

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. V, MUMBAI BENCH**

**IA No. 2932 of 2021**

**in**

**CP (IB) 3562/MB/2018**

Under Section 60 (5) of the I&B Code, 2016

M/s. Ramdas Shobraj

...Applicant

Vs

1. Mr. Vijay Pitambar Lulla

(Resolution Professional of Ahinsa Buildtech  
Private Limited)

2. Kabra & Associates

3. Committee of Creditors- Ahinsa Buildtech  
Private Limited.

...Respondents

In the matter of

**Pravin Electricals Private Limited**

...Petitioner

v/s

**Ahinsa Buildtech Private Limited**

....Respondent

**Order reserved on: 06.01.2022.**

**Order Pronounced on: 24.03.2022.**

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

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

For the Applicant: Mr. Amir Arsiwala, Advocate a/w Mr. Rishabh Dhanuka,  
Advocate.

For the Respondents: Mr. Chaitanya Nikte, Advocate i/b Mr. Vijay Lulla,  
RP. Mr. Pulkit Sharma, Advocate a/w Mr. Devarajan Raman, PCS.

*Per: Suchitra Kanuparthi, Member (J)*

## **ORDER**

1. The present application is filed u/s. 60 (5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016.
2. Corporate Debtor is a private limited company *inter alia*, engaged in the business of development and redevelopment of real estate project around Mumbai. At the time of initiation of Corporate Debtor's Corporate Insolvency Resolution Process, Corporate Debtor was redeveloping the Property, which included the area occupied by the Subject Shed.
3. The Applicant's family are protected tenants and in occupation of the Subject Shed since 1<sup>st</sup> November 1964. The Subject Shed was used by the Applicants and their family to carry out their business, making it an ancestral property of the family. The current Applicants have been in physical possession of the subject Shed since 1<sup>st</sup> November 1964 till they gave up possession of the same in 2011 to Corporate Debtor, in terms of and in furtherance of the Subject Agreement.
4. By a deed of Conveyance dated 7<sup>th</sup> July 2008, Corporate Debtor came to inter alia acquire the Property, thereby becoming the Applicants landlord, with a view to redevelop the same. By way of the Subject Agreement, executed between the Applicants and Corporate Debtor on 9<sup>th</sup> September 2011, the Applicants essentially agreed to cooperate with Corporate Debtor's efforts to redevelop the Property (which included the Subject Shed in the Applicants occupation), on the terms and

conditions as more particularly set out thereunder. Succinctly, the Subject Agreement provided that:

- a. Corporate Debtor shall provide to the Applicants Shop No. 1 in Wing A of the Sale building in the project known as Orbit Residence Park, free of cost, in lieu of the Subject Shed, on ownership basis, as and by way of Permanent Alternate Accommodation, at their own cost (Clause 2). In terms of the aforesaid, Corporate Debtor recognized that the Applicants were protected tenants and longtime occupants of the Subject Shed, and accordingly, did not require the Applicants to pay any additional money qua the Property's redevelopment;
  - b. The Applicants were entitled to exclusive right to use and enjoy two car parking spaces, without any additional payment (Clause 3);
  - c. In the event that possession was not granted to the Applicants within 24 months from the date of vacant possession, Corporate Debtor was liable to pay the Applicants inconvenience charges/ compensation from the date of expiry of the said 24 months till the date of handing over possession at the rates outlined at Clause 6 in the Subject Agreement.
5. Pursuant to the initiation of Corporate Debtor's CIRP and upon Respondent No. 1 inviting for claims from Corporate Debtor's creditors, the Applicants submitted Form CA (by their email dated 26<sup>th</sup> December 2019) for an aggregate claim of Rs. 4,08,29,000/- (Rupees Four Crore Eight Lakh Twenty-Nine Thousand Only), particularized as under:
- i. Rs. 2,66,92,255/- (Rupees Two Crore Sixty-Six Lakh Ninety-Two Thousand Two Hundred Fifty-Five only) as inconvenience charges on account of delay in handing over possession of the shop, as agreed in the subject Agreement, computed from 13<sup>th</sup> June 2013 to 26<sup>th</sup> December 2019, as provided for in the Subject Agreement;

- ii. Interest on the aforesaid amount at the rate of 18 % p.a. from 13<sup>th</sup> June 2013 till 26<sup>th</sup> December 2019 which amounts to Rs. 1,41,36,745/- (Rupees One Crore Forty-One Lakh Thirty-Six Thousand Seven Hundred Forty-Five only);
  - iii. Further interest at the rate of 18% on the aforesaid amounts from 26<sup>th</sup> December 2019 till date of handing over possession of the shop.
6. The Resolution Plans submitted by the Resolution Applicants contain a clause requiring flat purchasers of Corporate Debtor to pay an escalation cost, such that the Project may be completed. However, due to Respondent No. 1's obstinate ignorance of not including the Subject Agreement in Corporate Debtor's. In any event, even prior to the initiation of Corporate Debtor's CIRP, Corporate Debtor's erstwhile management expressly acknowledged that no escalation cost was required to be paid by the Applicants, being owners of the Shed.

Written Submissions:

7. The Applicant have executed a Permanent Alternate Accommodation Agreement and have surrendered their rights of tenancy in favour of the Corporate Debtor and against the same the Applicant were allotted shop bearing No. 1 in Wing "A".
8. As per recital 'S' at Page No. 40 r/w Clause 2 of the agreement entered between Corporate Debtor and Applicant, it is categorically stated that the Corporate Debtor shall provide to the Applicant and Applicant shall accept from the Corporate Debtor in lieu of the tenanted shed an alternate shop in Wing "A" on Ownership basis as and by way of permanent alternate accommodation.

9. Thus, the Applicant had paid a consideration in form of vacant and peaceful possession of the said Tenanted Shop and against the same has been allotted a certain shop. Thus, over and above the said consideration the Applicant will have to bear an escalation in terms of the Plan. The Applicant will not have to make any payment towards “balance consideration” as the entire consideration payable by the Flat buyer i.e. in this case handing over the vacant possession has been already paid i.e. possession is handed over by the Applicant and in lieu of the same he has been allotted the said shop on ownership basis for which the Applicant does not have to pay any further consideration over and above handing over of the possession. The Resolution Plan provides payment by all flat/ shop purchasers, likewise the Applicant also will have to bear the same escalation as all flat purchasers in the said flat will have to be treated equally.
10. Even otherwise the present application is not maintainable as no ground has been made out by the Applicant for rejecting the approval of the plan u/s. 31 of the IBC. U/s. 31 of the IBC the role of the adjudicating authority is limited to verify as to whether the provisions of Section 30 of the Code have been complied with and the authority has to satisfy that the plan provides provision for effective implementation. Once the adjudicating authority satisfy itself on these two aspects the plan has to be approved and it will be binding on all stake holders.

Findings:

11. It is undisputed fact that the Applicant has surrendered their rights of tenancy under the Permanent Alternate Accommodation Agreement in favour of the Corporate Debtor. It was also provided in the Agreement that the Applicant shall accept an alternate Shop in Wing-A on the ownership basis by way of Permanent Alternate Accommodation. Further, in terms of the Resolution Plan the Applicant will have to bear the balance consideration as he has been characterized in the category of flat buyer and the Plan requires the payment of escalation charges,

the Applicant will also have to bear the escalation charges as he is treated equal to the flat purchaser.

12. This Bench therefore concludes that the Applicant is bound by the terms of the Resolution Plan and has to bear the escalation charges being part of the class of creditors who are provided flats / shops and cannot claim to have different treatment. Further, the Resolution plan provides the exit option.
13. In view of the aforesaid observations, IA No. 2932 of 2021 is **dismissed**.

Sd/-  
ANURADHA SANJAY BHATIA  
Member (Technical)

Sd/-  
SUCHITRA KANUPARTHI  
Member (Judicial)