

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 07.08.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 389/BB/2019	For admission IA 264/2020 - CIRP	Sec 7 of I&B code 2016	M/s Skylark Ithaca Buyers Welfare Association	Joshua H Samuel, Advocate	M/s Skylark Mansions Pvt Ltd	Mario, Advocate Shri Ramanathan Bhuvaneshwari, IRP Malak Bhat for IA 264/2020

ADVOCATE FOR PETITIONER/s:

Rohan Jaitley }
Abhijeet Sinha } For I.A

ADVOCATE FOR RESPONDENT/s:

Jacob Alexander }
Vipul Chavla } Respondent
Rajnish Sinha, IRP

I.A.No.264/2020 in C.P. (IB)No.389/BB/2019

Xander Finance Pvt. Ltd. Vs. Skylark Mansions Pvt. Ltd.

Order dated: 07.08.2020

1. I.A.No.264/2020 in C.P. (IB)No.389/BB/2019 is filed by Xander Finance Private Limited (Applicant), U/s.60 (5)(c) of the IBC, 2016, by inter alia seeking to direct Mrs. Ramanathan Bhuvaneshwari, IRP of the Corporate Debtor not to proceed against the assets of any other entity (including any subsidiary of Corporate Debtor); and to halt the CIRP proceedings till such date that the orders of the Hon'ble High Court of Karnataka are in operation.
2. Brief facts of the case, which are relevant to the issue in question, are as follows:
 - (1) Xander Finance Private Limited (hereinafter referred to as Applicant) is a Private Limited Company and also a secured lender of M/s. Skylark Mansions Pvt. Ltd., was incorporated on 10.01.1997. In 2017, the Applicant had extended a secured term loan to (be disbursed in various tranches) Corporate Debtor of an amount of INR 40 Crores and further an amount of INR 65 Crores in Royaume Builders and Promoters Private Limited (RBPPL). The term of the said loan have been recorded in a Master Facility Agreement (MFA) dated 27.10.2017 executed between the Applicant (as the Lender), the Corporate Debtor, RBPPL, Vistra (ITCL) India Limited (as the Security Trustee), Saleem Shariff, Omar Sheriff, Shorab Sheriff and Nishat Saleem (as Obligors). As the Lender has several rights and remedies available to it under the terms of the MFA and under the terms of the security documents executed pursuant to the terms of the Master Facility Agreement.
 - (2) The Adjudicating Authority vide its Order dated 07.02.2020 in respect of the main Petition bearing C.P. (IB)No.389/BB/2019, initiated the CIRP against the Corporate Debtor. The order of Adjudicating Authority is in complete ignorance of the fact that the



Corporate Debtor is neither a promoter nor developer of the Project ITHACA and is a separate economic and legal entity. The CIRP Order categorically stated that the CIRP was in respect of M/s. Skylark Mansions Pvt. Ltd., i.e. the Corporate Debtor and the Order did not initiate CIRP against any of the subsidiary/ associate/group Companies of the Corporate Debtor. Accordingly, the remit of the CIRP Order is abundantly clear and therefore, the CIRP ought to be limited to only the Corporate Debtor. In this regard, the Applicant has relied upon the judgement dated 04.02.2020 passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi in Company Appeal (AT) (Insolvency) No.926 of 2019 [Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Pvt. Ltd.

- (3) The Applicant was not a party to the main Company Petition. However, the CIRP Order and the subsequent actions of the IRP have a direct and prejudicial impact on the secured rights of the Applicant in its capacity of a senior Secured Creditor of the Corporate Debtor as well as RBPPL.
- (4) The CIRP of the Corporate Debtor has been stayed vide an Order dated 24.03.2020, passed by the Hon'ble High Court of Karnataka in a W.P.No.6635/2020 filed by the Corporate Debtor. Thereafter, the Order of stay was extended by the Hon'ble High Court vide Order dated 05.06.2020. Currently, the CIRP of the Corporate Debtor ought to be halted till such time as the Hon'ble High Court deems fit or till the stay orders dated 24.03.2020 and 05.06.2020 are vacated.
- (5) In response to the Applicant email dated 01.07.2020, the IRP vide email dated 01.07.2020 directed the Applicant not to make any future disbursement of funds without obtaining the permission of the IRP. As per the letter and purport of the IRPs email dated 01.07.2020, that the IRP is attempting to include the sister concerns and subsidiaries of the Corporate Debtor and the real estate projects being developed by such subsidiaries and group Companies of the Corporate Debtor within the remit of the CIRP

Order. It is alleged that the IRP has transgressed her powers and has sought to include the subsidiary concerns of the Corporate Debtor within the remit of the CIRP of the Corporate Debtor. Therefore, the actions of the IRP are not only in the teeth of the CIRP order but also are in contempt of the orders passed by the Hon'ble High Court and the actions of the IRP to take control over all projects of the Corporate Debtors subsidiary will result in a blanket halt in construction of all real estate projects. The IRP's actions to take control over Project Dasos is therefore detrimental to the home buyers of Project Dasos and will cause irreparable hardship to the home buyers of Project Dasos being developed by RBPPL and also adversely affects the rights of the Applicant in its capacity as the senior secured lender to the Corporate Debtor and RBPPL.

- (6) In the circumstances, the instant Application is filed seeking the reliefs as stated supra. .
3. Heard Shri Rohan Jaitley, with Shri Abhijeet Sinha, learned Counsels for the Applicant and Shri Jacob Alexander with Shri Vipul Ganda, learned Counsels for the Respondent, and Shri Rajnish Sinha, learned Counsel for the IRP, **through Video Conference**. We have carefully perused the pleadings of the Parties and extant provisions of the Code, and Rules made thereunder and the orders passed by this Adjudicating Authority and Hon'ble High court of Karnataka and the Hon'ble NCLAT.
4. Shri Rohan Jaitley, learned Counsel for the Applicant, after arguing the case at length, has inter alia submitted that the Appeal is pending against the Order of this Adjudicating Authority before the Hon'ble NCLAT, New Delhi, which stands posted to 10.08.2020. Therefore, he has urged the Adjudicating Authority to protect the interest of the Applicant in the meanwhile.
5. Shri Jacob Alexander and Shri Vipul Ganda, learned Counsel for the Respondents, while accepting notice for the Respondent, have strongly opposed for entertaining this Application while matter is subjudice

before Hon'ble NCLAT. And they have requested time to file their respective replies to the instant Application.

6. Records of the case discloses, that after admission of the Company Petition (C.P.(IB)No.389/BB/2019) by the Adjudicating Authority, vide its Order dated 07.02.2020, the Corporate Debtor preferred Review (RA No.02 of 2020) seeking to review the admission order. After hearing the case, the Review was dismissed by an order dated 23rd April, 2020. Subsequently, they have approached the Hon'ble High Court and NCLAT as stated supra. The Applicant also filed Company Appeal (AT) (Insolvency) No.431 of 2020, which was later withdrawn by an Order dated 18.03.2020. Since the matter is subjudice before Hon'ble NCLAT, the Adjudicating Authority cannot pass any interim order as prayed for.
7. In view of the above facts and circumstances of the case, list the case on 17.08.2020, for further hearing of case, with a direction to the Respondents to file their respective Replies, in the meanwhile, duly serving copies on the other side. The Parties are further directed to place Order(s) of Hon'ble NCLAT to be passed on 10.08.2020, in the pending Appeal.



MEMBER (T)



MEMBER (J)

Shruthi