

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/302(KB)2021
IA(I.B.C)/489(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 05TH MARCH 2024, 10:30
A.M**

IN THE MATTER OF	"YES Bank Limited VS SARGA HOTEL PRIVATE LIMITED"
UNDER SECTION	IBC UNDER SEC 7

Appearance (via video conferencing/physically)

Mr. Joy Saha, Sr. Adv.] For the Applicants in IA(I.B.C)/489(KB)2024
Mr. D.N.Sharma, Adv.]
Mr. Sidhartha Sharma, Adv.]
Mr. Rishav Dutt, Adv.]
Mr. Arjun Asthana, Adv.]
Ms. Namrata Basu, Adv.]
Mr. Aman Kataruka, Adv.]

Mr. Shaunak Mitra, Adv.] For the SIDCL
Mr. Saurav Jain, Adv.]

Ms. Manju Bhuteria, Adv.] For the RP
Mr. Souvik Mazumdar, Adv.]
Md. Shehaboddin, Adv.]

ORDER

1. Ld. Sr. Counsel/Counsel for the parties present.
2. **IA 435 of 2024** has been preferred by the SRA Shri Ram Multicom Private Limited essentially to seek the following reliefs:
A. *"The Commissioner of Police, Bidhannagar Police Commissionerate; District Magistrate, North 24 Parganas; and The Inspector in Charge, Eco Park Police Station be directed to*

Post a police picket comprising of at least 10 police officers on the said hotel premises as well as the server room at the 6th floor of the hotel, as prayed in the letter dated 3rd March 2024 annexed to the present application and marked with the letter 'I' at the cost of the Applicants, and the police picket be directed to:

- I. To ensure that no act of disruption, obstruction, threat, coercion, encroachment, trespass is in the light and/or perpetrated by the Respondent No.4 and/or its men, servants and agents and/or by anti-socials and/or muscle men acting at the behest of the Shristi Infrastructure Development Corporate Limited;*
- II. To Ensure that there is no disruption, obstruction, threat, coercion, trespass, encroachment etc. to the said hotel premises and/or to the business of the Sarga Hotel Private Limited, i.e., the Westin Hotel;*
- III. To Ensure that no parking spaces, equipments, common utilities and services and access to such utilities and equipments be obstructed or hindered for smooth operations of the hotel;*
- IV. To Ensure right of ingress and egress to the Applicants for maintenance and fuelling diesel in storage tank which can be done through Gate No.6;*
- V. To Ensure compliance of the directions passed by this Hon'ble Tribunal by Order dated 23rd February, 2024 in IA (IBC) No. 435/KB/2024;*
- VI. To Ensure that the resolution plan approved by this Hon'ble Tribunal by order dated 4th January, 2024 is implemented;”*

3. Ld. Sr. Counsel Mr. Joy Saha, while arguing the matter would bring to our notice the previous order passed by this bench on 23rd February, 2024 in IA 435 of 2024. We would note that in by

way of the said IA, the present Applicant/SRA alleged obstruction by the respondents SIDCL to the implementation of the plan which stood already approved by this Tribunal on 1st of January, 2024. It was alleged that SIDCL was wrongfully restraining the men and agents of the SRA from entering the premises in question that where the utilities equipment/installation are located.

- ii. We had noted the extracts of the plan pertaining to said utilities equipment/installation that such utilities equipment/installation were built by CD and were the assets of CD.
 - iii. To keep the CD as a going concern it was necessary that the resolution applicant has unhindered and uninterrupted possession, access and usage of the utilities equipment/installations and shared services.
 - iv. The right of the Corporate Debtor to re-locate the utilities equipment within a period of 5 years extendable by a further period of two years from the effective date.
 - v. We also note that the order approving the plan has been assailed before the Hon'ble NCLAT and Hon'ble NCLAT has indicted that implementation of the Resolution Plan shall abide by the result of the appeal.
2. Therefore, having noted that the Order passed by the Hon'ble NCLAT does not create any impediment towards implementation of the plan whereas the respondents were trying to cause hindrance in running the hotel in question, we had permitted prayers A, B, C and D in the IA with modifications as required, that SIDCL and their men, servant and agents shall desists from interfering and creating hindrance in ingress and egress to the hotel premises as well as access to such essential facility/utility/services required for running of the operations of the hotel etc. and Respondent Nos. 5, 6 and 7 shall assist the

Applicant/SRA in implementation of the approved plan and see that law and order situation is maintained at the Hotel Westin.

3. Today at hearing, Learned Sr. Counsel Mr. Joy Saha would vociferously submit that despite such specific directions upon SIDCL, they continue to obstruct the SRAs right to have access to the share utility services due to which the SRA has been constrained to file further complaints with the Police Authorities on 1st March, 2024 and 3rd March, 2024. Learned Sr. Counsel would submit that the moment the Police personnel leave the spot, the men and agents of the SIDCL start creating disturbances in the peaceful possession, running of the hotel and access to the essential facilities/utilites and services required for running of the operations of the hotels as such a prayer has been made to seek police picketing at the spot.
4. Learned Counsel Mr. Shaunak Mitra, appearing for the SIDCL would vehemently deny any obstruction on the part of SIDCL or its men and agents as alleged by SRA.
5. Learned Counsel would submit that the application is misconceived. The allegations are ex facie in relation to the SIDCL. The Order dated 24th February, 2024 is under challenge and floors 6th to 9th are in possession of one Swayamvu, where the share utility services and installation are located and, therefore, without impleading Swayamvu, the SRA cannot seek any order against the SIDCL.
6. Learned Counsel at one breath would submit that the SIDCL is not in possession of the premises in question where the installations are and at the same breath submit that the SRA should give list of the men and agents and who are required to access the said floors and indicate the timeline as access to the said floors is restricted or rather not available from 8 p.m. onwards and is restricted to 10 a.m. to 8 p.m. on a daily basis. Such a submission from one who should not have a say in

running the hotel, could neither be comprehended nor countenanced.

7. We have noted the revival contentions in view of the fact that there is nothing placed on record to show that the Corporate Debtor had limited access to the premises where the installation are located or the access was restricted during a particular time of the day. Accordingly, We feel it appropriate to permit the SRA to have unhindered access to the said premises in terms of the Paragraphs 8.4 of the plan which also stands recorded in Para 'b' of our Order dated 24th January, 2024.
8. In view of the complaints already lodged with the ECO Park Police Station, we direct the Respondent Nos. 1 and 3 to consider the complaints and if the situation demands to arrange for police picketing at the 6th Floor of the hotel where the installation for shared utility services is located.
9. While parting, we would note that SIDCL, which claims that it does not use the hotel premises would in no way be affected, in the event, the prayer of the SRA is allowed.
10. List the IA(I.B.C)/489(KB)2024 for further consideration on **04th April, 2024.**

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)