



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

I.A (IBC) No. 239/KB/2025

In

C.P (IBC) No. 302/KB/2025

**An Application under section 60(5) Read With section 74(3) of the
insolvency and bankruptcy code, 2016 along with Rule 11 of the
National Company Law Tribunal Rules,2016**

In the matter of:

Yes Bank Limited

Financial Creditor

Versus

Sarga Hotel Private Limited

Corporate Debtor

And

In the matter of:

1. Sarga Hotel Private Limited

Applicant No. 1

2. Shri Ram Multicom Private Limited

Applicant No. 2

Versus

Axis Bank Limited

Respondent



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

Coram:

Shri Labh Singh, Member Judicial

Ms. Rekha Kantilal Shah, Member Technical

Date of Pronouncement: 18.06.2025

Mr. D.N Sharma, Sr. Adv.] For Applicant
Mr. Sidhartha Sharma, Adv.]
Mr. Rishav Dutt, Adv.]
Mr. Arjun Asthana, Adv.]
Mr. Aman Kataruka, Adv.]
Ms. Shalini Basu, Adv.]

Mr. Krishnendu Dutta, Sr. Adv.] For Respondent
Mr. Arindam Mrinal Pal, Adv.]
Mr. Harsh Rathi, Adv.]
Ms. Gargi Grace Rai Banerjee, Adv.]

Mr. Anubhav Sinha, Adv.] For R-4 in I.A. 1222/23
Mr. Subhasis Dey, Adv.]
Ms. Shruti Shaw, Adv.]

ORDER

Per: Rekha Kantilal Shah, Member (Technical)

1. This application has been filed in C.P (IBC) No. 302 /KB/2021,
seeks the following reliefs:



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

- a. Impose fine to tune of Rs. 1,00,00,000 (Rs One Crore Only) on Axis Bank Limited for contravention of the approved Resolution Plan:
- b. Impose fine to the tune of Rs. 1,00,00,000 (Rs One Crore Only) on Mr.Kankan Chatterjee, Vice President Axis Bank for contravention of the approved Resolution Plan.
- c. Direct the Respondent to issue No due Certificate to the Applicant No. 1 in accordance with clause 7.4.2 of the approved Resolution Plan.
- d. Ad interim relief in terms of prayers (c) and (d) above:
- e. Pass any other such order and /or orders as this hon'ble tribunal may deem fit and proper.

Facts of the Case

2. The Financial Creditor i.e. Yes Bank Limited filed an Application under section 7 of the IBC 2016 and vide order dated 11th February 2022, this Adjudicating Authority directed commencement of CIRP against the Corporate Debtor. Subsequently, this Adjudicating Authority vide its order dated 4th January 2024 approved the Resolution Plan of the Corporate Debtor.

Facts of the I.A (IBC) No. 239/KB/2025



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

3. The Present Application has been filed by the person in charge of the Management and control of the business and operation of the Corporate Debtor under section 60(5) Read With section 74(3) of the Insolvency and Bankruptcy Code, 2016 for seeking directions upon the Respondent in the nature of penalisation on the Axis Bank Limited as well as its vice president, Shri Kankan Chatterjee under section 74(3) of the IBC 2016 for knowingly and wilfully contravening Resolution Plan approved by this Adjudicating Authority vide order dated 4th January 2024 and further for seeking direction upon the Respondent to issue a “No Dues certificate” and remove the name of the Corporate Debtor/Applicant No.1 namely Sarga Hotel Private Limited from the list of defaulter in Nesl records in accordance with the approved Resolution Plan.
4. One of the Financial Creditor, Axis Bank filed its proof of claim as an unsecured Financial Creditor for amount of Rs 23,27,88,821 (Rs Twenty-Three Crore Twenty Seven Lakh Eighty Eight Thousand Eight Hundred Twenty One). The Resolution Professional accepted the claim and included in the list of unsecured creditors.
5. The Respondent held 5.91% of voting share and the Respondent voted in favour of the approval of Resolution Plan.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

6. In accordance with Clause 7.4.2 of the approved Resolution Plan the Respondent is obligated to issue a No dues certificate to the Applicant No.1 pursuant to receipt of settlement amount stipulated in the Resolution Plan. Clause 7.4.2 of the approved Resolution Plan is incorporated herein below:

“on payment of unsecured Financial Creditor settlement amount, the dues of the unsecured Financial Creditor, including the admitted claim of Axis bank Limited and or of any other creditor whose claim is admitted as unsecured Financial Creditor shall stand fully settled and satisfied and such unsecured Financial Creditor shall issue No due certificate to the Corporate Debtor. No claims or liability whatsoever, of any nature, either towards the principal dues, interest or penalty or any other amount, shall survival subsist against the Corporate Debtor or Resolution Applicant.”

7. Further, as per clause 16.34 of the Resolution Plan, the Respondent have to regularise all the loan account of the Corporate Debtor and has to make asset classification of such loan account as “standard”. Clause 16.34 of the Resolution Plan is incorporated herein:

“the unsecured Financial Creditor shall regularise all the Loan accounts of the Corporate Debtor and shall ensure that the asset classification of such loan accounts is “standard” in their books with effect from the effective date. Unsecured Financial Creditor shall intimate the credit information company/ies any information utility, Reserve Bank of India or any other regulatory authority to take note



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

and update its record. The Resolution Applicant undertakes to comply with all formalities as per RBI guidelines in this regard.”

8. Upon the approval of Resolution Plan vide order dated 4th January 2024, the Applicant No. 2 have made the entire payment to the creditors and stakeholders of the Applicant No.1 including Respondent. Further, the Applicant No. 2 has paid the second tranche of Rs 23,27,888 (Rs. Twenty-Three Lakh Twenty-Seven Thousand Eight Hundred Eighty-Eight only) on 5th October 2024, vide UTR No. HDFCR52024100599402905 towards full and final settlement of all the claims of the Respondent.
9. After receiving the payment, the Respondent admitted to processing of No dues certificate to the Applicant No.1. Copy of the email dated 7th October 2024 is a as Annexed as **Annexure G**.
10. It is further stated that since the Respondent did not act in accordance with the terms and conditions of the Resolution Plan, a further email dated 15th October 2024, once again called upon the Respondent to issue No Dues Certificate and to remove the name of Applicant No. 1 from the list of defaulters in NeSL. Again, several emails were issued by applicant No. 2 to the respondent from time to time on 11th November 2024 and second



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

December 2024 annexed as **Annexure J** and **Annexure K**, respectively. However, the Respondent failed to adhere to terms of Resolution Plan and issue no dues certificate and failed to remove the name of Applicant no. 1 from the list of defaulters in NeSL even after repeated requests. Due to which serious Have been faced for availing any credit facilities despite the fact that the Applicant no. 1 is no longer under financial stress.

11. Later, the Applicant issued a legal notice to the respondent on 27th January 2025 for non-compliance of the order dated 4th January 2024. However, no response was received even to the legal notice.

Respondent Submission:

12. Pursuant to CIRP order dated 11th February 2022, the Respondent submitted Rs 23,29,60,085 (Rs Twenty-Three Crore Twenty Nine Lakh Sixty Thousand and Eighty-five Only) for admission of claim. However, the Resolution Professional admitted only Rs. 23,27,88,821 (Rupees Twenty-Three Crore Twenty-Seven Lakh Eighty-Eight Thousand Eight Hundred Twenty-One only). The claim of the Respondent is based on bank guarantee issued by the Corporate Debtor in favour of the custom department in respect of certain export obligation of the Corporate Debtor.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

13. During the fourteen CoC meeting, the Respondent had sought certain clarification in connection with the treatment of bank guarantee prior to the voting of Resolution Plan.

14. Further, Respondent vide email dated 25th May 2023 requested RP to seek clarification on the treatment of bank guarantee from Applicant No. 2. The relevant excerpt of the email is incorporated is set out below:

“we refer to the ongoing Corporate Insolvency Resolution Process of Sarga Hotles Private Limited. Pursuant to our view of the Resolution Plan submitted by Shri Ram Multicon Private Limited (“Resolution Applicant”) dated 11 April 2023 (Resolution Plan). We request you to kindly seek clarification from the Resolution Applicant on the treatment of any bank guarantee in the event its corresponding export obligation of the Corporate Debtor is deemed to be satisfied, waived or extinguished.

Please seek this clarification on the Resolution Plan so that the clarification can be voted along with the Resolution Plan as per timelines decided on the 14th Meeting of Committee of Creditors held on 24 May”.

15. The Applicant No. 1 vide clarification email dated 26th May 2023 agreed to cooperate in releasing the bank guarantee to the extent of export obligation. A copy of email dated is **Annexed as Annexure R3**.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

16. It was only in the pretext of the clarification provided by the Applicant No. 2, the Respondent voted for approval of Resolution Plan. Hence, the plan stood approved with 100% voting share.
17. Pursuant to approval of Resolution Plan by the CoC, RP filed an Interlocutory Application (being I.A (IBC) No 1054/KB/2023) for approval of Resolution Plan by this Adjudicating Authority. The Resolution Plan was approved by this Adjudicating Authority vide order dated 4 January 2024. Copy of plan is annexed as **Annexure A** of the instant application.
18. Subsequent to the approval of Resolution Plan, applicant No. 2 has made payment as stated in the Resolution Plan on 5th October 2024. However, despite specifically agreeing vide the clarification email, the applicant has not taken any steps to release and return of bank guarantee. The applicant has followed up for no dues certificate, However, the applicant has taken no steps to compliance as per clarification email.

ANALYSIS AND FINDINGS

19. Heard the learned counsel and perused the record.
20. Upon perusal of the record, we find that the bank guarantee expired on 12.03.2025. Therefore, the bank guarantee has no



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

bearing on the bank at all to pursue for seeking relief as per their clarification email dated 26 May 2023.

21. we find that the Resolution Plan was approved by this Adjudicating Authority on 4th January 2024, which is binding on all the stakeholders. As per the Resolution Plan the Respondent has to issue “No dues certificate”. The relevant clause 7.4.2 of the approved Resolution Plan is can be referred (*supra*).
22. As per the clause 7.4.3 of the Resolution Plan, the liability of Corporate Debtor extinguishes upon the approval of the Resolution Plan. The relevant clause 7.4.3 of the Resolution Plan is incorporated herein:

By virtue of the aforesaid, all liability of the Corporate Debtor in relation to any bank guarantee (invoked/uninvoked), performance guarantee (invoked/uninvoked) issued by the unsecured Financial Creditor or any other bank / financial institution, whether claim in respect thereof have been admitted in the CIRP or not , along with any other contingent or future claims, liabilities and/or at the behest of, the Corporate Debtor, or incurred or undertaken by the Corporate Debtor, till effective date , whether claimed or not , whether admitted or not, crystallised or uncrystallised, invoked or uninvoked, known or unknown secured or unsecured, will be, and be deemed to be permanently extinguished, upon payment to the unsecured Financial Creditor, on and with effect from the effective date, and all liabilities of the Corporate Debtor in relation thereto will be written-off in full.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

23. Further the Applicant No. 2 has made payment as per the Resolution Plan. The detail of the payment is Annexed as **Annexure D** in this Application.

24. As per section 31 of the IBC 2016, the Resolution Plan once approved is binding on all stakeholders. The section 31 incorporated herein:

*“Section 31: Approval of resolution plan. *31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan. [Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]” [.....]*

25. The Hon'ble Supreme Court in the matter of **Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd 2021 SCC OnLine SC 313** wherein it has been vociferously held that once the Resolution Plan is approved, all the claims of the Corporate Debtor, including that of its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders shall stand extinguished. The said extract is captured hereunder; Hence, once the Resolution Plan is approved, it is binding on the corporate



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II

I.A (IBC) No. 239 /KB/2025
In
C.P (IBC) No. 302 /KB/2025

debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. The said extract is captured hereunder;

“58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.

26. Therefore, we direct the Respondent to issue “No dues certificate” to the applicant No. 1 within 15 days from the date of order. We also direct the Respondent to remove the name of the applicant No. 1 as a defaulter from the Nesl Portal within 15 days from the date of order. Further, direction is given to the applicant No. 2 to file affidavit Upon issuance of No dues certificate and removal of applicant No. 1 name from the defaulter list from Nesl Portal.

27. List the matter on 18.07.2025.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

Order Signed On 18.06.2025