

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

**Company Appeal (AT) (Insolvency) No. 1377 of 2019**

**IN THE MATTER OF:**

**State Bank of India**

SAMB-II, Raheja Chambers,  
1<sup>st</sup> Floor, B Wing, Free Press Journal Marg,  
Nariman Point, Mumbai - 400021

**...Appellant.**

**Versus**

**1. Mr. Subodh Kumar Agrawal**

Resolution Professional of Ushdev International Ltd.  
1, Ganesh Chandra Avenue,  
3<sup>RD</sup> Floor, R. N-301, Kolkata – 700013

**2. Taguda Pte. Limited, Singapore**

1, Magazine Road,  
#04-11 Central Mall,  
Singapore 059567

**3. Suman Gupta (Promoter)**

A/1, Brighton Apartments,  
68-D, Neapensea Road, Mumbai

**4. Lodha Development Management Pvt. Ltd.**

7<sup>th</sup> Floor, Lodha Excelus,  
Apollo Mills Comound,  
M.M. Joshi Marg, Mahalaxmi,  
Mumbai, Maharashtra – 400011

**5. Ushdev Employees Association**

Represented by Birendra Singh,  
1302, Crimson Tower,  
Akurli Satya CHS Ltd, Lokhandwala Township,  
Kandivali East, Mumbai - 400101

**...Respondents.**

**Present:**

**For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Misha,  
Mr. Vijayant Paliwal, Ms. Shivani Sinha and  
Mr. Charu Bansal, Advocates.**

**For Respondent: Vishrutyi Sahni, Mr. Kumar Kislay, RP, R-1.  
Mr. Arun Kathpalia, Sr. Advocate with  
Mr. Ujjal Banerjee, Mr. Akash Khurana,  
Advocates for R-2.  
Mr. Dhruba Mukherjee, Sr. Advocate with  
Mr. Vaibhav Manu Srivastava, Advocates for R-3.**

**Mr. Ashmi Mohan, Mr. Amit Aggarwal,  
 Mr. Mustafa Motiwala, Mr. Shwetabh Sinha,  
 Mr. Sunit Mandal, Advocates for R-4.  
 Mr. Ketan Madan, Advocates for R-5.  
 Mr. Amit Sibal, Sr. Advocate with  
 Mr. Prakshal Jain, Mr. Nitesh Jain, for ICICI Bank.  
 Mr. Vividh Tandon and Ms. Shivani Rawat  
 (Intervenor)  
 Futema Kachwala, R-1, IRP.**

**WITH**

**Company Appeal (AT) (Insolvency) No. 07 of 2020**

**IN THE MATTER OF:**

**Canara Bank**

Corporate Office At:  
 112, J C Road,  
 Bangalore, Karnataka – 560002

**One of its Branch at:**

Canara Bank,  
 150, Habibullah Road,  
 Thiyagaraya Nagar,  
 Chennai, Tamil Nadu 600017

**...Appellant.**

**Versus**

**1. Subodh Kumar Agarwal**

Resolution Professional  
 For Ushdev International Limited  
 1, Ganesh Chandra Avenue  
 3<sup>rd</sup> Floor, R. N-301,  
 Kolkata – 700013

**2. Taguda Pte. Limited, Singapore**

1, Magazine Road,  
 #04-11 Central Mall,  
 Singapore 059567

**...Respondents.**

**Present:**

**For Appellant: Mr. PBA Srinivasan, Ichchha Kalash,  
Mr. Parth Tandon and Mr. Avinash Mohapatra,  
Advocates.**

**For Respondent: Vishrutyi Sahni, Mr.Kumar Kislay, RP, R-1.**

**Mr. Arun Kathpalia, Sr. Advocate with  
Mr. Ujjal Banerjee, Mr. Akash Khurana,  
Advocates for R-2.**

**Futema Kachwalla, R-1, IRP.**

**Mr. Amit Sibal, Sr. Advocate with  
Mr. Prakshal Jain, Mr. Nitesh Jain,  
Mr. Vividh Tandon, for ICICI Bank.**

**ORDER  
(Virtual Mode)**

**08.04.2021** Seen Record of Proceedings of this Tribunal dated 06<sup>th</sup> April, 2021.

2. Subsequently, the Respondent No. 2 has filed hard-copy of Application (Diary No. 26632) along with Annexure A, which is stated to be Revised Resolution Plan. The Application makes a request that matter may be sent to Committee of Creditors (CoC in short) to consider the Revised Resolution Plan which is filed by the Applicant.

3. This Company Appeal (AT) (Ins.) No. 1377 of 2019 was filed by the State Bank of India against Impugned Order dated 07<sup>th</sup> November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench). Impugned Order was passed in CP No. 1790/IBC/NCLT/MB/MAH/2017. Before the Adjudicating Authority there were MA 626/2019 filed by the Resolution *Company Appeal (AT) (Ins.) No. 1377 OF 2019 and 07 of 2020*

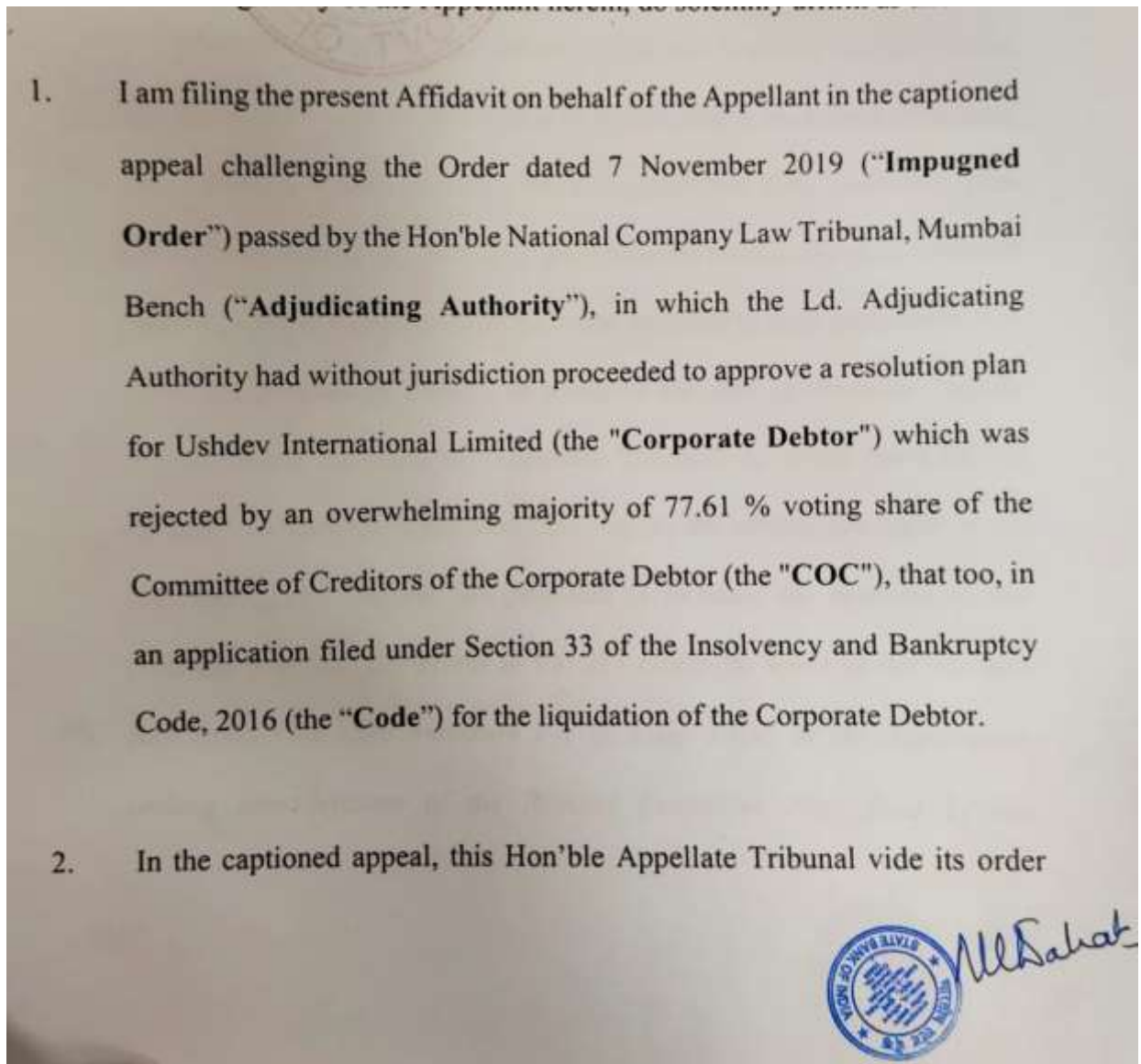
Professional seeking liquidation under Section 33 of IBC; MA 517/2019 filed by Canara Bank (Appellant in C.A. (AT) (Ins.) No. 07/2020); MA 716/2019 filed by a CoC Member; MA 989/2019 filed by Promoter of Corporate Debtor; MA 762/2019 filed by Taguda Pte. Ltd. the Unsuccessful Resolution Applicant and MA 857/2019 filed by Employees of the Corporate Debtor. The Corporate Debtor is Ushdev International Ltd. Company Appeal (AT) (Ins.) No. 07/2020 by Canara Bank also is challenging the same impugned Order.

4. The Learned Counsel for the parties before us accept that the CoC had by requisite majority rejected the Resolution Plan which had been earlier submitted by Respondent No. 2-Taguda Pte. Ltd. (Taguda in short) and the Resolution Professional had moved the Adjudicating Authority for liquidation of the Corporate Debtor filing Application under Section 33 of IBC. Record Shows the Adjudicating Authority however went into various details and Impugned Order in Paragraph 41 onwards recorded reasons why although the CoC rejected the Resolution Plan, the Adjudicating Authority was accepting the Resolution Plan submitted by Respondent No. 2.

5. It is stated by Learned Counsel for the Appellants that when CoC had taken a commercial decision rejecting Resolution Plan Adjudicating Authority could not have substituted it by its own decision to accept the Resolution Plan.

6. It is stated that during pendency of the Appeal there have been developments and the Respondent No. 2-Taguda who was unsuccessful before the CoC earlier has materially revised the offer in Revised Resolution Plan. The Affidavit filed by Assistant General Manager of State Bank of India shows and it  
*Company Appeal (AT) (Ins.) No. 1377 OF 2019 and 07 of 2020*

is argued by Sr. Advocate for State Bank of India that majority of Members of CoC are in favour of considering Revised Resolution Plan. The Affidavit filed is in C.A. (AT) (Ins.) No. 1377 of 2019, (Diary No. 26360) and the relevant part reads as under:



dated 29 November 2019, was then pleased to issue notice in the matter and directed that the Impugned Order shall not be implemented, if not yet implemented and the Resolution Professional was directed to continue managing the affairs of the Corporate Debtor and discharge his functions as before.



3. Thereafter, the pleadings in the matter were completed by March 2020 and the matter is at the stage of final arguments. However, the same did not come up for hearing on account of limited functioning of this Hon'ble Appellate Tribunal due to Covid-19 pandemic and the consequent nationwide lockdown. The facts of the matter have been stated in detail in the appeal, contents of which are not repeated herein for the sake of brevity.
4. Subsequently, during the pendency of the appeal, Taguda Pte. Limited ("**Taguda/Unsuccessful Resolution Applicant**"), whose resolution plan had been rejected by the COC, filed an application in the month of January 2021, thereby stating that they have reconsidered their resolution plan (which was rejected by the COC) and proposed to increase their financial offer in terms of a revised resolution plan attached to their application (the "**Revised Resolution Plan**"). In terms of the said application, Taguda prayed before this Hon'ble Appellate Tribunal, to direct the COC to consider the Revised Resolution Plan. As per the submission made in the said application, Taguda has proposed to increase the payment to the creditors from Rs. 200 crores to Rs. 227 crores, in terms of the Revised Resolution Plan (*See Annexure P-1 @ Page 10-65 of the Application seeking consideration of the Revised Resolution Plan filed by the*



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Applicant).

In view of the above, the Appellant herein i.e. State Bank of India, having 28.68% voting share in the COC is willing to consider the Revised Resolution Plan by Taguda. Further, in this regard, various other financial creditors being part of the COC have conveyed their willingness to consider the Revised Resolution Plan put forth by Taguda.

6. For the sake of convenience of this Hon'ble Appellate Tribunal, following is the list of the financial creditors (including the Appellant herein), along with their voting percentage in the COC, who have expressed their willingness to reconsider the Revised Resolution Plan:

S. No.	Name of the financial creditor	Voting percentage	Respective emails evidencing their consent to consider the Revised Resolution Plan as Annexures
1.	State Bank of India	28.68%	
2.	IDBI Bank Limited	13.32%	Annexure A-1
3.	Central Bank of India	5.99%	Annexure A-2
4.	Indian Overseas Bank	6.43%	Annexure A-3
5.	Union Bank of India (Andhra Bank)	3.74%	Annexure A-4
6.	Bank of Baroda and (Dena Bank)	10.67%	Annexure A-5
	<b>Total</b>	68.83%	

7. Therefore, it is evident that the majority of the financial creditors having a voting share of 68.83% in the COC are willing to consider the Revised Resolution Plan put forth by Taguda. The emails of the respective financial creditors demonstrating such interest/ willingness are annexed herewith as mentioned in the table above.



*M. Sahal*





8. It is pertinent to highlight that Taguda is proposing a considerable increase in value in terms of their Revised Resolution Plan, i.e. an increase of approximately 13.5% in value, from the original resolution plan that was rejected by the COC.
9. It is submitted further that in the current market scenario where the entire business world is dealing with the impact of Covid-19 pandemic and resultant lockdown, such an upward revision in offer could not only be beneficial for achieving value maximization of the assets of the Corporate Debtor but could also be in the interest of all the stakeholders. As per the submission made by Taguda, we note that Taguda is demonstrating interest in reviving the business of the Corporate Debtor. Therefore, in furtherance of the basic objectives of the Code i.e. to make all possible efforts to resolve a distressed entity and to ensure value maximization of the assets of a corporate debtor in the interest of all the stakeholders, it is imperative that an opportunity is afforded to the COC to consider the Revised Resolution Plan put forth by Taguda.
10. It is, therefore, to effectively uphold the purpose and object sought to be achieved by the Code as well as considering that Taguda is proposing a substantial increase in value of the Revised Resolution Plan, the members of the COC representing a majority (i.e. 68.83%) are willing to reconsider Taguda's Revised Resolution Plan.
11. Furthermore, in the case of *Swiss Ribbons Private Limited and Anr. v. Union of India and Ors. (2019) 4 SCC 17* and *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1*, the Hon'ble Supreme Court



*MSK*



has categorically held that liquidation of a corporate debtor should be a matter of last resort and every possible effort must be made for resolution of its insolvency.

12. Accordingly, in order to meet the objectives of the Code in case of the Corporate Debtor herein, the COC would require a direction to evaluate and consider the Revised Resolution Plan as the 270-day period of the corporate insolvency resolution process expired on February 07, 2019. This would enable the COC to decide the future course of action for the Corporate Debtor.
13. In light of the above and in the interest of justice, the Appellant is seeking urgent indulgence of this Hon'ble Appellate Tribunal to direct the COC to consider and evaluate the Revised Resolution Plan proposed by Taguda.

कृते भारतीय स्टेट बैंक  
For STATE BANK OF INDIA  
सनाव्यस्त आरित प्रबंधन शाखा-II, मुंबई  
Stressed Assets Management Branch-II, Mumbai

*M. Sahas*

सहा. महाप्रबंधक एवं प्राधिकृत अधिकारी  
Asst. General Manager & Authorised Officer

DEPONENT.

7. The Application which is referred in Paragraph 4 it is stated was earlier filed electronically but now hard-copy has been filed as Diary No. 26632.

8. The Learned Sr. Counsel for ICICI Bank who has filed Intervention Application Diary No. 16612 submits that ICICI Bank has certain reservations with regard to the part of revised resolution plan. It is stated that the ICICI Bank has corporate guarantee in its favour from one Ushdev NG Tech Ltd. which is tried to be assigned to the Resolution Applicant which according to the counsel is not permissible in law. The Learned Counsel states that the Appeal also raises this ground. According to us the statute is designed to be workable. The contentions are left open for consideration after CoC considers Revised Resolution Plan, and takes a decision.

9. Considering the Impugned Order which was passed and the law as it stands inter alia with regard to Commercial Wisdom of CoC, if the Appeals are allowed, and impugned Order is set aside the consequence would be liquidation. In such scenario, considering the Aims and Objects of IBC as they are, there is no harm if we send back the matter to CoC to consider the Revised Resolution Plan as has been filed and give some time for the same. It is settled law that liquidation should be last resort and if resolution is possible, every effort should be made for the same.

10. We may not be taken as expressing any opinion on the merits of the matter. We keep all contentions open. We find that the Revised Resolution Plan as has now been submitted should be sent to CoC. The CoC can consider the

Resolution Plan and negotiate with the Respondent No. 2 and take commercial decision in the best interest of the Corporate Debtor to find Resolution if possible.

For the above reasons, both the Appeals are allowed. Impugned Order is quashed and set aside. We remit back the matter to the CoC to consider the Revised Resolution Plan as has been filed with Diary No. 26632. It is stated that the Resolution Professional has been managing the Corporate Debtor in view of the Order dated 29<sup>th</sup> November, 2019 passed by this Tribunal in Company Appeal (AT) (Ins.) No. 1377 of 2019. The Resolution Professional is directed to call CoC meeting urgently and immediately place the Revised Resolution Plan as has been tendered in this Tribunal for the consideration of CoC.

11. We grant period of six weeks from today for completing the process which time will be considered as extended CIRP Period. During this time the CoC to consider the Revised Resolution Plan and take decision on the Revised Resolution Plan. The Resolution Professional will then take further steps depending on whether CoC accepts the Revised Resolution Plan (with or without modifications) or rejects the same.

12. If the Revised Resolution Plan is rejected the MA 626/2019 filed by the Resolution Professional under Section 33 of IBC would stand revived and Resolution Professional will move Adjudicating Authority for Orders regarding Liquidation and the Adjudicating Authority would be at liberty to pass orders as per law, of liquidation. If the Resolution Plan is approved, with or without modifications, the Adjudicating Authority will consider the same on motion by the Resolution Professional for further steps under IBC.

Both the Appeals are disposed, accordingly. No Order as to costs.

**[Justice A.I.S. Cheema]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

Basant B./md