that the change contemplated therein was the conversion of trade payables and unsecured loans into the Preference Share Suspense Account, and not the wholesale reduction of the liabilities and assets of the Corporate Debtor to zero. The Respondent has relied upon the said position in disputing the modifications proposed by the Applicant. The Respondent has also referred to the email dated 15.08.2024 received from the Enforcement Directorate in relation to the pending investigation concerning the Corporate Debtor. It has stated that the Liquidator informed the ED about the sale of Undertaking A and Undertaking B and the fact that the respective undertakings had been handed over. The Respondent has accordingly maintained that the Liquidator has acted in accordance with the position emerging from the Revival Plan and the subsequent liquidation proceedings.

4.20. The Respondent has lastly stated that she remains ready and willing to take such action as may be directed by this Adjudicating Authority and has reiterated that she shall comply with the directions of this Adjudicating Authority in accordance with law.

5. The Applicant in its rejoinder filed on 09.11.2024, has, inter alia controverted the averments made by the respondent in its reply and has stated as follows:

5.1. The Applicant has sought to distinguish the financial statements of Undertaking B relied upon by the Respondent from the Special Purpose Financial Statements sought in the present application. According to the Applicant, the financial statements of Undertaking B relied upon by the Respondent are financial statements prepared under the Companies Act, 2013, whereas the present application seeks preparation of Special Purpose Financial Statements for the limited purpose of filing revised/modified Income Tax Returns pursuant to the Revival Plan and the Composite Scheme approved by the Stakeholders' Consultation Committee and this Adjudicating Authority.

5.2. The Applicant has further contended that the losses reflected in the financial statements relied upon by the Respondent are book losses, whereas the issue raised in the present application concerns the losses and tax attributes under the Income Tax Act, 1961. In support thereof, reliance has again been placed upon Clause 9.2.6.1 of the Composite Scheme, permitting revision of the respective tax returns upon the Scheme becoming effective, and Clause 6.7.2.3, which includes the right to carry forward and set-off accumulated losses and unabsorbed depreciation, if any, and other benefits under the Income Tax Act in respect of the Demerged Undertaking.

5.3. The Applicant has further stated that it had already furnished the justification for the modifications sought vide email dated 21.02.2024. According to the Applicant, it had specifically informed the Respondent that the difficulty arose in relation to preparation of the Special Purpose Financial Statements from FY 2019-20 onwards, as the existing financial statements were, according to it, not in consonance with the approved Revival Plan and Composite Scheme. It was further stated that the unabsorbed depreciation and business losses had been wrongly carried forward by the Corporate Debtor and were required to be declared as NIL for the purpose of the modified returns.

5.4. The Applicant has also referred to the order dated 13.12.2023 passed in I.A. No. 5986/2023 and submitted that the said proceedings had already culminated in the statement recorded by this Adjudicating Authority that the request of the Applicant would be complied with as per law. The Applicant has relied upon the said order in support of its contention that the issue concerning the implementation of the approved arrangement had already been brought before this Adjudicating Authority.

5.5. With regard to the subsequent correspondence, the Applicant has specifically relied upon its email dated 21.02.2024, whereby, according to it, the proposed rectification/modification of the financial statements for FY 2019-20, FY 2020-21 and FY 2021-22 and the relevant provisions of the order dated 25.04.2023 were brought to the notice of the Respondent. It has contended that, despite the same, the financial statements were not modified or rectified.

5.6. The Applicant has further addressed the Respondent's communication dated 26.03.2024 and stated that the same did not, provide a proper justification for declining the modifications sought. It has reiterated that the modifications were sought from FY 2019-20 onwards to give

effect to the reorganisation and restructuring contemplated under the approved Revival Plan and Composite Scheme.

5.7. The Applicant has reiterated that, in terms of Clause 6.7.2.3 of the Composite Scheme, the unabsorbed depreciation and business losses of past years which, according to it, had been wrongly carried forward by the Corporate Debtor were required to be declared as NIL in the modified returns. It has maintained that such exercise was to be undertaken through preparation of Special Purpose Financial Statements for the purpose of filing the modified returns under Section 170A of the Income Tax Act. In response to the Respondent's reliance upon Undertaking B, the Applicant has reiterated that the financial statements pertaining to Undertaking B do not address the issue raised in the present application, since those statements reflect the book position under the Companies Act, whereas the Applicant's claim concerns the tax losses and other tax attributes under the Income Tax Act which, according to the Applicant, stood transferred to the Resulting Company under the Composite Scheme.

5.8. The Applicant has accordingly contended that the Income Tax Returns filed by the Respondent from FY 2019-20 onwards did not give effect to the approved Revival Plan, Clause 6.7.2.3 of the Composite Scheme and the order dated 25.04.2023. It has therefore reiterated its request for rectification/modification of the financial statements for FY 2019-20, FY 2020-21 and FY 2021-22 through preparation of Special Purpose Financial Statements and for corresponding modification of the Income Tax Returns for AY 2020-21, AY 2021-22, AY 2022-23 and AY 2023-24, particularly in relation to the unabsorbed depreciation and business losses which, according to the Applicant, were wrongly carried forward by the Corporate Debtor.

5.9. The Applicant has further contended that the aforesaid rectification/modification remained pending despite the legal opinion and justification furnished by it and has alleged that the continued

pendency of I.A. No. 2998/2024, filed by the Respondent for discharge, would result in the present application being rendered infructuous if the liquidation proceedings were concluded before the issue was adjudicated

5.10. The Applicant has, on the aforesaid basis, maintained that the relief sought in the present application concerns the tax treatment arising from the approved reorganisation and is not a request to alter the financial statements of Undertaking B merely on account of the Applicant having acquired Undertaking A. It has accordingly reiterated that the Special Purpose Financial Statements and corresponding modified Income Tax Returns are required to give effect to the tax consequences which, according to the Applicant, flow from the approved Revival Plan and Composite Scheme.

6. The Applicant thereafter filed an Additional Affidavit dated 21.05.2025 placing on record the Scheme of Demerger forming part of the Revival Plan dated 08.03.2022, stating that although the Revival Plan had already been annexed with the application, the Scheme of Demerger, being an integral part thereof, had inadvertently been omitted from the record. The Applicant sought to place the said document on record for proper and complete adjudication of the present application.

7. Further, a Brief Note dated 13.04.2026 was filed on behalf of the Applicant, wherein its submissions, as discussed above, have been reiterated.

8. The Applicant has identified three specific acts which, according to it, remained to be undertaken: **first**, preparation and signing of the Special Purpose Financial Statements of the Corporate Debtor for FY 2019-20 to FY 2021-22; **second**, filing of the modified Income Tax Returns for AY 2020-21 to AY 2022-23 under Section 170A of the Income Tax Act; and **third**, rectification of the Income Tax Return for AY 2023-24 so as to remove the carry forward of unabsorbed business losses and depreciation pertaining to the Demerged Undertaking.

9. The Respondent, in compliance of order dated 25.05.2026, filed its Short Note, wherein it reiterated its objections to the reliefs sought by the Applicant and, inter alia submitted as follows:

9.1. According to the Respondent, the claim is contrary to the Composite Scheme and the clarification furnished by the Applicant itself before this Adjudicating Authority.

9.2. It has been submitted that the Applicant had categorically stated that it had acquired only the Business A of the Corporate Debtor and had not acquired Undertaking B. The Respondent has relied upon the clarification dated 02.02.2023 furnished by the Applicant through the affidavit dated 03.02.2023 and the order dated 25.04.2023 passed by this Adjudicating Authority, wherein the distinction between Undertaking A and Undertaking B was recorded.

9.3. The Respondent has further relied upon the balance sheet of Undertaking B furnished by the Applicant along with its clarification. According to the Respondent, the said balance sheet disclosed Reserves and Surplus amounting to approximately ₹1081 Crores, subject to the adjustment contemplated under the Scheme of Arrangement of approximately ₹39 Crores, and the losses formed part of the said Reserves and Surplus. It has accordingly been contended that no part of the balance sheet of Business A reflected such losses.

9.4. It has further contended that the order dated 25.04.2023 approving the Scheme was passed on the basis of the clarification furnished by the Applicant and specifically recorded that the Liquidator would undertake the sale of the balance Undertaking B. According to the Respondent, any alteration to the balance sheet of Undertaking B at this stage would amount to modification or recall of the order dated 25.04.2023, which cannot be permitted.

9.5. The Respondent has further submitted that the Applicant's contention that the losses were required to be transferred under the Income Tax Act cannot override the clarification furnished by the Applicant before this Adjudicating Authority. It has been contended that, if the Applicant's present interpretation is accepted, the clarification furnished by it at the time of approval of the Scheme would be rendered contrary to law and would have resulted in the order dated 25.04.2023 being passed on an incorrect representation. The Respondent has accordingly submitted that the Applicant cannot now seek relief contrary to the position placed before this Adjudicating Authority at the time of sanction of the Scheme.

9.6. The Respondent has further raised a specific objection to the proposed revision of the financial statements for FY 2019-20. It has been submitted that the Effective Date under the Scheme was 01.04.2020 and, therefore, the Applicant could not seek revision of the financial statements for FY 2019-20 in the manner proposed. According to the Respondent, the Applicant cannot claim anything beyond the terms of the Scheme sanctioned by this Adjudicating Authority.

9.7. It has further been submitted that, even assuming that revision of the Income Tax Return from an earlier date is permissible, the liabilities of the Corporate Debtor could not consequently be reduced to zero. According to the Respondent, such treatment would prevent the Liquidator from making payment to creditors in the event of any subsequent recovery, if the corresponding liabilities were not reflected in the revised balance sheets and Income Tax Returns. The Respondent has therefore contended that, at the highest, any permissible revision could only be to reflect the balance sheet of Undertaking B in the manner in which it was recorded in the order dated 25.04.2023.

9.8. The Respondent has also disputed the Applicant's entitlement to claim the losses under Section 72A(4)(a) and 170A of the Income Tax Act. It has relied upon the legal opinion obtained by the Respondent to

contend that the Scheme does not satisfy the statutory requirements of a "demerger" under Section 2(19AA) of the Income Tax Act. In particular, it has been submitted that there was no issuance of shares of the Resulting Company to the shareholders of the Demerged Company and, consequently, the mandatory requirements prescribed under Section 2(19AA) were not fulfilled.

ANALYSIS & FINDINGS:

10. We have heard the Ld. Counsels for the Applicant and the Respondent and perused the pleadings, documents, written submissions and the material placed on record.

11. In view of the pleadings and submissions of the parties, the following issues arise for consideration:

ISSUE No. 1: *Whether the accumulated business losses and unabsorbed depreciation formed part of Undertaking A under the approved Revival Plan?*

ISSUE No. 2: *Whether the Applicant is entitled to the directions sought under Section 170A of the Income-tax Act, 1961?*

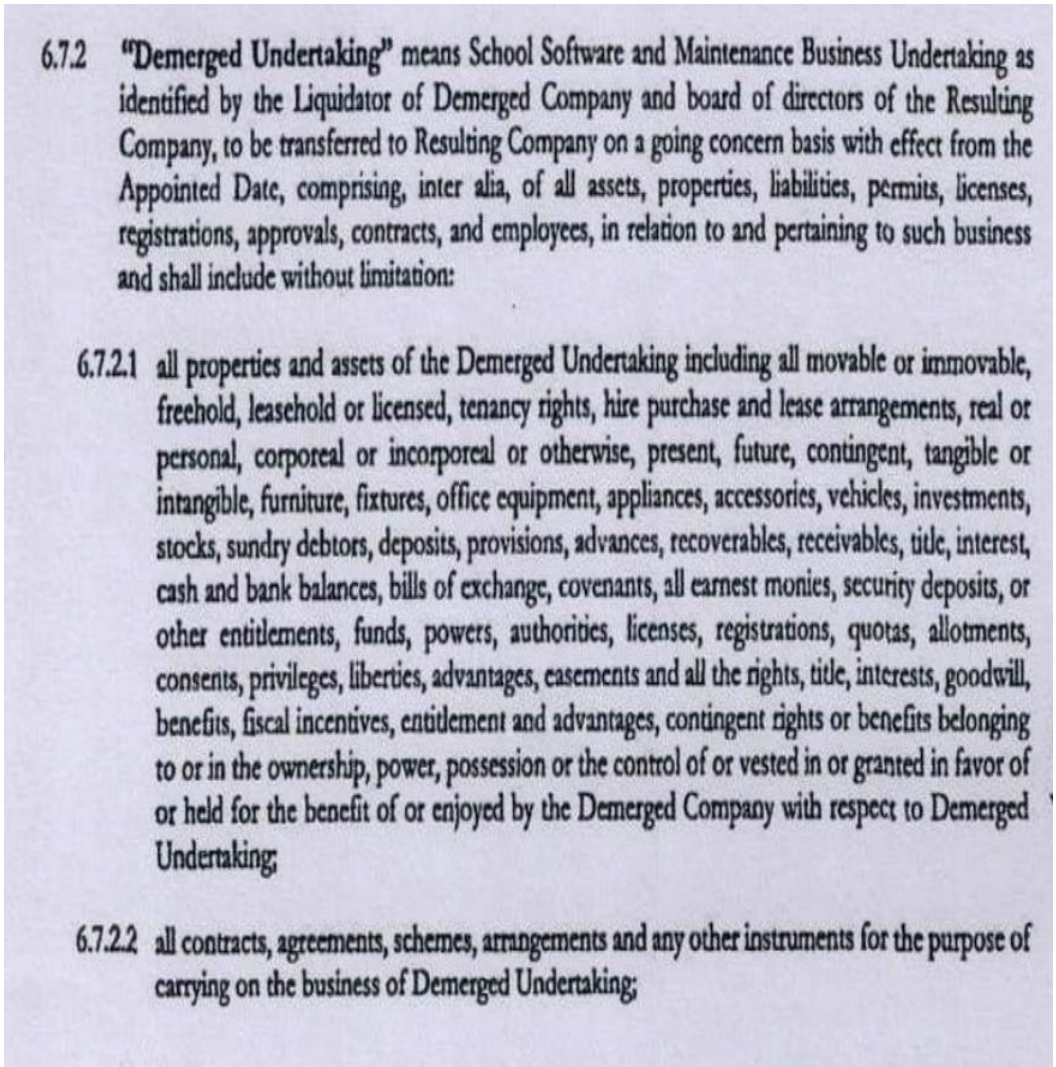
ISSUE No. 3: *Whether the Respondent/Liquidator has failed to discharge her statutory and obligations under the sanctioned Scheme by not taking the steps sought by the Applicant?*

12. ISSUE No. 1: Whether the accumulated business losses and unabsorbed depreciation formed part of Undertaking A under the approved Revival Plan?

12.1. The principal contention of the Applicant is that, upon implementation of the Revival Plan and the Composite Scheme, Undertaking A stood transferred to the Applicant together with the tax attributes pertaining thereto, including the right to carry forward and set-off accumulated

losses and unabsorbed depreciation. The Respondent, on the other hand, contends that the Applicant had acquired only Undertaking A, whereas Undertaking B, comprising the remaining assets and liabilities of the Corporate Debtor, continued to remain with the Corporate Debtor, and that the Applicant's own clarification dated 03.02.2023 does not show the accumulated losses or unabsorbed depreciation as forming part of Undertaking A.

12.2. Before considering the rival submissions on facts, it would be appropriate to examine the relevant provision of the Scheme. Clause 6.7.2.3 is extracted hereunder:



6.7.2 "Demerged Undertaking" means School Software and Maintenance Business Undertaking as identified by the Liquidator of Demerged Company and board of directors of the Resulting Company, to be transferred to Resulting Company on a going concern basis with effect from the Appointed Date, comprising, inter alia, of all assets, properties, liabilities, permits, licenses, registrations, approvals, contracts, and employees, in relation to and pertaining to such business and shall include without limitation:

6.7.2.1 all properties and assets of the Demerged Undertaking including all movable or immovable, freehold, leasehold or licensed, tenancy rights, hire purchase and lease arrangements, real or personal, corporeal or incorporeal or otherwise, present, future, contingent, tangible or intangible, furniture, fixtures, office equipment, appliances, accessories, vehicles, investments, stocks, sundry debtors, deposits, provisions, advances, recoverables, receivables, title, interest, cash and bank balances, bills of exchange, covenants, all earnest monies, security deposits, or other entitlements, funds, powers, authorities, licenses, registrations, quotas, allotments, consents, privileges, liberties, advantages, easements and all the rights, title, interests, goodwill, benefits, fiscal incentives, entitlement and advantages, contingent rights or benefits belonging to or in the ownership, power, possession or the control of or vested in or granted in favor of or held for the benefit of or enjoyed by the Demerged Company with respect to Demerged Undertaking;

6.7.2.2 all contracts, agreements, schemes, arrangements and any other instruments for the purpose of carrying on the business of Demerged Undertaking;

6.7.2.3 all tax credits, refunds, reimbursements, claims, concessions, exemptions, benefits under Tax Laws including sales tax deferrals and minimum alternate tax paid under section 115JA/115JB of the Income-tax Act, advance taxes, tax deducted at source, right to carry forward and set-off accumulated losses and unabsorbed depreciation, if any, deferred tax assets, minimum alternate tax credit, goods and service tax credit, deductions and benefits under the Income-tax Act or any other taxation statute enjoyed by the Demerged Company with respect to Demerged Undertaking.

6.7.2.4 all debts, borrowings and liabilities, or deferred tax liabilities, whether secured or unsecured, pertaining to the Demerged Undertaking after settlement/adjustment/waiver / restructuring of the all or any of the claims of such debts, borrowings, loans and liabilities (whether secure or unsecured) as per the Revival Plan;

6.7.2.5 all Permits, licenses, approvals, registrations, quotas, incentives, powers, authorities, allotments, consents, rights, benefits, advantages, municipal permissions, trademarks, designs, copyrights, patents, and other intellectual property rights of the Demerged Company pertaining to Demerged Undertaking, whether registered or unregistered and powers of every kind, nature and description whatsoever, whether from the government bodies or otherwise, pertaining to or relating to Demerged Undertaking

6.7.2.6 all books, records, files, papers, process information, computer programs, software licenses (whether proprietary or otherwise), drawings, manuals, data, catalogues, quotations, sales and advertising materials, lists of present and former customers and suppliers, customer credit information, customer pricing information, and other records whether in physical or electronic form in connection with or relating to Demerged Undertaking

6.7.2.7 all permanent and/or temporary employees, workmen, staff, contract staff or workers of the Demerged Company engaged in the business of the Demerged Undertaking

Details of assets and liabilities forming part of the Demerged Undertaking is given in the Annexure attached herewith. No liabilities other than liabilities mentioned in the attached details of assets and liabilities will be transferred to the Resulting Company pursuant to this Scheme. The liabilities mentioned therein are the only liabilities of the Demerged Undertaking and the same are subject to settlement/adjustment/waiver / restructuring as mentioned in the Revival Plan.

12.3. Clause 6.7.2.3 provides for transfer of, inter alia, the right to carry forward and set-off accumulated losses and unabsorbed depreciation **"with respect to Demerged Undertaking."** Thus, the Scheme does contemplate transfer of tax attributes, including accumulated losses and unabsorbed depreciation, but the same are expressly referable to the Demerged Undertaking. The provision, therefore, does not contemplate an automatic transfer of every tax attribute of the Corporate Debtor irrespective of whether the same pertains to the Demerged Undertaking or to the undertaking retained by the Corporate Debtor.

12.4. The aforesaid distinction assumes significance in the present case since the Revival Plan did not contemplate transfer of the Corporate Debtor as a whole. The structure of the transaction was specifically placed before this Adjudicating Authority and the Applicant was directed to clarify the identity and status of Undertaking A and Undertaking B. The order dated 11.01.2023 passed in I.A. No. 1762/2022 specifically sought clarification as to the identity of the two undertakings after the proposed transfer. The relevant portion of the said order is extracted hereinbelow:

IA-1762/2022

Clarification Order

1) It is proposed that Undertaking A shall be sold to the Successful Revival Applicant, whereas Undertaking B will remain back with the Liquidator. Pursuant to this sale, two separate entities shall be formed. The names of these two entities cannot be the same.

What will be the identity of Undertaking A and Undertaking B after this sale as a going concern is approved by this Adjudicating Authority?

2) The share capital structure of Edu Smart Service Private Limited is proposed to be taken over and completely altered by Undertaking-A. Hence, Undertaking B shall be left with no share capital at all.

How can a Company have no share capital at all? Will it not be non-compliance of the applicable provisions of the Companies Act? Also what will be the share capital of the Successful Applicant after taking over Undertaking A?

List the matter on 07.02.2023.

12.5. Pursuant to the aforesaid direction, the Applicant furnished its clarification by way of affidavit dated 03.02.2023. In the said clarification, the Applicant itself stated:

LAKSHDEEP INVESTMENTS AND FINANCE PRIVATE LIMITED
Regd Office: 3, Narayan Building, 23, L N Road, Dadar (East), Mumbai 400 014. Telephone: (022) 43341999
Corporate Identity Number: U67120MH1993PTC072685

MOST RESPECTFULLY SHEWETH

CLARIFICATION IN COMPLIANCE OF ORDER DATED 11.01.2023 OF HON'BLE NCLT, PRICIPAL BENCH AT NEW DELHI SEEKING CLARIFICATION IN RESPECT OF UNDRGIVEN QUESTIONS

1) **What will be the identity of Undertaking A and Undertaking B after this sale as a going concern is approved by this Adjudicating Authority? The names of these two entities cannot be same.**

Clarification:

- That, the Business Undertaking A primarily comprises of all assets, properties, liabilities, permits, licenses, registrations, approvals, contracts, and employees, in relation to and pertaining to school software and maintenance business of the Corporate Debtor. All assets and liabilities not pertaining to the school software and maintenance business form part of Undertaking B.

- Once the plan under Regulation 32(f) of Liquidation Regulations is approved by the Hon'ble Adjudicating Authority, Undertaking A (along with all its assets and liabilities, more particularly described in the Scheme of Arrangement on Page 171 of the Application and Para 1.3 on Page 179 of the Application) will be demerged and transferred to the Revival Applicant i.e., Lakshdeep Investments and Finance Private Limited.

- Corporate Debtor will continue to own remaining assets and liabilities, i.e., Undertaking B.

- Undertaking A demerges from Corporate Debtor and gets merged with the Revival Applicant i.e., Lakshdeep Investments and Finance Private Limited while Undertaking B remains in the Corporate Debtor i.e., Edu Smart Services Private Limited. Hence the names of these two entities i.e., Revival Applicant and Corporate Debtor are different.

- Assets and Liabilities forming part of Undertaking A is attached herewith as **Annexure 1** and Balance Sheet of Corporate Debtor that retains Undertaking B post giving effect to Revival Plan / Scheme of Arrangement is attached herewith as **Annexure 2.**

12.6. The Applicant further stated in the same clarification that the **"Assets and Liabilities forming part of Undertaking A"** were being attached as **Annexure-1**, whereas the **"Balance Sheet of Corporate Debtor that retains Undertaking B post giving effect to Revival Plan / Arrangement"** was being attached as **Annexure-2**.

12.7. Thus, the Applicant itself placed before this Adjudicating Authority a specific demarcation between the two undertakings. Undertaking A was identified with reference to the School Software and Maintenance Business and the assets and liabilities pertaining thereto, while all assets and liabilities not pertaining to the said business were stated to form part of Undertaking B. The Applicant further represented that Undertaking B would continue to remain with the Corporate Debtor.

12.8. It is also material to notice that the Applicant itself furnished separate financial particulars of the two undertakings. The order dated 25.04.2023 records the assets and liabilities of Undertaking A based on the financials as on 31.03.2020. The relevant portion thereof reads:

4.4 The assets and liabilities forming part of Business 'Undertaking A' based on the financials dated 31.03.2020, to be transferred to the Revival Applicant as stated in affidavit dated 03.02.2023 is extracted below:

Particulars	Amount	Amount
ASSETS		
Non-Current Assets		
Property Plant and Equipment		
Office Equipment	17,515	
Furniture and Fixtures	13,586	
Computers and accessories	50,915	82,017
Loans (Security Deposits)		93,19,995
Other Non- Current Assets		
GST/VAT Receivable	2,90,83,100	
TDS Recoverable	7,41,29,687	10,32,12,787
		11,26,14,799
Current Assets		
Trade Receivable (Considered Good)	1,56,94,85,862	
Unsecured (Considered Doubtful)	3,12,36,42,700	
Less: Allowance for Credit Loss	-3,12,36,42,700	1,56,94,85,862
Cash and Cash Equivalent		84,49,598
Interest accrued but not due		3,73,074
Other Current Assets (Advance to suppliers)		3,68,38,222

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IA- 1762(PB)/2022 in CP-(IB)-102(PB) of 2017
M/s Edu Smart Services Private Limited (Through its Liquidator Ritu Rastogi) v/s Lakshdeep Investments & Finance Private Limited & ors.

TRUE COPY

Total Assets		**1,72,77,61,554**
LIABILITIES		
Non – Current Liabilities		
Provision for gratuity and leave encashment	3,76,314	**3,76,314**
Current Liabilities		
Provision for Expenses	3,52,571	
Liability towards Creditors	20,00,00,000	20,03,52,571
Total Liability		**20,07,28,885**

12.9. The same order thereafter records the financial position of Undertaking B in the following terms:

> 4.5 The Balance Sheet of 'Undertaking B' (Corporate Debtor), after this Revival Plan is implemented will be as extracted below (Annexure-2 of affidavit dated 03.02.2023 filed by the Revival Applicant):

Particulars	**Amount**	**Amount**
ASSETS		
MAT Credit	4,50,82,679	
Margin Money	34,29,436	
Recoverable against Corporate Guarantee Invocable	86,45,00,000	91,30,12,115
Total		**91,30,12,115**
LIABILITIES		
Equity Share Capital	1,00,000	
10,000 0.1% Non-Cumulative,		

Redeemable Non-Convertible Preference Share of Rs. 100/- each (issued against 45 Lakhs 8% NCPS)	10,00,000	11,00,000
Reserves and Surplus		
Reserves and Surplus	-10,81,24,64,149	
Less:- Adjustments pursuant to scheme of Arrangement	-39,74,88,736	-11,20,99,52,885
Preference Share suspense account		11,25,73,65,000
Receivable against corporate guarantee invocable		86,45,00,000
Total		**91,30,12,115**

12.10. The aforesaid material demonstrates that the distinction between Undertaking A and Undertaking B was not subsequently created by the Liquidator. It was the structure proposed by the Applicant itself and was placed before this Adjudicating Authority for approval which was further approved vide the aforesaid order dated 25.04.2023 by this Adjudicating Authority. The Applicant, having specifically identified the assets and liabilities which were to constitute Undertaking A and separately placed on record the balance sheet of Undertaking B which was to remain with the Corporate Debtor, cannot now contend that the entire financial and tax attributes of the Corporate Debtor necessarily stood transferred to Undertaking A.

12.11. It is also pertinent to note that the order dated 25.04.2023 was passed by this Adjudicating Authority after considering the clarification furnished by the Applicant by way of affidavit dated 03.02.2023 and the material placed on record pursuant thereto. Once the Scheme was approved by a judicial order on the basis of the position placed before this Adjudicating Authority, the Applicant is bound by the said order and cannot, in subsequent proceedings, seek to adopt a position contrary to the basis on which the Scheme was approved. The Applicant cannot seek to reopen or enlarge the scope of the arrangement already sanctioned by this Adjudicating Authority merely to claim a benefit which was not established at the time of such approval.

12.12. At this stage, the principle of estoppel and the rule against approbation and reprobation become relevant. It is settled that a party cannot accept and act upon a transaction or order for obtaining a benefit and thereafter adopt a contrary position in respect of the same transaction to secure a further benefit. The Hon'ble Supreme Court in *R.N. Gosain v. Yashpal Dhir*, (1992) 4 SCC 683, held that the law does not permit a person to both approbate and reprobate. The principle has also been explained by the Hon'ble Supreme Court in *Rajasthan State Industrial*

Development & Investment Corporation v. Diamond & Gem Development Corporation Ltd., (2013) 5 SCC 470, wherein it was held that a party which knowingly accepts the benefit of a contract, conveyance or order is ordinarily estopped from denying its validity or binding effect.

12.13. The doctrine is attracted in the present case not merely because the Applicant has taken a subsequent position different from its earlier position, but because the subsequent position sought to be taken is inconsistent with the very demarcation which the Applicant itself placed before this Adjudicating Authority for approval of the Revival Plan. The Applicant represented that Undertaking A comprised the assets and liabilities pertaining to the School Software and Maintenance Business and that the remaining assets and liabilities constituted Undertaking B, which would continue with the Corporate Debtor. The Applicant thereafter placed separate financial particulars of the two undertakings on record. The Revival Plan was ultimately approved on the basis of the structure so placed before this Adjudicating Authority.

12.14. The Applicant cannot, therefore, accept the benefit of the sanctioned arrangement whereby Undertaking A was transferred to it while Undertaking B remained with the Corporate Debtor, and at the same time seek to contend that the entire accumulated business losses and unabsorbed depreciation of the Corporate Debtor necessarily formed part of Undertaking A, without establishing that such tax attributes specifically pertained to the Demerged Undertaking. Such a stand would amount to accepting one part of the transaction while departing from the factual representation on the basis of which the two undertakings were delineated.

12.15. We have also considered the Applicant's reliance upon Clause 6.7.2.3 of the Composite Scheme. The said clause cannot be read to mean that all accumulated losses and unabsorbed depreciation of the Corporate Debtor, merely because they existed as tax attributes of the Corporate

Debtor, automatically vested in the Applicant. The clause specifically qualifies such tax attributes by the words "with respect to Demerged Undertaking." Therefore, it was necessary for the Applicant to establish that the particular accumulated losses and unabsorbed depreciation now sought to be carried forward were attributable to Undertaking A and were not referable to the business, assets or liabilities retained in Undertaking B.

12.16. In this regard, the clarification dated 03.02.2023 becomes material. Although the Applicant furnished a detailed description of Undertaking A and separately identified the assets and liabilities of Undertaking B, the said clarification does not specifically identify any amount towards accumulated business losses or unabsorbed depreciation as forming part of Undertaking A. This is particularly significant when the Applicant itself had been specifically called upon to clarify the identity and status of the two undertakings and had furnished separate financial particulars thereof.

12.17. The subsequent correspondence between the Applicant and the Liquidator also shows that the issue was not treated by the parties as a mere ministerial or consequential exercise. When the Applicant forwarded the proposed modified returns and Special Purpose Financial Statements, the Liquidator sought particulars and justification for the proposed changes and specifically raised concerns regarding the proposed treatment of the liabilities and borrowings of the Corporate Debtor as "Zero" from the Appointed Date. The issue was also considered before the Stakeholders' Consultation Committee. These circumstances demonstrate that the proposed changes had implications beyond the tax treatment of Undertaking A and affected the financial position of the Corporate Debtor in respect of Undertaking B.

12.18. It is also material that the order dated 13.12.2023 in IA No. 5986/2023 did not adjudicate the Applicant's entitlement to the accumulated losses or unabsorbed depreciation. The said order merely recorded the statement that the request of the Applicant would be complied with "as and when all particulars are provided in accordance with the law". Thus, the said order cannot be construed as a determination that the tax attributes claimed by the Applicant formed part of Undertaking A.

12.19. The Applicant has subsequently characterised the proposed statements as Special Purpose Financial Statements for giving effect to the reorganisation in the tax returns. However, the same does not, by itself, establish that the accumulated business losses or unabsorbed depreciation of the Corporate Debtor pertained to Undertaking A. The clarification dated 03.02.2023 furnished by the Applicant itself specifically demarcated Undertaking A and Undertaking B, without identifying the said tax attributes as forming part of Undertaking A, which was further approved by this Adjudicating Authority vide order dated 25.04.2023.

12.20. Having obtained approval of the Composite Scheme on the basis of the aforesaid demarcation, the Applicant cannot now adopt a position inconsistent with its own representation. The principle against approbation and reprobation is therefore attracted. Accordingly, while Clause 6.7.2.3 contemplates transfer of tax attributes pertaining to the Demerged Undertaking, the Applicant has failed to establish that the entire accumulated business losses and unabsorbed depreciation claimed by it pertained to Undertaking A.

12.21. It is pertinent to note that, pursuant to the Applicant's affidavit and the directions contained in the order dated 25.04.2023, the remaining assets and liabilities comprising Undertaking B were admitted to form part of the Corporate Debtor and were accordingly made available for sale in liquidation. Consequently, a Sale Notice dated 01.03.2024 was

issued, and pursuant thereto, an e-auction was conducted on 20.03.2024, wherein Mr. Sandeep Garg was declared the successful bidder. Upon receipt of the entire bid consideration on 04.04.2024, the Sale Certificate was issued in his favour, and the documents, records and data pertaining to Undertaking B were duly handed over to him. In these circumstances, the Applicant's present request seeking retrospective alteration of the financial and tax position of the Corporate Debtor cannot be considered in isolation. Any retrospective alteration at this stage would have a direct bearing upon a transaction that has already attained finality and has been acted upon in accordance with the liquidation process.

12.22. Issue No. I is accordingly answered against the Applicant.

13. ISSUE No. 2: Whether the Applicant is entitled to the directions sought under Section 170A of the Income-tax Act, 1961?

13.1. The Applicant has sought directions for preparation and signing of Special Purpose Financial Statements for Financial Years 2019–20 to 2021–22 and for filing of modified Income Tax Returns for the corresponding Assessment Years, relying upon Clauses 6.7.2.3 and 9.2.6.1 of the Composite Scheme and Section 170A of the Income Tax Act. Section 170A provides a statutory mechanism for giving effect, in the income-tax proceedings, to an order relating to business reorganisation. The successor is required to furnish a modified return in accordance with, and limited to, such order, and the assessment or reassessment is thereafter to be made or modified by the Assessing Officer taking into account the modified return.

13.2. Thus, Section 170A does not independently determine the assets, liabilities or tax attributes transferred pursuant to the reorganisation. Its operation is consequential upon the terms of the order sanctioning the business reorganisation. In the present case, having regard to our finding on Issue No. I, the Applicant cannot seek preparation of the

Special Purpose Financial Statements or modification of the Income Tax Returns so as to include tax attributes which have not been established as pertaining to Undertaking A. The statutory mechanism under Section 170A cannot be invoked to enlarge the scope of the sanctioned Composite Scheme.

13.3. Accordingly, **Issue No. II is answered against the Applicant.**

14. **ISSUE No. 3: Whether the Respondent/Liquidator has failed to discharge her statutory and obligations under the sanctioned Scheme by not taking the steps sought by the Applicant?**

14.1. The Applicant has contended that the Respondent failed to discharge her statutory and court-mandated obligations by not signing the Special Purpose Financial Statements and taking steps for filing the modified Income Tax Returns. The contention, however, has to be examined in the context of our findings on the preceding issues. The Applicant's request was founded upon its assertion that the accumulated business losses and unabsorbed depreciation formed part of Undertaking A and consequently stood transferred to it under the sanctioned Composite Scheme. As already held, the Applicant has failed to establish such entitlement to the extent claimed.

14.2. In these circumstances, the mere fact that the Respondent did not undertake the acts sought by the Applicant cannot be construed as a failure to discharge her statutory duties. The Respondent was required to act in accordance with the sanctioned Scheme and the orders passed by this Adjudicating Authority and could not be directed to give effect to a position which, as held hereinabove, has not been established under the Scheme. The order dated 13.12.2023 in I.A. No. 5986/2023 also did not adjudicate upon the Applicant's entitlement to the tax attributes in question, but merely recorded that the request would be

complied with upon furnishing the requisite particulars in accordance with law.

14.3. It is further material that the Respondent continued to discharge her functions in respect of the remaining undertaking in terms of paragraph 7.8 of the order dated 25.04.2023. Undertaking B, which had continued to remain with the Corporate Debtor, was taken through the liquidation process; a Sale Notice dated 01.03.2024 was issued, the e-auction was conducted on 20.03.2024, and after the bid amount was received, the Sale Certificate dated 04.04.2024 was issued in favour of Mr. Sandeep Garg and the documents and data pertaining to Undertaking B were handed over to the purchaser. The Respondent thereafter proceeded with the steps for completion of the liquidation process and filed I.A. No. 2998/2024 in that regard. Thus, the record does not support the Applicant's contention that the Respondent failed to act in accordance with the directions governing the liquidation.

14.4. In view of the findings recorded on Issues No. I and II, we therefore find that the Applicant has not established any subsisting obligation of the Respondent to undertake the acts sought in the present application. Consequently, the allegation of failure to discharge statutory duties is not made out. The subsequent completion of the sale of Undertaking B further renders the prayer for directions requiring the Respondent to retrospectively alter the financial or tax position of the Corporate Debtor untenable.

14.5. As a consequence, the prayer seeking continuation of the liquidation proceedings and withholding of the discharge of the Respondent/Liquidator until the proposed tax-related compliance is completed also cannot be granted.

14.6. Accordingly, Issue No. III is answered against the Applicant.

15. In view of the foregoing discussion and the findings recorded on Issues No. I, II and III, we find that the Applicant has failed to establish any legal basis for the reliefs sought. The directions sought for preparation and signing of Special Purpose Financial Statements, filing or modification of Income Tax Returns, and withholding the completion of the liquidation proceedings, therefore, cannot be allowed.

16. Accordingly, I.A. No. 3729 of 2024 is dismissed. There shall be no order as to costs.

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)