

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.264 of 2020 in
C.P. (IB) No.389/BB/2019
U/s 60(5)(c) of the IBC, 2016

Between:

M/s. Xander Finance Pvt. Ltd.

101, 5 North Avenue, Maker Maxity,
Bandra Kurla Complex,
Bandra East,
Mumbai – 400 051.

- Applicant

AND

M/s. Skylark Mansions Private Limited

Through its Resolution Professional
Mrs. Ramanathan Bhuvaneshwari
C-006, Pioneer Paradise, 24thMain Road,
7th Phase, JP Nagar,
Bangalore – 560 042.

- Respondent

Order Pronounced on: 31st March, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Mr. Rohan Jaitley with
Mr. Malak Bhat

Resolution Professional : Mrs. Ramanathan Bhuvaneshwari

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.264 of 2020 in C.P. (IB) No.389/BB/2019 is filed by M/s.Xander Finance Private Limited, (hereinafter referred to as 'Applicant') U/s 60(5)(c) of the IBC, 2016, by *inter alia* seeking to direct Mrs. Ramanathan Bhuvaneshwari, the Resolution Professional of the Corporate Debtor not to proceed against the assets of any other



entity (include any subsidiary of Corporate Debtor) but the Corporate Debtor or the extend the CIRP beyond the Corporate Debtor; to limit the CIRP process initiated against the Corporate Debtor pursuant to the order dated 07.02.2020 only to the Project ITHACA and no other Project being developed by the Corporate Debtor or any of its subsidiaries etc.

2. Brief facts of the Application, which are relevant to the question, are as follows:

- (1) C.P. (IB) No.389/BB/2019 filed by M/s. Skylark Ithaca Buyers Welfare Association U/s 7 of the Code, 2016 was admitted by Adjudicating Authority (AA) vide Order dated 07.02.2020 by initiating CIRP in respect of M/s. Skylark Mansions Pvt. Ltd., appointed Mrs. R. Bhuvaneshwari as IRP.
- (2) In the year 2017, the Applicant had extended large sums of money in the form of secured term loan facility to the Corporate Debtor and Royaume Builders and Promoters Private Limited (RBPPL). The terms of the said loan have been recorded in a Master Facility Agreement dated 27.10.2017 executed between the Applicant (as the Lender), the Corporate Debtor (as the Borrower No.2), RBPPL (as the Borrower No.1), Vistra (ITCL) India Limited (as the Security Trustee), Saleem Sheriff, Omar Sheriff, Shorab Sheriff and Nishat Saleem (as Obligors) (hereinafter referred to as the 'Master Facility Agreement') whereby the Corporate Debtor and the RBPPL jointly and severally availed a rupee term loan facility of an amount of INR 105,00,00,000/- ('Term Loan'). Pursuant to the Master Facility Agreement, *inter alia* the Corporate Debtor has secured/ caused to be secured the payment/repayment of the Term Loan together with the accrued interest, default interest, charges, fees etc. In addition to this, the Corporate Debtor has created a pledge in favour of the Applicant over its entire shareholding in RBPPL by way of Share Pledge Agreement dated 31.10.2017. Further, the

Applicant also has the benefit of charge created by way of hypothecation over the receivables of Project Dasos. The Project Dasos is being completely and exclusively developed by RBPPL. Therefore, the Applicant is a secured creditor of the Corporate Debtor and the Applicant's security is premised largely on the shareholding of RBPPL and Project Dasos.

- (3) The actions of RP to take control over all projects of Corporate Debtors subsidiary will result in a blanket halt in construction of all real estate projects. Furthermore, even in terms of the law laid down by the Hon'ble Appellate Tribunal in *Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Pvt. Ltd. through IRP* [Company Appeal (AT) (Insolvency) No.926 of 2019], the CIRP process ought to be limited further only to the particular Project in question and cannot be extended even beyond such Project. 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.
- (4) The CIRP Order categorically limits the ambit of the CIRP exclusively to the Corporate Debtor. The RP's direction that the Applicant take the RP's permission to make future disbursement of funds in projects unrelated to the Corporate Debtor is a gross transgression of the CIRP Order. In fact, by way of the email dated 01.07.2020, the RP is attempting to access the assets which are vested in the subsidiaries of the Corporate Debtor which are wholly independent, solvent and legally separate economic and corporate entities. Sections 17 and 18 of the Code, which delineate the rights and responsibilities of the Resolution Professional are all in relation to the Corporate Debtor. Further, Explanation to section 18 of the Code, clarifies that 'Assets' shall



not include *inter alia* assets of any Indian or foreign subsidiary of the Corporate Debtor.

- (5) In view of the above, it is clear that RP must restrict the CIRP only to the Corporate Debtor and that too only to the Project ITHACA and remain within the confines of the CIRP Order. The CIRP cannot extend to even any other project being developed by the Corporate Debtor. All assets and transactions which either belong to or are made by subsidiaries or any other group companies of the Corporate Debtor are not within the managerial rights of the RP.
3. Heard Mr. Rohan Jaitley, learned Counsel for the Applicant and Mrs.R.Bhuvaneshwari, Resolution Professional, through Video Conference. We have carefully perused the pleadings of the Parties and extant provisions of the Code, Rules made there under and the Law on the issue.
4. Mrs. R. Bhuvaneshwari, Resolution Professional, has filed a Memo dated 18.03.2021 (which is taken on record), which reads as under:
- "It is humbly submitted that Hon'ble NCLAT vide its Interim Order dated 10th August, 2020 restricted the CIRP to the project Skylark Ithaca.*
- Accordingly, the undersigned Respondent / Resolution Professional is bound by the above order and hence has been conducting the CIRP with reference to the Project Skylark Ithaca only.*
- Hence, this I.A. No.264 of 2020 has become infructuous."*
5. Since the Resolution Professional conceded the main prayer of Applicant, pending appeals before the Hon'ble NCLAT, the instant Application has become infructuous.

6. In the result, I.A. No.264 of 2020 in C.P. (IB) No.389/BB/2019 is hereby disposed of as infructuous, in terms of above Memo dated 18.03.2021, however, subject to final result of appeals pending in the case before the Hon'ble NCLAT. No order as to Costs.



**ASHUTOSH CHANDRA
MEMBER TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

Krishna