

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-V

I.A. 1535 OF 2023

IN

C.P.(IB) No. 163/MB/2023

Under Section 60(5) of the Insolvency &
Bankruptcy Code, 2016

Phoenix ARC Private Limited,

5% Floor, Dani Corporate Park, 158,
CST Road, Kalina, Santacruz (East)
Mumbai, Mumbai City, MH 400098

...Applicant

Vs

**Precision Realty Developers Private
Limited,**

Knowledge House, Shyam Nagar, Off.
Jogeshwari - Vikhroli Link Road,
Jogeshwari — East Mumbai MH 400
060

...Corporate Debtor

In the matter of

Phoenix ARC Private Limited,

...Financial Creditor

Vs

**Precision Realty Developers Private
Limited,**

... Corporate Debtor

Order Pronounced on: 30.06.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Applicant: Mr. Nishit Dhruva, Counsel

For the Respondent: Mr. Ritin Rai, Senior Counsel a/w. Mr. Harsh Moorjani,
Mr. Mridul Yadav and Ms. Krishna Barua, Ld. Counsel

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The present Application is filed by the Applicant, namely, Phoenix ARC Private Limited, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") seeking an injunction on disposal of assets by the Precision Realty Developers Private Limited (hereinafter referred to as "**Corporate Debtor**").

FACTS OF THE CASE

2. Company Petition No. 163 of 2023 has been filed by the Applicant herein against the Corporate Debtor seeking to initiate Corporate Insolvency Resolution Process under Section 7 of the Code for a debt amount of Rs. 118.95 Crore approximately.
3. The Applicant has submitted that in the past, the Corporate Debtor had requested the Financial Creditor for the restructuring of the loan facilities. However, the Corporate Debtor had again defaulted under the said restructuring facility granted by the Financial Creditor by way of indulgence.
4. The Applicant has further submitted that the Corporate Debtor has been disposing of or creating third party rights in their various movable and

immovable assets to defeat the claim of the Applicant and to jeopardise the whole CIRP Process.

5. The Applicant has further been submitted that there are several petitions against the group companies of the Corporate Debtor as well as the against the personal guarantors and the liability of the Corporate Debtor and their group companies with the various Financial Creditors are huge. Therefore, it has been submitted that the order of status quo and the injunction would ultimately protect the interest of all the Financial Creditors and no prejudice would be caused to the Corporate Debtor.
6. It has been submitted that if any third-party rights are created with respect to any of the assets of the Corporate Debtor, the Applicant/ Financial Creditor will suffer grave and irreparable loss.
7. The Applicant/ Financial Creditor apprehends that further delay in the disposal of the Petition would result in the Corporate Debtor disposing of its assets to defeat the entire CIRP process.
8. Therefore, the Applicant has filed the present Application seeking to restrain the Corporate Debtor from selling, leasing, transferring, alienating, disposing of or creating any third-party rights in any of its assets till the final disposal of the Company Petition No. 163 of 2023.

REPLY FILED ON BEHALF OF THE RESPONDENT

9. At the outset, the Respondent denied all the averments and contentions made by the Applicant in the present Interlocutory Application.
10. The Respondent has submitted that the present Application has not been substantiated by any documents and, therefore, the allegations made by the Applicant are vague and without any merits.

11. It has further submitted that the Applicant is required to show that the assets of the Respondent are being alienated to defeat the claim of Applicant / Financial Creditor and therefore, the Applicant has failed to make out a case for the grant of discretionary reliefs.
12. The Applicant has further submitted that if any reliefs are granted, which are akin to an interim moratorium at a pre-admission stage, it would cause grave prejudice and irreparable harm to the respondent.
13. The Respondent has submitted that the present Application has been filed to seek exceptional relief as a matter of right without any basis and documentary proof.
14. The Respondent has further submitted that the Applicant has filed this Interlocutory Application in order to damage the repute of the Respondent and to gain undue advantage. The Respondent has submitted that the Application does not warrant exercise of the inherent power by this Tribunal and, therefore, has prayed for the dismissal of the present Application.

FINDINGS

15. During the course of arguments, the Counsel for the Applicant has argued that there is a huge liability of the Respondent/Corporate Debtor and to avoid and frustrate the claim of the Applicant/Financial Creditor, the Respondent is trying to alienate the valuable movable and immovable properties and if the Respondent is not restrained from alienating such properties, it would eventually defeat the rights of the Applicant. Therefore, the Respondent is liable to be restrained from alienating any of its assets till the disposal of the CP No. 163 of 2023 filed by the Applicant. In support of his contentions, the Counsel for the Applicant has further argued as per the provisions of the Rule 11 of the NCLT Rules, 2016, this Court has the necessary power and discretion to pass an injunction order.

16. On the other hand, the Counsel for the Respondent has argued that the Applicant has failed to make out a case for grant of an injunction as prayed for in the Application. The Counsel for the Respondent has further argued that the allegations made in the Application are misconceived and without any basis. Therefore, at the pre-admission stage, no injunction can be granted especially when the Applicant has not made out any prima facie case for the issuance of such an injunction.
17. We have considered the above contentions raised by the Counsel for the Parties.
18. By way of this Application, the Applicant is seeking an injunction to restrain the Respondent/Corporate Debtor from alienating its assets as the Corporate Debtor has been trying to dispose of or create third party rights in its movable and immovable assets to defeat the claim of the Applicant, as stated in Para 2.3 of the application. However, the Applicant has nowhere specified in the application as to exactly which of the movable and immovable assets of the Corporate Debtor are being disposed of or certain third-party rights are being created therein. To that extent, in our considered view, the allegations made in the Application remain quite vague and ambiguous. The Applicant has further not specified in the Application as to whether any security interest was created in favour of the Applicant or not when he advanced the loan/credit facilities to the Corporate Debtor regarding which the Petition under Section 7 of the Code has been preferred.
19. To make out a case for grant of injunction and that too at the pre-admission stage, the Applicant is required to make out a strong prima facie case. The balance of convenience should also be shown to be in favour of the Applicant and it must also be shown that in the event of non-grant of an injunction, the Applicant may suffer irreparable loss. However, to substantiate the averments made in the Application, the Applicant has not given any detail of the properties/assets which the Corporate Debtor is trying to dispose or creating third party interest. Therefore, the allegations made in the

Application remain utmost vague and uncertain, on the basis of such averments, in our considered view, no injunction can be granted.

20. As a result of the above discussion, the application for grant of an injunction is **dismissed** being devoid of merit. IA No. 1535 of 2023 is accordingly **disposed of**.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)