

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA/887/2022 & IA/1606/2022

In

IA/1447/2021

In

CP(IB)No. 1790/MB/2017

Applications are filed under section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016.

Taguda Pte. Limited

1, Magazine Road,

#04-11 Central Mall, Singapore -059567

...Applicant

V/s

Subodh Kumar Agrawal, RP of Ushdev International Limited

1, Ganesh Chandra Avenue, 3rd Floor,

R.N-301, Kolkata-7000013

... Respondent

In the matter of

Subodh Kumar Agrawal

...Resolution Professional

V/s

Taguda Pte. Limited

...Resolution Applicant

In the matter of

State Bank of India

...Financial Creditor

V/s

Ushdev International Limited

...Corporate Debtor

Order Pronounced on: - 14.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)

**For the Applicant : Adv. Gautam Ankhad
Adv. Mustafa Kachwala**

ORDER

Per- Coram

1. It is an IA/887/2022 filed by the Taguda Pte. Limited (Resolution Applicant) under section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016, against Subodh Kumar Agrawal, RP of Ushdev International Limited, seeking modification of the order dated 03.02.2022 in IA/1447/2021, limited up to waivers as sought under the Resolution Plan. However, the Applicant had missed out to mention and seek reliefs with respect to some of the waivers. Simultaneously, the Applicant has filed another IA/1606/2022

seeking the missed-out reliefs with respect to the waivers as sought under the Resolution Plan. On the request of the Applicant Counsel, both the applications were tagged together and same has been dealt accordingly.

2. On perusal of the Application, it reveals that this Tribunal while approving the Resolution Plan has ordered and directed that all the past liabilities arising out of any levies/tax dues to any government authorities, etc. which are not part of the Resolution Plan and pertaining to pre-Corporate Insolvency Process period shall stand extinguished from the date of approval of the Resolution Plan. Further, this Tribunal ordered that any waiver sought in the Resolution Plan shall be subject to approval of the concerned Authorities. As a consequence, thereof, the said order essentially does not allow the specific waivers sought in the Resolution Plan even though the same has been entirely approved by the CoC. Thus, the Applicant is seeking specific waivers of various liabilities which includes the liabilities accrued during the CIRP period, liabilities which shall occur till the closing date (as defined under the Resolution Plan) and liabilities which shall arise on implementation of the Resolution Plan.

The Applicant seeks following relief:

- i.) *That the Hon'ble Tribunal pass an order waiving income tax liability accrued on the Corporate Debtor from 14th May 2018 (date of commencement of CIRP) till 31st March 2020 i.e. period prior to closing date for AY 2018-2019, AY 2019-2020 and AY*

- 2020-2021 amounting to Rs. 1,20,38,33,230/- (Rupees One Hundred and Twenty Cores Thirty-Eight Lakhs Thirty-Three Thousand and Two Hundred and Thirty only).
- ii.) That the Hon'ble Tribunal pass an order for waiving income tax liability that would accrue on the Corporate Debtor after 31st March 2020 till the closing date;
- iii.) That the Hon'ble Tribunal pass an order waiving of GST liability accrued on the Corporate Debtor from 14th May 2018 (date of commencement of CIRP) till 31st March 2019 i.e. period prior to closing date for AY 2018-2019 and AY 2019-2020 amounting to Rs. 52,20,675/- (Rupees Fifty-Two Lakhs Twenty Thousand Six Hundred and Seventy-Five only);
- iv.) That the Hon'ble Tribunal pass an order waiving of GST liability that would accrue on the Corporate Debtor after 31st March 2019 till the closing date;
- v.) That the Hon'ble Tribunal pass an order waiving of fees and stamp duty for filing Form SH-7 with the Ministry of Corporate Affairs amounting to Rs. 2,65,44,000/- (Rupees Two Crores Sixty-Five Lakhs Forty-Four Thousand only) on implementation of the Resolution Plan;
- vi.) That the Hon'ble Tribunal pass an order waiving of stamp duty to be paid on the consideration sum of Rs. 50,00,00,000/- (Rupees Fifty Crores only) on the 30th day from the Closing Date which as per Resolution Plan would result in assignment of debt from Financial Creditor to Taguda India Pvt. Ltd.;

- vii.) *That the Hon'ble Tribunal pass an order waiving of stamp duty of Rs. 74,68,543/- (Rupees Seventy-Four Lakhs Sixty Eight Thousand Five Hundred and Forty Three only) and Rs, 1,37,95,641 (Rupees One Crore Thirty-Seven Lakhs Ninety-Five Thousand Six Hundred and Forty One only) to be paid on transfer of immovable properties of third parties to Applicant or its affiliate located at Apeejay House, 6th Floor, Mumbai Samachar Marg, Fort, Mumbai 400 023 and Qube, Unit No. B-201 and B - 204, 2nd Floor, CTS No. 1498 A/2, Village Marol, Sahar Road, Andheri (E), Mumbai - 400 059; and*
- viii.) *That the Hon'ble Tribunal pass an order waiving of income tax liability on notional income arising on implementation of the Resolution Plan due to writing back of the unpaid dues to the creditors in the books of Corporate Debtor.*
- ix.) *That pending the final hearing and disposal of this Application this Hon'ble Tribunal be pleased pass necessary order and direction to grant/allow extension of time period for the implementation of the Resolution Plan;*
- x.) *That the Hon'ble Tribunal pass an order for waiving all the past non-compliances of the Corporate Debtor in relation to any delayed filing or non-filing of relevant mandatory forms or returns or any other documents, including any undertakings or acknowledgements to be filed in relation thereto, under the Companies Act, 2013, Foreign Exchange Management Act, 1999 and any other Applicable Laws from occurrence Closing Date;*

- xi.) That the Hon'ble Tribunal pass an order directing the Central Board of Direct Taxes to exempt the Applicant from any tax liabilities which may arise out of the transfer of equity shares by Applicant to the retail shareholders as per the Resolution Plan;*
- xii.) That the Hon'ble Tribunal pass an order directing Reserve Bank of India to exempt the valuation at which the equity shares shall be issued by the Corporate Debtor to the Sellers pursuant to the share swap arrangement from the pricing guidelines prescribed under Foreign Exchange Management Act, 1999;*
- xiii.) That the Hon'ble Tribunal pass an order directing Reserve Bank of India to exempt the acquisition of the sale shares by the Corporate Debtor pursuant to the share swap arrangement from the eligibility conditions and investment limits as set out under the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004;*
- xiv.) That the Hon'ble Tribunal pass an order providing 6 months' time period to the Applicant after the Closing Date in order to assess the status of the permits, approvals and consents that may have lapsed, expired, suspended, cancelled, revoked or terminated and to ensure that the Corporate Debtor is compliant with them without initiating any investigations, actions or proceedings from the Government Authorities in relation to the non-compliances for the period till Closing Date.*

xv.) *That pending the final hearing and disposal of this Application, this Hon'ble Tribunal be pleased to tag the present Interlocutory Application along with Interlocutory Application No. 877 of 2022 in Company Petition No. 1790 of 2017 before this Hon'ble Bench.*

3. After hearing the Applicant in detail and on perusal of material on record, we are of the view that all the past liabilities arising out of any levies/tax dues to any government authorities, etc. which are not part of the Resolution Plan and pertaining to Corporate Insolvency Process period shall stand extinguished from the date of approval of the Resolution Plan. The authorities have to file the claim before the RP before the approval of Resolution Plan by the CoC. At this stage, we cannot burden the Resolution Applicant with the liabilities that had arisen before the approval of the Resolution Plan. In view of the above, relief (i), (ii), (iii) and (iv) are granted. Further, waiving of fees and stamp duty for filing Form SH-7 with the Ministry of Corporate Affairs amounting to Rs. 2,65,44,000/- (Rupees Two Crores Sixty-Five Lakhs Forty-Four Thousand only) on implementation of the Resolution Plan is concerned, the applicant may approach the RoC concerned who would consider such request under the Companies Act, keeping in view the spirit of IBC legislation.

Moreover, this bench is of the view that the income tax liability on notional income arising on implementation of the Resolution Plan due to writing back of the unpaid dues to the

creditors in the books of Corporate Debtor is to be waived off. Accordingly, such liabilities are waived off. Further, the Applicant is provided 6-month time after the Closing Date in order to assess the status of the permits, approvals and consents that may have lapsed, expired, suspended, cancelled, revoked or terminated and to ensure that the Corporate Debtor is compliant with them without initiating any investigations, actions or proceedings by the Government Authorities in relation to the non-compliances for the period till Closing Date. Further, the time period for the implementation of the Resolution Plan is also extended till 6 months. Relief (xv) is granted as the Interlocutory Application No. 1606 of 2022 was already tagged along with Interlocutory Application No. 877 of 2022 in Company Petition No. 1790 of 2017 before this Hon'ble Bench. Accordingly, IA/887/2022 and IA/1606/2022 are disposed of as ***partly-allowed***.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)