

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

4. I.A. 535/2024

In

C.P. (IB)/690(MB)2022

CORAM: MS. LAKSHMI GURUNG, MEMBER (J)
SHRI. CHARANJEET SINGH GULATI, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **15.02.2024**

NAME OF THE PARTIES: Indusind Bank Ltd.

VS

SITI Networks Limited

Appearance:

For Resolution Professional : Adv. Pooja Mahajan a/w. Adv. Ritwika
Nanda, Adv. Saurabh Bachhwat, Adv.
Shrishti Agnihotri, Adv. Arveena
Sharma, Adv. Karan Vir Khosla i/b.
Chandhiok & Mahajan

For Respondent : Adv. Kunal Tandon a/w. Adv. Prachi
Pandya i/b. Corporate Attorneys

SECTION 7 OF IBC, 2016

ORDER

Hearing through: VC and Physical (Hybrid Mode)

I.A. 535/2024

1. This is an Application filed by the Resolution Professional seeking following reliefs:

- a) *Pass ex-parte, ad interim directions against the Respondent directing it to continue providing its services to the Corporate Debtor till the final adjudication of the present Application;*
 - b) *Direct the Respondent to continue providing its services to the Corporate Debtor till the continuation of the moratorium;*
 - c) *Direct the Respondent to withdraw the Disconnections Notices dated 25 January 2024;*
 - d) *Pass such order of further relief(s) as this Hon'ble Adjudicating Authority may deem fit and proper in facts and circumstances of the case.*
2. The Corporate Debtor was admitted to CIRP on 22.02.2023 in C.P. 690/2022 under section 7 and Mr. Rohit Mehra was appointed as IRP.
 3. Ms. Shilpi Asthana, one of the directors of the Corporate Debtor filed an appeal before the Hon'ble NCLAT on 07.03.2023 wherein order was passed that "*operation of the impugned order shall remain stayed*" and therefore CIRP process was stayed. The appeal was finally dismissed on 10.08.2023 by the Hon'ble NCLAT and CIRP process was resumed.
 4. The Corporate Debtor is a distribution platform operator engaged in the business of distribution of various television channels to its subscribers. Hence, the channels owners/licensees (like Star) that have granted license/right to the Corporate Debtor to rebroadcast/retransmit their respective channels to the subscribers are critical for maintaining the Corporate Debtor as a going concern.
 5. It was submitted that to prevent any precipitative actions against the Corporate Debtor due to defaults in meeting payment/service obligations and to maintain the operations of the Corporate Debtor as a going concern and to preserve its value, the IRP has been making monthly payments to the

Respondent and has also initiated discussions with the Respondent in respect of the incentive amount which used to be allowed by the Respondent earlier.

6. It is submitted that the Respondent had informed the IRP that due to defaults by the Corporate Debtor in making payments of outstanding subscription fees to the Respondent under the existing SLAs, it shall proceed to terminate the existing SLAs, based on the order dated 30 May 2023 of the TDSAT. The IRP assured the officials of the Respondent that all possible attempts will be made to amicably resolve the concerns and requested the Respondent not to discontinue/terminate the existing SLAs.
7. It is further submitted that the IRP made payment of INR 11,79,25,923/- due and payable till 31 August 2023. By email on 31 August 2023 the Respondent accepted the said payment from IRP without prejudice basis. Thereafter, RP has been releasing the payment on the monthly basis in the months of August, September, October, November and December, total amounting to INR 36,47,32,527/- towards the services provided by the Respondent during these months.
8. However, the Respondent has issued disconnection notice dated 25.01.2024 (wrongly typed as 25.0.2023) under clause 7 of the Interconnection Regulations for non-payment of the outstanding subscription asking the applicant to make the overdue outstanding payment as per the agreement within a period of three weeks' otherwise the same would be disconnected.
9. Ld. counsel for the Applicant has placed before us a chart with details of payments made to the Respondent which is reproduced below:

Zone	Month	Gross Cost	Invoice Amount by Star	Total Payable (Net of GST and TDS)	Incentive Amount (Net of GST and TDS)	Actual Amount Paid to Star (Net of Incentive, GST and TDS)
A	B	C	D=C*80%	E	F	G
CIRP Period (10 th August 2023 to 31 st December 2023)						
SNL	Aug-23	7,71,96,228	6,17,56,982	7,16,38,099	1,44,89,692	7,37,58,499
SNL	Sep-23	10,71,97,903	8,57,58,323	9,94,79,654	2,04,90,556	8,45,88,982
SNL	Oct-23	10,67,83,438	8,54,26,750	9,90,95,030	2,05,76,173	5,63,08,882
SNL	Nov-23	10,41,67,575	8,33,34,060	9,66,67,510	1,96,34,655	7,70,32,855
SNL	Dec-23	10,01,93,825	8,01,55,060	9,29,79,869	1,99,36,560	7,30,43,309
SNL	YTD FY24	49,55,38,968	39,64,31,175	45,98,60,162	9,51,27,636	36,47,32,527

10. She has submitted that out of the gross amount payable for the period from 10 August 23 to 31 December 23 after adding GST payable and deducting TDS and incentive a net payment of Rs. 36.47 crores has been released to the Respondent from time to time on a monthly basis. As far as demand by the Respondent is concerned it is limited to the amount of incentive of Rs. 9.51 crores which can be resolved by discussions between the parties and she also proposes that two weeks' time may be given to resolve the disputed issue of incentive entitlement of the applicant. She submits that disconnection of channels services to the Corporate Debtor will be in the teeth of the moratorium under section 14 of the IBC.
11. Ld. counsel appearing for the Respondent on advance notice has not denied the factum of the monthly payments being received from the applicant. However he submits that there is no violation of moratorium under IBC. He has referred to the para 8.18 of the report of The Insolvency Law Committee which is reproduced below:

“However, the Committee was also conscious that mandating such supplies throughout the period of the moratorium, without payment, has a risk of resulting in counter-party distress if suppliers are not paid during this period. Given this, the Committee agreed that such critical suppliers should be paid for suppliers made during the moratorium period on an on-going basis, generally on the same terms as those that existed pre-insolvency or on a reasonable commercial basis. Consequently, the Committee recommended that if such payments are not made, suppliers should be permitted to terminate, suspend or interrupt these critical suppliers.”

12. He submits that above recommendations have been incorporated in section 14(2A) of IBC. According to section 14(2A) of IBC, the Corporate Debtor is under obligation to make regular monthly payments for availing the services during CIRP period without unilateral deduction of any incentive. He referred to clause on Payment Terms para-10 (B)(IV) of Subscription License Agreement annexed as Annexure 7 to the application which states that *“it is hereby clarified that the obligation to make payment towards the incentive is subject to DPO qualifying for the same and upon receipt of outstanding (if any) and/or Monthly Subscription Fee. It is hereby clarified that there cannot be any unilateral set off or deduction of Incentive Amount from the payable Monthly Subscription Fee by the DPO.”* DPO being the corporate debtor therefore is not entitled to deduct incentive unless the applicant is qualified for the same. Therefore, the respondent is entitled to monthly payments of channel services provided to the applicant without any unilateral deduction on account of incentive. In case dues arising out the channel supply during moratorium period are not paid then the Respondent is entitled to disconnect the supply as per section 14(2A) of IBC and hence the disconnection notice is in accordance with the provisions of IBC.

13. Having heard the arguments advanced on both the side, we prima facia are of the view that monthly payments are being made by the applicant to the respondent. It is not a case where no payments are being made at all. We are also of the view that the applicant and the respondent may resolve the disputed issue of incentives in accordance with the contract agreement, as was proposed by the applicant within two weeks from today.
14. Pleadings to be completed. Reply be filed within one week, rejoinder if any be filed within one week thereafter.
15. In the meantime, Respondent will not to give effect to the above notice of disconnection dated 25.01.2024 till further order.
16. List on **05.03.2024**.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)
--Rajeev--

Sd/-
LAKSHMI GURUNG
Member (Judicial)