

**NATIONAL COMPANY LAW TRIBUNAL  
COURT No. – I, MUMBAI BENCH**

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**CP (IB) No. 2938/MB/2019**

**Shikhar Leasing & trading Ltd  
V/s  
Vijay Suraksha Realty LLP**

**\*\*\* \*\***

**Dated 12<sup>th</sup> January, 2021**

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**ORDER**

The matter is taken up on VC. Counsel for the Petitioner (Operational Creditor) and Respondent (Corporate Debtor) are present. The mentioning praecipe as filed by the Petitioner is taken on record. The praecipe is for taking up the CP and order for withdrawal of the CP. The praecipe is allowed. CP No. 2938 of 2019 is taken on record. The parties have filed consent terms dated 09.12.2020 and have agreed to withdraw the matter. Heard. On perusal, we are satisfied that the parties have settled the matter and the matter can be withdrawn. CP No. 2938 of 2019 is dismissed as withdrawn in terms of Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The consent terms shall form part of the order. The physical copy of the consent terms be filed with the Registry.

**SD/-  
V. NALLASENAPATHY  
Member (Technical)**

**SD/-  
JANAB MOHAMMED AJMAL  
Member (Judicial)**



**AZB & PARTNERS**  
ADVOCATES & SOLICITORS

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, MUMBAI**

**C.P. (IB) NO. 2938/2019**

**IN THE MATTER OF:**

Shikhar Leasing and Trading Limited

...Petitioner/Financial Creditor

Versus

Vijay Suraksha Realty LLP

...Respondent/Corporate Debtor

1. **BE PLEASED**, to circulate the papers and proceedings in the captioned company petition before the Hon'ble Bench comprising of Shri Mohammed Ajmal and Shri V. Nallasenapathy on an earliest date, when the counsel for both the parties shall be making an urgent application for filing the consent terms dated December 9, 2020 ("**Consent Terms**") arrived between the parties.
2. The Petitioner/Financial Creditor desires to place the Consent Terms on record so that the captioned matter can be disposed of in terms of the Consent Terms. In view of the above, the Petitioner requests that the company petition be listed on an earliest date. Copy of the Consent Terms is annexed hereto as **Annexure A**.
3. The advocates for both the parties will be attending the hearing by video conference if circulation is granted.

Dated this 18<sup>th</sup> day of December, 2020

Yours faithfully,

**AZB & Partners**

Advocates for the Petitioner/Financial Creditor

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# ANNEXURE A

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

COMPANY PETITION NO. (IB) 2938 (MB)/ 2019

(under Section 7 of the Insolvency and Bankruptcy Code, 2016)

## IN THE MATTER OF:

Shikhar Leasing and Trading Limited	...	Petitioner
	Versus	
Vijay Suraksha Realty LLP	...	Respondent

## CONSENT TERMS

### THE CONSENT TERMS BETWEEN THE PETITIONER AND RESPONDENT:

The Petitioner have filed the present Company Petition inter-alia for declaration that the Respondent failed to make the payment by 31/07/2019, it is alleged by the Petitioner that, the Respondent has committed breaches of the Agreement as well on the representations made by it as stated in the Agreement. By letter dtd. 02/08/2019 the Petitioner intimated the Respondent of its failure to make the payment by 31/07/2019. The Petitioner further alleged in the petition under reference that the amount of Rs.17,50,00,000/- payable by the Respondent to Petitioner is a financial debt as it was disbursed against consideration for the time value It is further alleged that, it is an amount due, inter-alia under a transaction having the commercial effect. The Respondent however, deny the same by filing the Affidavit-in-Reply, the Respondent inter-alia averred that, the transaction contemplated in Agreement dtd. 19/08/2017 is first right to acquire saleable FSI area mentioned therein by the Petitioner upon the terms and conditions mentioned therein. It is agreed between the parties thereto that, the Respondent shall pay the said Rs.17,50,00,000/- (Rs. Seventeen Crores Fifty Lakh Only) to the Petitioner or alternatively the Respondent has the option to adjust and settle the said Rs.17,50,00,000/- (Rs. Seventeen Crores Fifty Lakh Only) by way of transferring the earmarked Flats in the name of the Petitioner or its nominees towards the full and entire liability of the Respondent on or before 31/07/2019.

Due to the aforesaid, Company Petition initiated by the Petitioner against the Respondent inter-alia for the reliefs mentioned therein, the parties hereto have realized that the present state of affairs with multiple and potentially endless rounds of litigations to avail the reliefs as sought for could take infinite time and therefore decided to amicably settle the dispute. Pursuant to the negotiations and discussions, the parties hereto have ultimately concluded and reached an Agreement amongst themselves that it is in the best interests of all the parties hereto.

The parties to this Company Petition are desirous to record the terms of their settlement inter-se amongst each other in terms of Agreement dtd. 19/08/2017 and the following terms and conditions as and by way of full and final settlement of the dispute between the Petitioner and the Respondent.

1. The parties hereto record and confirm that, on 23/07/2014 (hereinafter referred to as "the said Deed dtd. 23/07/2014") Shikhar Leasing and Trading Limited (Petitioner) and Vijay Grihnirman Pvt. Ltd. ("VGPL") entered in to an agreement whereby VGPL granted the Petitioner a first right to acquire an aggregate 66,000 (Sixty Six Thousand) square feet saleable FSI arising out of several pieces and parcels of the lands acquired by VGPL, more particularly described therein. In consideration of which the Petitioner deposited an amount of Rs.4,22,40,000/- (Rupees Four Crore Twenty Two Lacs Forty Thousand Only).
2. The parties hereto record and confirm that, by and under the said Deed dtd. 23/07/2014, it was agreed by and between the "VGPL" & the Petitioner that in the event the Petitioner chooses to exercise the aforesaid right, the Petitioner shall be obliged to pay VGPL an amount of Rs. 12,27,60,000/- (Rupees Twelve Crores Twenty Seven Lakh Sixty Thousand Only) in consideration of VGPL selling the FSI to Petitioner. However, if the Petitioner chooses not to buy the FSI, then the Rights granted to Petitioner stand cancelled and the Respondent becomes liable to pay to the Petitioner a pre-determined value of the right granted which was Rs.36,77,60,000/- (Rs. Thirty Six Crores Seventy Seven Lakh Sixty Thousand Only). In such event, VGPL would be liable to pay to the Petitioner an amount of Rs. 24,50,00,000/- (being predetermined price less receivables i.e. Rs. 12,27,60,000/-).
3. The parties hereto record and confirm that, by Deed of Transfer and Assignment of Business dtd. 27/04/2015 (hereinafter referred to as "the said Business Transfer Deed") executed by and between the VGPL therein referred to as Assignor and M/s. Vijay Group Construction (Formerly Known as Vijay Developers) and 11 others therein

referred to as the Confirming Parties and Respondent herein therein referred to as the Assignees. The Assignor therein with the consent and knowledge of the Confirming Parties therein assigned in favour of the Assignee therein all the right in respect of the said properties more particularly described in the III, IV & V Schedule thereunder which includes the said Property herein along with benefit and advantages of the Deeds referred therein at or for consideration and upon the terms and conditions more particularly stated therein. The said Business Transfer Deed is registered in the office of the Sub-Registrar of Assurances, Thane11 under Sr. No.TNN11-2159/2015 on 27/04/2015.

4. The parties hereto record and confirm that, pursuant to acquiring all the right in respect of the properties more particularly described in the said Business Transfer Deed, the Respondent vide Letter dtd. 19/09/2014 informed the Petitioner that Business of the VGPL has been taken over by the Respondent and all the obligation of VGPL in the said Deed dtd. 23/07/2014 will be fulfilled by the Respondent.
5. The parties hereto record and confirm that, by undated letter, the Respondent confirmed the receipt of Rs.4,22,40,000/- from the Petitioner towards the above said FSI. By letter dtd. 31/07/2017 addressed by the Petitioner to the Respondent, the said Deed dtd. 23/07/2014 was mutually terminated with immediate effect.
6. The parties hereto record and confirm that, on 19/08/2017 the Petitioner and the Respondent entered in to Deed (hereinafter referred to as **"the said Deed dtd.19/08/2017"**) whereby the Respondent granted the Petitioner a first right to acquire an aggregate 43,000 sq. ft. saleable FSI arising out of out of several pieces and parcels of the lands acquired by the Respondent, more particularly described therein on or before 30/09/2017. In consideration of which it was recorded that the Petitioner had deposited an amount of Rs. 4,22,40,000/- with Respondent.
7. The parties hereto record and confirm that, by and under the said Deed dtd. 19/08/2017, it was agreed by and between the parties thereto that in the event the Petitioner chooses to exercise the aforesaid right, the Petitioner shall be obliged to pay the Respondent an amount of Rs. 6,52,60,000/- in consideration of Respondent selling the FSI to Petitioner. However, if the Petitioner chooses not to buy the FSI, then the Respondent shall cancel the right granted and pay to the Petitioner a pre-determined value of the right granted which was Rs.24,02,60,000/- and the Respondent shall be liable to pay to the Petitioner an amount of Rs. 17,50,00,000/- (being predetermined price less receivables i.e. Rs. 6,52,60,000/-) on or before 31/07/2019.

8. The parties had agreed that, in case (a) if Respondent fails to pay the said sum of Rs. 17,50,00,000/- (Rupees Seventeen Crores Fifty Lakhs Only) on or before 31st July, 2019 or (b) Respondent chooses to settle its obligations by transferring the said Flats. Respondent shall execute in favour of the Petitioner or their nominee deed for sale of Flats and Car Parking on ownership basis of building Orion-3 (to the extent such flats have not been sold before such date in accordance herewith) and the Respondent will be fully and completely free and released from entire and all of its liabilities against Petitioner under this Deed or under any other writing between the parties and Respondent would not be liable to pay any interest for delay payments to Petitioner.
9. The parties hereto record and confirm that, by letter dtd. 21/08/2017, the Petitioner noted that charges/mortgage has been created in respect of the Flats in Orion and that the Respondent has assured that the same would be released and NOC shall be issued by the Financial Institution within sixty days from the letter.
10. The parties hereto record and confirm that, on October 12, 2017, ICICI Bank Limited issued NOC in respect of Flat Nos. 1101,1102/A-B,1201,1202/A-B, 1301,1403 in Project Orion –3 (“the said flats”), allotted to the Petitioner by the Respondent.
11. The parties hereto record and confirm that, the Respondent, was in process of transferring the business with Cognizant Properties Private Limited, whereby the entire business undertaking of the Respondent along with all its assets and liabilities was to be transferred to, and succeeded by, Cognizant Properties Private Limited on a going concern basis under a slump sale transaction. However no such transfer has taken place.
12. The parties hereto record and confirm that, upon getting knowledge of the said business transfer agreement, the Petitioner has filed Company Petition being Company Petition No. (IB) 991/2020 before the National Company Law Tribunal, Mumbai Branch against Cognizant Properties Private Limited.
13. In the meanwhile parties herein with assistance and aid of well wishers have arrived at amicable settlement pursuant to which they have arrived at understanding whereby it is agreed between the parties hereto that neither party will have any claim of whatsoever nature against other party. Both parties have agreed to abide by understanding as arrived at.
14. In view of understanding as arrived at between the parties the Petitioner hereby unconditionally withdraws the above Company Petition being Company Petition No. (IB) 2938/2019 No. as well as Company Petition NO. (IB) 991/2020 as filed against the said Cognizant Properties Private Limited.

 

15. The above Company Petition No. (IB) 2938/2019 and Company Petition No. (IB) 991/2020 shall accordingly stand withdrawn.

Place: Mumbai

Date: 9<sup>th</sup> Dec 2020 .



Petitioner



Respondent



Advocate for the Petitioner



Advocate for the Respondent