



पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

N 063935

Handwritten notes and stamps on the left side of the document:

- 10/8/13
- 2-01
- 21/1/13
- M.V. 1590221194
- Stamp: Notary Public
- Stamp: Registrar of Assurances



Certified that the Document is admitted to Registration. The Signature Sheet and the Instrument of Deeds attached to this document are the part of this Document.

Additional Registrar of Assurances-II, Kolkata

THIS INDENTURE OF CONVEYANCE made this the 21st

day of January, Two Thousand and Thirteen, **BETWEEN**
SAWAR DHANANIA, son of Late Dina Nath Agarwal, residing at No.1, Lord Sinha Road, Kolkata-700 071, acting through **MRS. MOUMITA CHATTERJEE**, Advocate wife of Sri Kaushik Chatterjee, having her PAN No. AFPPC1742P, residing at 32/1A, Gobinda Ghosal Lane, Kolkata - 700 025, P.S. - Bhawanipore, having been appointed as the **RECEIVER** in pursuance of a Decree dated July 29, 2004 passed by the

High Court Original Side
 CA 619/85
 6/9/15
 27/4/16
 [Signature]

93654

Sold to.....
 Address.....
 - 5 OCT 2012
 Value 100
 L. S. V.
 High Court A.S.

SINGHVI & CO.
 Advocates
 1C, Kiran Shankar Roy Road
 1st Floor, Calcutta - 700 001.



[Handwritten signature]

Dulal Ghosh
 S/O Late Kastick Ghosh
 26 Labaria Howrah - 711314
 Business

27 JAN 2012

Hon'ble High Court, Calcutta in C.S. No.619 of 1985 (Pawan Properties -Versus- Biswanath Agarwal & Ors.) in respect of the one fourth share belonging late Dina Nath Agarwal in or upon Municipal Premises No.46, Shakespeare Sarani (formerly Theatre Road), Kolkata-700 019, hereinafter referred to as the "**VENDOR/RECEIVER**" (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include her successor and/or successors in office) of the **FIRST PART : A N D M/S. PAWAN PROPERTIES**, a registered partnership firm carrying on business and/or having its Office at No.10/ID, Lal Bazar Street, 3rd Floor, Kolkata - 700 001, hereinafter referred to as the "**PURCHASER**" represented by its one of the Partner namely **MR. SHYAM SUNDAR NANGALIA**, son of Late Bhuramull Nangalia, aged about 63 years, by faith Hindu, by occupation business, residing at 32C, New Road, Block - "B", 3rd Floor, Kolkata-700 027, P.S. - Alipore, (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include its present partner and/or partners and/or those who may be taken in and/or admitted as partner and/or partners and their respective heirs, legal representatives, executors, administrators and assigns) being the party of the **SECOND PART :**

W H E R E A S :

- A. By a registered Deed of Conveyance dated May 6, 1957 registered at the office of the Registrar of Assurances, Calcutta in Book No. 1, Volume No. 56, Pages 117 to 123, Being No.1558 for the year 1957 Md. Gulsaigal and Others therein collectively



ADDITIONAL ASSISTANT
REGISTRAR OF COMPANIES
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referred to as the Vendor of the One Part sold transferred and conveyed **ALL THAT** the Municipal Premises Nos.46A and 46B, Theatre Road (now known as Shakespeare Sarani) Kolkata-700 017 unto and in favour of (1) Sankar Lal Agarwal, (2) Ramjidas Agarwal, (3) Dinanath Agarwala and (4) Harkishandas Agarwal therein referred to as the Purchasers and (hereinafter collectively referred to as **ORIGINAL OWNERS**) for the consideration and subject to the terms and conditions contained and recorded in the said Indenture each of the said original owners being entitled to undivided one fourth share or interest therein.

- B. The said Premises Nos.46A and 46B, Theatre Road (now known as Shakespeare Sarani), Kolkata-700 017 has since been renumbered as Municipal Premises No.46, Shakespeare Sarani, Kolkata-700 017 (more fully and particularly mentioned and described in the **FIRST SCHEDULE** hereunder written and shown delineated in red border in the map or plan annexed hereto and is hereinafter referred to as the said PREMISES).
- C. By an agreement dated October 13, 1932 registered at the office of the Registrar of Assurances, Calcutta in Book No. 1, Volume No. 94, Pages 113 to 126, Being No. 1285, for the year 1983 and made between the said Original Owners therein collectively referred to as the Owners of the One Part and the Purchaser herein the said Original Owners granted the exclusive right of development and sale in respect of the said Premises unto and in favour of the said Pawan Properties



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OF HYGIENE AND
21 JAN 2013

namely the Purchaser herein for the consideration and subject to the terms and conditions contained and recorded in the said Agreement (hereinafter referred to as the **PURCHASER'S AGREEMENT**).

- D. Disputes and differences having arisen between the said Original Owners and the said Pawan Properties the Purchaser herein the Purchaser filed a suit being C.S. No. 619 of 1985 in the Hon'ble High Court, Calcutta against the said original owners inter alia for specific performance of the said Purchaser's Agreement and for other consequential reliefs (hereinafter referred to as the **PURCHASER'S SUIT**).
- E. During pendency of the said Purchasers Suit disputes and differences having arisen between the said original owners, Ramjidas Agarwal (since deceased) one of the Original Owners and being entitled to undivided one fourth share or interest into or upon the said premises filed a suit being C.S. No. 148 of 2002 in the Hon'ble High Court, Calcutta for partition of the said premises by metes and bounds and for other consequential reliefs (hereinafter referred to as the **PARTITION SUIT**).
- F. The said Dinanath Agarwal and the Purchaser entered into a Terms of Settlement dated November 25, 2003 in Title Suit No. C.S. No. 619 of 1985 being G.A. No. 4027 of 2003 whereby the said



ADDITIONAL POSTAGE
OF APPROXIMATELY IN VALUE
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Dinanath Agarwal being entitled to the undivided one fourth share or interest into or upon the entirety of the said Premises hereinafter referred to as the said **UNDIVIDED SHARE**) more fully and particularly mentioned and described in the **SECOND SCHEDULE** hereunder written agreed to sell and transfer the said 'Undivided Share' unto and in favour of the Purchaser for the consideration and subject to the terms and conditions contained and recorded in the said Terms of Settlement.

- G. The application for recording the terms of settlement and for passing a decree on the basis thereof being G.A. No. 4027 of 2003 was heard by the Hon'ble High Court at Calcutta and after a contested hearing a Decree was passed on July 29, 2004 in accordance with the terms of the said Terms of Settlement whereby the Purchaser became entitled to acquire the entirety of the right title interest of the said Dinanath Agarwal into or upon the said Premises and in the agreement dated October 13, 1982 for the consideration therein mentioned.
- H. In accordance with the terms of settlement the PURCHASER has paid a sum of Rs.45 lakhs to the said Dinanath Agarwal since deceased in the manner stated hereinafter. By a letter dated February 6, 2004, the said Dinanath Agarwal informed the purchaser that he was not keeping well and also instructed the purchaser to pay the balance consideration payable by the purchaser to the said Dinanath Agarwal to his son Sawar



ADDITIONAL REGISTRAR
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Dhanania and also to hand over the 4000 square feet of super built area in the building to be constructed on the said premises, being part of the consideration payable by the purchaser, to the said Sawar Dhanania his son. The purchaser has paid the balance sum of Rs.40 lakhs to the said Sawar Dhanania which sum has been duly received and is evidenced by the certificate issued by Andhra Bank the bankers of the purchaser.

- I. In pursuance of the said Decree the Purchaser made the following amount by cheques/RTGS drawn on Andhra Bank, Ezra Street (Kolkata Main Branch) to the Vendors :

| Payee's Name | Cheque No. | Amount Rs. | Cheque dated | Encashed on |
|------------------|------------|-------------|--------------|-------------|
| Dinanath Agarwal | 439991 | 40,00,000/- | 20.11.03 | 20.11.03 |
| Dinanath Agarwal | 819941 | 5,00,000/- | 17.08.04 | 19.08.04 |
| Sawar Dhanania | RTGS | 40,00,000/- | 12.05.10 | 12.05.10 |

- J. In the said partition suit being C.S No. 148 of 2002, a preliminary decree dated May 6, 2005 was passed declaring that the said Dina Nath agarwal was entitled to One fourth share in the said premises.
- K. The said Dinanath Agarwal died on March 8, 2009 leaving behind him a Will dated February 6, 2004 whereby and whereunder he bequeathed his right to receive the balance sum of Rs.40.00 laks and the constructed area of 4000 sq.ft. along with three car parking space to his son Sawar Dhanania.



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OF ASSURANCES, CALCUTTA
21 JAN 2013

- L. The said Sawar Dhanania obtained Probate of the said Will from the Hon'ble High Court at Calcutta in PLA NO:118 of 2011 on March 23, 2012.
- M. The said purchaser filed an application for execution of the decree dated July 29, 2004 against all the heirs of Late Dinanath Agarwal being E.C. No. 127 of 2011 and by an order dated December 21, 2012 the Hon'ble High Court at Calcutta was pleased to direct the respondent No.2 i.e. Sawar Dhanania the sole legatee of the Will of Dinanath Agarwal to deliver vacant possession of the area under his occupation at premises No.46, Shakespeare Sarani, Kolkata to the purchaser on or before March 31, 2013 and further directed the Receiver to execute and register the Deed of Conveyance in respect of 1/4th undivided share of the said premises in favour of the Purchaser. The said order further directed the said Pawan Properties to have the building plan sanctioned and to construct a multistoried building and deliver 4000 sq.ft. along with 3 car parking space to the said Sawar Dhanania within a period of 3 years from the date of sanction of the building plan. A Xerox copy of the certified copy of the said order is annexed hereto and marked with letter 'A'.
- N. In terms of the said order dated December 21, 2012 the purchaser has approached the learned Receiver for execution and registration of this Deed of Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in pursuance of the said Decree dated July 29, 2004 **AND** in terms of the order dated December 21, 2012 passed in E.C. No. 127 of 2011 **AND** in further consideration of a sum of Rs.85,00,000/- (Rupees eighty five lakhs) only of the lawful money of the Union of India well and truly paid by the Purchaser to the predecessor in interest of the Vendor and to the Vendor which amount has been paid as detailed out in Recital 'I' herein above at or before the execution of these presents (the receipt whereof the said Sawar Dhanania acting through the Receiver doth hereby admit and acknowledge to have been received and of and from the payment of the same and every part thereof doth hereby acquit release and discharge the Purchaser and the said Undivided 1/4th Share in the First Schedule Premises hereby intended to be sold transferred and conveyed) **AND** in the further consideration of the Purchaser providing and delivering a flat in the New Building to be constructed at the said premises having a super built up area of 4000 sq.ft. be the same a little more or less along with parking space for three cars to the Vendor in terms of the said Decree dated July 29, 2004 the Vendor doth hereby indefeasibly grant sell transfer convey assign and assure unto and to the Purchaser **ALL THAT** the Undivided 1/4th share or interest belonging to the Vendor equivalent to 25% (twenty five per cent) into or upon and/or the entirety of the right title and interest of the Vendors into or upon **ALL THAT** the Municipal Premises No.46, Shakespeare Sarani, Kolkata-700 017 (more fully and particularly mentioned and described in the **FIRST SCHEDULE** hereunder written and hereinafter referred to as



ADDITIONAL REG. OFFICER
OF ASSURANCE
21 JAN 2013

the said **PREMISES**) containing by estimation 2 Bighas, 0 Cottahs, 8 Chittacks and 20 sq.ft. **TOGETHER WITH** proportionate share in all constructions standing thereon hereunder written and hereinafter referred to as the said **UNDIVIDED SHARE** more fully and particularly described in the **SECOND SCHEDULE** herein written free from all encumbrances charges liens lispendens, attachments trusts whatsoever or howsoever **OR HOWSOEVER OTHERWISE** the said Undivided Share or any part or portion thereof now is or are or at any time or times heretofore was or were situated butted and bounded called known numbered described or distinguished **TOGETHER WITH** all benefits and advantages of ancient and other lights all yards, courtyards areas sewers drain ways water courses ditches fences paths and all manner of former and other rights liberties easements privileges walls fences advantages appendages and appurtenances whatsoever to the said property and/or the said undivided share or any part or portion thereof belonging thereto or in anyways appertaining to or with the same or any part or portion thereof now are or is or at any time or times heretofore were or was held used occupied or appertaining or enjoyed therewith or reputed to belong or appertain thereto **AND** the reversion or reversions remainder or remainders and the rents issues and profits of the said Undivided Share and every part or portion thereof **A N D** all the legal incidences thereof **AND** all the estate right title interest inheritance possession use trust property claims and demands whatsoever both at law and in equity of the Vendors into or upon and in respect of the said Undivided Share or any and every part thereof herein comprised and hereby sold granted and transferred **TOGETHER WITH** all deeds pattahs



ADDITIONAL REGISTRAR
OF ASSURANCE
21 JAN 2013

muniments and evidences of title which are anyways exclusively relates to or concerns the said property/Undivided Share or any part or parcel thereof which now are or hereafter shall or may be in the custody power possession or control of the Vendors or any person or persons from whom the Vendors can or may procure the same without any action or suit at law or in equity **TO HAVE AND TO HOLD** the said Undivided Share hereby granted sold conveyed transferred assigned assured or expressed or intended so to be with all rights and appurtenances belonging thereto unto and to the use of the Purchaser absolutely and forever free from all encumbrances charges liens claims demands mortgages leases licenses liabilities trust attachments acquisitions requisitions prohibitions restrictions easements and lispendences whatsoever **WITH ALL** the rights benefits members easements and appurtenances thereto unto and to the use of the Purchaser herein absolutely and forever free from all encumbrances charges liens lispendens attachments trusts acquisitions requisitions whatsoever or howsoever **AND** free and clear and freely and clearly and absolutely acquitted exonerated and released or otherwise well and sufficiently indemnified from and against all manner estates claims charges liens attachments and encumbrances **AND** further all right title and interest of the Vendors in the agreement dated October 13, 1982 stand extinguished in terms of the said decree dated July 29, 2004.



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ADDITIONAL REGISTRAR
OF ASSURANCES
21 JAN 2013

**THE FIRST SCHEDULE ABOVE REFERRED TO
(THE SAID PREMISES)**

ALL THAT the messuage tenement and hereditaments **TOGETHER WITH** the piece and parcel of revenue redeemed land containing an area of 2 Bigha 0 Cottahs 8 Chittacks 20 sq. ft. (be the same a little more or less) whereon or any part whereof the same is erected and built being Municipal Premises Nos.46A and 46B, Theatre Road (now known as premises No.46, Shakespeare Sarani), Kolkata-700 017, within the Police Station - Shakespeare Sarani, within Ward No.63 and within the limit of Kolkata Municipal Corporation in the South Division of Kolkata and butted and bounded as follows, that is to say :

- ON THE NORTH** : By Shakespeare Sarani;
- ON THE SOUTH** : By premises No.1, Auckland Square;
- ON THE EAST** : By premises No.48, Shakespeare Sarani,
(known as Kala Mandir); and
- ON THE WEST** : By partly premises No.44, Shakespeare Sarani (IDBI Building) and partly premises No.2, Auckland Square;

OR HOWSOEVER OTHERWISE the said premises butted bounded called known numbered described and distinguished as hereinbefore stated and the situation whereof has been shown and delineated in the map or plan annexed hereto and bordered in **RED** colour thereon.



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ADDITIONAL REGISTRAR
OF ASSURANCES, MONTREAL
21 JAN 2013

**THE SECOND SCHEDULE ABOVE REFERRED TO
(THE SAID UNDIVIDED SHARE)**

ALL THAT the Undivided 1/4th share or interest held by the Vendors being 1/4th share or interest into or upon the said premises consisting of (i.e. Bastu land 5.7321 katha and semi commercial land 4.3998 katha, 1263 sq.ft. residential pucca cemented structure on the ground floor, 1263 sq.ft. residential pucca structure on the first floor, 2529 sq.ft. residential tin shed cemented structure on the ground floor, 549 sq.ft. semi commercial cemented pucca structure on the ground floor, 549 sq.ft. semi commercial cemented tin shed structure on the first floor of the said premises, more fully and particularly mentioned and described in the First Schedule hereinbefore written and/or the entirety of the right title and interest of the VENDOR into or upon the said premises.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and seals the day month and year first above written.

SIGNED AND DELIVERED by the said
RECEIVER MRS. MOUMITA
CHATTERJEE (for and on behalf of the
VENDOR in terms of the decree dated July
29, 2004 and the order dated December
21, 2012) at Kolkata in the presence of :

Moumita Chatterjee
Receiver *J*

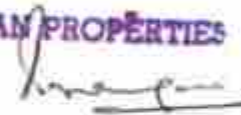


ADDITIONAL DEPARTMENT
OF ASSURANCE
21 JAN 2013

WITNESSES:

1. Rahul Kothari
7C K.S. Ray Road
Kolkata - 700001
2. Sunjay Chatterjee
28/2, Sivan Vihar Road
Howrah - 711101

SIGNED AND DELIVERED by the said
PURCHASER at Kolkata in the presence
of:

PAWAN PROPERTIES

Partner
(Shyam (under Bengali))

WITNESSES:

1. Rahul Kothari
7C K.S. Ray Road
Kolkata - 700001
2. Sunjay Chatterjee
28/2, Sivan Vihar Road
Howrah - 711101



ADDITIONAL SECRETARY
OF ASSURANCE, CALCUTTA
21 JAN 2013

MEMO OF CONSIDERATION

RECEIVED of and from the within named PURCHASER the within mentioned sum of Rs.85,00,000/- (Rupees Eighty Five lacs only) being the entirety of the consideration amount payable to the Vendors under these presents as per memo below :

1. Late Dinanath Agarwal, by several cheques aggregating Rs.45,00,000/- drawn on Andhra Bank, Ezra Street, (Kolkata Main Branch), Kolkata as per details given below :

| Cheque No. | Dated | In favour of | Amount Rs. |
|------------|------------|------------------|---------------|
| 439991 | 20.11.2003 | Dinanath Agarwal | 40,00,000.00 |
| 819941 | 17.08.2004 | Dinanath Agarwal | 5,00,000.00 |

2. Sawar Dhanania by RTGS for Rs.40,00,000/- dated 12.05.2010 drawn on Andhra Bank, Ezra Street (Kolkata Main Branch), Kolkata.

40,00,000.00
Total : 85,00,000.00

(Rupees Eighty five lacs only)

WITNESSES:

1. *Rahul Kothari*
7C K-S Roy Road
Kolkata - 700001

Trinita Chatterjee
Receiver

2. *Sanjit Chatterjee*
23/1, Girani Vihar Road
Howrah - 711101

Drafted by :

Arctama Manoj

Advocate, High Court
Calcutta

SITE PLAN OF PREMISES NO-46, SHAKESPEARE SARANI KOLKATA-700076.

AREA OF LAND - 28.0X-80X-209FT.

DEFENDANT NO-4:- YODHISTER KUMAR DHAWANIA ALIAS AGARWAL,
DEFENDANT NO-1:- HEIRS LEGAL REPRESENTATIVE AND/OR
PERSONS CLAIMING THROUGH OR UNDER LATE DINANATH AGARWAL.

SCALE: N.T.S.



SARANI PROPERTIES

[Signature]
Partners

[Signature]

Partners

SARANI RESTRAURANT

P.D-39-(15)



J

ADDITIONAL REGISTRAR
OF ASSURANCES
21 JAN 2013

22-11-2013

E. C. NO. 128 OF 2011

C.S. NO. 619 OF 1985

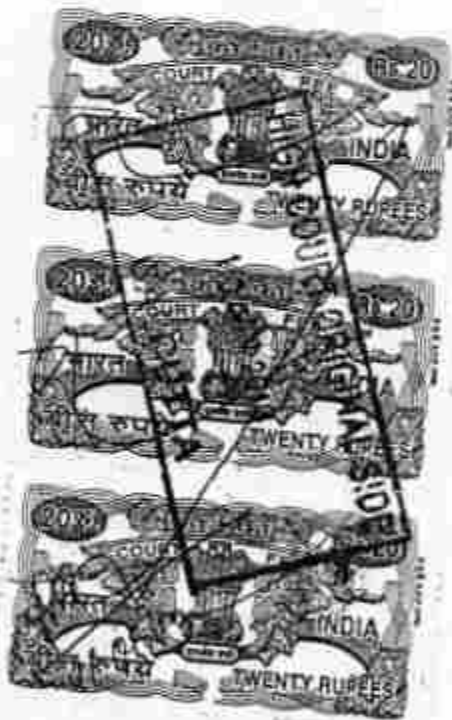
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

Pawan Properties, a registered
Partnership Firm having its
registered office at 10/1D, Lal
Bazaar Street, Kolkata-700 001,
within the aforesaid jurisdiction.

.....
.....
Petitioner.

Versus

1. Raj Kumar Dhanania, son of Late
Harkishan Das Agarwal, residing
at premises No.1, Lord Sinha
Road, Kolkata-700 071, within
the aforesaid jurisdiction.
2. Smt. Pramila Dhanania,
daughter of Late Harkishan Das
Agarwal, residing at 1, Lord
Sinha Road, Kolkata-700 071,
within the aforesaid jurisdiction.
3. Shri Ramesh Dhanania, son of
Late Harkishan Das Agarwal,
residing at 1, Lord Sinha Road,



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Pranita Chatterjee



ADDITIONAL REGISTRAR
OF COMPANIES
21 JAN 2019

Kolkata-700 071, within the
aforesaid jurisdiction.

4. Smt. Bela Goel, daughter of Late
Harkishan Das Agarwal, residing
at 1, Lord Sinha Road, Kolkata-
700 071, within the aforesaid
jurisdiction.
5. Shri Nirmal Dhanania, son of
Late Harkishan Das Agarwal,
residing at 1, Lord Sinha Road,
Kolkata-700 071, within the
aforesaid jurisdiction.
6. Smt. Neelu Poddar, daughter of
Late Harkishan Das Agarwal,
residing at 1, Lord Sinha Road,
Kolkata-700 071, within the
aforesaid jurisdiction.

... Judgment Debtors.

T. Venkata Chaitanya



ADDITIONAL REGISTERED
OF POSITIVE
21 JAN 2013

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction

E.C. 127 of 2011
C.S. No. 619 of 1985

In the matter of :

PAWAN PROPERTIES

..... Petitioner

-Vs.-

SMT. NARAYANI DEVI DHANANIA & ORS.

..... Judgment Debtors

E.C. 128 of 2011
C.S. No. 619 of 1985

In the matter of :

PAWAN PROPERTIES

..... Petitioner

-Vs.-

RAJ KUMAR DHANANIA & ORS.

..... Judgment Debtors

For the Petitioner : Mr. P.S. Sengupta, Advocate with
Mr. Sabyasachi Choudhury
Ms. Sreetama Manna, Advocates.

For the Judgment Debtor
Of E.C. 127 of 2011 : Mr. Pradip Kr. Ghosh, Senior Advocate with
Mr. Pramit Ray,

For the Judgment Debtor
Of E.C. 128 of 2011 : Mr. Raja Basu Choudhury, Advocate

T. S. Chatterjee

*4.8
5.15*



ADDRESSE POSTAL
OF ADDRESS
21 JAN 1913

Heard on : 04.10.12, 10.10.12, 11.10.12 & 17.10.12

Judgment on : 21st December, 2012

I.P. MUKERJI, J.

Two execution applications were heard by me. One was E.C. 127 of 2011, which was against the heirs of Dina Nath Agarwal who at one point of time was the third defendant. The other application is E.C. 128 of 2011 against the heirs of Harikishan Das Agarwala who at one point of time was the fourth defendant in the suit. Each of these execution applications prayed of an order for transfer of a 1/4th share in the property numbered as premises no. 46A and 46B, Shakespeare Sarani, Kolkata - 700 017 in favour of the plaintiff decree-holder. Mr. Pradip Kumar Ghosh, learned Senior Advocate represented the heirs of Harikishan Das Agarwala, while Mr. Raja Basu Choudhury represented the heirs of Dina Nath Agarwal. Each of the above applications was opposed by the above respective heirs. But these two applications can be disposed of by this common judgment.

The genesis of the dispute between the parties was an agreement dated 13th October, 1982 between the plaintiff decree-holder and inter alia, Dina Nath Agarwal and Harikishan Das Agarwala for development of the above property which was of substantial area and measured more than two bighas. In a suit between the parties to the agreement and or their heirs being C.S. No. 619 of 1985, the parties to the suit at that point of time, on 25th November, 2003 executed a Terms of Settlement. In Clause 4 of these terms it was recorded that the third and fourth defendants had 1/4th share each. Clause 5 provided that in consideration of the plaintiff decree-holder paying the sums mentioned in Schedule X to the agreement these defendants would transfer their interest in the property to them. Part-II of Schedule X, inter alia, provided that each of the above two defendants would be paid Rs.40 lacs. The last sentence of Clause 5 stated that cheques for the said amount had been handed over to the defendants. The total consideration as mentioned in Part - I of the Schedule was 80 lacs to be paid to each of the said defendants. The above 40 lacs was to be paid at the time of

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12/12/12
MUKERJI

Pradip Kumar Ghosh

12/12/12

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OF ASSOCIATION
21 JAN 2019

signing of the terms, which undisputedly was paid and the balance was payable immediately upon passing of the decree as provided in Part – III of the Terms of Settlement. Therefore, the total monetary consideration receivable by either of them was Rs. 85 lacs.

Moreover, each of these defendants would be provided a constructed area of 4000 sq. ft. super built up along with three car parking spaces in the above property. I reproduce Clause 8 and 9 and 1 (c) of Part – I:

8. Mrs. Moumita Chatterjee, Advocate is appointed Receiver over and in respect of the undivided share of the consenting defendants without security and without remuneration for the purpose of executing the deeds of conveyances in favour of the plaintiff or its nominee or nominees upon the plaintiff or its nominee or nominees making payment of the entire purchase consideration to the consenting defendants as mentioned in Schedule "X" and the Receiver shall also be entitled to admit execution and present such deed of conveyance or deeds of conveyances for registration before the appropriate registration authority.

9. For the sake of clarity, it is recorded that by reason of the aforesaid arrangements the plaintiff would now be entitled, as owner of the undivided 26/33th share of the said property, to proceed with the development of the said premises in the manner referred to in the said Development Agreement dated 13th October, 1982 and deal with all authorities concerned and finally sell transfer and/or deal with the constructed area attributable to the said undivided share under the said development agreement which has vested in the plaintiff.

1 (c). The share of the Defendant no. 3 and 4 in the suit property being 1/4th share each at and for an agreed consideration of Rs.85.00 lacs each and constructed area of 4000 sq. ft. super built up along with three car parking space to each of them. The earmarking of the area shall be done by Syam Sundar Nangalia and Raj Kumar Dhanania mutually"



Moumita Chatterjee



ADDITIONAL REGISTRAR
OF ASSURANCES
21 JAN 2013

Clauses 8 and 9 of the Terms and 1 (e) of Schedule X are most important and have been given different interpretations by the learned counsel appearing for the decree-holder and the judgment-debtors. Therefore, it is imperative that this Court makes a proper interpretation of the above clauses for a correct resolution of the disputes between the parties. It is also important to note that according to Clause 10 of the terms possession of the vacant portion of the premises as recorded by an earlier receiver had been made over to the plaintiff decree-holder. This possession is now disputed by the plaintiff decree-holder but this dispute does not lie at the heart of the controversy.

An application was made for recording the above compromise as a decree of this Court being G.A. No. 4027 of 2003 connected with C.S. 219 of 1985. This application was resisted by some defendants. The record shows that the fourth defendant had also supported these defendants. These parties objected to a decree being passed. However, the application was allowed and a decree in terms of the settlement was passed on 29th July, 2004 by Pradip Kumar Biswas J.

Now, it is important to examine the grounds on which the execution of the decree as claimed by the plaintiff is being resisted by the heirs of the above defendants. Their stand is that unless the above built up area together with the car parking space is handed over to them, they would not execute the conveyance. According to them that is the meaning that it is to be attributed to Clauses 8 and 9 of the terms of settlement read with Clause 1 (e) of the Schedule.

Mr. Pradip Kr. Ghosh, learned Senior Advocate for the judgment-debtor cited the case of *White vs. Elmdene Estates Ltd.* reported in 1959 2 ALL E.R. Pg. 605. He says that the word "payment" has a wide meaning and also includes payment in kind.

Clause 8 stipulates that upon making payment of the entire consideration the receiver would execute the conveyance in favour of the plaintiff. The entire consideration has been defined in Part-I of Schedule X and in Clause 1(e) of Schedule X as 85 lacs and the constructed area. Therefore, although the plaintiff has paid Rs. 85 lacs, it could not be said that they have paid the entirety of the said

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Pradip Kumar Biswas

P.S.
S.M.

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21 JAN 2010

consideration. They would only have paid the whole consideration if they constructed and handed over the above constructed area. Mr. Ghosh submitted that the above compromise decree was not unilateral in its terms but contained reciprocal promises. The obligation of the judgment-debtors to execute the conveyance would arise after making over to them of the constructed area. So unless the prior obligation was fulfilled by the plaintiff there was no obligation on the part of the defendants to execute the conveyance. He relied on the case of *Jai Narain Ram Lundia Vs. Kedar Nath Khetan and others* reported in AIR 1956 SC 359. He also added that the Court had full powers to investigate the fulfilment of reciprocal promises at the execution stage under Section 47 of the Code of Civil Procedure.

Mr. P. S. Sengupta, learned Senior Advocate for the decree-holder interpreted the terms of the compromise as meaning that after payment of Rs. 85 lacs the judgment-debtors would have to execute the conveyance. Only, thereafter could the plaintiff decree-holder make construction and hand over possession of the constructed portion within three years of sanction of the plan as provided in Clause 4 of the above development agreement. He cited the building rules and the attending forms and schedules relating to Kolkata Municipal Corporation Building Rules, 2009. He relied mainly the Rules and Schedule 1. In an application for sanction of a plan it has to be specifically mentioned under what capacity an applicant was applying. Such an application for construction can only be signed by the owner. Therefore, it is logical that the conveyance is executed in favour of the plaintiff. The plaintiff becomes the owner and takes steps for making construction in terms of the agreement. Only then can the judgment-debtors claim the built up area within three years of sanction of the said plan.

FINDINGS:

In *White vs. Elmdene Estates Ltd.* decided by the Court of Appeal of England and Wales and reported in (1959) 2 ALLER 605, the tenants sold their property at an undervalue to the landlord's nominee in consideration of the landlord granting tenancy to them. Was the difference in value to be considered as the premium paid by the tenants under the relevant Rent Act was the question before the Court. In

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T. S. Sengupta

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21 JAN 2013

that context Lord Evershed M.R. held that it was and went on to hold that payment could be in cash or in kind. I read the relevant part from the judgment:

"I therefore, conclude that, where a specific sum is to be deducted from a known or assumed sale price as a condition of the grant of a tenancy, that is a "pecuniary consideration" within the scope of the definition, and amounts, therefore, to a premium. If I am right, it must follow that the exaction of such a deduction must amount to a "payment"; and I find, indeed, no difficulty in so concluding; for the word "payment" in itself is one which, in an appropriate context, may cover many ways of discharging obligations. It may ever (as is well known, although it does not arise in this case) include a discharge, not by money payment at all, but by what is called "payment in kind". It follows, therefore, that if, in the present case, the defendant company had required, as a condition of the grant of a tenancy, that the plaintiff should sell to the defendant company his own house, 174, The Heights, for500 less than the known or assured value of2,300, that would have been the requiring of the payment of a premium, within the scope of s. 2 (1) of the Act of 1949."

Now, under the terms of settlement the consideration, as I have said before was payment by the plaintiff to each of the third and fourth defendants, Rs. 85 lacs together with making over a constructed area of 4000 Sq. ft.(super built up) and three car parking spaces. On the basis of the above judgment of the Court of Appeal I have no hesitation in holding that making over of the constructed area could be termed as "payments".

Now, one has to see how far this takes the judgment-debtors.

Clause 8 of the agreement states that upon payment of the "entire purchase consideration" "as mentioned in Schedule X", the receiver would execute the conveyance. If the deed of conveyance had stopped there, I would have been at once with Mr. Ghosh that upon payment of cash and making over of the constructed part, the receiver would execute the conveyance. But Clause 9



Pravina Chatterjee

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ADDITIONAL REGISTRAR
OF COMPANIES, MP
21 JAN 2013

expresses a different intention. It stipulates that the plaintiff would "now be entitled as owner" to proceed with "development of the said premises". Therefore, it is plain from reading of these two Clauses that the plaintiff could proceed to make construction after execution of conveyance in their favour and that the consideration mentioned in Clause 8 is only the monetary consideration. Therefore, upon receipt of the monetary consideration the receiver would execute the conveyance and the plaintiff would proceed towards development. If Mr. Ghosh's argument was true there would not have been any scope for the insertion of paragraph 9.

In view of my above interpretation of the terms of settlement the judgment of the Supreme Court in the case of *Jai Narain Ram Lundia Vs. Kedar Nath Khetan and others* reported in AIR 1956 SC 359 falls into place. Bose J. delivering the judgment for the Supreme Court opined paragraph 18 and 19:

"18.When a decree imposes obligations on both sides which are so conditioned that performance by one is conditional on performance by the other execution will not be ordered unless the party seeking execution not only offers to perform his side, but, when objection is raised, satisfies the executing Court that he is in a position to do so. Any other rule would have the effect of varying the conditions of the decree: a thing that an executing Court cannot do.

There may of course be decrees where the obligations imposed on each side are distinct and severable and in such a case each party might well be left to its own execution. But when the obligations are reciprocal and are interlinked so that they cannot be separated, any attempt to enforce performance unilaterally would be to defeat the directions in the decree and to go behind them which, of course, an executing Court cannot do. The only question therefore is whether the decree in the present case is of this nature. WE are clear that it is.

19. This is not a case of two independent and severable directions in the same decree but of one set of reciprocal conditions indissolubly linked together so that



T. S. Chatterjee

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they cannot exist without each other. The fact that it is a decree for specific performance where the decree itself cannot be given unless the side seeking performance is ready and willing to perform his side of the bargain and is in a position to do so, only strengthens the conclusion that was the meaning and intendment of the language used.

But the principle on which we are founding is not confined to cases of specific performance. It will apply whenever a decree is so conditioned that the right of one party to seek performance from the other is conditional on his readiness and 'ability' to perform his own obligations.

The ratio of the judgment was followed by the judgment in the case of *Chen Shen Ling vs. Nand Kishore Jhajharia* reported in AIR 1972 SC 726.

The terms of settlement spell out the order in which the obligations have to be performed. The plaintiff has made payment of Rs. 85 lacs to each of the said predecessors of the judgment-debtors. Hence, now in terms of Clause 8 and 9 of the terms of settlement, it is for the heirs of those defendants, i.e. the present judgment-debtors to allow the Receiver to execute and register the conveyance. Thereafter, it is the obligation of the plaintiff to complete the construction of the commercial complex within three years from the date of sanction of the plan by the Kolkata Municipal Corporation.

I observe with considerable regret that the judgment-debtors stood in the way of performance of the terms of the consent decree.

Therefore, each of the execution applications is allowed by passing orders in terms of prayers (i), (ii) and (iii) of the Tabular Statement. The judgment-debtor no. 2 is to deliver possession of the property mentioned in the schedule to the tabular statements by 31st March, 2013 to the plaintiff decree holder failing which the Officer-in-Charge of the local police station will evict the judgment-debtor no. 2 from the premises.

Tranida Chatterjee

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21 JAN 2013

I direct the plaintiff to obtain sanction of the building plan from the Kolkata Municipal Corporation and direct the Kolkata Municipal Corporation to accord sanction to the plan prepared by the plaintiff in accordance with law within three months of its presentation with them. I further direct the plaintiff to complete construction within three years of sanction of the plan. If there is failure on the part of the plaintiff to obtain sanction of the building plan or to deliver possession of the constructed area in accordance with the compromise decree within three years of sanction of such plan, the plaintiff will be deemed to be in breach of their reciprocal obligation as held in the case of *Jai Narain Ram Lundia Vs. Kedar Nath Khetan and others* reported in AIR 1956 SC 359 (Supra) the ratio of which was followed in the case of *Chen Shen Ling vs. Nand Kishore Jhajharia* reported in AIR 1972 SC 726 (Supra). The judgment-debtors will then be entitled to restitution, in accordance with law.

Urgent certified photocopy of this judgment/order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

CERTIFIED TO BE A TRUE COPY

Prabir K. Das 11.01.13.

Authorised under Section 76 of
the Indian Evidence Act, 1872
(Act-1 of 1872)

*sdf Indra P. Mukerji, J.
(G. P. Mukerji, J.)*

Later:

Considering the circumstances, the Receiver will stay her hands till 15th January, 2013, to enable the judgment debtors to approach the Appeal Court.

Urgent Xerox certified copy.

*sdf Indra P. Mukerji, J.
(G. P. Mukerji, J.)*

CERTIFIED TO BE A TRUE COPY

Prabir K. Das 11.01.13

Authorised under Section 76 of
the Indian Evidence Act, 1872
(Act-1 of 1872)

*4-10
Exd
Srabani Bhattacharyya
11.01.13*

Tisnita Chatterjee



21 JAN 2013

[424/09]

In the High Court at Calcutta
Ordinary Original Civil
Special Jurisdiction

EC 127/2012
CS 619/1930

- i) Date of application on for Copy 21.12.12
- ii) Date of notifying the charges. 10.01.13
- iii) Date of putting in the charge. 10.01.13
- iv) Date on which the copy is ready for delivery. 11.01.13
- v) Date of Making over the copy to the applicant. 11.01.13

A. P. Reference No. of 19

Raman Prasad

Verus

Smt Narayani Devi
Dhanu 2012

Placed
Superintendent, 11.1.13
Copyists' Department
High Court, O.S.
D. Ghoshal
11/1/13

Judgment on: 21.12.12

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Judgment delivered by the Hon'ble Mr Justice I. P. Mukherjee and the Hon'ble Mr. Justice



ADDITIONAL REGISTRAR
OF APPEALS
21 JAN 2013

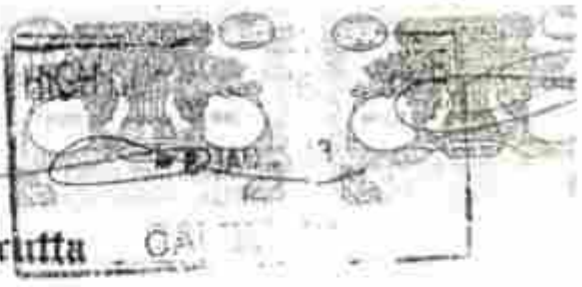
Filed t 8th day of Jan '13

Assistant Registrar

40-10,000

Moumita Chatterjee Singhvi & CO.

46



In the High Court at Calcutta
Ordinary Original Civil
Special Jurisdiction

EC 127/2011.

Income-Tax Reference No.

CS 669/1985

of 19

Versus Pawan Properties.

vs
Smt. Narayani Devi Dhanania & os.

Present :

The Hon'ble Mr. Justice I. P. Mukerji
and
The Hon'ble Mr. Justice

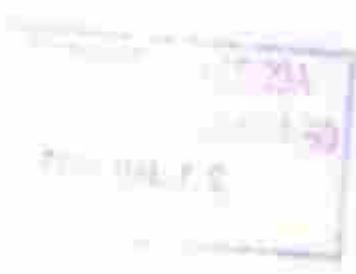
Appearance :

For Applicant

For Respondent

Heard on:

Judgment on: 21.12.12



Treemita Chatterjee

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ADDITIONAL RECEIPT
OF ASSESSMENT
21 JAN 2013

Govt. of West Bengal
Directorate of Registration & Stamp Revenue
eChallan

GRN: 19-201213-000096189-1

Payment Mode: Online Payment

GRN Date: 16/01/2013 15:43:21

Bank: AXIS Bank

BRN: 8226587

BRN Date: 16/01/2013 15:38:30

DEPOSITOR'S DETAILS

Id No. : 1902L000001086/2/2013
(Query No Query Year)

Name : PAWAN PROPERTIES

Contact No. : Mobile No. : +91 9830091899

E-mail : ssn@koll.in

Address : 10 B.R.B.BASU ROAD, KOLKATA - 700001

Applicant Name : Mr. Arun Gagar

Office Name : A. R. A. - II KOLKATA, Kolkata

Office Address :

Status of Depositor : Others

Purpose of payment / Remarks : Requisition Form Filled in Registration Office

PAYMENT DETAILS

| Sl. No. | Identification No. | Head of A/C Description | Head of A/C | Amount (₹) |
|--------------|---|--|--------------------|-------------------|
| 1 | 1902L000001086/2/2013 | Property Registration- Stamp duty | 0030-03-103-003-00 | 11131558 ✓ |
| 2 | 1902L000001086/2/2013 | Property Registration- Registration Fees | 0030-03-104-011-16 | 1749258 ✓ |
| Total | | | | 12880824 ✓ |
| In Words : | Rupees One Crore Twenty Eight Lakh Eighty Thousand Eight Hundred Twenty Four only | | | |



21 JAN 1918
CALCUTTA
INDIA



Government Of West Bengal
Office Of the A.R.A. - II KOLKATA
District:-Kolkata

Endorsement For Deed Number : I - 00745 of 2013

(Serial No. 00688 of 2013)

Identified By: Dulal Ghosh, son of Late Kartick Ghosh, Shyampur, P.O. :- ,District:-Howrah, WEST BENGAL, India, Pin :-711314. By Caste: Hindu, By Profession: Business.

(Dulal chandra Saha)
ADDL REGISTRAR OF ASSURANCES-II



(Dulal chandra Saha)
ADDL. REGISTRAR OF ASSURANCES-II



Government Of West Bengal
Office Of the A.R.A. - II KOLKATA
District:-Kolkata

Endorsement For Deed Number : I - 00745 of 2013
(Serial No. 00688 of 2013)

On 21/01/2013

Certificate of Admissibility(Rule 43,W.B. Registration Rules 1962)

Admissible under rule 21 of West Bengal Registration Rule, 1962 duly stamped under schedule 1A, Article number : 23, 5 of Indian Stamp Act 1899.

Registration Fees paid Online using Government Receipt Portal System (GRIPS), Finance Department, Govt. of WB

Registration Fees Rs. 17,49,256/- paid online on 16/01/2013 3:38PM with Govt. Ref. No. 192012130000961891 on 16/01/2013 3:43PM, Bank: AXIS Bank, Bank Ref. No. 8226587 on 16/01/2013 3:38PM, Head of Account: 0030-03-104-001-16, Query No:1902L000001086/2013

Certificate of Market Value(WB PUVI rules of 2001)

Certified that the market value of this property which is the subject matter of the deed has been assessed at Rs. -15,90,22,119/-

Certified that the required stamp duty of this document is Rs.- 11131568 /- and the Stamp duty paid as: Impressive Rs. - 100/-

Stamp Duty paid Online using Government Receipt Portal System (GRIPS), Finance Department, Govt. of WB

Stamp duty Rs. 1,11,31,568/- paid online on 16/01/2013 3:38PM with Govt. Ref. No. 192012130000961891 on 16/01/2013 3:43PM, Bank: AXIS Bank, Bank Ref. No. 8226587 on 16/01/2013 3:38PM, Head of Account: 0030-02-103-003-02, Query No:1902L000001086/2013

Presentation(Under Section 52 & Rule 22A(3) 46(1),W.B. Registration Rules,1962)

Presented for registration at 12.01 hrs on :21/01/2013, at the Office of the A.R.A. - II KOLKATA by Mr Shyam Sundar Nangalia ,Claimant.

Admission of Execution(Under Section 58,W.B.Registration Rules,1962)

Execution is admitted on 21/01/2013 by

1. Mr Shyam Sundar Nangalia
Partner, M/s. Pawan Properties, 3rd Floor, 10/1 D, Lal bazar Street, Kol, Thana:-Hare Street, P.O. :-
District:-Kolkata, WEST BENGAL, India, Pin :-700001.
By Profession : Business
Identified By Dulal Chandra Saha, son of Late K C Ghosh, Uluberia, . . P.O. :- ,District:-Howrah, WEST BENGAL, India, By Caste: Hindu, By Profession: Law Clerk.
2. Mrs Moumita Chatterjee, wife of Sri Kaushik Chatterjee , 32/1 A, Gobinda Ghosal Lane, Kol, Thana:-Bhawanipore, P.O. :- ,District:-South 24-Parganas, WEST BENGAL, India, Pin :-700025, By Caste Hindu, By Profession : Advocate



(Dulal chandra Saha)
ADDL. REGISTRAR OF ASSURANCES-II

Government of West Bengal
Department of Finance (Revenue) , Directorate of Registration and Stamp Revenue
Office of the A.R.A. - II KOLKATA, District- Kolkata
Signature / LTI Sheet of Serial No. 00688 / 2013, Deed No. (Book - I , 00745/2013)

I . Signature of the Presentant

| Name of the Presentant | Photo | Finger Print | Signature with date |
|--|---|---|--|
| Shyam Sundar Nangalia 32 C, New Road, Block - B, 3rd Floor, Kol, Thana:-Alipore, P.O. :- ,District:-South 24-Parganas, WEST BENGAL, India, Pin :-700027 |  21/01/2013 |  LTI 21/01/2013 |  21/1/13 |

II . Signature of the person(s) admitting the Execution at Office.

| Sl No. | Admission of Execution By | Status | Photo | Finger Print | Signature |
|--------|--|--------|---|---|---|
| 1 | Shyam Sundar Nangalia Address -32 C, New Road, Block - B, 3rd Floor, Kol, Thana:-Alipore, P.O. :- ,District:-South 24-Parganas, WEST BENGAL, India, Pin :-700027 | Self |  21/01/2013 |  LTI 21/01/2013 |  |

Name of Identifier of above Person(s)

Dulal Ghosh
Uluberia, , P.O. :- ,District:-Howrah, WEST BENGAL,
India,

Signature of Identifier with Date

2 Moumita Chatterjee
Address -32/1 A, Gobinda
Ghosal Lane, Kol,
Thana:-Bhawanipore, P.O. :-
,District:-South 24-Parganas,
WEST BENGAL, India, Pin
:-700025

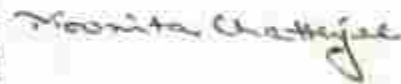
Self



21/01/2013



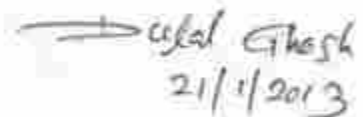
21/01/2013



Name of Identifier of above Person(s)

Dulal Ghosh
Shyampur, P.O. :- ,District:-Howrah, WEST BENGAL,
India, Pin :-711314

Signature of Identifier with Date


21/1/2013




(Dulal chandra Saha)
ADDL. REGISTRAR OF ASSURANCES-II
Office of the A.R.A. - II KOLKATA

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Name Shyam Sunder Nangali
 Signature .. [Handwritten Signature]

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Name Dharmata Chaitanya
 Signature [Handwritten Signature]

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Name
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Name




ACKNOWLEDGEMENT
OF RECEIPT
21 JAN 2013

Certificate of Registration under section 60 and Rule 69.

Registered in Book - I
CD Volume number 3
Page from 4941 to 4976
being No 00745 for the year 2013.




(Dulal chandra Saha) 22-January-2013
ADDL. REGISTRAR OF ASSURANCES-II
Office of the A.R.A. - II KOLKATA
West Bengal