
Cancellation of Documents

When the parties to a deed agree that the deed should not operate, it is necessary that the deed should be returned to the executant and a deed of cancellation should be executed. Such a deed should be registered if the original deed had been registered.

FORMS

Agreement to Rescind a Contract

THIS AGREEMENT is made this day of.....BETWEEN AB son of residing at of the one part and CD son of residing at.....of the other part.

WHEREAS by an agreement dated the day of, and made between the said AB and the said CD, the said CD agreed to erect, construct and build for the said AB at a dwelling house etc. on the terms and conditions therein mentioned: AND WHEREAS differences having arisen between the said AB and the said CD regarding the terms, conditions and implications of the said agreement, the parties hereto have agreed to rescind the said agreement: NOW IT IS HEREBY AGREED as follows:

1. The aforesaid agreement made on the day of, be and is hereby rescinded.

2. That on adjustment of the account between the parties of all sums paid by the said AB and all work done, executed or performed by the said CD a further sum of Rs. is found due and payable to the said CD which the said CD doth hereby admit, acknowledge and confirm to have received from the said AB.

3. Each party releases the other from the obligation arising out of performance or non-performance of the contract under the aforesaid agreement.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed and delivered by AB

Signed and delivered by CD

WITNESS:

Deed of Cancellation

THIS DEED OF CANCELLATION made this day of 2000 BETWEEN P (hereinafter referred to as the PURCHASER) of the one part AND V (hereinafter referred to as the VENDOR) of the other part:

WHEREAS by an Agreement made between the parties hereto and registered in the office of the Sub-Registrar of Book No. I, Vol. Pages being No. for the year 1998 it was witnessed that the party hereto of the 1st part agreed to purchase the property fully mentioned in the Schedule thereto as also in the Schedule hereunder written and hereinafter referred to as the said property at and for the sum of Rs. on terms contained therein.

AND WHEREAS the party of the 1st part paid to the party of the 2nd part a sum of Rs. as earnest money on the basis of the said agreement.

AND WHEREAS the said sum of Rs. was in terms of the said agreement secured by a charge on the said property.

AND WHEREAS the said agreement is in full force and virtue.

AND WHEREAS it has now been agreed by and between the parties hereto that the party of the 2nd part shall refund to the party of the 1st part the said sum of Rs. and also pay a further sum of Rs. on account of all his costs, charges and expenses for searches, investigation of title and on other accounts whereupon the said agreement shall stand cancelled.

AND WHEREAS the party of the 2nd part has refunded to the party of the 1st part the said sum of Rs. and paid Rs. as aforesaid which the party of the 1st part doth hereby as also by the receipt hereunder written, admit, acknowledge and confirm.

AND WHEREAS the party of the 2nd part has also returned to the party of the 1st part the said agreement for sale dated the endorsed as cancelled. NOW THIS INDENTURE WITNESSETH that for the consideration as aforesaid the party hereto of the 1st part doth hereby agree, declare and

confirm that he has no longer any right, title, claim or interest in the said property under and by virtue of the hereinbefore recited agreement for sale which stands cancelled with immediate effect and shall hereafter be of no force and effect whatsoever AND FURTHER that the party of the 1st part doth hereby and hereunder grant, release, discharge, reassure the said property and every part thereof unto and to the party of the 2nd part freed and discharged from the charge, security, claim, created thereon under and by virtue of the said recited agreement for sale as aforesaid and all claims, demand, cause of action arising out of or in connection with the same AND the party of the 1st part doth hereby covenant with the party of the 2nd part that he has not done any act, deed or thing whereby or by reason or means whereof he is prevented or hindered from cancelling the said agreement for sale and/or releasing and reassuring the said property in the manner as aforesaid.

The Schedule above referred to

OR HOWSOEVER OTHERWISE the same may be butted, bounded, called, known, numbered, described or distinguished.

IN WITNESS WHEREOF the party of the 1st part doth hereunder set and subscribe his hand and seal the day, month and year first above-written.

Signed, sealed and delivered
at in the presence of:

P

Deed of Cancellation of a Conveyance

THIS INDENTURE made this day of 1999 BETWEEN AB son of etc. hereinafter referred to as the PURCHASER which expression shall of the one part AND CD son of hereinafter referred to as the VENDOR which expression shall of the other part WHEREAS by conveyance dated day of 19..... made between the parties hereto and registered in Book I, Vol., Pages to being No. for the year in the Office of the Registrar of it was witnessed that the VENDOR had for the consideration mentioned therein purported to grant, convey, sell, transfer, assign and assure the under mentioned property unto and to the use of the PURCHASER absolutely and for ever so as to enable the purchaser to have, hold, own, possess and enjoy the same peacefully and quietly without any claim, demand, interruption by any person or persons on behalf of and/or claiming under the VENDOR and to receive the rents, issues and other profits and benefits of the property AND WHEREAS the said conveyance though contained *inter alia* all the necessary covenants as are usual on the part of a VENDOR in the case of a sale of the property of that nature, viz. the covenant as to good title, peaceful possession, non-encumbrance, further assurance and indemnity, but nevertheless, the same

could not be acted upon or otherwise given effect to inasmuch as the VENDOR did not and further could not deliver possession of the property up till now owing to obstruction and/or resistance as to such delivery of possession created by several persons still residing in the said property. AND WHEREAS the PURCHASER has in the circumstances aforesaid been kept out of possession of the said property and so deprived of all its rents, issues and other profits and other benefits thereof and also of all benefits of the moneys invested AND WHEREAS in the event hereinbefore stated the conveyance has been infructuous to all intents and purposes AND WHEREAS in the circumstances hereinbefore stated the parties have mutually agreed and decided to be relieved of their respective liabilities arising out of the transaction of sale by having the said conveyance cancelled against refund of the consideration money only all other accounts between them having been settled and adjusted AND WHEREAS the said PURCHASER has returned the said conveyance to the VENDOR endorsed as "cancelled" thereon and the VENDOR has also refunded the consideration money to the PURCHASER which the PURCHASER do hereby admit, acknowledge and confirm NOW THIS INDENTURE WITNESSETH that for the consideration as aforesaid the parties hereto do hereby mutually agree and declare the said conveyance shall be and has in fact and truth been cancelled with immediate effect (as if the same was never executed or brought into existence) and as such the same was and shall be of no force and effect hereafter and This Indenture Further Witnesseth that parties hereto further agree and declare that in consequence of such cancellation as hereunder made all right, title, interest and claim, demand, etc. of the purchaser in the property concerned under and by virtue of the purported deed of conveyance are hereby retransferred, reassigned, and reassured shall be deemed as completely divested, extinguished and discharged and reverted fully to and vested in the VENDOR as his former estate and they are both placed in the same position in which they were before the sale and This Indenture furthermore witnesseth that the parties hereby mutually agree and covenant to each other that neither of them has done, executed or performed any act, deed or thing or suffered anything to the contrary whereby or by reason or means whereof the said property may in any way be affected or prejudiced in title or estate or the parties or any of them may be hindered or prevented from cancelling the said Indenture of Conveyance and releasing and re-transferring the said property unto and to the use of the VENDOR in the manner hereinbefore indicated.

The Schedule above referred to

IN WITNESS WHEREOF:

Signed, sealed and delivered
 at in the presence of:

AB
 CD

Deed of Revocation of Trust

THIS DEED OF REVOCATION OF TRUST is made this the day of, BETWEEN AB of, etc., (hereinafter called the SETTLOR), of the one part and CD of etc., and EF of etc. (hereinafter called the TRUSTEES) of the other part.

WHEREAS by a deed of trust made the day of I, the SETTLOR, transferred the properties described therein as also in the schedule hereto upon trust for the objects specified therein AND WHEREAS XY a beneficiary under the said deed of trust having since died the said objects failed AND whereas, I, the SETTLOR, having also reserved free power and authority to revoke the trust am desirous of creating a fresh trust after revoking the said trust NOW THIS DEED OF REVOCATION OF TRUST WITNESSES that in the exercise of the power of revocation expressly reserved in the said deed of trust and all other powers enabling me, I, the said AB hereby and hereunder revoke and determine the trust created by the aforesaid deed of trust to all intents and purposes as if the same was never created nor intended.

IN WITNESS, etc.

The Schedule above referred to

Signed, sealed and delivered

AB
CD
EF

Deed of Cancellation

THIS AGREEMENT IS MADE at Calcutta the 10th day of January 2000 BETWEEN Mr. X of hereinafter referred to as the first party and Mr. Z of hereinafter referred to as the second party.

WHEREAS the first party has executed a Deed of Conveyance on the day of in favour of the second party in respect of the land and premises situated at and more particularly described in the Schedule to the said Deed.

AND WHEREAS the second party had agreed to pay to the first party a sum of Rs. 5,00,000 as consideration for the sale of said land and premises for the said amount but the second party failed and neglected to pay and has admitted his inability to pay the said sum.

AND WHEREAS the title to the said property was intended to be passed to the second party on payment of the said amount.

AND WHEREAS the possession of the said property has not yet been given to the second party.

AND WHEREAS the said Deed of Conveyance has been lodged for registration with the Registrar of Assurances at Red Cross Place, Calcutta but the first party has not yet admitted the execution thereof.

AND WHEREAS the second party was unable to make arrangement for payment of the said consideration money, the first party and second party have therefore agreed to cancel the said Deed of Conveyance and they have also agreed to cancel the said agreement and do hereby record the said agreement of cancellation.

NOW IT IS AGREED AND DECLARED by the parties hereto that in view of inability of the purchaser to pay the consideration money the parties hereto by mutual consent do hereby cancel the said Deed of Conveyance and agree and confirm that the same is cancelled and shall be deemed to be and treated as cancelled and never to have been acted upon.

AND it is agreed and confirmed that the said property has not passed to the second party and second party does not claim any right, title or interest in the said property under or by virtue of the said Deed of Conveyance.

AND it is further agreed and declared that all costs, charges and expenses including the stamp duty and registration fees in respect of the Deed of Conveyance and of these presents are to be borne and paid by the second party wholly.

IN WITNESS WHEREOF the parties have executed these presents on the day, month and year first above-written.

Signed and delivered by the
within-named first party Mr. X
in the presence of:

Signature

Signed and delivered by the
within-named second party Mr. Z
in the presence of:

Signature

11

Clubs and Societies

Halsbury in his *Laws of England* has defined club as a club except a proprietary club or an investment club may be defined as a society of persons associated together, not for the purposes of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose; but trading activities will not destroy the nature of a club if they are merely incidental to the club's purposes. The association must be private and have some element of permanence. The purposes for which a club exists may be altered or modified, and there is no rule of law which requires a club to fulfil each and every separate purpose for which it was originally formed. Once the mutual assent of the members has been secured, the doctrine of *ultra vires* has no place with respect to the activities of such an association.¹

A club may be of two kinds, viz.—(i) a members' club or (ii) a proprietary club. The properties of the club generally vest in the members, while in the latter case an individual or a limited company or a society as the case may be owns the property nevertheless the members are allowed to make use of that property on certain terms. The members' club may be an unincorporated society or may be registered under the Companies Act (Act 1 of 1956) or Societies Registration Act (Act XXVI of 1981). A proprietary club is run by the owner or the owners, as the case may be, for purposes of gain, while in a members' club it is not so. It is necessary in a society or club so registered that the Memorandum of Association should contain the name of the society, the objects of the society, the names, addresses and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations of the society, certified to be a correct copy by not less than three members of the governing body has to be filed

1 Halsbury's *Laws of England*, 4th Ed., vol. 6, p. 56.

with the Memorandum of Association with the Registrar of Companies or Society as the case may be of the State. The proceedings of such a society must conform to the provisions of the Societies Registration Act. If the members' club is registered under the Companies Act 1956 it must also conform with the provisions of that Act.

In an unincorporated club the liability of an individual member (even if he be a secretary or other office-bearer of the club) for debts incurred by the club depends upon whether he has in any way pledged his personal credits.

FORMS

Memorandum for Businessmen's Club

- (1) The name of the club shall be Businessmen's Club.
- (2) The objects of the club are:
 - (a) to provide for a common place for meeting of the members of the club for the purposes of recreation, discussion of common problems, encouragement of thrift, advancement of social welfare ideas, mutual assistance, protection of interests of the members, etc.;
 - (b) to provide for instruction and diffusion of knowledge amongst the families of members, their dependants and employees;
 - (c) to provide for medical assistance and other relief measures for the members, their dependants and employees;
 - (d) to develop civic consciousness, to raise standard of living and to take steps for development and enactment of appropriate legislation for the interests of the members and the business community;
 - (e) and for other objects and purposes which may be conducive to and beneficial for the members and the business community.
- (3) No person other than a businessman shall be eligible to be a member of the club.
- (4) The subscribers to this Memorandum of Association shall be the original members of the club. The total number of members of the club shall not exceed 200 unless in a special general meeting the number is altered by a three-fourth majority of the members present.
- (5) There shall be a committee of management consisting of seven members (besides Chairman, Secretary and Treasurer) elected at the annual general meeting of the club to be held in the month of April each year or as early as possible thereafter. Three members of the committee shall retire every year voluntarily or by lot. There shall be elected also a chairman, a secretary and a treasurer respectively at the annual general meeting after

the election of the members of the managing committee who shall hold office till the termination of the next annual general meeting at which the office-bearers inclusive of the members of the managing committee have been elected for the next ensuing year. The property of the club shall vest in the managing committee and in the event of any member of such committee dying or having been expelled or having become incapable of acting the said properties of the club shall continue to vest in the remaining members of the managing committee which may include also any member annually added thereto.

(6) No new member shall be elected unless he has deposited a proposal fee of Rs. and subscription for the first three months. This deposit shall be known as proposal fee which shall belong absolutely to the club irrespective of the fact whether the proposed candidate has been elected or not. In the event of the proposed candidate not being elected the subscription aforementioned shall be returned to him and he will not be eligible for being elected till the expiry of six months from the date of such rejection of his proposal for election. No new deposit, however, will be required to be made by him if he seeks election at a subsequent time. A member shall be deemed to be duly elected if three-fourths of the members present vote in his favour for election. A person who has ceased to be a member and desires to be re-admitted to the club as a member may be so admitted by deposit of any proposal fee provided he had not been expelled from the club and provided there is no objection to his readmission by one-fourth of the total number of members of the club who signify their dissent to his re-admission in writing. Candidates for admission must be proposed by one member and seconded by another, and the name of the candidate in full with his address shall be inserted in the candidate's book, and placed in some conspicuous part of the club for 14 days. The election of the member shall be by ballot.

(7) There shall be payable by each member a monthly subscription of Rs. which is subject to alteration in an annual general meeting at which at least three-fourths majority must be more than one-half of the total number of members of the club.

(8) A member may resign in writing at any time and his resignation shall take effect immediately but without prejudice to any liability or obligation incurred by him theretofore while he was a member. He shall cease to have any interest in the property of the club or exercise any rights in respect thereto at such resignation submitted by him in writing to the secretary.

(9) If the conduct of any member either in or out of the club houses shall in the opinion of the committee or of any 21 members of the club who shall certify the same in writing, be injurious to the character, reputation and interests of the club or who is alleged to be guilty of any dishonourable or disreputable conduct in his dealings with a member of the club, the committee after such enquiry as may be necessary and after giving

opportunity to the member concerned to explain his conduct in writing, shall be empowered to request such member to resign, and if such member shall not resign within one month, the committee shall order his name to be erased from the list of members, and he shall cease to be a member; provided that no such request be sent to any member unless the resolution to send the same be agreed to by two-thirds of the committee actually present at a meeting convened for the purpose: provided also that in such meeting of the committee it is unanimously resolved that immediate expulsion of the member whose conduct in question be advisable the committee shall be empowered forthwith to expel such member, should it, however, be the opinion of any 21 members that the case of the members so expelled might be reconsidered without damage to the club, the committee shall call an extraordinary general meeting, to which the matters shall be submitted, such meeting to consist of at least two-thirds of the total number of members of the club, and if a majority of not less than three-fourths of such meeting shall agree to the reinstatement of that member he shall be reinstated. Any member expelled from the club shall be deemed to have forfeited his proposal fee and subscription, and shall subject to the above provisions, be for ever after ineligible for re-election. The rules of natural justice demand that a man is not to be removed from office or membership or otherwise dealt with to his disadvantage without having a fair and sufficient notice of what is alleged against him and an opportunity of making his defence; and that the decision whatever it is must be arrived at in good faith with a view to the common interest of the society or institution concerned. If these conditions are satisfied a Court of Justice will not interfere with the decision.

The expression 'dishonourable' or 'disreputable' conduct shall include:

- (a) wilful and intentional non-fulfilment of contract, or fraudulent and flagrant breach of contract;
- (b) frivolous repudiation of contract;
- (c) refusal to refer any question in dispute to arbitration or to abide by an arbitration or appeal award, unless arbitration is specifically excluded by the contract.

(10) The club shall be opened to the members between 6 p.m. and midnight every day unless otherwise determined in a special general meeting. A member of the committee (including the chairman, secretary and the treasurer), however, shall be entitled to visit the club premises at any hour of the day and inspect any place, book or article at all reasonable hours.

(11) There shall be an annual general meeting of the members to be held in April or as early as possible thereafter in each year at which the member of the committee and the officers of the club shall be elected, the accounts shall be passed and other agenda as proposed by the committee or by any seven members after a previous notification thereof for at least fourteen

days shall be taken into consideration and adopted as required. The account shall be audited annually and the annual balance-sheet shall be submitted to the members at least fourteen days before the said annual general meeting.

(12) The management of the affairs of the club shall be in the discretion of the committee inclusive of the said office-bearers whereof the chairman of the club shall preside if present and in his absence a member of the committee as proposed, seconded and assented to by the majority of the members present shall preside. The committee shall be entitled to hold extraordinary or special general meetings from time to time as the committee may think fit. The extraordinary general meeting may be required to be held by 21 members of the club and special general meeting may be called by the chairman as and when necessary. The members of the committee may also call an extraordinary general meeting by directing the secretary to issue the notices therefor. No extraordinary general meeting shall be called without seven days' previous notice therefor. A special general meeting may be called by the chairman after a two days' notice therefor. The notices shall be sent per peon or under a certificate of posting, by post to the members at the address given to the secretary therefor.

(13) A member shall be entitled to invite not more than two guests at the premises of the club but such guests shall not be entitled to be present at any general special or extraordinary meeting of the members or of the meeting of the committee. No expelled member shall be invited as a guest into the club nor shall such a guest be allowed to remain in the club if more than 21 members desire his eviction from the premises of the club.

(14) The members shall not be liable personally for goods supplied to or obligation incurred by any officer of the club on behalf of the club but the property of the club shall be liable to meet such debt or obligation in the hands of the managing committee. The managing committee shall be entitled to sue and be sued in the name of the club provided the rules relating thereto embodied in the Code of Civil Procedure regarding such matters are complied with.

(15) The aforementioned rules shall be liable to alteration by a majority of three-fourths of the members present in a meeting specially convened therefor whether in the extraordinary or special general meeting or whether embodied in the agenda for the annual general meeting provided, however, that a majority of the total number of members of the club adopt the said alteration. The managing committee is empowered to frame bye-laws for the conduct of the proceedings and affairs of the club or as may be conducive to the fulfilment of objects of the club and are in conformity and not in conflict with the rules aforementioned.

(16) On the dissolution of the club the properties of the club shall be transferred to such other club or association or party as may be determined

by the members at the meeting where the resolution of dissolution is passed, provided that such a resolution shall not take effect unless confirmed by another meeting of the members held after 21 days of the prior resolution for dissolution and disposal of the properties of the club.

Memorandum of Association of the Club Ltd.
(Limited Club)

1. The name of the Company shall be "THE CLUB LIMITED".
2. The Registered Office of the Company shall be situated in West Bengal.
3. The objects for which the Company is established are:
 - (a) to provide facilities for games, sports and pastimes in the neighbourhood of and to afford to its members all the usual privileges, advantages, conveniences and accommodation of a residential Club;
 - (b) to take over the effects and liabilities of the present unincorporated Association, known as the including its outstanding debts;
 - (c) from time to time to borrow or raise moneys which may be required for the purpose of the Club upon Bonds, Debentures, Bills of Exchange, Promissory Notes or other obligations or securities of the Company or by mortgage or charge of the Company's property, including its uncalled Capital (if any), and the amount guaranteed by the members of the Company for the time being, as mentioned in the fourth clause hereof;
 - (d) to purchase, take on lease or hire or otherwise acquire, any movable or immovable property, or any right, or privileges necessary or convenient for the purposes of the Club;
 - (e) to lay out and prepare, adopt, and improve any lands, for the purpose of riding, holding, horse and other shows, horse racing, shooting, playing golf, tennis, croquet or other sports or games thereon, or for any kind of athletic sports, entertainment, amusements or recreations and to construct, alter, keep in repair houses, pavilions, refreshment rooms, stables and other buildings erections and conveniences whether of a permanent or temporary nature which may seem directly or indirectly conducive to the Company's objects, and to pull down or demolish, sell, or otherwise dispose of, any buildings or erections not so required;
 - (f) to invest the money of the Company, not immediately required, in such securities as may from time to time, be determined by the Committee including any Debentures issued by the Company;

- (g) to sell, improve, manage, develop, lease, mortgage, dispose of or otherwise deal with all or any part of the property of the Company with power especially to sell, deal in, and distribute all kinds of apparatus required for any game, sport or pastime, and all kinds of provisions, wines, spirits, tobacco and other stores among Members and Honorary or Temporary Members, for consumption either inside or outside the premises belonging to or used by the Club, and to give and contribute towards prizes, cups, medals, stakes and other rewards whether competed for by members or others;
- (h) to subscribe to, become a member of or otherwise co-operate with any other Association, whether incorporated or not, whose objects are altogether or in part similar to those of this Company;
- (i) to remunerate any person or Company for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing of any Debentures or other Securities of the Company;
- (j) to do all or any of the above things through trustees, agents or otherwise, and either alone, or in conjunction with others;
- (k) generally to do all such other things as are incidental or conducive to the attainment of the above objects.

4. Every member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up during the time that he is a member, or within one year afterwards for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs.

5. If upon the winding up or dissolution of the Company, there remains after the satisfaction of all debts and liabilities, any property whatsoever the same shall be paid to or distributed among the members of the Company, in equal shares.

WE, the several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Association.

Names, addresses & descriptions
of subscribers

Names, addresses & descriptions
of witnesses

Dated this day of 2000

Model Bye-laws of a Club

1. **Guests.** Non-members, other than permanent Guests, may be admitted to the Club premises only when accompanied by a Member or his permanent Guest. The Committee reserves the right to check all persons entering the Club premises to ensure that only Members and their genuine guests are admitted.

A Visitors' Book is kept in the main Entrance Hall of the Club House in which, in order to comply with the Excise regulations members are requested to enter the names of their guests other than golfing and tennis guests, for whom separate books are provided.

Members introducing guests are responsible for all charges incurred on their account. Any individual, particularly a resident of Calcutta should not normally be introduced as a guest more than six times in a year.

Members' dependent children upto the age of 21 years only may use their membership; special application to be made in respect of their children between the ages of 21/23 years. Beyond the age of 23 years, members' children must conform to guest rules.

2. **Children.** Members or their permanent Guests bringing children to the Club premises are particularly requested to see that they do not interfere with the convenience of other members.

Ayaks are not allowed on the gravelled area or on the Tea Lawn, other than in the children's playground.

On Race mornings and afternoons, only those children who are accompanied by their own parents may use the precincts of the Club other than the children's playground.

3. **Dogs.** Dogs must be kept under proper control, and when within the precincts of the Club House they must be on a leash. Dogs may not be taken into any of the Club buildings.

Any dog in the neighbourhood of the Club House which barks or otherwise causes annoyance to members must be sent to the garage in charge of a dog boy.

Dogs brought into the Club compound on track must be under control at all times and when in the vicinity of the Race Course they must be on a lease.

On Race mornings and afternoons they may not be brought into the Club Grounds even in cars.

4. **Closing hours.** The Club House will be closed at 8 p.m. on week days and 10 p.m. on Saturdays, Sundays and Public Holidays or at such times as the Committee may decide.

5. **Motor Cars.** Are not allowed to stand in the porch or in the roadway near the Club House, on Saturdays, Sundays and Public Holidays.

Members are requested to assist the Committee by ensuring that their cars are parked between the white lines in the covered garage area or the parking spaces defined in the uncovered area to the North of the new tennis courts. Under no circumstances may cars be parked along the verges of the 'IN' and 'OUT' roads.

The route to the Garage is via the Club House. Cars or other vehicles may not be driven direct to the garage from the main Entrance Gate except on Race Afternoons and on track mornings.

Members are requested to see that their cars are driven slowly inside the Club Grounds and they do not interfere with golfers when passing in front of the 13th tee. Horns should not be sounded within the Club Grounds.

6. **Transistors & Radios** may not be played in the vicinity of the Club House. Music is available in A.C. Bars over weekends and holidays.

7. **Tipping of any Club Staff** is strictly forbidden except only when an individual is employed as a Caddy. Appreciation of service may be shown by a contribution to the Gratuity Fund for which a book is maintained by the Club Stewards.

8. **Complaints** should be addressed to the Managing Member in writing or entered in a book which is kept for that purpose in the lounge.

9. **Suggestions.** Constructive suggestions are welcomed, and may be entered in 'SUGGESTION BOOK' which is kept in the lounge.

GOLF

1. **Caddies.** Caddies must be engaged through the Caddy Master, and the Caddies' Engagement Register must be signed before commencement of play or practice.

2. **Payment due to caddies** must, in all cases, be made by cash.

3. The employment of Forecaddies is permitted except where expressly disallowed, *e.g.* when playing in competition.

4. A match between a member and a playing caddy has the same standing on the course as other Two-Ball Matches.

5. **Starting sheet.** Matches will start in the order written on the Starting Sheet.

A match may not be entered on the Starting Sheet until two players in the match are within the Club premises, except as provided for under Bye-laws 6 hereunder.

6. **Booking of times.** Starting times for Saturdays, Sundays and holidays will be allotted, and Members may apply for times on those days not more than 14 days before the day of play. All timings for competitions will be allotted.

Applications for starting times must specify the names of the players in the match. Where a guest is one of a match, his name and the designation 'GUEST' must be entered on the slip.

7. **Allotment of times.** The allotment of times in the case of Three and Four Ball matches, Fixed matches, will be subject to the limits laid down from time to time by the Committee. This chart will be posted on the Club Notice Board and Members will be notified of changes periodically when they occur.

8. **Forward times.** Subject to Bye-law 9 hereunder, any match may start at the 8th or any subsequent Tee, provided that the following match has not reached the preceding Tee. A forward booking may be made at the 1st Tee—But only for alternate times—on the Starting Sheet and, if ready to start at such times on the 1st Tee, such match will be entitled to play. Under no circumstances are three or four-ball matches, mixed matches and mixed foursomes permitted to commence play outside the times laid down by the Committee.

9. **Cutting in.** Members may not at any time cut in unless there is a clear hole behind them; for example, no match may start from the 8th Tee when there are players on the 7th hole or when players have moved off the 6th green. Similarly, no match may start from the 11th, 12th, 13th, 15th or 17th Tees when the next following match has left the 9th, 10th, 11th, 13th or 15th green respectively.

10. **Shamianas.** Players must leave the shamianas and be on the Tees at the 5th and 15th holes before the match ahead has left the green, and be on the 10th tee before the match ahead has played a second shot.

11. **Golfing guest.** Members may introduce, as Golfing Guests, visitors to, or residents of Calcutta, provided that no resident non-Member shall be introduced on more than six occasions in one calendar year in all, irrespective of the Members introducing him. Guests must play either with their introducer or his Permanent Guest.

Names of guests must be entered in the Guest Book in the 18th Bar prior to commencing a round.

12. **Green Fees.** Green Fees will be charged to Members of Golfing Guest introduced by them or playing with the Permanent Guest as follows:

		<i>On Saturdays Sundays and Holidays</i>		<i>Other days</i>
Gentlemen	.....	Rs.	.....	Rs.
Ladies	.....	Rs.	.....	Rs.
Visiting Members	.....	Rs.	.....	Rs.

13. **18th Shamiana Bar.** Ladies are not permitted in this Bar before 1 p.m. on Sundays and Holidays.

14. **Dogs.** Dogs, if brought on the course, must be kept under control. Dogs are not allowed to be brought into the Club compound on Race days.

15. **Closure of Course.** The gold course, or any part thereof, may be closed, owing to weather conditions at the discretion of the Managing Member or a Member of the Golf Sub-Committee.

CATERING

1. Breakfast, Lunch, Tea and Supper are served daily on demand, according to the standard menu. Members are asked to give 24 hours' notice of any special menus, lunch parties, etc. Except for Club evenings and special dinner parties booked in advance, the kitchen will normally be closed at 9 p.m.

2. Large and small Cakes, Shortbreak, Club Biscuits and Fudge may be purchased from the Club Bakery on giving 24 hours' notice.

Sausages, Bacon, Pate and other items can also be obtained from the Club Deep Freeze.

3. Members may not have picnics within the Club grounds without the previous sanction of the Managing Member.

4. The Club House and/or the Air Conditioned Bars may be engaged by Members for private parties.

5. Under Excise Regulations, children under the age of 18 years are not permitted in the A.C. Bar.

TENNIS

1. **Booking.** A member desiring to reserve a court or to book the marker should either enter his name personally in the book kept for that purpose, or apply by letter or telephone A chart of bookings made will be displayed each day in the tennis court area, and this may be referred to by all players.

Courts may be reserved not more than 14 days in advance, and it is helpful if 24 hours' clear notice of bookings is given.

2. **Cancellations.** If a court has been booked and is not required it will be charged for unless (a) notice of cancellation is received 24 hours before the time for which it has been booked, or (b) the court is used by some one else, or (c) it is closed under Bye-law 3 below.

Cancellation of Tennis Courts in the book must be initialled by the Member who booked the court.

3. **Closing of Courts.** The Courts may be closed on any day or days at the discretion of the Managing Member or a Member of the Tennis Subcommittee.

4. **Tennis Balls.** Members must make their own arrangements for Tennis Balls, which are also available for purchase at the Club Shop.

5. **Tennis Guests.** A fee of Rs. 3 will be charged to members for each guest introduced by them or playing with their Permanent Guest.

6. **Signing.** Members are asked to ensure that they sign for their guests, marker, ball boys, before vacating the court.

SWIMMING BATH

1. **Hours.** The Swimming Bath is open daily from 6-30 a.m. to 8 p.m. except only for annual painting in January/February.

2. **Children** using the Swimming Pool must be accompanied at all times by either a Member or Permanent Guest and under no circumstances should be left unattended in the Swimming Pool where, if not under control, they can be in danger of injury or cause nuisance to other Members.

3. **Towels.** Bath Towels are provided by the Club. They should on no account be removed from the area of the Pool and Changing Rooms.

4. **Servants.** No servants are allowed inside the Swimming Bath premises other than Club attendants.

5. **Dogs.** Dogs are not allowed within the precincts of the Swimming Bath under any conditions whatever.

ACCOMMODATION

1. **Reservation.** Booking of the Club Suites may be made through the Head Steward at the Club.

2. **Charges.** The rates for the Air-Conditioned room with attached bath have been kept intentionally low, currently @ Rs. 40 per day for Permanent Members and Rs. 70 per day for Reciprocal and Temporary Members. These charges cover electricity and service, with additional Rs. 10 for a third occupant in any room.

3. **Duration.** Two Suites are available for extended occupation by firms, whilst the others are intended for reservation for short periods. No member

may normally occupy for more than 10 days at a stretch unless there is no pending booking for the room.

4. **Accounts.** Bills in respect of occupants will be submitted weekly for payment on presentation.

5. **General.** Residents at the Club are particularly requested to abide by all Rules and covenants pertaining to CLUB.

Hacking—Bridle Path

MEMBERS and their guests are requested to refer to the Sketch Map posted on the Club Notice Boards. When using the Bridle Path they are requested to give right of way to golfers when crossing any fairway or approaching any tee.

Constitution of a Rotary Club

ARTICLE I

Name

The name of this organisation shall be of

ARTICLE II

Territorial Limits

The territorial limits of this club shall be as follows.

ARTICLE III

Object

The object of Rotary is to encourage and foster the ideal of service as a basis of worthy enterprise and, in particular, to encourage and foster:

First: The development of acquaintance as an opportunity for service;

Second: High ethical standards in business and professions; the recognition of the worthiness of all useful occupations; and the dignifying by each Rotarian of his occupation as an opportunity to serve society;

Third: The application of the ideal of service by every Rotarian to his personal, business and community life;

Fourth: The advancement of international understanding, goodwill and peace through a world fellowship of business and professional men united in the ideal of service.

ARTICLE IV

Meetings

Section 1. This club shall meet regularly once each week on the day and at the time provided in the bye-laws, provided that in an emergency, or for good cause, the BOARD OF DIRECTORS of the club may change the regular meeting of any week to a different day of the same week or to a different hour of the regular day, or to a different place, or cancel the regular meeting of any week when it falls on a legal holiday, or because of the death of the club President or an epidemic or a disaster affecting the entire community.

Section 2. An annual meeting for the election of officers of this club shall be held not later than the thirty-first day of March in each year as provided in the bye-laws of this club.

Article V

Membership

Section 1. Kinds. There are four kinds of membership, namely, active; senior active; past service and honorary.

Section 2. Active membership. Each active member shall be an adult male person of good character and good business or professional reputation—

- (a) engaged as proprietor, partner, corporate officer, or manager of any worthy and recognized business or profession; or
- (b) holding an important position in an executive capacity with discretionary authority in any worthy and recognized business or profession; or
- (c) acting as the local agent or branch representative of any worthy and recognized business or profession, having charge of such agency or branch in an executive capacity; and

personally and actively engaged in the business or profession in which he is classified in the club and having his place of business or residence located within the territorial limits of the club, except as otherwise provided in Article 7, section 2A of this Constitution.

Section 3. Classifications. (a) Each active member of this club shall be classified in accordance with his business or profession.

(b) The classification of each active member will be that which covers the principal and recognized activity of the firm, company or institution with which he is connected, or if he be independently engaged in a business or profession his classification shall be that which covers his principal and recognized business or professional activity.

(c) *How corrected.* The Board, in its discretion, may correct or adjust the classification of any member, whose membership has not terminated, if the circumstances warrant such action. Due notice of such proposed correction or adjustment shall be given to the member and he shall be allowed a hearing thereon.

Section 4. *Limitation.* The active membership shall consist of but one man from each classification of business or profession, excepting the newspaper and religion classifications, and excepting the provision for additional active members as provided in sections 5 and 6 of this Article.

Section 5. *Additional active member.* (a) Any active member of this club may propose for and the club may elect to active membership one additional man from the concern or establishment with which the proposer is connected, whose classification shall be the same as that of the proposer. The qualifications of such additional member shall be those required for active membership. An additional active member is in all respects an active member except that the membership of an additional active member elected under the foregoing provisions of this section shall automatically terminate with the termination of the active membership of the active member who proposed him.

(b) The club may, subject to the approval of the holder of the classification, elect to additional active membership in the club any former active member of a Rotary Club whose place of business whereat he is actively engaged in within the territorial limits of the club and who otherwise qualified for membership, provided—

- (1) that there shall, in no case, be more than one additional active member elected under this paragraph of this section in respect of any one classification,
- (2) that any member so elected shall have terminated membership of his former club only because he ceased to be actively engaged within the territorial limits of that club in the classification of business or profession under which he was classified in that club, and
- (3) that an additional active member elected under this paragraph of this section shall cease to be a member when the classification becomes vacant, provided that when the classification is again filled, he may [without prejudice to the right of the holder of the classification to propose an additional active member under para (a) of this section] then be re-elected.

Section 6. *Religion and newspaper classifications.* Representatives of more than one denomination and of more than one newspaper published within the territorial limits of this club may be eligible to active membership under the same classifications, provided that they otherwise possess the qualifications for active membership.

Section 7. *Public office holder.* Persons elected or appointed to public office for a specified time only shall not be eligible to active membership in this club under the classification of such office. This shall not apply to persons holding a position or office in schools, colleges or other institutions of learning.

An active member of this club who is elected or appointed to public office for a specified period may during the period in which he holds such office continue as such active member in the club under the classification represented by him in the club immediately prior to such election or appointment.

Section 8. *Local preference.* No man engaged as the local agent or branch representative of an outside concern shall be eligible to active membership when a suitable prospective member may be available whose principal place of business is within the territorial limits of this club.

Section 9. *Senior active membership.* (a) Any active member of this club—

- (1) who has been an active member of this or other clubs for a total of fifteen or more years; or
- (2) who is of the age of sixty or more after having been an active member of one or more clubs for a total of ten or more years; or
- (3) who is of the age of sixty-five or more after having been an active member of one or more clubs for a total of five or more years; or
- (4) who is a present or a past officer of Rotary International; or

Any past service member of this club—

- (i) who has been an active member of this club and who, at the time he ceased to be an active member of this club, had the qualifications for senior active membership as hereinbefore set forth; or
- (ii) who has been an active and past service member of this and/or other clubs for a total of fifteen or more years; or
- (iii) who is a present or past officer of Rotary International shall automatically and forthwith become a senior active member.

(b) This club may, at its option, elect to senior active membership in this club any former member of any club, who was a senior active member or was eligible to become senior active member at the time he ceased to be member of a club, provided such former member resides within the territorial limits of this club or within the surrounding area.

(c) A senior active member shall have all the rights, privileges and responsibilities of an active member, except that—

- (i) he shall not be considered as representing a classification, and
- (ii) he shall not have the right to propose an additional active member.

This club may admit to membership a qualified person in the classification of business or profession in which such senior active member may be engaged.

Section 10. *Past service membership.* (a) A former active member of a club whose active membership was terminated because of his retirement from active business or professional life, may be elected a past service member in this club provided he has been an active member in one or more clubs for or more years. Such former member may be elected to past service membership at the time of, or at any time after, the termination of his active membership, provided he has all the other qualifications of a past service member. If his retirement from business or professional life occurs after he has ceased to be a member of a Rotary club, he is not eligible to past service membership. He must reside and continue to reside within the territorial limits of this club or within the surrounding area, unless he has been an active member in this club in which event he may reside and continue to reside in the locality of his residence at the time he ceased to be an active member in this club.

(b) A past service member shall have the rights, privileges and responsibilities of an active member except that—

- (i) he shall not be considered as representing a classification,
- (ii) he may not become a senior active member (except as provided in section 9A of this Article), and
- (iii) he does not have the right to propose an additional active member.

Section 11. *Honorary membership.* (a) A male person who resides within or who has resided within the territorial limits of the club and who has distinguished himself by meritorious services in the furtherance of Rotary ideals there or elsewhere may be elected to honorary membership in the club.

(b) Honorary members shall be exempt from payment of admission fees and dues, shall have no vote and shall not be eligible to hold any office in the club; shall have no interest in any property of the club; shall not be considered as representing a classification, but shall be entitled to attend all meetings and enjoy all other privileges of the club. No honorary member of this club is entitled to any rights or privileges in any other club.

ARTICLE VI

Officers and Directors

Section 1. The governing body of this club shall be a Board of Directors to be constituted as the Bye-laws of the club may provide.

Section 2. Except as herein otherwise specifically provided, the decision of the Board in all club matters shall be final, subject only to an appeal to the club. The Board shall have general control over all officers and all committees and may, for good cause, declare any office vacant. It shall constitute a board of appeal from the rulings of all officers and actions of all committees. Appeal may be taken from any decision of the Board to the club. On such appeal, the decision appealed from shall be reversed only by a two-thirds vote of the members present, at a regular meeting specified by the Board, a quorum being present, notice of such appeal having been given by the Secretary to all members of the club at least five days previous to such meeting.

Section 3. The officers of this club shall be a President, one or more Vice-Presidents, all of whom shall be members of the Board, and a Secretary, a Treasurer, and Sergeant-at-arms, any or all of whom may or may not be members of the Board of Directors as the Bye-laws of the club shall provide.

Section 4. Each officer shall be elected as provided in the Bye-laws of the club and, except as may otherwise be provided in relation to the President, shall take office on the first day of July immediately following his election and shall serve for the period of his election or until his successor shall have been elected and qualified.

The President shall be elected at any time within the two-year period immediately preceding the year for which he is elected to serve as President. The President shall take office on the first day of July in the Rotary year for which he is elected to serve as President and shall serve for the period of his election or until his successor shall have been elected and qualified. In the event that the President is elected prior to the Rotary year immediately preceding the year in which he is to serve as President, such President-elect shall, if he is not otherwise a member of the Board, serve as an *ex-officio* member of the Board in the year immediately preceding the year in which he is to serve as President.

Each officer and each director shall be an active (including additional active), senior active, or a past service member in good standing of this club.

ARTICLE VII

Admission Fees and Dues

Section 1. Each active, senior active, and past service member of this club shall pay, as an admission fee and as annual dues, such sums as may be prescribed in the Bye-laws of this club, except that a senior active or past service member who has held active membership in this club shall not be required to pay a second admission fee.

ARTICLE VIII

Duration of Membership

Section 1. *Period.* Membership shall continue during the existence of the club unless terminated as hereinafter provided.

Section 2. *How terminated.* (a) Active membership shall automatically terminate, if, and when, an active member ceases to be personally and actively engaged in the classification of business or profession under which he is classified in the club or ceases to have his place of business or residence located within the territorial limits of the club, or his connection with his business establishment is severed.

Except that by permission of the Board of Directors, an active member, moving from the territorial limits of the club, may be given special leave of absence for a period not exceeding one year to enable him to visit and become known to a Rotary Club in the community to which he moves, providing he is still active in the same classification of business or profession and continues to comply with the attendance and all other conditions of Rotary membership. The termination of his membership would take effect only at the end of the period of leave granted to him.

In the event an active member of the club, after having been an active member of the club for five or more years, ceases to have his place of business or residence within the territorial limits of the club, he may retain his membership in the club provided his new place of business or residence is located within the corporate limits of the city in which the club is located.

(b) The membership of an additional active member elected under the provisions of Article 5, section 5A of this Constitution shall automatically terminate with the termination of the membership of the active member who proposed him, or in the event such active member becomes a senior active member of this club. If such additional active member is promptly re-elected to active membership in this club, he shall not be required to pay a second admission fee.

An additional active member elected under Article 5, section 5B shall cease to be a member when the classification becomes vacant provided that when the classification is again filled he may (without prejudice to the right of the holder of the classification to propose an additional active member under Article 5, section 5A of this Constitution) then be re-elected.

(c) Past service membership shall automatically terminate on the thirtieth day of June next after the date of election. However, the Board in its discretion may, by resolution from year to year, continue such honorary membership for the ensuing year. Such honorary membership may be continued by the Board although the person so elected has ceased to reside within the territorial limits of the club.

Section 3. *How to rejoin.* When the membership of an active member has terminated as provided in the foregoing section 2, such person may make new application for membership, under the same classification or another classification. Such application by an additional active member elected under the provisions of Article 5, section 5A of this Constitution shall be considered, before any other, for membership under the classification in which he applies. If elected to membership he shall not be required to pay a second admission fee.

Section 4. *Termination—non-payment of dues.* Any member failing to pay his dues within thirty (30) days after the prescribed time shall be notified in writing by the Secretary at his last known address. If the dues are not paid on or before ten (10) days from the date of notification, said membership shall automatically terminate.

Such former member, at the discretion of the Board, may be reinstated to membership upon his petition, and upon the payment of all his indebtedness to the club, provided that no former member can be reinstated to active membership if his former classification has been filled.

Section 5. *Termination—non-attendance.* (a) The membership of any active, senior active, or past service members except as provided in this article, who is absent from four consecutive regular weekly meetings of this club shall automatically terminate, unless such absence is made up as hereinafter provided, or he is excused by the Board for good and sufficient reason.

Any member absent from a regular meeting of this club may make up such absence by attendance at a regular meeting of any other Rotary Club or a provisional Rotary Club at any time between the usual time of the regular meeting of this club immediately preceding the day of absence and the usual time of the regular meeting of this club immediately following the day of absence and be given full credit for attendance in this club, provided notice of such attendance is given to this club by the secretary of the club visited or the member may make his own report.

In the event an active, senior active, or past service member of this club presents himself at the regular time and place of meeting of any other club for the purpose of attending the meeting of such club, and such club has omitted, postponed or changed the time or place of its meeting for the said week, then such member shall be credited with attendance by this club for the week for which he would be entitled to credit had such meeting been held at the regular time and place, provided notice of such circumstances is given to this club by the secretary of the club visited or the member may make his own report.

Any active, senior active or past service member of this club, who is serving as an officer of Rotary International, or a committee-man of Rotary

International, or as a SPECIAL REPRESENTATIVE OF THE DISTRICT GOVERNOR, or who is in the employ of Rotary International, absent from a regular meeting of this club on Rotary business shall be credited with attendance at such meeting missed while on such business, provided notice of such circumstances is given to this club by the member.

Any active, senior active, or past service member of this club absent from a regular meeting of this club while travelling with reasonable directness to or from a convention of Rotary International, an international assembly, a Rotary Institute for past and present officers of Rotary International, a Rotary regional conference, a Rotary International committee meeting, a Rotary district conference, Rotary district assembly any district meeting held by direction of the board of directors of Rotary International, or a regular announced intercity meeting of Rotary clubs, shall be credited with attendance at such regular meeting of this club, provided notice of such circumstances is given to this club by the member.

Any active, senior active, or past service member of this club absent from a regular meeting of this club who attends a convention of Rotary International, an international assembly, a Rotary Institute for past and present officers of Rotary International. A Rotary regional conference, a Rotary International committee meeting, a Rotary district conference, a Rotary district assembly, any district meeting held by direction of the board of directors of Rotary International, or a regularly announced intercity meeting of Rotary clubs, at any time between the usual time of the regular meeting of this club immediately preceding the day of absence and the usual time of the regular meeting of this club immediately following the day of absence shall be credited with attendance at such regular meeting of this club, provided notice of such attendance is given to this club by the member.

(b) The membership of any active, senior active or past service member, except as hereinafter provided, whose percentage of attendance is less than **sixty per cent** during the first or second six months of this club's fiscal year shall automatically terminate, unless he is excused by the Board for good and sufficient reason.

(c) Any senior active or past service member who, because of protracted ill-health or impairment, is physically unable to comply with the provisions of this section may, during the period of its continuance, upon application to the Board be excused from complying with attendance requirements and his absence shall not be computed in the attendance record of the club.

(d) Any senior active or past service member who has been a member of one or more Rotary clubs for in the aggregate twenty years or more, and has reached the age of sixty-five years, may notify the secretary in writing of his desire to be excused from complying with attendance requirements. If approved by the Board such member's attendance or absence shall not be computed in the attendance record of the club.

Section 6. *Termination for other causes.* (a) The membership of any member who shall cease to have the qualifications for membership in this club may be terminated by the Board by the votes of not less than two-thirds of the members thereof, at a meeting called for that purpose.

(b) The membership of any member may be terminated by the Board, for a reason which the Board may deem to be sufficient by the votes of not less than two-thirds of the members thereof, at a meeting called for that purpose.

(c) In either case (a) or (b) the member shall be given at least ten days' notice in writing of such pending action and an opportunity to submit to the Board a written answer. He shall also have the privilege of appearing before the Board to state his case. Service of such notice shall be made by personal delivery or by registered letter to his last address.

(d) In case of a decision to terminate membership, the secretary shall, within seven days after the date of the Board's decision, notify the member in writing of the decision of the Board. Such member may, within fourteen days after the date of such notice, give written notice to the secretary of his intention either to appeal to the club or to arbitrate as provided in Article 12 of this Constitution. In the event he appeals, the Board shall set a date for the hearing of the appeal at a regular meeting of the club, to be held within twenty-one days after the receipt of such written notice of appeal. At least five days' notice of such club meeting and its special business shall be given in writing to every member of the club, and only members of the club shall be permitted to be present when such appeal is considered at such meeting.

(e) When the Board has terminated the membership of an active member as provided for in this section, the club shall not elect any member under his former classification, until the time for hearing the appeal, if any, has expired and the club's decision or the arbitrators has been announced.

(f) The action of the Board shall be final if no appeal to the club is taken and no arbitration is requested. If an appeal is taken, the action of the club shall be final.

Section 7. *Resignation.* The resignation of any member from this club shall be in writing (addressed to the President or Secretary) and shall be accepted by the Board, provided that all indebtedness of said member to the club has been paid.

Section 8. *Property interest—forfeiture of.* Any person whose membership in this club has been terminated in any manner shall forfeit all interest in any funds or other property belonging to the club.

ARTICLE IX

Community, National and International Affairs

Section 1. The general welfare of the community, the nation and the world is a concern to the members of this club, and the merits of any public question involving such welfare shall be proper subjects of fair and intelligent study and discussion before a club meeting for the enlightenment of its members in forming their individual opinion. However, this club shall not express an opinion on any pending controversial public measure.

Section 2. This club shall not endorse or recommend any candidate for public office and shall not discuss at any club meeting the merits or demerits of any such candidate.

Section 3. (a) This club shall neither adopt nor circulate resolution or views, nor take corporate action, dealing with world affairs or international policies of a political nature.

(b) This club shall not direct appeals to clubs, peoples or governments, or circulate letters, speeches, or proposed plans for the solution of specific international problems of a political nature.

ARTICLE X

Official publication

Section 1. By acceptance of active, senior active, or past service membership in this club, such member voluntarily becomes a subscriber to the monthly publication of Rotary International. His subscription shall be handled in six-month periods and shall continue as long as he is a member of the club and to the end of any six-month period during which he may cease to be a member of the club.

Section 2. The amount of the subscription shall be collected by the club from each member, semi-annually, in advance. The secretary shall enter such subscriptions and amounts so collected in a special subscription account and remit to Rotary International.

Section 3. The Board of Directors of Rotary International may prescribe this standard club constitution without this article for the use of clubs outside of the United States of America and Canada.

ARTICLE XI

*Acceptance of object and compliance with
Constitution and Bye-laws*

A member by payment of his admission fee and dues thereby accepts the principles of Rotary as expressed in its object and submits himself to

and agrees to comply with and be bound by the Constitution and Bye-laws of this club, and on these conditions alone is entitled to the privileges of the club. No member shall be absolved from the observance of the Constitution and Bye-laws on the plea that he has not received a copy of them.

ARTICLE XII

Arbitration

Should any dispute arise between any member or members, or a former member or members, and the club, or any officer or the Board of the club, relating to membership or any officer or the Board of the club, relating to membership or to any alleged breach of the Constitution or Bye-laws, or the expulsion of any member from the club, or on any account whatsoever which cannot be satisfactorily settled under the procedure already provided for such purpose, the matters in difference shall be settled by arbitration. Each party shall appoint an arbitrator and the arbitrators shall appoint an umpire. Only members of a Rotary club may be appointed as umpire or as arbitrators all functioning in accordance with the Arbitration and Conciliation Act 1996. The decision arrived at by the arbitrators, or in the event of their disagreement, by the umpire, shall be final and binding on all parties.

ARTICLE XIII

Bye-laws

This club shall adopt Bye-laws not inconsistent with the Constitution and Bye-laws of Rotary International (and the rules of procedure for and area administration where established) and with this Constitution, embodying additional provisions for the Government of this club. Such Bye-laws may be amended from time to time as therein provided.

ARTICLE XIV

Amendments

Section 1. *Time.* This Constitution, except in an emergency as provided for in Article 6, section 2 of the Bye-laws of Rotary International, and except as provided in section 4 of this Article, may be amended only by action of the Council on legislation as part of the Convention of Rotary International held in an even-numbered year, and except that in the event a sufficient number of votes are cast by clubs against approval of action by the Council on any proposed enactment to amend this Constitution, which will require action by the Convention, as provided in Article 9, section 8G of the Bye-laws of Rotary International, this Constitution may be amended by the Convention in an odd-numbered year by a majority vote of the electors present and voting at the time such amendments are submitted to the Convention.

Section 2. *Who may propose.* Amendments to this Constitution, except as provided in section 4 of this Article, may be proposed only by a club, by a district conference, by the general council or the conference of Rotary International in Great Britain and Ireland, by the Council-on-legislation, or by the board of directors of Rotary International.

Section 3. *Procedure.* Any proposal to amend this Constitution shall be delivered to the General Secretary of Rotary International not later than the first day of August, in the Rotary year in which the Council-on-legislation is to meet.

The General Secretary of Rotary International shall mail a copy thereof to the Secretary of each club by the first day of November in the Rotary year in which the Council-on-legislation is to meet.

The General Secretary of Rotary International shall transmit directly to the Council all duly proposed amendments.

The Council shall consider and act upon each such duly proposed amendment and any preferred amendment thereof.

Section 4. Article 1 (Name) and Article 2 (Territorial Limits) of this Constitution may be amended at any regular meeting of this club by the affirmative vote of a majority of members present and voting, provided that notice of such proposed amendment shall have been mailed to each member at least ten (10) days before such meeting, and provided further, that such amendment shall be submitted to the Board of Directors of Rotary International for its approval and shall become effective only when so approved.

Societies

Societies in India were originally registered under Societies Registration Act 1860 (Act XXI of 1860) unless there is some local legislation in the State. The old Act (Act XXI of 1860) was repealed in its application to West Bengal with effect from 1st April 1963. The old Act was modelled after the Library and Scientific Institution Act 1854 of England.² In West Bengal they are now registered under the W.B. Societies Registration Act 1961 (West Bengal Act XXVII of 1961). Any seven or more individuals associated with any of the objects—religious, charitable or literary, prescribed under sub-section 2 of section 4 of the Act—form a society by filing with the Registrar a Memorandum of Association and a copy of the Regulations.

2 17 and 18 Vict C 112, in England.

The society so registered is neither a corporation nor a limited company incorporated under the Companies Act.³ It is an independent registered association but not a partnership of individuals which has acquired a legal status by virtue of its registration with the Registrar appointed by the State Government under the provisions of the Societies Registration Act. It enjoys the status of a legal entity apart from the members constituting the same. Every member of a corporation or an incorporated company join the same on that basis. The majority of the members is entitled to exercise its powers and control its operation generally. The same would be the position in the case of unincorporated associations of individuals whether the same be registered under the Societies Registration Act or not. The rule of majority is the normal basis of these associations. The members join these associations whether incorporated or unincorporated, whether registered or unregistered, knowing fully well that affairs of these associations would be conducted normally by the vote of the majority of the members thereof. In the absence of any specific rules and regulations governing the conduct of these affairs, this would be normal presumption and no member who joins any association would be heard to contend to the contrary. The properties belonging to any society vest in the trustees and in the absence thereof are deemed to vest for the time being in the governing body.

SOCIETIES REGISTRATION ACT XXVI OF 1961

Memorandum of Association

1. The name of the society shall be "....."
2. The Registered Office of the society shall be situated at,
..... in the State of West Bengal.
3. The aims and objects of the society are as follows:
 - (a) To perpetuate the memory of
 - (b) To help and give relief to the poor and indigent and other deserving person or persons by providing food, shelter, periodical distribution of cloth, medicine and money and other necessities, also to provide books to deserving students and *sanyasis* and to distribute alms in cash or kind annually out of the funds of the society.
 - (c) To give lessons and instructions on the *Geeta*, *Bible*, *Koran* and other religious scriptures and arrange for and provide all suitable and necessary ways and means for the daily worship and

3 *Satyavarat v Arya Samaj* AIR 1946 Bom 516 (519); 48 Bom LR 34.

periodical festivals of according to the wishes of and offering of Puja and Bhoga to and for observance of such other occasional religious festivals at the Samadhi Mandir at as may be decided by the society from time to time.

- (d) To perpetuate, keep and maintain the aforesaid Samadhi Mandir and other premises and the land attached thereto at in good state and condition and make such additions, alterations and repairs thereto as may be necessary.
- (e) To construct, maintain, extend, alter, repair or improve any temple building and premises that may be acquired by the Ashram. To undertake administration of any religious or charitable institution or endowment, e.g. church, temple, math or others.
- (f) To receive and collect any gifts, subscriptions and donations either in cash or in kind, or acquire by any other lawful ways and means and spend the same in fulfilment of all or any of the aims and objects of the society. The income and properties of the society shall be applied solely for the promotion and fulfilment of the aims and objects of the society, provided if any donor intends that his contributions, donation or subscription shall be applied to the attainment of any particular object or objects of the Ashram, such contribution, donation, subscription shall be spent towards the promotion of that particular object or objects only.
- (g) To acquire by purchase, take on lease, hire or by gift or otherwise and hold any movable or movables and also any immovable property or properties or any rights or privileges that may be deemed necessary or useful for the advancement of the objects of the Ashram or any of them.
- (h) To arrange and/or provide for the long-standing practice of annual observation of Utsava at the Samadhi Mandir of at
- (i) To do all such other lawful acts, deeds and things as are incidental and conducive to the attainment of the objects or any of them.
- (j) To manage and administer any orphanage, nursing home, hospital, library, reading room, trust, school, college and other institution irrespective of caste, creed or social status.
- (k) To take over, absorb or amalgamate with any other society or association or institution whose objects are similar to the objects of the society.
- (l) To apply the income and properties of the society for the fulfilment of its objects and not to pay any portion thereof by way of profit or dividend or bonus.

4. Without prejudice to the generality of the above objects and for effectively carrying out the same the society shall have power to receive, hold and possess any property including securities of any kind and to construct and maintain any building, to manage transfer or otherwise dispose of or deal in any property of security and to enter into any contract for or in connection with the purposes of the society to raise moneys and funds including debentures and to establish provident fund or funds for the benefit of the employees of the society and to accept the management of any trust or endowment in which the society may be interested. The society shall have also the power to frame rules and bye-laws under its Constitution.

5. The management and control of the shall be in the hands of a Committee of Management of the society to be elected annually by the Mantra Sishyas of and shall be carried on in accordance with the rules as may be framed or modified from time to time by the said Committee of Management, whose names, addresses and descriptions are subscribed hereunder:

The following persons shall be the members of the first governing body of the society:

	<i>Name</i>	<i>Address</i>	<i>Description</i>
1.	Sri .....	.....	President
2.	" .....	.....	Secretary
3.	" .....	.....	Treasurer
4.	" .....	.....	Assistant Secretary
5.	" .....	.....	"
6.	" .....	.....	Member
7.	" .....	.....	"
8.	" .....	.....	"
9.	" .....	.....	"

We the undersigned are desirous of forming a society named "....." in pursuance of this Memorandum of Association:

<i>Signature</i>	<i>Address</i>	<i>Occupation</i>
.....
.....
.....
.....
.....

WITNESS:

Signature	Address	Occupation
.....
.....
.....
.....
.....

Rules and Regulations

1. **Definition.** In these Rules and Regulations unless there be anything repugnant to or inconsistent with the subject or context:

- (a) *Society* means.....
- (b) *Committee of Management* means the Committee of Management of duly appointed annually by the Mantra Sishyas of
- (c) *Member* means any of the members forming the Committee of Management.
- (d) means an assemblage of Mantra Sishyas both male or female of over 18 years of age.
- (e) *A Meeting of the Sishya Sangha* means a meeting of the Mantra Sishyas both male or female of over 18 years of age present at a meeting duly convened and held under the rules of the Ashram.
- (f) *Financial Year* means the year commencing from 1st Baisakh to the last date of Chaitra in one year.
- (g) *Mantra Sishya* means a direct disciple either male or female of Shree over 18 years of age and eligible under these rules to participate and vote in a meeting of the Sishya Sangha.
- (h) *President* means the President of the Ashram elected annually in a meeting of the Sishya Sangha.
- (i) *Treasurer* means the Treasurer of
- (j) *Assistant Secretary* means the Assistant Secretary of
- (k) means premises at

2. **Committee of Management.** The Committee of Management shall consist of:

(a) President, (b) Secretary, (c) two Assistant Secretaries, (d) Treasurer and 16 members duly elected annually at a meeting of the Sishya Sangha convened for the purpose in the manner hereinafter provided for.

3. All properties of the Ashram, both movable and immovable, as well as the management of the affairs and concerns of the Ashram shall vest in the Committee of Management subject to the rules and regulations of the Ashram.

4. No one except a Mantra Sishya above 18 years of age shall be eligible to be a member.

5. The members shall hold office for a term of one year, but any of them shall be eligible for re-election.

6. In the case of any casual vacancy in the post of any of the members on account of death, resignation, expulsion or any other incapacity to work as a member, a new member will be co-opted by the Committee of Management from amongst the Sishyas within four weeks from the date of such casual vacancy of the Sangha. Such a new member will hold office till the next election of the Committee of Management. Pending filling up of the vacancy as stated above the remaining members in the Committee will carry on the work of the Ashram and the properties both movable and immovable of the Ashram shall vest in the remaining members.

7. For the proper conduct of the affairs of the Ashram the Committee of Management shall hold meetings as and when necessary, but there shall be at least one meeting in every two months and it shall keep proper records of all proceedings of such meetings. Five members present at a meeting shall form the quorum.

8. The Committee of Management shall, out of the funds and income of the Ashram, spend money for the fulfilment of the objects of the Ashram according to the budget as sanctioned by the Sishya Sangha at the annual general meeting. The Committee of Management shall appoint and, whenever necessary dismiss any sevak, pujari, durwan and other menial servants for the work of the Ashram and shall make all suitable arrangements for the protection of the Samadhi Mandir etc.

9. The Committee of Management may frame rules and bye-laws not inconsistent with the rules and regulations hereof for the internal management of the Ashram and the conduct of its meetings and may alter and amend the same when necessary.

10. All deeds and documents by or in favour of the Ashram shall be in the name of the Ashram.

11. In case any member shall desire to tender resignation from the membership before the expiry of his term, he shall have to give at least one month's notice in writing to the Secretary of the Committee of Management

and in case he himself happens to be the Secretary then at least three months' notice to the President of the society. Such a letter of resignation will be placed at a meeting of the Committee of Management especially convened for the purpose within one month from the receipt of the letter. No resignation shall be deemed to have taken place until accepted at the said meeting. Similar procedure will be followed in the case of any casual vacancy due to death or incapacity of a member to work as a member.

12. The members shall not be entitled to any remuneration.

13. **President.** The President shall preside over every meeting of the Committee of Management. In his absence, one of the members shall be elected as Chairman of the meeting.

14. **Secretary.** The Secretary or one of his Assistant Secretaries duly authorised by him shall look after the daily worship and Bhogarag of and also conduct the day-to-day affairs as resolved and passed by the Committee. He shall incur all necessary expenses in connection with his work mentioned above.

The Secretary to the Committee of Management will be in charge of the office of the Ashram and amongst others do the following acts and things:

- (a) To check and verify accounts in the cash book and sign the same.
- (b) To sign and issue notices for the meeting of the Committee of Management and the annual meeting of the Sishya Sangha.
- (c) To look after and conduct all correspondence relating to or in any way concerning the Ashram other than those which may be allocated to any member or members in charge of any department of the society.
- (d) To keep or cause to be kept in proper order and custody all documents and all papers and files belonging to the Ashram.
- (e) To operate or cause to be operated by one of his assistant secretaries duly authorised by him on current account in one or more bank or banks as approved by the Committee of Management in conjunction with the Treasurer of the society.
- (f) To sign in token of sanction all vouchers for necessary expenses of the Ashram within the limit sanctioned by the Committee before payment by the Treasurer.

15. **Treasurer.** (a) To receive subscriptions, donations and pronamis in cash and record the receipts in the Cash Book maintained for the purpose.

(b) To arrange for investment of surplus assets of the Ashram as approved by the Committee of Management in conjunction with the Secretary of the society.

(c) To operate on current account in one or more bank or banks as approved by the Committee of Management in conjunction with the Secretary or one of the Assistant Secretaries duly authorised by the Secretary of the Ashram.

(d) To submit all books and papers relating to the Ashram's receipts and expenditures, cash books, bank pass books, etc., to the Secretary of the Ashram once in a month for his scrutiny and signature.

(e) To prepare yearly accounts of receipts and expenditures and have the same audited by the Auditor appointed by the Committee of Management and approved at the general meeting and present the same before the annual meeting of the Sishya Sangha.

16. Auditors. At the annual meeting of the society, one or two Mantra Sishya, or outsiders be elected Auditors or Jt. Auditors who will audit the accounts of the Ashram for the ensuing year. Such appointment will be made for one year, but the same Auditor or Auditors will be eligible for re-election.

The Auditor or Auditors shall have at all reasonable time access to the books of accounts of the Ashram and to all papers, vouchers, receipt books, etc., and for this purpose of verifying any accident examine any office-bearer of the Ashram to make any enquiry from any member.

The Auditor or Auditors shall not be entitled to any remuneration.

17. Assistant Secretary to the Committee of Management. The Assistant Secretary will assist the Secretary in all matters relating to the duties of the Secretary and in the absence of the Secretary shall function according to his (Secretary's) instructions.

18. Proceedings of the Committee of Management. All proposals put to any meeting of the Committee of Management must be decided and passed by majority of votes of the members present at the meeting.

19. All resolutions duly passed in any meeting of the Committee of Management shall duly be recorded in the Proceedings Book either in Bengali or in English and shall be signed by all members present at the meeting.

20. The President may request any Mantra Sishya, who is not a member of the Committee or any of the persons who is not a Mantra Sishya, to attend a meeting of the Committee of Management to give their valuable and considered opinion regarding any matter relating to the Ashram. Such non-members of the Committee shall have, however, no power to cast vote at the meeting.

21. Proceedings of the meeting of annual Sishya Sangha. The Annual General Meeting of the society will be held on a date to be decided by the Committee of Management not later than four months after the date of

financial year of the Ashram. Necessary notice to all Mantra Sishyas shall be issued 15 days in advance by the Secretary. The notice will be in Bengali mentioning the date, time and place and the agenda of the meeting.

22. The business of the Annual Meeting of the society shall be:

- (a) to consider the Ashram's annual report presented by the Secretary on behalf of the Committee of Management;
- (b) to consider and pass the audited accounts of receipts and expenditure for the previous year;
- (c) to elect the President and other members of the Committee of Management for the ensuing year; and
- (d) to consider any other matter brought before the meeting either by the Committee of Management or by any member present at the meeting concerning the management and welfare of the Ashram.

23. **Quorum of meeting of Sishya Sangha.** Fifteen members of the Sishya Sangha personally present in any meeting of the Sishya Sangha shall form the quorum.

24. If for want of quorum any meeting of the Sishya Sangha cannot be proceeded with, then the meeting will be adjourned to some other date as the Committee of Management may think proper. No new matter shall be considered at the adjourned meeting except those mentioned in the agenda of the meeting which has been adjourned.

25. **Chairman.** At every meeting of the Sishya Sangha, one of the Mantra Sishyas present at the meeting shall be duly elected Chairman of the meeting.

26. Every resolution submitted to a meeting of the Sishya Sangha shall be determined by the majority votes of the Mantra Sishyas present, every Mantra Sishya having one vote. In case of equality of votes, the Chairman will have the casting vote. Votes will be taken by show of hands or by ballots as decided by the Sishya Sangha.

27. An attendance book shall be kept and as far as possible it should be signed by all Mantra Sishyas present at the meeting of the Sishya Sangha. The proceedings of all meetings of the Sishya Sangha shall be duly and properly recorded or caused to be recorded in the proceedings book either in English or Bengali by the then Secretary or in his absence by any member and shall be signed by the Chairman of the meeting.

28. An extraordinary meeting of the Sishya Sangha shall be convened at such place and time as the Committee of Management may deem fit on the written requisition of at least 10 Mantra Sishyas showing the reasons for calling of the same and shall be convened within 15 days of the receipt of requisition. A week's notice to be served to the Mantra Sishyas for the purpose will suffice.

29. It shall be lawful for the Sishya Sangha at an annual meeting duly convened for the purpose in the manner herein to amend, vary, alter, modify or repeal all or any of the rules and regulations of the Ashram.

Certified to be the true copy of the rules and regulations of

1.
2.
3.

Members of the Committee of Management

..... Society

(Registered under the West Bengal Societies
Registration Act 1961)

(Act XXVI of 1961)

Memorandum of Association

1. The name of the society is

2. The registered office of the society will be situated at No. for the time being. The said office may be removed to such other place or places as the COUNCIL OF PROMOTERS shall think fit and proper from time to time. It may open and close any branch office or offices at any other place or places as it may decide from time to time.

3. The objects for which the society is established are:

- (i) To preach the Message of Jesus Christ, to hold meetings, Crusades and Campaigns, to pioneer and support Gospel work in Virgin Areas, to print and publish religious literature such as tracts, magazines, pamphlets, books and booklets.
- (ii) To train workers for Gospel outreach, to support Christian workers, for the propagation of the Gospel.
- (iii) To co-operate with Christian Organisations or Associations in India and abroad to work within the scope of the 'India Evangelistic Crusade'.
- (iv) To help local churches in the construction of Church and to administer the same and to establish community halls and support social work through schools and orphanages and to provide for stipends, scholarships, prizes, library, reading-room, lectures etc., and to provide and give medical relief and monetary help and shelter to poor and deserving children. To administer any trust or endowment.

- (v) The receive any sum or sums of money as gifts or donations in cash or kind or subscriptions given to or acquired by any other means by the Crusade and to spend in fulfilment of all or any of the objects of the Crusade.
- (vi) To purchase or to acquire on lease or in exchange or hire or to acquire by gift or otherwise and to hold and deal in whenever necessary in movable and immovable property or any right or privilege that may be deemed necessary for the promotion and advancement of the objects of the Crusade or any of them and to enter into any contract or contracts and to execute such conveyance or conveyances as may be necessary or required.
- (vii) To borrow or raise money whenever necessary for some urgent and important work of the Crusade or for its maintenance and uplift or for any other religious or charitable purpose by the issue of or upon Bond, Promissory Notes, Debentures or other securities or by mortgaging the property of the Crusade, or to meet other obligations as may be determined by the Crusade from time to time. The value of such loan shall in no case exceed half of the total value of the properties.
- (viii) To do all such lawful things as are incidental or conducive to the attainment of the above objects or any of them.

4. If upon the dissolution or winding-up of the society there remains after satisfaction of all debts and liabilities any property whatsoever the same shall not be paid to or distributed among the members of the society but shall be given or transferred to some other institution or institutions having objects similar to those of the society to be determined by the votes of three-fourths of the members of the society for the time being present personally at the time of dissolution or in default thereof, by the court having jurisdiction in the matter.

5. No portion of the income and property of the society shall be paid, applied or transferred directly or indirectly by way of dividends, bonus or otherwise howsoever by way of profit to any member of the society or any person claiming through any of the members PROVIDED THAT nothing hereto contained shall prevent the payment in good faith of remuneration or reward to any officer, employee or servant of the society or any member of the society or other persons in return for any service actually rendered to the society.

6. The management and control of the affairs of the society and/or of the branches of the society shall be carried on in accordance with the Articles of Association of the society and/or the rules and bye-laws and regulations framed by the COUNCIL OF PROMOTERS for the said purpose.

7. The names and addresses of members and office-bearers of the First Council of Promoters are:

COUNCIL OF PROMOTERS

- 1. President
- 2. Secretary-cum-Treasurer
- 3. Member
- 4. Member
- 5. Member
- 6. Member
- 7. Member

8. We the several persons whose names and addresses are subscribed hereto are desirous of being formed into a society in pursuance of this Memorandum of Association and under the provisions of the West Bengal Societies Registration Act 1961 (Act XXVI of 1961).

<i>Names and Addresses</i>	<i>Occupation</i>	<i>Signature</i>	<i>Witness</i>
1.
2.
3.
4.
5.
6.
7.

Dated the 22nd day of October 1983

Rules and Regulations

(Registered under the West Bengal Societies Registration Act 1961)

1: **Interpretation.** In these Rules and Regulations unless there be anything in the subject or context inconsistent therewith:

- (a) The *Society* means
- (b) The *Members* means the members of the society for the time being.
- (c) The *President* and *Secretary-cum-Treasurer* mean those respective office-bearers for the time being of the society.

- (d) The *Annual General Meeting* and a *Special General Meeting* mean such general meetings of the society as are convened and held only under the rules of the society in force.
- (e) The *Meeting* means all meetings other than Annual and Special General Meetings of the society.
- (f) A *Resolution* means a Resolution of the Society duly passed and adopted.
- (g) The *Seal* means the seal of the society.
- (h) *Year* means the official year of the society as may be determined by the Council of Promoters from time to time.
- (i) *Life Members* and *Ordinary Members* means the life members and ordinary members respectively of the society.

2. **Membership.** All persons who belong to the Christian community and profess Christian religion and who have attained 21 years of age and have subscribed to the aims and objects of the society subject to the approval of the Council of Promoters will be entitled to be its Ordinary Members and Associate Members on payment of their subscriptions as hereinafter provided. The decisions of the Council of Promoters in this regard shall be final and binding.

3. **Clauses of Membership and Fees:** (i) *Ordinary Members.* Those members as aforesaid who shall pay an yearly subscription of Rs. 10 per year shall be admitted as an ordinary member of the society subject to the approval of the Council of Promoters.

(ii) *Associate Members.* Those members as aforesaid who shall pay an yearly subscription of Rs. 5 will be Associate Members of the Society subject to the approval of the Council of Promoters.

Explanation. (a) Those persons, who have paid till the date of registration of the society the respective membership fees applicable to the respective clauses, shall be deemed to have been admitted to the respective clauses, and shall be deemed to be the Founder Members.

(b) Any ordinary member, whose subscription has remained in arrears before the holding of the Annual General Meeting or Extraordinary General Meeting shall not be entitled to exercise the voting rights at the Annual General Meeting or the Extraordinary General Meeting, as the case may be.

4. **Patrons.** The Council of Promoters may, according to such terms and conditions as it shall decide from time to time, admit as PATRONS those persons who are likely to help in furthering the objects and cause of the society either through their professional knowledge and experience and/or through financial assistance.

5. Register of Members. The society shall maintain at its registered office a register of its members and shall enter therein, within 15 days after the admission of a member or the cessation of his membership as the case may be, the following particulars:

- (a) The name and address of the member.
- (b) The date on which the member was admitted.
- (c) The date on which a member ceased to be such member.

6. Rights of Members. (a) Each Ordinary Member shall have one vote at every meeting.

(b) All Ordinary and Associate Members of the society shall be entitled to participate in the meetings and religious functions and gatherings of the society and after the expiry of one month of his or her/their membership elect or be elected to its Council of Promoters.

(c) All the Ordinary Members shall have right to inspect the books of account, book containing minutes of proceedings of general meetings and register of members of the society on any working day during business hours by giving reasonable notice.

(d) All the members—Ordinary and Associate—of the society shall be bound by the Rules and Regulations and/or bye-laws which may be framed from time to time.

7. Council of Promoters. (a) The members of the First Council of Promoters of the society shall hold the offices for a period of five years, after the expiry of which the Council of Promoters shall be composed and constituted from among the members of the society as follows:

(i)(a) Seven members to be elected at every Annual General Meeting.

(b) Two members to be co-opted by the members as in (a) above.

(ii) The Council of Promoters thus composed and constituted shall from amongst themselves elect the following office bearers:

“President” and “Secretary-cum-Treasurer”.

8. A member or an office-bearer of the Council of Promoters may resign by making a request addressed to the President or the Secretary-cum-Treasurer of the Council of Promoters in that respect in writing before the expiry of his term.

9. A member who is an undischarged insolvent or who has been convicted of any offence in connection with the formation, management or of the affairs of the society or of any offence involving moral turpitude shall not be entitled to be a member or office-bearer of the Council of Promoters.

10. In case of any vacancy in the Council of Promoters, including the office-bearer, caused by the removal of disqualification under these rules or by death or by resignation of any member or office-bearer during his

term as a member or office-bearer another member or office-bearer during his term as a member or office-bearer may be appointed in his place and stead by the remaining members and the office-bearers of the Council of Promoters and such appointed member or office-bearer shall hold the office only for the unexpired portion of the said member's or office-bearer's term.

11. Members of the Council of Promoters shall be eligible for re-election.

12. **Proceedings of the Council of Promoters.** The Council of Promoters shall meet at least twice in a year. Other meetings may be held either upon the advice of the President, or request of at least three members of the Council of Promoters.

13. (a) The quorum for the meeting of the Council of Promoters shall be three members present in person.

(b) If within half an hour of the time appointed for a meeting a quorum is not constituted, the meeting shall stand adjourned for one hour at the same time and place, and if at the meeting a quorum be not constituted within half an hour of the time appointed for the meeting, the members present shall constitute the quorum.

(c) The absence, without leave of any member of the Council of Promoters for 3 (three) consecutive meetings and/or for a continuous period of 6 months whichever is more, shall entitle the Council of Promoters to remove such member from the Council of Promoters.

(d) The Council of Promoters may pass a resolution by circulation. Such resolution passed whether by majority or unanimously by circulation amongst the members of the Council of Promoters shall be equally valid and shall be construed as if passed at a meeting duly called and convened for the purpose and such resolution shall be entered by the Secretary-cum-Treasurer in the minute-books of the meetings of the Council of Promoters.

14. The Council of Promoters shall be empowered with any, every and all functions pertaining to the administration, control and management of the society and will decide on all questions and more particularly the Council of Promoters acting collectively shall have power to:

(a) Represent the society.

(b) Acquire and transfer property, movable, immovable or both, assume obligations and conclude agreements of any nature.

(c) Appoint the personnel of the society, determine their remuneration, salaries and other service conditions and also to terminate their services, dismissal or otherwise and take disciplinary action as necessary.

(d) Open and operate bank accounts, deposit, withdraw or invest funds, issue, accept, sign, endorse and deliver cheques, drafts,

letters of credit and in general any other negotiable instruments. Such banking account or accounts as and when opened shall be operated jointly by the President and Secretary-cum-Treasurer.

- (e) Determine and incur expenses in general and administer the finances of the society and to raise, receive and accept funds, subscriptions, donations and money and all kinds of gifts and charities.
- (f) Decide on the establishment of branch offices of the society.
- (g) Exercise control over the books and funds of the society, prepare and submit to the General Meeting the annual report, the balance-sheet, income and expenditure account of the society.
- (h) Frame bye-laws relating to the internal administration of the society.
- (i) Decide on any, every and all matters pertaining to or in connection with the administration of the society and the successful pursuance of aims and objects.
- (j) To make arrangements or appointments of the council or such other bodies for organising and publishing regular bulletins, journals or other publications and to hold and organise classes, lectures, meetings etc., under the direct supervision and guidance of the Council of Promoters.

15. The President shall preside over and direct the meetings of the Council of Promoters. But if at any meeting the President be not available to preside within 30 minutes of the time fixed for the meeting, the members of the Council of Promoters present shall elect one of them as Chairman of the meeting.

16. The Secretary-cum-Treasurer shall be the Executive Officer of the Council of Promoters. He or she shall carry on the administrative work of the society, receive all letters and documents addressed to the society, prepare correspondence, keep all books and records of the society.

17. The Secretary-cum-Treasurer shall collect all dues to the society and effect all its payments, keep appropriate records and books and help the Council of Promoters in financial administration of the society.

18. **Delegation of Authorities.** The Council of Promoters may delegate any of its powers and authorities referred to in rules to a sub-committee of two or more persons appointed from amongst the members of the society, if necessary. In each of such sub-committees, the President and the Secretary of the Council of Promoters shall always remain *ex officio* members.

19. **General Meetings.** The general body of the members shall be the supreme authority of the society in respect of all its activities and more particularly to decide on:

- (a) Amendments and/or additions to the memorandum of society and these rules.
- (b) Election of not more than seven members of the Council of Promoters every year after the expiry of the period of the First Council of Promoters and appointment of auditors and fix up their remuneration.
- (c) Approval with or without amendments of the annual report, the Annual Balance-sheet and the Income and Expenditure Account.
- (d) Collaboration or amalgamation of the society with any other society or fund pursuing similar objects.
- (e) Dissolution of the society and disposal of fund upon dissolution as hereinbefore mentioned.

20. The Annual General Meeting shall be convened by the Council of Promoters regularly once a year within the three months following the end of the society's accounting year provided that for any reason if it be not practicable to convene the Annual General Meeting within the aforesaid period, the Council of Promoters shall have power to extend the date of such Annual General Meeting for a further period not exceeding three months and it will not continue to act during this period but not more than 15 months shall elapse between the two Annual General Meetings.

21. The Council of Promoters may, whenever it deems necessary call an Extraordinary General Meeting.

22. The notice for the General Meeting shall be delivered personally or sent by post to the members of the society at least 10 days prior to the date of the meeting and at least five days in the case of an adjourned meeting. The notice must indicate the place, date and hour hereof, as well as the items of agenda.

23. The General Meeting whether Annual or Extraordinary shall not discuss or decide on any matter which are not included in the agenda, save and except with the permission of the President.

24. The quorum for the General Meeting shall be one-fifth of the membership strength or 20 whichever is less. In the event such quorum is not present within half an hour of the time appointed for the meeting the General Meeting shall stand adjourned for one hour at the same place and at such adjourned meeting the members present shall constitute a quorum.

25. The decision of the General Meeting including the election of the members of the Council of Promoters shall be taken by show of hands or secret ballot as the President may desire by majority of the votes of the members present.

26. The General Meeting shall be presided over by the President and in his absence the members present shall elect from amongst themselves a

President of the Council of Promoters for the meeting. The decision of the General Meeting shall be recorded in minutes, entered into a special book maintained for the purpose, duly signed by the President of the meeting.

27. President. (i) The President shall guide and supervise the various activities of the society. He shall preside over the Council of Promoters and at the Annual General and other General Meetings. He shall be the Head of the society. The ruling of the President at the Council of Promoters shall be final and binding on all questions raised.

(ii) The President in case of emergency may exercise all the powers and perform all the functions required to be exercised and performed under the Rules and Regulations by the Managing Committee provided always that all the actions taken by the President shall be placed before the Council of Promoters in the next meeting immediately failing the exercise of such powers and functions by the President.

(iii) The President in case of emergency if he thinks fit may also dissolve the Council of Promoters and appoint an *ad hoc* Council of Promoters provided, however, that the Council of Promoters appointed by the President under this sub-rule shall function only until the new Council of Promoters is elected at the next Annual General Meeting immediately failing the appointment of such *ad hoc* Council of Promoters.

28. Secretary-cum-Treasurer. The Secretary-cum-Treasurer shall be in charge of all executive work of the society. He shall keep records of the affairs of the society and issue calls for various meetings. He will not act under the guidance, supervision and advice from the President and the Council of Promoters.

29. Audit. At each Annual General Meeting a qualified Auditor/Auditors as provided in Explanation to s. 15(2) of the West Bengal Societies Registration Act 1961, shall be appointed. The Auditor shall submit a report on the income and expenditure, account and balance-sheet of the society presented by the Council of Promoters. The minutes of the meeting of the Council of Promoters and of the General Meeting, books of accounts, the correspondence and in general, all records of the society as well as any data required for the carrying on of the audit shall, upon a requisition by the auditors, be submitted to them.

30. Casting Vote. In all matters to be decided by a simple majority in General Meetings, casting vote of the PRESIDENT shall prevail in case of equality of votes.

31. Financial Year. The financial year of the Society shall commence on the 1st day of January and end with the 31st day of December according to English calendar year.

32. **Investments.** The funds of the society, besides being invested in the investment authorised by law for the time being in force relating to the investment of the TRUST FUNDS may also be invested in fixed deposit account with a scheduled bank or banks as may from time to time be directed by the Council of Promoters.

33. The name of a member of the society whose fees shall be in arrears may be removed from the register of members of the society on three months' notice to such member unless in the meantime such arrears are paid. Any member, whose name has been so removed from the register of members, shall not be eligible for readmission as a member unless he pays all arrears for which his name has been so removed from the register of members.

34. Any member may resign his membership by serving a written notice to that effect on the Secretary, but any dues payable by the member to the society on the date of resignation shall be payable by him.

35. **Suits and Proceedings.** The society may sue or be sued in the name of its secretary.

36. **Indemnity.** Every member of the Council of Promoters or any sub-committee, auditor, and other officer or servant of the society shall be indemnified against all liabilities arising out of acts and things done by him in performance of the duties entrusted, by way of damages otherwise, and all losses, costs, charges and expenses which he may incur or become liable by reason of any contract entered into or any act or deed done by him as such member, auditor, officer or servant in any way or about the discharge of his duties.

CERTIFIED to be a true copy of the Rules and Regulations of

- | | |
|---------|-------------------------|
| 1. | President |
| 2. | Secretary-cum-Treasurer |
| 3. | Member |
| | Council of Promoters |
| | Date |

Trade Union

A trade union is an association of wage earners for maintaining and/or improving the conditions of their employment. As defined in the *Chamber's Encyclopaedia* "it is an association of wage-earners or salary earning people primarily for the purpose of collective action for forwarding or defending its professional interests". It is defined under s. 2A of the Indian Trade Union Act 1926. It has not grown out of old caste system or craft guilds though they contained rudiments of trade unionism. It was not originally created by law. Its struggle for recognition and realisation of its objectives and the problems of regulating its activities have been modified by law.

Article 19(1)(c) of the Constitution of India gives all citizens the right to form associations and unions. The right to form a union is given by sub-cl. (c) of Art. 19, the right of the members to meet is guaranteed by sub-cl. (b) of Art. 19, their right to move from one place to another place within India by sub-cl. (d), their right to discuss their problems and to inter-change their views by sub-cl. (a), their right to hold property by sub-cl. (f) and so on each however being subject to such reasonable restrictions as may be imposed by cls. (2) to (6) of Art. 19.⁴ An association of citizens cannot, however, claim the right and powers nor the facilities which are not guaranteed to citizens nor freedom from restrictions to which the citizens composing it are subject. The right to form a union under sub-cl. (c) of Art. 19 does not by any means carry with it a concomitant right that the unions formed for protecting the interest of labour shall be free from all interference except those justified on grounds of public order or morality. They are always subject to and governed by such laws, rules and ordinances as might from time to time be enacted to impose limitations and restrictions, the union of citizens might legitimately engage themselves. In any event trade unions have under Art. 19(1)(c) no guaranteed right to an effective, collective bargaining or to strike either as part of its collective bargaining or otherwise. The right to strike or the right to declare a lock-out is controlled or restricted by legislation, standing orders, ordinances and the validity of such legislation, standing order or ordinance is tested not with reference to the criteria laid down in cl. (4) of Art. 19 but by totally different consideration.⁵

The enjoyment and fulfilment of the purposes of the trade union are not in all cases guaranteed by sub-cl. (c) of Art. 19(1). The right to be recognised and/or to represent the workmen is never an absolute right guaranteed by Art. 19(1)(c) though every member has the right to join a union of his own choice or refuse to be member of a union.⁶

Trade Union with reference to the law of contract. Section 27 of the Indian Contract Act 1872, declares any agreement by which anyone is restrained from exercising a lawful trade or profession, or business of any kind to that extent void. Agreements in restraint of trade are also bad as opposed to public policy under ss. 23 and 24 of the Indian Contract Act. Nevertheless s. 19 of the Trade Unions Act 1926, protects such agreement from being void or voidable on the ground that any of its objects is in restraint of trade when the same is between the members of a registered trade union. But no

4 J.L. Mallick's *Trade Union Law*, p. 24.

5 *All India Bank Employees' Association v The National Industrial Tribunal* AIR 1962 SC 171.

6 *Uttar Pradeshiya Shramik Maha Sangha v State of Uttar Pradesh* AIR 1960 All 45; see also *Keshoram Rayon Workmen's Union v Registrar of Trade Unions* AIR 1967 Cal 507.

suit or any other action lies for recovery of damage for breach of conditions on which any member or members shall or shall not sell their goods, transact business work or employ or be employed in any trade. The English Act, *i.e.* s. 3 of the Trade Union Act 1871, gives complete protection to all unions whether registered or not.

A trade union can act through agents and, in doing so, it remains liable for costs, charges and expenses, negligence and defaults of agents.⁷

Nevertheless s. 18(2) of the Indian Trade Unions Act protects the trade union from any liability on account of acts of agents in cases when done without knowledge or against express instructions as registration of a union gives it a separate legal entity from its members. The union acts as agents of the members.

Section 23 of the Payment of Wages Act 1936, provides that any agreement or contract whereby any employee relinquishes any right conferred upon him by the Act is void in so far as the same deprives him of such a right.

Government servants have the right under Art. 19(1)(c) to form associations. The Government can control recognition in the interest of or efficiency and discipline of the employees. There is no fundamental right to obtain recognition of the Government.⁸

Trade union with reference to law of crime. Although s. 17 of the Indian Trade Unions Act 1926, protects all officers and members against offence under s. 120(B) of the Indian Penal Code (which refers to criminal conspiracy other than conspiracy to commit an offence) in connection with any contract or agreement as between them for promotion of the objects of the union (s. 15 of the Act) but nevertheless the immunity does not extend to criminal trespass, intimidation, molestation or violence (ss. 143, 340, 342, 352, 425, 447 and 506, IPC).⁹ In the result peaceful strike or gathering together though permitted, unlawful confinement, criminal trespass, force, assault are not exempt from liability. In any event an agreement to commit an offence is never exempted under the criminal law of the land.¹⁰ A strike is illegal against contract to the contrary in the contract of employments.

The trade union is mainly a post-war organisation; nevertheless the idea dates back to early part of the 18th century. Before 1918, workers engaged in the industry were in an unorganised state. Working hours were inordinately long and wages were pitifully poor, education was practically nil and the conditions of workers were in fact humiliating so much so that workers were treated mere adjuncts of the machinery rather than human

7 *Taffvale's cases* 1901 AC 420 (429).

8 *Raghubir v Union of India* AIR 1962 SC 263.

9 *Rooke v Barnad* 1964 AC 1129.

10 *Joy Engineering Works v State* AIR 1969 Cal 407.

beings. The import of the World War which resulted in the rise in prices and wages and costs of living, contributed to the cause of labour consciousness and established occupational units in the repealing and amending Act of 1942 (Act 25 of 1942) and, came into operation on 1st June 1917, was the earliest legislation on the subject. It was subsequently amended by the Indian Trade Unions Amendment Act XV of 1928 and again by the repealing and amending Act of 1942 (Act 25 of 1942) and, lastly, by the Amendment Act 1947, which received the assent of the Governor-General on 20th December 1947. The Act protects the members of the trade union against civil action in respect of any act done in furtherance of the trade and from liability for criminal conspiracy for any agreement or understanding as between themselves. Various temporary or permanent organised bodies were set up primarily for the purpose or regulating the relation between workmen and which imposed restricted conditions on the conduct of any trade or business and included any federation of two or more unions. The Act achieved success in every State in respect of anything done in furtherance of trade so much so that regulations were enacted to help its implementation in West Bengal, Bombay United Province, Andhra, Madhya Pradesh, Assam and Madras. The labour courts were set up to hear disputes arising out of the refusal of the employers to recognise particular unions. A trade union was not entitled to recognition under any order of the labour court until and unless it fulfilled certain conditions. The Amendment Act specified certain acts for recognition of the trade union. The act also specified certain acts as unfair practice on the part of the employer. A trade union is an association completely different from the company and, even though registered as such, cannot be a trade union. It, however, does not follow that a combination which purports to be registered as a company is not a trade union. A trade union can be registered only under the Trade Unions Act but not under the Societies Registration Act 1860 (XXI of 1860) or the Co-operative Societies Act 1972 (Act II of 1972) or under the Companies Act 1956 (Act 1 of 1956); registration of the trade union under any of those Acts is void *ab initio* (s. 14 of the Trade Unions Act).

The mode of registration is simple. Any seven or more persons by subscription of their respective names to the rules of the trade union and also by applying under the provisions of the Act may apply for registration under this Act. Chapter 2 of the Trade Unions Act contains full particulars as to how a trade union may be registered. It also provides for the regulations as are contemplated in s. 29 of the Trade Unions Act.¹¹ The condition of registration being that the trade union becomes a body corporate and so without registering it cannot have a real and perpetual succession. It can acquire and own property; it can contract to achieve and, lastly, it can sue and be sued when registered.

11 The Trade Unions Act 1926 as amended by Amendment Act of 1947.

FORM A

(Regulation 3)

Application for Registration of a Trade Union

Dated the day of 19.....

1. We hereby apply for the registration of a trade union under the name of

2. The address of the head office of the union is

3. The union came into existence on the day of 19..... (and has on its roll on the date of his application members).¹²

4. The union is a union of employers/workers engaged in the industry (or profession).

5. The particulars required by s. 5(1)(c) of the Indian Trade Unions Act 1926, are given in Schedule I.

6. The particulars given in Schedule II show the provision made in the rules for the matters detailed in s. 6 of the Indian Trade Unions Act 1926.

7. (To be struck out in the case of unions which have not been in existence for one year before the date of application). The particulars required by s. 5(2) of the Indian Trade Unions Act 1926, are given in Schedule III.

8. We have been duly authorised to make this application by

	Signature	Occupation	Address
Signed 1
2
3
4
5
6
7

12 Vide Notification No. 2474 Com., dated the 9th August 1939.

State here whether the authority was given by a resolution of a general meeting of the union, or, if not, in what other way it was given.

To
The Registrar of Trade Unions, West Bengal

SCHEDULE I
List of officers

NOTE. Enter in this Schedule the names of all members of the executive (including all honorary or temporary members)¹³ of the union; shown in column 1 the names of any posts held by them (i.e., President, Secretary, Treasurer, etc.,) in addition to their office as members of the executive.

SCHEDULE II

Reference to Rules

The numbers of the rules making provision for the several matters detailed in column 1 are given in column 2 below:

1 Matter	2 Number of Rules
Name of union	
The whole of the objects for which the union has been established	
The whole of the purposes for which the general funds of the union shall be applicable	
The maintenance of a list of members	
The facilities provided for the inspection of the list of members by officers and members	
The admission of ordinary members	
The admission of honorary or temporary members	
The conditions under which members are entitled to benefits assured by the rules	
The conditions under which fines or forfeitures can be imposed or varied	
The manner in which the rules shall be amended, varied or rescinded	
The manner in which members of the executive and the other officers of the union shall be appointed and removed	
The safe custody of the fund	
The annual audit of the accounts	
The facilities for the inspection of the account books by officers and members	
The manner in which the union may be dissolved	

¹³ Vide Notification No. 2474, dated the 9th August 1939.

SCHEDULE III

(This need not be filled in if the union came into existence less than one year before the date of application for registration) Statement of liabilities and assets on the day of 19.....

<i>Liabilities</i>	<i>Rs. P.</i>	<i>Assets</i>	<i>Rs. P.</i>
Amount of general fund		Cash	
Amount of political fund		In hand of Treasurer	
		In hands of Secretary	
		In hands of	
Loans from		In the Bank	
.....		In the Bank	
.....		Securities as per list below	
.....		Unpaid subscriptions due	
Debts due to		Loans to	
.....		
.....		
Other liabilities (to be specified)		Immovable property	
.....		Goods and furniture	
.....		Other assets (to be specified)	
.....		
.....		
Total liabilities		Total assets	

LIST OF SECURITIES

<i>Particulars</i>	<i>Nominal value</i>	<i>Market value</i>	<i>In hands of</i>

Signed 1

2

3

4

5

6

7

Model Constitution of a Trade Union

Rules and Regulations of (name of the union)

1. The name of the union shall be the and hereinafter referred to as "the union".
2. The registered office of the union shall be
3. The aims and objects of the union shall be—
 - (i) to redress the grievances of members;
 - (ii) to secure for the members proper conditions of service;
 - (iii) to persuade the employers to standardise at a fair level the wages of their workmen;
 - (iv) to prevent any reduction of wages below the permissible level;
 - (v) to organise and unite the persons engaged in the industry in the city and to regulate the relations of employers and of employees, *inter se*;
 - (vi) to provide against sickness, unemployment, infirmity, old age and death;
 - (vii) to secure compensation for members in cases of accidents under the Workmen's Compensation Act;
 - (viii) to make efforts at settlement of disputes between employers and workmen in an amicable manner in the interest of continuity of work;
 - (ix) to provide legal assistance to members in respect of matters or disputes arising out of, or incidental to, their employment;
 - (x) to render necessary help to the members during the period of any strike brought about with the permission of the union or a lock-out;
 - (xi) to obtain adequate information relating to the industry in India and outside;
 - (xii) to co-operate and federate with labour organisations having similar objects in India and outside;
 - (xiii) to help, in accordance with the Indian Trade Unions Act, the working classes in India;
 - (xiv) generally, to take such other steps as may be necessary to ameliorate the social, economic, civic and political conditions of the members;
 - (xv) to open permanent or temporary centres for the achievement of all or any of the above objects.
4. Any person engaged in the industry in the (in District) who has attained the age of 15 years shall be entitled to

become an ordinary member of the union on payment of an admission fee of annas and a monthly subscription of provided he agrees to abide by these rules and regulations and such other rules and bye-laws as may from time to time be framed by the union.

5. A member running in arrears of his monthly subscriptions for a period of three months shall be declared a defaulter and, in the event of his not clearing up the arrears within one month of such declaration, he shall cease to be a member and his name shall be removed. He may, however, rejoin on payment of arrears and fresh admission fee.

6. **Benefits.** No member of the union shall be entitled to any benefits that the union may decide to give to its members unless he has been a member for at least six months and has paid all contributions.

7. A member of the union who is in arrears with his subscription or dues shall not be entitled to any benefits until all arrears have been paid and a period of two months has elapsed from the date of payment of such arrears.

8. Should the members of the union go on strike without the sanction or approval of the Managing Committee, they shall not be entitled to any benefits whatever.

9. The union shall keep a register of all its members containing their names and particulars of their place of work, their residence, etc.

10. The register shall be open to inspection by any member or officer of the union at the head office during the hours during which the office of the union is open on any weekday excluding holidays.

11. **Executive.** The executive of the union shall consist of a President, not more than two Vice-Presidents, a General Secretary, two Secretaries, a Treasurer, and four more members. All of them shall be elected at the Annual General Meeting of the union and they shall be eligible for re-election.

The Executive so constituted shall have power to co-opt two more members.

12. **Management of the union.** The management of the affairs of the union shall be carried on by the Executive constituted as above.

13. In the event of a vacancy occurring among the office-bearers or the members of the Executive, it shall be filled by the Managing Committee by co-option.

14. Any office-bearer of the union or a member of the executive can be removed at the General Meeting of the members by a three-fourths majority for committing any fraud or having acted against the interests of the union, provided the office-bearer or the member to be removed is given reasonable opportunity to explain his conduct.

15. The Executive shall meet once a month or as often as found necessary on such days and at such place as may be fixed by the General Secretary in consultation with the President.

16. The presence of at least one-third members of the Managing Committee shall be necessary to form a quorum. No quorum is necessary for adjourned meetings.

17. At least five days' notice shall be given for a Managing Committee meeting.

18. The President shall preside over all meetings of the union and the Executive, preserve order, sign all minutes and shall be allowed to give a casting vote only. The President shall have power if necessary, to call special meetings of the Executive or of the union, whenever necessary. One of the Vice-Presidents shall function in place of the President in his absence.

19. The General Secretary shall record minutes of all union and committee meetings, conduct all correspondence, convene all meetings, keep all accounts, exercise a supervision over the affairs of the union and shall also keep a correct account of all receipts and expenditure. He shall prepare a balance-sheet annually showing clearly every item of receipts and expenditure. He shall be responsible for submitting to the Registrar of Trade Unions all returns and notice that should be sent to that officer under the Indian Trade Unions Act 1926. He shall have power to engage, in consultation with the President and subject to the approval or confirmation of the Managing Committee, any assistants for organising and clerical purposes if he considers necessary, and all such assistants shall be under the control of the General Secretary.

20. The Secretaries shall generally help the General Secretary. One of them shall perform the duties of the General Secretary in his absence.

21. The Treasurer shall be responsible for all moneys which may from time to time be paid into the union and for duly banking them. He shall make payments towards all expenditure sanctioned by the Managing Committee. He shall not have the power to draw money from the bank without first having the cheque signed by the President or the General Secretary.

22. There shall be held in the month of April or May an Annual General Meeting of all the members of the union to transact the following business:

- (a) to adopt the report of the work done by the union and the audited statement of accounts;
- (b) to elect the office-bearers and other members of the Managing Committee for the current year; and
- (c) to transact such other business as may be brought forward with the permission of the Chairman.

23. The President may call a General Meeting of the members of the union whenever he thinks necessary by giving 15 days' notice to the members and shall call it on a requisition signed by one-fifth of the total strength of the union within 20 days of the receipt of the requisition. The quorum for the General Meeting shall be one-third of total membership. No quorum is necessary for adjourned meetings.

24. The general funds of the union shall consist of the admission fees, subscriptions from members, donation etc. They shall be deposited in a bank or banks, approved by the Managing Committee in the name of the union and the account may be operated by the Treasurer and either the President or the General Secretary. The General Secretary or the Treasurer shall not keep more than Rs. 50 with him for current expenses.

25. The union shall make the provision for the annual audit of the accounts of the union by competent auditors appointed by the Executive in accordance with the provisions of trade regulations applicable to the union.

26. The rules may be amended, altered, rescinded or added to at any time by a majority of the members present at a General Meeting provided a previous notice of at least seven days is given to the members of the proposed amendments, etc.

27. (a) The union shall not be dissolved except by the vote of a majority of three-fourths members present at a General Meeting called for the purpose, provided the total number of votes cast at such a meeting is not less than two-thirds of the total number of the members then on the rolls of the union.

(b) On the dissolution of the union the executive shall send a notice of dissolution to the Registrar in the manner provided by s. 28 of the Trade Unions Act and shall also make arrangements for winding up the union and to distribute its assets.

Dated this day of 2000

12

Companies

A company is a separate person or entity having independent existence from its members. A company may be a private company or a public limited company. The liability of its members may be limited by shares held by them or by guarantee.

Any two persons may form a private company. The maximum number of members of a private company shall not exceed fifty. A public company may be formed by any seven persons. No limit has been prescribed as to the maximum number of members of a public company.

The constitution of a company is contained in the Memorandum of Association which is required to be registered with the Registrar of Companies. The internal regulations of the company are contained in its Articles of Association registered with the Registrar of Companies. The provisions of the Companies Act 1956 will override any provisions in the Memorandum of Association or the Articles of Association of the company.

If a company acquires any property subject to a charge, this fact has to be registered with the Registrar of Companies. When a company creates a charge over any of its assets (other than Pledge) such charge has to be registered with the Registrar of Companies. The creditor or the charge-holder may register such charge with the Registrar of Companies if the company delays or fails to do so.

All notices and documents may be served on a company or an officer thereof sending them to the company or at the registered office of the company. The service of notice may be by post under Certificate of Posting, by Registered Post or by leaving it at the registered office. Other modes of service at the registered office will also be valid.

The management is in the hands of the Board of Directors. The Board can exercise all the powers of the company for running the business. The Board acts by Resolution and by a majority vote.

The Board of Directors can exercise the powers on behalf of the company by issuing Debentures and to borrow moneys by passing appropriate resolution at a meeting of the Board. However, in the case of a public company or a private company which is the subsidiary of a public company, the Board requires consent of the General Meeting to sell, lease or dispose of the whole or substantially the whole of the undertakings of the company or to borrow moneys exceeding the aggregate of the paid-up capital of the company and its free reserves.

All the important contracts and execution of documents shall be pursuant to authorisation at a general meeting wherever necessary and the Board Resolution. Such Board Resolution may authorise the Secretary and a Director of the company to affix the Official Seal of the company on the documents and to execute the same and also specify the person who will execute the documents.¹

A company may appoint a Sole Selling Agent for any area for a term of five years or less at a time. The appointment is renewable for a similar period. Such appointment has to be approved by the first general meeting of the company after the appointment. If the general meeting does not approve then from the date of the meeting the agreement becomes void. The Central Government may regulate the appointments or terms and conditions of the appointment of Sole Selling Agent for any area or for any goods.²

A company may propose to amalgamate with another company. The other company in such a case takes over all the assets and liabilities of the first (amalgamating) company. The two companies may amalgamate on terms and conditions agreed upon by them and on obtaining the consent of the respective shareholders at a General Meeting and on notice to the Central Government with the sanction of the High Court concerned.³

FORMS

Memorandum of Association

..... Private Ltd.

(Incorporated under the Companies Act 1956)

1. The name of the company is
2. The Registered Office of the company will be situated at
in the State of

1 Sections 292 and 293 of the Companies Act 1956.
2 Sections 294 and 294AA of the Companies Act 1956.
3 Sections 391 to 396A of the Companies Act 1956.

3. The objects to be pursued by the company immediately after incorporation are:

To acquire by purchase the business of publishers of journals and periodicals carried on under the names and styles of Indian Journal of Power and River Valley Development and Indian Mining Journal as going concerns with all the assets and liabilities, pending contracts, rights, privileges and goodwill attached thereto.

4. The objects incidental to and ancillary to attainment of the main objects are:

- (a) To carry on the business of printers and publishers of books, journals, periodicals, newspapers, magazines, etc., in different languages and to organise their sales in India and outside India directly or through agents.
- (b) To carry on the business of advertising agents for publicity through journals and periodicals, cinema slides, neon signs, and all other modes of advertisement.
- (c) To carry on the business of importers, exporters, traders, agents, printers, contracts, brokers, and dealers of all commodities that may be found profitable by the company.
- (d) To initiate, promote, encourage, facilitate and support financially or otherwise research of all kinds of scientific or natural phenomena whether directly or indirectly connected with any of the above subjects.

5. The other objects for which the company is established are as follows:

- (i) To acquire and undertake the whole or any part of the business of any concern either private or public company, firm or individual which may in the opinion of the company be carried on conveniently.
- (ii) To apply for, purchase or otherwise acquire any patents, licences, concessions and the like conferring any exclusive or non-exclusive or limited right to use, make or deal with or the acquisition of which may be calculated directly or indirectly to benefit the company.
- (iii) To enter into partnership or any other arrangement for sharing profits, union of interests, co-operation, joint venture, reciprocal concessions with any person, firm or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorised to carry on or engage in or any business or transaction capable of being conducted so as to benefit the company directly or indirectly.
- (iv) To enter into any agreement with any Government, railway, body corporate, corporation or other authorities supreme, municipal,

local or otherwise and private or public bodies that seem competent or undertake operations similar to those undertaken by this company and conducive to the company's objects or any of them and to obtain from any such Government, railway, body concessions which the company may think desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

- (v) To advance and lend money upon such security as may be thought proper or without taking any security and to invest and deal with the money of the company not immediately required upon such securities.
- (vi) To borrow or raise or secure payments of money in such manner as the company shall deem fit and in particular by issue of debentures charged upon all or any of the company's properties, both present and future, including its uncalled capital and to purchase, redeem and to pay off any such securities or debentures.
- (vii) To draw, accept, make, endorse, discount and negotiate bills of exchange, promissory notes and other negotiable instruments, coupons, drafts, bills of lading, railway receipts, debentures, certificates, securities, and other instruments and securities whether transferable or negotiable or not.
- (viii) And generally to do all such other things as are incidental or conducive to the attainment of the objects or any of them and the intention is that the objects set forth in all the paragraphs of this clause shall have the widest possible construction and shall be in no way limited or restricted by reference to or in reference from the terms of any other paragraphs of this clause.

6. The liability of the members is limited.

7. The capital of the company is Rs. 21,000 divided into 2,100 Equity shares of Rs. 10 each with the power to increase or reduce the capital as may be determined by the company in General Meetings from time to time.

We, the several persons whose names, addresses and descriptions are subscribed hereto are desirous of being formed into a private limited company in pursuance of this Memorandum of Association and we are respectively agreeable to take the number of shares in the capital of the company set opposite to our respective names.

Serial No.	Names, Addresses and Description	Number of Shares taken	Witness

Dated the day of 2000.

Articles of Association

..... Company Ltd.

(Incorporated under the Companies Act 1956)

1. The provisions of Table A in the first schedule of the Companies Act 1956, shall apply to this company so far as they are applicable to private limited Companies and are not expressly provided otherwise in these articles.

2. **Share Capital.** The capital of the company is Rs. 21,000 divided into 2,100 Equity shares of Rs. 10 each payable Rs. 5 on application and the balance on allotment.

3. **Private Company.** The company shall be a private limited company and accordingly:

- (a) No invitation shall be made to the public to subscribe its share capital or debenture, if any.
- (b) The number of members of the company shall not exceed 50 excluding the employees of the company and the joint holders of one or more shares shall be considered for the purpose of this sub-clause as one member.
- (c) The right to transfer its shares shall be restricted as hereinafter provided.

4. **Agreement.** As soon as possible after the registration of the company the Directors shall give effect to the agreement between the firms Indian Journal of Power and River Valley Development and Indian Mining Journal of the one part and the company of the other part to acquire the business as stated in the Memorandum of Association of the company, by proper entries in the books of account.

5. **Shares.** Subject to and without prejudice to the other provisions of these articles, the shares of the company shall be under the control of the Directors who shall allot to the members its shares at such time and in such manner and for such consideration as Directors shall determine.

6. **Transfer and Transmission of Shares.** Shares of the company may be transferred by the holders thereof to their sons, daughters, wives or other legal heirs or any other member or members of the company in the usual way, but such transferrer shall be deemed to remain the holder of any share transferred until the name of the transferee is entered in the Register of Members as the holder thereof.

7. In case a shareholder of the company expresses his intention to transfer all or any part of the shares held by him to any other person except those referred to in the above article, he is to signify his such intention by proposal in writing to the Directors of the company giving the name, address and description of such proposed transferee and the Directors will convene a meeting forthwith to consider such proposal and the Directors will be at

liberty to either take in such transferee as a member of the company, or arrange the sale of such shares to some of the members of the company.

8. Any member wishing to transfer his shares shall give notice in writing (hereinafter called the SALE NOTICE) to the company of his intention to do so specifying and denoting the number of shares he intends to sell. Every such notice shall constitute the company the agent of the member proposing to sell (hereinafter called the VENDOR) for the sale of such shares as a *fair value* to any member of the company (hereinafter called the PURCHASER) or in the absence of any member agreeing to purchase, to any outsider whom the Directors in their meeting may nominate. No sale notice may be withdrawn without the written sanction of the Directors.

9. On receipt of a SALE NOTICE the Directors shall offer the shares comprised in such notice at their "fair value" in the first instance to the existing members of the company and shall set a limit of time not less than 30 days within which such offer, if not accepted, shall be deemed to have been declined. Should more than one member accept the offer, the Directors may either divide the shares between them as nearly as may be in proportion to their holding in the company.

10. If the Directors are unable within 60 days after the receipt of the SALE NOTICE by them to find any member willing to purchase any or all of such shares offered for sale at a "fair value", then they may by resolution nominate an outsider, as PURCHASER of such shares and the VENDOR shall be bound upon payment of the "fair value" to transfer the shares to such purchaser be he a member or outsider, within seven days from the receipt of the notice of the transaction.

11. If the Directors fail within 90 days after service of the sale notice to find a PURCHASER for any or all of the shares comprised therein at a "fair value", they shall give notice to this effect to the vendor within seven days thereafter stating the best value, if any, that they are able to obtain for the said shares.

12. The VENDOR shall then be at liberty to either accept the offer or to sell and transfer the said shares to any person he may select without the sanction of the Directors provided that the sale be effected at a figure higher than that offered in writing by the Directors, and the company shall thereafter be bound by such transfer. In the absence of any notice to the vendor as prescribed here, he shall conclude that no offer is forthcoming for the said shares and may proceed to deal with them in the manner prescribed above.

13. Before the ordinary General Meeting of each year, the auditors of the company shall make out a valuation of the company and assign a "fair value" to each share and on the basis of such valuation at the ordinary General Meeting in each year, the company shall by resolution fix the price of the shares (but such price must not be less than the value reported by the auditor).

14. **Directors.** The number of Directors shall not be less than two and more than five.

15. The qualification of a Director shall be the holding of at least 100 shares in the company. The Directors shall get such remuneration as may be determined by the company in general meeting from time to time.

16. The following persons shall be the first Directors of the company:

(1) Mr.

(2) Mr.

17. The Board of Directors may appoint additional Directors who will hold office up to the date of the next Annual General Meeting of the company but the number of the Directors and additional Directors together shall not exceed five.

18. The business of the company shall be managed by the Managing Director under the supervision of the Board of Directors.

19. The Board of Directors shall appoint one of the them to the office of the Managing Director for such terms and conditions as they think fit but not exceeding five years at a time.

20. **Rotation of Directors.** All the Directors shall retire every year but they will be eligible for re-election.

21. **Disqualification of Directors.** The office of Director shall be vacated if he:

(a) fails to obtain within the time specified in sub-sec. (1) of section 27 of the Companies Act 1956 or any time thereafter ceases to hold the share-qualification necessary for his appointment, or

(b) is found to be of unsound mind by a competent court of law having jurisdiction; or

(c) is adjudged an insolvent; or

(d) applies to be adjudged an insolvent; or

(e) is convicted by a court in India of any offence and is sentenced in respect thereof to imprisonment for not less than six months; or

(f) fails to pay any calls made in respect of shares of the company held by him whether alone or jointly with others within six months from the date of such calls being made; or

(g) is found to be interested directly or indirectly in any business almost similar to that of the company without having previous consent of the Board of Directors in writing.

22. **Meetings.** A meeting of the Board of Directors shall be held at least once in every three calendar months. Two Directors present in person shall form the quorum.

23. Notice of every meeting of the Board of Directors shall be given in writing to every Director at his usual address.

24. An Annual General Meeting of the company shall be held within 18 months from the date of its incorporation and thereafter once at least in every year at such time (not being more than nine months after the expiry of the financial year of the company).

25. Notice of an Annual General Meeting shall be given to each member in writing to his usual address at least 21 days before the date of the meeting specifying the place, day and hour of the meeting and also a statement of the business to be transacted thereat.

26. No business shall be transacted at any General Meeting unless a quorum of two members is present in person at the time when the meeting proceeds to transact business.

27. On show of hands every member present in person shall have one vote; on a poll every member present in person or by proxy shall have one vote for each share held by him. In the case of an equality of votes the chairman shall have a casting vote.

28. **Accounts.** The Board of Directors shall keep or cause to be kept proper books of accounts.

29. The books of accounts shall be kept at the registered office of the company and shall be open to inspection by the Directors during the usual office hours.

30. The Board of Directors shall, as required by sections 210 and 211 of the Companies Act 1956, cause to be prepared and to be laid before the Company in the General Meeting such Profit and Loss Accounts and Balance-Sheet and Reports as are referred to in those sections.

31. **Audit.** Once at least in every year the accounts of the company shall be examined and the correctness of the Balance-Sheet and Profit and Loss Accounts be ascertained by a Chartered Accountant.

We, the several persons whose names, addresses and descriptions are subscribed hereto, are desirous of being formed into a private limited company in pursuance of this Memorandum of Association and we are respectively agreeable to take the number of shares in the capital of the Company set opposite to our respective names.

Serial No.	Names, Addresses and Description	Number of Shares taken	Witness

Dated the day of 1999.

Agreement of Amalgamation of One Company with Another

THIS AGREEMENT is made on this 5th day of June 2000 BETWEEN AB Co. Ltd., a company registered under the Companies Act 1956 and having its registered office at (hereinafter called the VENDOR) of the One Part and XY & Co. Ltd., a company registered under the Companies Act 1956 and having its registered office at (hereinafter called the PURCHASER) of the Other Part.

WHEREAS the VENDOR is a company limited by shares with a capital of Rs. 50 lakhs divided into 50,000 shares of Rs. 100 each;

AND WHEREAS the VENDOR has under its Memorandum of Association the necessary rights and powers to sell, transfer or convey the business of the company in whole or in part with all its undertakings, assets, pending contracts and other rights whatsoever for adequate consideration in cash, shares, debentures or such other securities;

AND WHEREAS the PURCHASER is a company limited by shares with a share capital of Rs. 100 lakhs divided into 1,00,000 shares of Rs. 100 each;

AND WHEREAS all the shares of PURCHASER have been allotted and paid-up and the PURCHASER is authorised under its Memorandum of Association to increase its share capital;

AND WHEREAS the PURCHASER has the power under its Memorandum of Association to purchase the business of any other company similar to the one carried on by it as a running concern with all its assets, rights and liabilities whatsoever;

AND WHEREAS the VENDOR has agreed to amalgamate with the PURCHASER and it has passed necessary resolution for that purpose on and the PURCHASER has also passed the necessary resolution on for taking over the business of the VENDOR with all its undertakings, assets and liabilities.

NOW THESE PRESENTS WITNESSETH and the parties hereby agree as follows:

1. The PURCHASER shall forthwith pass the necessary resolution to increase its share capital to Rs. 150 lakhs by the creation and issue of 50,000 shares of the value of Rs. 100 each ranking *pari passu* in all respects with its present shares.

2. The VENDOR shall sell and the PURCHASER shall purchase and take over the entire business of the VENDOR with all its undertakings, rights, assets and liabilities whatsoever with effect from the day of

..... for consideration of Rs. 60 lakhs agreed to be paid to the VENDOR in the manner as follows:

- (a) Rs. 10 lakhs in cash; and the balance
- (b) Rs. 50 lakhs by issue of shares to the VENDOR

or to such persons as the VENDOR may direct, which shares shall be treated as fully paid-up.

3. As for the day of the PURCHASER shall be entitled to the business of the VENDOR with all its undertakings, rights, securities and liabilities whatsoever and wherever situate and shall thenceforward be entitled to carry on the business, realise the securities without any let or hindrance from the VENDOR company or any one claiming through or under it.

4. Upto the above said day of when the business of the VENDOR is taken over as above the VENDOR shall carry on its business for and on behalf of the PURCHASER.

5. On or before the expiry of days from the date of taking over of business as above the VENDOR shall deliver to the PURCHASER all title deeds of the properties and the premises belonging to it along with an abstract report regarding its title to the properties and premises. The defects, if any, to the title of the VENDOR to the said properties and premises shall be intimated to the VENDOR in writing within days after receipt of the title deeds and abstract of title and if no objection is lodged within the time prescribed as above the PURCHASER must be deemed to have accepted the title.

6. The purchase shall be completed on the to at the office of the PURCHASER'S Solicitors when the PURCHASER shall pay the said sum of Rs. 10 lakhs in cash or Bank Draft and shall hand over the Certificates for Rs. 50 lakhs of the said shares and thereupon the VENDOR and all other necessary parties shall execute all such deeds and do such things as may be reasonably required for vesting all the properties agreed to be sold in the PURCHASER.

7. The entire staff of the VENDOR company shall be taken over and maintained by the PURCHASER company with effect from the aforesaid date of taking over on the same terms and conditions as those are at present prevailing.

8. For the purpose of stamp duty the value of goodwill fittings and fixtures, book debts, contracts, patents, designs and trade marks, belonging to the VENDOR shall be taken as Rs. 10 lakhs and the value of all other properties of the VENDOR hereby agreed to be sold at Rs. 50 lakhs.

IN WITNESS WHEREOF the parties hereto executed these presents on the day, month and year first above-written.

Signed, sealed and delivered
by Mr.
pursuant to Board Resolution
dated of the VENDOR
AB Co. Ltd. in the presence of:

VENDOR

Signed, sealed and delivered
by Mr.
pursuant to Board Resolution
dated of XY & Co. Ltd.
in the presence of:

PURCHASER

Conversion of firm into Company

The Companies Act 1956 in Part IX, section 567 makes provision as to Companies and firms authorised to register under the Act. The section provides *inter alia* that before the Registration of a Joint-stock Company there shall be delivered to the Registrar of Companies a list containing the names, addresses and occupation of all persons who were the members of the firm, their shares, a copy of the Deed of Partnership, a Statement specifying the nominal share capital, number of shares taken by each of the members and the name of the company to be registered with the word "Limited". This section can be taken as the enabling provision for conversion of a partnership firm into a Limited Company. The existing partnership firm is required to execute a document in the line of the Memorandum of Association containing the requirements of this section.

SUGGESTED FORM

Company Limited by Shares

Memorandum and Articles of Association of Industrial Company Pvt. Ltd.

MEMORANDUM OF ASSOCIATION made this 15th day of September 2000 BETWEEN
S. Tanton residing at by occupation business
of the FIRST PART, T. Tanton residing at by occupation
business of the SECOND PART, U. Tanton, residing at
by profession business of the THIRD PART, V. Tanton residing at

..... by occupation business of the FOURTH PART, W. Tanton, residing at by occupation business of the FIFTH PART, X. Tanton residing at by occupation business of the SIXTH PART and Y. Tanton residing at by occupation business of the SEVENTH PART.

WHEREAS the parties on the FIRST PART to SEVENTH PART are carrying on business in partnership under the name and style of Industrial Company in Delhi having several branches in South, East and West of India under a Registered Deed of Partnership dated

AND WHEREAS the firm has been carrying on business as manufacturer of and dealer in all kinds of Computer Hardware and Softwares and import and export of all sorts of goods in connection therewith.

AND WHEREAS the said Partners have adjusted their rights and accounts with the intention to register a JOINT STOCK COMPANY under the name and style of INDUSTRIAL COMPANY PVT. LTD. for the purpose of carrying on the said business of Partnership with a nominal Share Capital of Rs. 7,00,000 divided into 70,000 Equity Shares of Rs. 10 each.

AND WHEREAS the said parties have agreed that the share-holding of each of them in the said JOINT STOCK COMPANY would be 10,000 shares each fully paid-up.

AND WHEREAS for the better and efficient management of and expansion of the said business the said parties have agreed that the said JOINT STOCK COMPANY be governed by the Articles of Association containing the regulations for the day-to-day management of the company particulars whereof is mentioned in Schedule 'A' hereto.

AND WHEREAS the assets and properties of the said partnership firm would be the assets and properties of the JOINT STOCK COMPANY, the particulars whereof are given in Schedule 'B' hereto.

AND WHEREAS the parties have agreed that the said partnership firm and the JOINT STOCK COMPANY would be and continue to be bound by the regulations and the parties among themselves will be governed by these presents and the said Articles of Association.

NOW THESE PRESENTS WITNESSETH that the said parties in relation to all acts and deeds hereby agree and undertake as follows:

1. The name of the company is INDUSTRIAL COMPANY PVT. LTD.
2. The Registered Office of the company will be situated in Delhi.
3. (a) The main objects to be pursued by the company on its incorporation are the manufacturing and dealing in all sorts of Computer, Hardware and Software and exporting thereof;
- (b) The objects incidental or ancillary to the attainment of the above main objects are the acquisition, construction, building,

setting-up and provisions of establishment for the tool shops, assembly lines, packaging units and workshops for training the personnel and establishing infrastructure for the Computer industry as are conducive to the attainment of foregoing objects;

- (c) The other objects for which the company is established are carrying on the business of, dealing in as exporter and importer of computer goods and in connection with the business to borrow moneys give Guarantees, make inter-corporate deposits, accept deposits, borrow money from banks and financial institutions and to do all other acts which are necessary for carrying on the business of company.

4. The liability of members is limited.

5. The share capital of the company is Rs. 7,00,000 divided into 70,000 Equity Shares of Rs. 10 each.

Schedule A

The Articles of Association of Industrial Company Pvt. Ltd. being the regulations for the management of the company as contained in Table 'A' of First Schedule of the Companies Act 1956 with necessary modifications to suit the members.

Schedule B

(Particulars of assets and properties taken over from the partnership firm after accounts being adjusted.)

We, several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Name, address and description of Subscribers</i>		<i>No. of shares subscribed by each Subscriber</i>
1.	S. Tanton, 3 White Street New Delhi 110 002 Businessman	10,000
2.	T. Tanton 3 White Street New Delhi 110 002 do	10,000
3.	U. Tanton 4 White Street New Delhi 110 002 do	10,000
4.	V. Tanton 4 White Street New Delhi 110 002 do	10,000

<i>Name, address and description of Subscribers</i>		<i>No. of shares subscribed by each Subscriber</i>
5.	W. Tanton 5 White Street New Delhi 110 002 Businessman	10,000
6.	X. Tanton 5 White Street New Delhi 110 002 do	10,000
7.	Y. Tanton 6 White Street New Delhi 110 002 do	10,000

Dated the
day of 2000

K.P. Joshi, Auditor

.....

WITNESS to the above signatures

**Contract between a Proprietor of
Business and Promoter of a Company**

AN AGREEMENT made this day of 1999 BETWEEN
..... son of residing at in the District of
..... by caste by occupation and
son of residing at by caste by occupation
..... hereinafter collectively referred to as the AGENTS AND
TRUSTEES of a private limited company intended to be
incorporated under the Indian Companies Act (Act VII of 1956) of the ONE
PART and son of residing at
in the District of hereinafter referred to as the proprietor
of the OTHER PART:

WHEREAS the proprietor has been carrying on business at No.
under the name and style of AND WHEREAS the agents and trustees
intend to register a Company having similar objects by their own initiatives
and efforts with a capital of Rs. divided into
ordinary shares of Rs. each AND WHEREAS the proprietor intends
to amalgamate and merge his said concern with the said company as and
when registered AND WHEREAS at the treaty for such incorporation it was
agreed by and between the parties that the trustees and agents shall
accommodate the proprietor to the extent of Rs. to pay up its
immediately payable debts and liabilities fully mentioned and described in
Schedule "A" hereto to be adjusted, liquidated and reimbursed as hereinafter

appearing and to be treated as loan advanced to the company for acquisition of the said concern now IT IS HEREBY AGREED AND DECLARED as follows:

1. A company shall forthwith be formed at the costs and expenses of the agents and trustees and duly incorporated under the Indian Companies Act as a private company limited by shares of Rs. having as one of its objects the acquisition and management and working of the concern of the proprietor.

2. The proprietor shall sell and the said company shall purchase.

- (i) ALL THAT the goodwill of the said (with the exclusive right to use the name of & Co. as part of the name of the company and represent the company as carrying on such business in continuation of the proprietor or in succession thereto) and all trade and property marks connected therewith.
- (ii) All the plant, machinery, office furniture, patents, licences, wagons, carts, lorries, implements and utensils to which the proprietor is entitled in connection with the said business.
- (iii) All the book debts and other debts and actionable rights and claims due to the proprietor in connection with the said business and the full benefits of all securities for such debts and claims.
- (iv) The full benefit of all pending contracts and engagements to which the proprietor is entitled to in connection with the said business.
- (v) All bills, cheques and notes of the proprietor in connection with the said business.
- (vi) All other property and benefits and advantages to which the proprietor is entitled in connection with the said business including the benefits of all insurance policies and other contracts.

An abstract list is set out in the Schedule "B" hereto.

-3. The consideration money for which purchase shall be Rs. to be paid and satisfied by allotment of fully paid-up shares.

4. The sum or sums so spent by the agents and trustees for the repayments of the debts and liabilities of the concern as well as for preliminary and other expenses in connection with the incorporation of the company shall be treated as contributions by them towards the share capital and shall be adjusted by allotment of fully paid-up shares of the company when incorporated.

5. The parties hereto shall each subscribe the Memorandum of Association of the company for share in all. The other subscribers may be such persons as the parties hereto shall mutually agree upon.

6. The Memorandum and Articles of Association of the company shall provide that the directors of the company shall enter into an agreement for

purchase of the business of the proprietor a draft whereof has been prepared and signed by the parties hereto for the purpose of identification and the parties shall use their best endeavours to enable the company to enter into and carry out such agreement in terms of the agreement. Subject to what are hereinbefore stated the company shall be a private limited company to all intents and purposes.

7. The parties hereto shall be the first directors of the company. They shall continue as permanent directors except in case of fraud, lunacy, criminal conviction or any other offence, insolvency, moral turpitude.

8. The parties hereto shall not, during their respective lives, transfer any share of the company to be allotted to them without the previous consent in writing of the other parties.

9. The purchase shall be completed by the day of when possession of the office and all its equipment shall, as far as practicable be given to the company together with all books, papers and writings, and the consideration aforesaid shall be paid and satisfied subject to the provisions of this agreement and thereupon the proprietor and all other necessary parties, if any, shall at the expenses of the company execute and do all assurances and things for transferring and/or vesting the said concern in the company and giving to it the full benefit of this agreement as shall be reasonably required.

10. If from any cause whatsoever other than the wilful default of the proprietor the purchase shall not be completed by the said day of the proprietor shall pay interest on the said sum of Rs. at the rate of per cent per annum and as interim security thereof he will execute a *hundi* in favour of the agents and trustees.

11. Save as aforesaid the proprietor shall pay and discharge all other debts and liabilities in connection with the said business as on the day of and shall indemnify the company and the agents and trustees against all proceedings, claims and demands in respect thereof.

12. If the company is not formed and does not adopt these presents on or before the 5th day of May 2000, any of the parties may by notice in writing to the other parties determine this agreement.

13. Upon adoption of this agreement by the company as aforesaid, the agents and trustees shall be freed and discharged from all liabilities created by these presents and the *hundi* shall stand cancelled and discharged.

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, sealed and delivered
at

Proprietor
Agents & Trustees of Company

Agreement between a Company and its Employees

AB Ltd. 57 G.C. Avenue, Calcutta 700 013

General Rules for Service

1. EVERY EMPLOYEE shall perform his duty honestly and diligently and shall carry out any order or work entrusted or asked to do by his departmental senior or by a director. He shall have to do any work other than his general assignment if he is required to do. He may be transferred from one work to another.

2. GENERALLY office hours will be from 10 AM to 6 PM with a short recess for tea or lunch at a suitable time. However, any employee shall not refuse to work beyond above time if, sometimes, it is necessary to do so for office work.

3. YEARLY increment, if any, will be as stated in salary scale. However, any staff member may get promotion to a higher post if directors feel so, looking to his efficiency and higher responsibilities. Salary shall be paid according to English calendar months.

4. DIRECTORS may relieve any employee from his service with (a) one calendar month's notice in case of a permanent Staff; (b) one calendar month's notice in case of a temporary one; and (c) at any time without serving notice in case of an apprentice. Any employee may be dismissed any time without any previous notice if he is found guilty of gross indiscipline, fraud, misappropriation or acting against the interest of the company. He may be degraded to a lower scale of salary if he is not found competent for the work and duties assigned to him.

5. LEAVE: Generally there will be 12 days' casual leave in a year, and any further leave will be subject to deduction in salary. Employees going to their native places far away from West Bengal may be allowed additional leave with pay subject to the previous sanction of directors, who will decide whatsoever, looking to the circumstances stated in applications.

6. BONUS: There will be no hard and fast rules for payment of bonus which shall be in the absolute discretion of the directors who shall decide at the end of every year the bonus to be paid. However, there will be no liability on the part of the company to pay bonus if they cannot do so.

7. TEMPORARY EMPLOYEES: Employees appointed on temporary or apprentice basis may be made permanent generally after completion of two years' service or earlier in the absolute discretion of the directors if directors feel to do so. Any employee can be appointed on permanent basis from the beginning if it is felt to do so.

8. PROVIDENT FUND: All permanent staff members or such temporary members, who are specifically approved by the directors will get benefit of the Provident Fund Scheme if it is maintained by the company.

9. CHANGE: Directors have authority to make any changes at any time in the above general rules.

Appointment / Renewal of Service Order

Mr. XY

3 A.K. Road, Calcutta

is hereby informed that he has been appointed/his service has been renewed as an employee of this company subject to acceptance of general rules of service from 10th day of June 1999 under the following terms:

- (1) General assignment of work.
(Subject to changes)
- (2) Permanent, temporary or apprentice.
- (3) Scale of Salary.
- (4) Starting salary from

(To be signed by employers)

To

AB Ltd.

57 G.C. Avenue, Calcutta

I have read and understood thoroughly the rules of service and the above terms of my appointment/renewal of my service, and I do hereby agree with all terms as above and I shall abide by all general rules of service which are now or may hereafter be in force and accordingly I accept my appointment/ the renewal of my service with you.

(To be signed by the employee)

Tea Co. Limited

(Incorporated under the Companies Act 1996)

Authorised Capital (Rs. 10,00,00,000 (Rupees Ten Crore)

5 Anna Salai, Chennai 600 005

DEBENTURE

Issued pursuant to clauses 78 and 112(3) of the Company's Memorandum and Articles of Association respectively and in pursuance of a resolution of the Directors of the Company passed on the 5th day of September 1999.

1. Tea Co. Limited (hereinafter called the COMPANY) hereby binds itself to pay to X Bank Ltd. (hereinafter called the DEBENTURE-HOLDER) at the time and the event of the principal money accrued becoming payable as provided by the conditions endorsed hereon the sum of Rs. 50 lakhs

(Rupees fifty lakhs) and until payment of the said sum of Rs. 50 lakhs to pay interest thereon at the rate of 12 per cent per annum by yearly payments on the 31st day of December in each year.

2. This DEBENTURE is issued subject to and with benefits of the conditions endorsed hereon which are to be deemed part of it.

3. The PAYMENT of the principal sum and interest secured in this debenture is unconditionally guaranteed by the Governor of Tamil Nadu.

Given under the Common Seal of the COMPANY on this 30th day of September One Thousand Nine Hundred Ninety-nine.

WITNESS :

Name :

Address: Tea Co. Ltd.
5 Anna Salai
Chennai 600 005

for Tea Co. Ltd.
Managing Director

Name :

Address :

Signed, sealed and delivered for and on behalf of the Governor of State of Tamil Nadu in the presence of:

Signed, sealed and delivered by X Bank Ltd. through its authorised agent Mr. in the presence of:

Conditions (Endorsed on the Debenture)

1. The company will redeem this debenture by allotment to the debenture-holder of equity shares of the company of the face value equal to the Principal sum of Rs. 50 lakhs hereby secured within 3 (three) months from the date when the company declares its first dividend on equity shares and in the meantime the debenture-holder will not transfer or alienate this debenture. The company will simultaneously with the allotment of shares as aforesaid pay in cash to the debenture-holder the accrued interest on this debenture upto the date of such allotment.

2. The company will also be entitled to redeem this debenture at any time prior to such conversion as aforesaid by payment to the debenture-holder of the principal sum hereby secured together with interest accrued due thereon upto the date of such payment. Such option however shall be exercisable by the company by giving one month's notice in writing in that behalf to the debenture-holder.

3. The debenture-holder shall be entitled to call in and compel payment of the principal sum hereby secured together with interest accrued thereon in any of the following events namely:

- (a) If the company makes default for three months in payment to the debenture-holder of any interest due on this debenture after the date at which the same ought to have been paid and after one month's written notice is given to the company to that effect by the debenture-holder.
- (b) If an order is made or an effective resolution is passed for winding up of the company.
- (c) If the company ceases or threatens to cease to carry on the business.
- (d) If the company fails to convert this debenture into equity shares of the company in the event and within the time specified in condition No. 1 above.
- (e) If the company fails to make payment pursuant to any notice given to it by the debenture-holder in terms of condition No. 2 above on expiry of one month from the date of service thereof.

Tea Co. Ltd.
 X Bank Ltd.
 for Governor of State of Tamil Nadu

Debenture Trust

THIS DEBENTURE TRUST DEED is made this 29th day of May 1999 BETWEEN X Co. Ltd. a company registered under the Companies Act 1956 having its registered office at (hereinafter called the COMPANY which term shall include its successors) of the One Part and Mr. AB son of residing at and Mr. CD son of residing at (hereinafter called the trustees which term shall include their successors and the Trustee for the time being) of the Other Part.

WHEREAS by clause sub-clause of its Memorandum of Association, the COMPANY is authorised to borrow or raise or secure the payment of money by the issue of debentures charged upon any of the company's properties.

AND WHEREAS the Directors of the COMPANY being duly empowered in that behalf by para of the Articles of Association of the company have decided by a resolution passed by the Board of Directors in the meeting of the Board held on to raise a sum of Rs. by issue of First Mortgage Bearer Debentures of Rs. each, bearing interest at per cent per annum framed in accordance with the forms

set forth in the First Schedule hereto and to secure the same by mortgaging with the trustees the properties described in the Second Schedule hereto.

AND WHEREAS the trustees above-mentioned have consented to act as *trustees* for the debenture-holders.

NOW THIS DEED WITNESSETH AND DECLARES AS FOLLOWS:

1. That in these presents unless there be something in the subject or context inconsistent therewith, the expressions following shall have the meaning hereafter mentioned, that is to say:

COMPANY means Ltd.

TRUSTEES means Mr.

or any other trustees hereof for the time being.

DEBENTURES means the debenture of the company in the form set out in the First Schedule hereto for the time being outstanding and entitled to the benefit of these presents.

DEBENTURE-HOLDERS means the persons for the time being entitled to the benefit of the debentures.

MORTGAGED premises means the property belonging to the Company described in the Second Schedule hereto and comprised in the security of the debenture-holders.

Words denoting the singular include the plural and *vice versa* unless the contrary appears from the context.

2. The debentures entitled to the benefit of these presents shall consist of a series of debentures of Rs. each, aggregating to Rs. in all to rank *pari passu* without any preference or priority by reason of the date of issue or otherwise and secured by the mortgage hereby created on the mortgaged premises.

3. The COMPANY hereby covenants with the TRUSTEES that the COMPANY will on the day of or such earlier day as principal moneys shall become payable under clause 7 hereof pay the debenture-holders the amounts secured by their debentures respectively, and in the meantime will pay interest to the debenture-holders on the day of 19..... in each year, the first payment of interest to be made on the day of 19.....

4. Provided that the COMPANY shall be entitled, at the end of every year, to redeem per cent debentures by giving one month's notice to the debenture-holders by advertisement of its intention to do so, on payment of the amount due on such debentures with interest up to date. The debentures to be redeemed in this manner will be determined by lot.

5. In consideration of the debentures hereby authorised aggregating to Rs. the company, as the beneficial owner, hereby mortgages unto the

TRUSTEES all the fixed plant and machinery and fixture at present existing at the company's factory and described in Para A of the Second Schedule hereto and which may be acquired by the COMPANY hereafter or fixed or erected hereafter at its factory for the benefit of the debenture-holders and the property described in Para B of the Second Schedule as security for the due payment of principal moneys amounting to Rs. in aggregate with interest and all other charges, expenses and other dues, the payment of which has been secured by a charge on the mortgaged premises under these presents. The charge hereby created on the property mentioned in Part A of the Second Schedule shall be the specified charge, while that on the property included in Part B of the Second Schedule shall rank as floating charges.

The TRUSTEES may, at any time, by notice in writing to the COMPANY, convert the said floating charge into a specific charge as regards any assets included in the Second Schedule and specified in the notice in case it is, in the opinion of the trustees, in danger of being seized or sold under any sort of distress or execution levied or threatened or in any other case.

6. The COMPANY shall hold and enjoy all the mortgaged premises and carry on therein and therewith the business or any of the business mentioned in the Memorandum of Association of the COMPANY until the security hereby constituted shall become enforceable under the terms of these presents, in which case the trustees may, in their discretion, without any such request as next hereinafter mentioned and shall upon the request in writing of the holder or holders of at least of the debentures, enter upon or take possession of the mortgaged premises, or any of them and may in the like discretion and shall upon the like request sell, call in, collect and convert into money the same or any part thereof with full power to sell any of the same premises either together or in parcels, and either by public auction or private contract, and either for a lump sum or for a sum payable by instalments or for a sum on account and a mortgage or charge for the balance and with full power upon every such sale to make any special or other stipulations as to title or evidence, or commencement of title or otherwise which the trustees shall deem proper and with full power to modify or rescind or vary any contract for sale of the said premises or any part thereof and to re-sell the same without being responsible for any loss which may be occasioned thereby and with full power to compromise and effect compositions and for the purposes aforesaid or any of them to execute and do all such assurance and things as they shall think fit.

7. The principal moneys due to the debenture-holders under this Indenture shall become immediately payable and the security hereby constituted shall become enforceable within the meanings of these presents in each and any of the following events:

- (a) If the COMPANY makes default in the payment of any interest which ought to be paid in accordance with these presents.

- (b) If the COMPANY ceases to carry on its business.
- (c) If an order shall be made or a special resolution shall have been passed for winding up the company.
- (d) If the COMPANY acts in contravention of clause of its Articles of Association.

Provided that on the happening of the events specified in sub-clause (a), the permission given by clause 6 to hold and enjoy the mortgaged premises shall not be determined unless and until the trustees shall have first served on the company a preliminary notice requiring the company to pay the interest in arrears and the company shall have neglected for the period of 30 days to comply with such notice.

8. As soon as the principal moneys shall become payable and the security enforceable under the last preceding clause No. 7 (and unless the time for payment and the security to be enforced has been expressly extended by the debenture-holders), the trustees shall enter upon and take possession of the mortgaged premises and shall forthwith take steps to consult the debenture-holders for the purpose of determining whether the business of the company may be allowed to be carried on or whether the mortgaged premises shall be realised by sale or otherwise.

9. Until the happening of some one of the events mentioned in clause No. 7 of this Indenture, the trustees shall not be in any manner bound to interfere with the management or affairs of the said business except to the extent they may consider necessary for the preservation of the mortgaged premises or any part thereof.

10. If the debenture-holders resolve not to allow the business of the COMPANY to be carried on as mentioned in clause No. 8 above but to realise the security, the trustees shall, after giving a notice of 30 days in writing to the company, proceed to realise the mortgaged premises by sale or otherwise and, in doing so, shall conform to directions, if any, given by debenture-holders.

11. The trustees shall apply the proceeds of such sale or other mode of realisation in the following manner, that is to say, that the trustees shall pay:

- (a) In the first place all costs, charges and expenses incurred in or about such sale or the performance or execution of trust or otherwise in relation to these presents or otherwise in respect of the security including the remuneration of the trustees.
- (b) Secondly, the interest for the time being due and owing on the debentures.
- (c) Thirdly, the principal money then due and owing to debenture-holders.
- (d) And lastly, the surplus, if any, to the company or its assigns.

Provided that if the said money shall be insufficient to pay all such interest or principal money in full, then the said moneys shall be paid rateably and without preference or priority among all debenture-holders of this series according to the amount of the face value of the debentures held by them, but all interest shall be paid before any principal moneys.

12. When all the principal moneys, secured by these presents shall have been paid and satisfied, the trustees shall forthwith, upon the request and at the cost of the COMPANY and on being paid all the costs, charges and expenses properly incurred by the TRUSTEES in relation to the security, reconvey, reassign, release and surrender the mortgaged premises or so much of the same as shall not have been sold or disposed of, unto the COMPANY or its assigns.

13. If the COMPANY shall, at any time during the continuance of the security, be desirous of selling, demising or otherwise disposing of or dealing with any part of the mortgaged premises otherwise than in respect of the floating charge the ordinary course of the company's business, the TRUSTEES may, if satisfied that the debenture-holders' security shall not be thereby prejudiced, assent to or concur in such sale, demise, disposal or other dealing, and may, if necessary, release the property in question from the trust under this deed on such terms as the trustees may determine.

14. The COMPANY hereby covenants with the trustees:

- (i) That the moneys secured by this deed shall be the first mortgage and charge on the mortgaged premises and shall take precedence over all other moneys which may hereinafter be borrowed by the COMPANY against the security of the premises hereto mortgaged;
- (ii) that the COMPANY shall maintain the mortgaged premises and any and every part thereof in a fit and efficient condition of repair and shall keep the said property duly insured against risk of fire, riot, civil and war risks with such insurers and in such manner as the TRUSTEES may determine from time to time and, to default, the trustees shall carry out repair and keep insured the mortgaged premises in the interest of the debenture-holders, and shall be entitled to the immediate payment of such expenditure in full; and
- (iii) that the COMPANY shall pay the trustees remuneration for the services under this Indenture at the rate of Rs. per year, such remuneration to be a charge on the mortgaged property.

15. The debenture-holders may, by a resolution, remove the trustees or the TRUSTEES may, with the consent of the directors of the COMPANY and of the majority of the debenture-holders in writing resign or retire from trusteeship.

16. In the event of death, bankruptcy, disability or resignation of any TRUSTEE or TRUSTEES, another TRUSTEE or TRUSTEES shall be appointed who shall thereafter have and exercise all powers of the TRUSTEE or TRUSTEES under these presents. The power of appointing a new TRUSTEE or TRUSTEES shall be vested in the directors, but no such trustee shall be appointed by the company until his appointment has been approved by a resolution of the debenture-holders.

17. The TRUSTEES may by agreement with the directors of the COMPANY modify the terms of the deed in any manner that may be necessary to meet any requirement or contingency, provided that the TRUSTEES are satisfied that such modifications are in the interests of the debenture-holders.

18. If any debenture is proved to the satisfaction of the COMPANY to have been lost, the COMPANY will issue a fresh debenture on payment of a fee of Rs. for each such debenture and on such indemnity as the directors may think fit.

In witness whereof the company has caused its Common Seal to be affixed to these presents and the trustees have hereto set their hands the day and year above-written.

WITNESSES:

Common Seal of the
affixed in the presence of:

Directors
TRUSTEES

Agreement between Company and a Broker

THIS AGREEMENT made on the 10th day of May 2000 BETWEEN X Co. Ltd., a company carrying on the business of building contractors at 5 J.P. Nagar, Bangalore (hereinafter called the COMPANY) of the one part and B & Co. of 8 Joy Nagar, Bangalore (hereinafter called the BROKER) of the other part.

WHEREAS the COMPANY wants to sell the property described in the Schedule hereto and for the said purpose the services of the broker are required.

AND WHEREAS the said BROKER is agreeable to act as broker for the sale of the said property described in the Schedule hereto.

AND WHEREAS the COMPANY has agreed to pay to the BROKER a commission of 1 per cent on the sale price.

NOW THEREFORE THIS AGREEMENT WITNESSES and the parties hereby agree as follows:

1. The COMPANY hereby authorises the BROKER for a period of six months to sell the property described in the Schedule hereto at the price and on the terms and conditions hereinafter contained in these presents.

2. The BROKER will sell the property at the minimum price of Rs. 8,00,000 and out of this consideration the purchaser shall pay Rs. 2,00,000 in advance as earnest money and the balance of Rs. 6,00,000 shall be paid within 3 months hereof before the Registrar of Assurances at the time of registration of the sale deed.

3. The BROKER shall be authorised to sell the property at a price not less than Rs. 8,00,000 and on terms and conditions that may be acceptable to the COMPANY.

4. The COMPANY represents and warrants that the details of the property as described in the Schedule hereto are true and correct and the said property is free from all encumbrances.

5. The COMPANY undertakes to deliver to the purchaser within reasonable time an abstract of title showing that the COMPANY is the owner of the property having a good title and the said property is free from all encumbrances.

6. The COMPANY hereby agrees that the sale-deed to be executed by the COMPANY shall contain full covenants and warranties as are usual in similar cases.

The Schedule

IN WITNESS WHEREOF the parties herein have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution
dated 2nd May 2000 of X Co. Ltd.
in the presence of:

Signed, sealed and delivered by
Mr.
as proprietor of B & Co. in the
presence of:

Underwriting of Issue of Shares and Debentures

A company cannot allot any shares offered to the public for subscription unless the minimum amount required as stated in the Prospectus has been

applied for and the amount has been received in money. This is called minimum subscription.⁴

In the event enough shares are not applied for to raise the minimum subscription the application money has to be returned. To avoid the contingency of minimum subscription not being received by the issue of shares the company may enter into underwriting agreements with the financial institutions, banks and others whereby the bank, financial institutions or other persons assure the company that in case the public do not subscribe for adequate number of shares to raise the minimum subscription, such banks, financial institutions or other persons shall take up the requisite or agreed number of shares so that the minimum subscription or money for the entire issue be raised and allotment be made in accordance with the Prospectus, the provisions of the Companies Act 1956 and other Statutory provisions in this regard.

A company may pay a commission to any person in consideration of his agreeing to subscribe for any shares in or Debentures of the company or to procure such subscription. The payment of commission should be authorised by the Articles of the company and it should not exceed 5% of the Issue price or the amount mentioned in the Articles, whichever is less, and in case of Debentures 2.5% of the Issue price of Debentures or the rate mentioned in the Articles, whichever is less. These facts are to be disclosed in the Prospectus.⁵

This assurance to subscribe or procure subscription for the shares or Debentures of the company, if the minimum subscription is not raised or the entire issue is not subscribed, is called Underwriting. The term means an Agreement to subscribe to shares and/or Debentures of a company in the event the public or the existing shareholders do not subscribe as required by the company.⁶

To raise the required Capital a company issues shares and/or Debentures and unless such shares and Debentures are subscribed by the Investors the company's purpose will not be served. Underwriting of the shares and Debentures gives an assurance to the company against the risk of inadequate response from the investors and the risk of not obtaining even the minimum subscription.

A person who acts as an Underwriter must hold a certificate from the Securities & Exchange Control Board of India. Every stock-broker or Merchant Banker registered with the Board is entitled to act as an Underwriter without obtaining a Certificate.⁷

4 Section 69 of the Companies Act 1956.

5 Section 76 of the Companies Act 1956.

6 Rule 2 of Securities & Exchange Board of India (Underwriters) Rules 1993.

7 Rule 3 of SEBI (Underwriters) Rules 1993.

The Underwriters shall not derive any benefit directly or indirectly from the commissioning of issue of shares and Debentures other than the commission or the brokerage payable under the agreement for Underwriting or Brokerage. An Underwriter shall not take up underwriting obligations exceeding twenty times of its Net Worth. In case of underwriting public issue when called upon to subscribe the Underwriter within 45 days shall subscribe to such shares or Debentures as agreed.⁸

Broker's Consent Letter

To
The Board of Directors
X Co. Ltd.
Bangalore

Dear Sirs

Re: Your public issue of 12% Secured Non-convertible Redeemable Debentures for the aggregate value of Rs. 2,000 Crores.

We, the undersigned, hereby agree to act as Brokers to the aforesaid issue and our name being inserted as Brokers to the issue in the Prospectus to be issued by the company. We hereby authorise the company to deliver this letter of consent to the Registrar of Companies, Bangalore pursuant to the provisions of section 60 of the Companies Act 1956.

We are agreeable to accept brokerage at 1% on the nominal value on allotment of the Debentures made in respect of applications bearing our stamps as brokers. We authorise you to deliver a copy of this letter to the Registrar of Companies pursuant to the provisions of section 76(1)(v) of the Companies Act 1956.

Yours faithfully
B & Co.

Underwriter's Consent

To
The Board of Directors
X Co. Ltd.

Dear Sirs

We have seen your draft prospectus offering for public-subscription 1,00,000 shares of your company of the nominal value of Rs. 100 each. We

⁸ Rule 15 of SEBI (Underwriters) Rules 1993.

are agreeable to underwrite the whole issue provided the shares are offered to the public in accordance with the conditions entered in the prospectus.

We shall put in a written application for allotment of such shares as remain unsubscribed on the closing day fixed for subscription of those shares. If all these shares are subscribed by the public on or before the closing day, our undertaking shall cease. If a smaller number of shares are subscribed by the public then our application and undertaking shall have effect in respect of the balance shares.

You shall pay us a commission at the rate of 5% on the face value of 1,00,000 shares to be issued. If we fail to apply for the shares which remain unsubscribed on the closing day fixed for subscription of those shares we hereby authorise you to appoint some of your officers to make an application on our behalf for the unsubscribed shares on the closing day fixed for subscription and the commission payable to us may be appropriated by you towards the application and/or allotment money. Please let us have your acceptance of this application.

Yours faithfully
Y & Co.

Letter of Acceptance

To
Y & Co.

Dear Sirs

With reference to your application dated we accept your offer to act as an underwriter to our issue of 1,00,000 ordinary shares of Rs. 100 each at a commission of 5% per cent upon the footing and subject to the conditions contained in your application and in the draft Prospectus.

Yours faithfully
X & Co. Ltd.

Underwriting Agreement for Shares

THIS AGREEMENT made on the 4th day of June 2000 BETWEEN X & Co. Ltd., a company having its registered office at (hereinafter called the COMPANY) of the one part and Merchant Bank Ltd., having its registered office at (hereinafter called the UNDERWRITER) of the other part.

WHEREAS the COMPANY is intending to offer for public subscription the issue of 1,00,000 shares of Rs. 100 each in accordance with terms of the draft prospectus a copy of which is annexed hereto with such modifications therein as may be mutually agreed upon BETWEEN the COMPANY and the UNDERWRITER.

AND WHEREAS the UNDERWRITER has agreed to underwrite the shares on the terms and conditions contained in the draft prospectus as also in these presents.

NOW THEREFORE THESE presents witnesseth and the parties hereby agree as follows:

1. If the said 1,00,000 shares shall on or before the 10th day of June 1999 (or such later date as shall be mutually agreed upon by the parties hereto but not after the 10th July 2000) be offered by the COMPANY for subscription by the public at par on the terms of such prospectus as aforesaid, the UNDERWRITERS shall on or before the closing of the subscription list apply at par for the said 1,00,000 shares.

The said prospectus shall be issued in the form already approved by the UNDERWRITER or with such modification, if any, as shall be mutually agreed between the company and the UNDERWRITER.

2. If on the closing of the lists under the said prospectus the said 1,00,000 shares shall be allotted in respect of applications from the public the responsibility of the UNDERWRITER will cease and no allotment is to be made under this agreement to the UNDERWRITER but if the said 1,00,000 shares be not allotted to the public or any smaller number of such shares be allotted, the undertaking of the UNDERWRITER is to take the balance shares.

3. The COMPANY shall pay to the UNDERWRITER in cash within 15 days from the allotment of the said 1,00,000 shares a commission at the rate of 5% on the nominal value of the entire issue of the shares.

4. This agreement is irrevocable on the part of the UNDERWRITER and authorises the COMPANY in the event of the UNDERWRITER not applying for the said 1,00,000 shares to cause application to be made for such shares or any part thereof in the name and on behalf of the UNDERWRITER in accordance with the terms of the said prospectus and UNDERWRITER authorises the directors of the COMPANY to allot the requisite shares of the COMPANY to the UNDERWRITER. In the event of the COMPANY causing an application to be made for such shares in the name of the UNDERWRITER, the UNDERWRITER shall hold the COMPANY, and the said applicants harmless and keep them indemnified in respect of all liabilities in relation to such application and/or shares.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution
dated 4th June 2000 of X & Co.
Ltd. in presence of:

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution of
Merchant Bank Ltd. dated 4th
June 2000 in the presence of:

Underwriting Agreement for Debentures

THIS AGREEMENT is made on the 20th day of June 2000 BETWEEN X & Co. Ltd., of (Address) (hereinafter called the COMPANY) of the one part and B.R. & Co. Ltd. having its office at (Address) (hereinafter called the UNDERWRITER) of the other part.

WHEREAS THE COMPANY IS INTENDING TO OFFER for public subscription 50,000 12% mortgage debentures which are to be constituted and secured by a Trust Deed drawn up on terms and conditions contained therein and for the purpose of identification initialled by both the parties.

AND WHEREAS the COMPANY is desirous of obtaining assurance of such debentures being subscribed and/or taken up by the investors and the UNDERWRITER has given such assurance.

NOW THEREFORE THESE presents witnesseth and it is hereby agreed as follows:

1. The COMPANY will offer for public subscription the said 50,000 debentures of Rs. 1,000 each.

2. Such offer is to be made by a prospectus prepared in accordance with the terms of the draft prospectus annexed hereto but with full power for the COMPANY, prior to the publication of such prospectus, to modify the same in such a manner as the company shall think fit provided that such modification shall be approved by the said UNDERWRITER.

3. The UNDERWRITER shall take up and pay at par the whole of the debenture stock aforesaid which shall not have been taken up and allotted to other persons within 15 days after the first publication of the said prospectus and in consideration of the obligation so imposed on the UNDERWRITER it shall be entitled to 2.5% of the issue price of the said 50,000 debentures.

4. The UNDERWRITER shall pay up the full issue price of the debentures taken up by it as aforesaid by instalments and at the times specified in the prospectus aforesaid.

5. The UNDERWRITER may fix the premium at which the said debentures shall be offered for subscription by the said prospectus and if it does not within 10 days after notice in writing specify the same then the company may fix the premium.

6. Any notice to the UNDERWRITER may be given by sending the same through the post addressed at its above mentioned address and a notice so sent shall be deemed to have been received at the expiration of twenty-four hours after it is posted.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution
dated 18th June 2000 of X & Co.
Ltd. in the presence of:

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution of
B.R. & Co. Ltd. dated 19th June
2000 in the presence of:

**Petition for Rectification of the
Register of Charges and for Other Reliefs**

**Before the Company Law Board Bench, Eastern Region
9 Old Post Office Street, Calcutta 700 001**

Company Petition No. of 2000

In the matter of the Companies Act 1956
section 141 of the said Act and Regulation
44 of the Company Law Board
Regulations 1991

And

In the matter of:
1. X Co. Ltd. a company registered under
the Companies Act 1956 having its
registered office at Calcutta

2. Y Co. Ltd. a company registered under The Companies Act 1956 having its registered office at Calcutta

And

ELH Bank Ltd. a Banking Company within the meaning of the Companies Act 1956 and carrying on business *inter alia*, at Calcutta

Petitioner

versus

1. X Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at Calcutta

2. Y Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at Calcutta

3. The Registrar of Companies West Bengal, having its office at Nizam Palace, 226 A.J.C. Bose Road, Calcutta 700 020

Respondents

The humble petition of ELH Bank Ltd., the petitioner above-named most respectfully

SHEWETH:

1. Particulars of the company. (a) The first respondent was incorporated on and the second respondent was incorporated on

(b) The registered offices of the respondents Nos. 1 and 2 are at Calcutta.

(c) The authorised, issued, subscribed and paid-up capital of the first respondent is Rs. 10,00,000. The authorised, issued, subscribed and paid-up capital of the second respondent is Rs. 15,00,000. The shares of both the companies comprise of equity shares of Rs. 10 each fully paid-up.

(d) The objects for which the respondents Nos. 1 and 2 were established are to manufacture and deal in jute goods and allied products. The objects of the two companies will appear from the Memorandum of Association of each of the two companies to which your petitioner will crave leave to refer.

(e) The management of the first respondent has been amalgamated with the second respondent and all the assets and liabilities of the first respondent are vested in the second respondent.

2. Particulars of the Petitioner. (a) The petitioner was incorporated as a Banking Company in 1982 and is carrying on banking business at Calcutta.

(b) The petitioner granted credit facilities to the first respondent against hypothecation of movable assets and mortgage of its immovable properties. The petitioner is a secured creditor.

(c) The second respondent has taken over the assets and liabilities of the 1st respondent and the petitioner has claims against the second respondent and is entitled to a charge over all its movable assets and mortgage on its immovable properties being the successor of the first respondent.

3. Particulars of the respondents. (a) The respondents Nos. 1 and 2 are public companies, the first respondent has been amalgamated with the second respondent. The first respondent has not yet been dissolved.

(b) The terms and conditions on which the first respondent has been amalgamated with the second respondent will appear from the order dated of the Hon'ble High Court at Calcutta sanctioning the scheme, a copy whereof is annexed hereto.

(c) The charges and modifications of charge created by the first respondent in favour of the petitioner have been filed with the Registrar of Companies, West Bengal but the respondent No. 3 has not yet issued the Certificates and the reasons for not issuing such Certificates could not be ascertained.

4. Jurisdiction of the Bench. The petitioner declares that the subject-matter of the petition and the respondents are all within the jurisdiction of this Hon'ble Bench.

5. Limitation. The petitioner further declares that the present petition is within the period of limitation laid down by the Companies Act 1956 and the petitioner's cause of action arises from day to day.

6. Facts of the case. (a) The petitioner bank granted credit facilities to first respondent against hypothecation of its movable assets and mortgage of its immovable properties. The first respondent executed several Banking documents. The Charge and Modifications thereof were filed with the Registrar of Companies, respondent No. 3.

(b) From time to time the limit of credit facilities was enhanced and further banking documents were executed by the respondents. The necessary forms were filed with the Registrar of Companies for Registration of Modification of Charges.

(c) Respondent No. 3 has not yet issued any Certificate either for the Original Charge created or for the subsequent Modification of Charges. On enquiries no specific explanation was given by the Registrar of Companies except that it was stated that there was some defects in the forms submitted.

(d) Your petitioner verbally requested the respondents Nos. 1 and 2 to look into the matter and regularise the same but nothing so far has been done.

(e) In the facts of the case your petitioner states that respondents Nos. 1 and 2 be directed to correct the defects, if any, in the forms submitted by them. In view of the said hypothecation and mortgage the Respondent No. 3 be directed to issue the necessary Certificate of Charges and Modification of Charges.

(f) The delay or omission in filling the requisite forms or incorporation of the particulars therein or annexing any documents thereto or furnishing any explanation asked for by the Registrar of Companies be condoned and the Register of Charges be correspondingly rectified and the requisite certificates be issued to the petitioner.

(g) The petitioner is ready and willing to do all such acts and things and make payment of such fees as this Learned Bench may direct.

7. Matters not previously filed or pending with any other court. Your petitioner declares that your petitioner has not filed any application, writ petition or suit regarding the matter in respect of which this petition has been made before any other court of Law or authority or Bench of the Board, and no such application, writ petition or suit is pending before any of them.

8. Reliefs sought. In the facts and circumstances mentioned hereinbefore your petitioner prays for the following reliefs:

(a) The delay in filing the particulars of Charge and Modification of Charge and modification thereof be condoned;

(b) The omission or misstatement in Form 8 and Form 13 or in any other Form filed with the Registrar of Companies be allowed to be rectified;

(c) Registrar of Companies be directed to specify reasons for not issuing the Certificate of Registration and Certificate of Modification of Charge to the petitioner;

(d) Leave be given and delay be condoned to comply with the requisition that may be made by the Registrar of Companies and/or to make good the defect and/or defects within such time as this Learned Bench may direct;

(e) The respondents be directed to comply with the provisions of law in regard to the Charge and/or Modifications thereof in respect of the assets and properties of the respondents Nos. 1 and 2 in favour of the petitioner;

(f) Further Orders be made as to this Learned Bench may deem fit and proper.

9. Interim Order, if prayed for. Pending final decision on the petition your petitioner seeks issue of the following Interim Orders:

(i) Registrar of Companies be directed to make an enquiry into the Registration and Modification of Charges in favour of the petitioner and submit a report to this Learned Bench;

10. Particulars of Bank Draft. Bank draft No. 56 datedfor Rs. drawn by and payable at petitioner's branch at Calcutta.

(Cause Title as above)

Affidavit verifying the petition

I, son of, aged years, by occupation service working for gain at Calcutta do hereby solemnly affirm and say as follows:

1. I am the Branch Manager and a principal officer of ELH Bank Ltd. Calcutta. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to affirm and I do affirm this affidavit on behalf of the petitioner-bank.

2. The statements in paragraphs of the petition shown to me and signed by me and marked with letter X are true to my knowledge and those mentioned in paragraphs of the said petition are based on information derived from records maintained by the said bank and believed by me to be true, and those in paragraphs of the said petition are my humble submissions to this Learned Bench.

Solemnly affirmed by the said at Calcutta this day of 2000

Signature

Before me
Notary Public

**Application by the Depositor
under section 58A(9) of the Companies Act**

Before the Company Law Board Bench, Eastern Region
9 Old Post Office Street, Calcutta 700 001
Company Petition No. of 2000

In the matter of the Companies Act 1956
section 58A read with the Regulation
37 of the Company Law Board Bench
Rules 1991

And

In the matter of AB residing at
..... Calcutta

Petitioner

versus

X Co. Ltd. a company registered under
the Companies Act 1956 and having its
registered office at Calcutta

Respondent

The humble petition of the applicant
above-named most respectfully

SHEWETH:

1. Name and address of the depositor-applicant : AB residing at Calcutta.
2. Name of the company and address of its registered office : X Co. Ltd., having its registered office at Calcutta.
3. Name of the depositor and his address : AB residing at Calcutta West Bengal.
4. Amount of deposit : Rs. 10,00,000.
5. Fixed Deposit Receipt No. and date : Fixed Deposit Receipt No. 5 dated 6th September 1995. Xerox copy is enclosed.
6. Terms and conditions of deposit as also date of maturity of deposit : Interest at 25% per annum was payable quarterly. The principal amount was payable on 15th January 1999. Interest was payable every quarter.
7. Details of payment made by the company, if any : The company has not made any payment of interest or the principal amount in spite of demands.
8. Actual amount due as on the date of application : Principal amount: Rs. 10,00,000
Interest amount : Rs. 2,50,000.
9. Details of correspondence if any made between the company and the depositor : Copies of correspondence are enclosed.

10. Any other particulars as may be considered relevant : The company is carrying on business acquiring assets and shares in other companies and making inter-corporate deposits, and is commercially insolvent and several applications for winding-up are pending.

The depositor-applicant therefore prays:

- (i) that the company above-named be directed to make payment of the aforesaid deposit along with interest due thereon in accordance with the terms and conditions of deposit contained in Fixed Deposit Receipt;
- (ii) further Orders be made as the Company Law Board may deem fit and proper in the circumstances of the case.

Place
Date

Signature of the
depositor-applicant

Verification

I,, son of, aged years, residing at, do hereby solemnly affirm and say as follows:

1. I am the depositor above-named. I know the facts and circumstances of the case.
2. The statements made in paragraphs hereinabove are true to my knowledge derived from records maintained by me and from the Board proceedings against the respondent company and I believe them to be true. I sign this Verification this day of 2000 at Calcutta.

Signature

Before me
Notary

Petition for Framing of Scheme for Management

Before the Company Law Board
Principal Bench, New Delhi
Company Petition No. ... of

In the matter of the Companies Act 1956

And

In the matter of an Application under sections 397, 398, 399, 402 and 403 of the Companies Act 1956

And

X Co. Pvt. Ltd. a company registered under the Companies Act 1956 having its registered office at

And

In the matter of:

1. AB, residing at
2. CD, residing at
3. EF, residing at
4. GH residing at
5. JK residing at

Petitioners

versus

1. X & Co. Pvt. Ltd., a company registered under the Companies Act 1956 and having its registered office at
2. MN, working for gain at
3. PQ, working for gain at

Respondents

The humble petition of the petitioners above-named most respectfully

SHEWETH:

A. Particulars of the company. (1) X & Co. Pvt. Ltd. (hereinafter referred to as the COMPANY) was incorporated on 15th May 1985 as a Private Limited Company. The registered office of the COMPANY is situated at in the State of West Bengal. The authorised capital of the COMPANY is Rs. 10 lakhs. The issued subscribed and paid-up capital of the COMPANY is Rs. 5 lakhs comprising of 50,000 Equity shares of Rs. 10 each.

(2) The main objects for which the COMPANY was incorporated are, *inter alia*, to take over the business of the firm X. & Co. and to manufacture and deal in all kinds of Computers, Hardwares & Softwares and as exporter and importer of all kinds of Electronic goods. The objects will appear from

the Memorandum and Articles of Association of the Company a copy whereof is annexed hereto marked "A".

(3) Soon after its incorporation the COMPANY commenced its business on taking over the assets and liabilities and business of the firm X & Co.

B. Particulars of petitioners. The petitioners and the respondents Nos. 2 and 3 were carrying on business in partnership in manufacturing diverse plant, machinery, tools and implements and other Electronic goods, Computers Hardware and Software and exporting the same. Due to expansion of business, the petitioners and respondents 2 and 3 converted their partnership business into a Private Limited Company, respondent No. 1 herein. Each of the petitioners subscribed 16% of the shares issued by the COMPANY. The petitioners together held 80% of the Equity Shares issued, subscribed and paid-up shares in the share capital of the COMPANY.

C. Particulars of the respondents. The respondents Nos. 2 and 3 along with the petitioners formed a partnership business under the name and style of X & Co. for manufacturing and dealing in all kinds of Computers, Hardware of Software and plant, machinery, tools, implements and other Electronic articles. After the partnership business was converted into a private limited company, the first respondent above-named, respondents Nos. 2 and 3 each subscribed and held 10% of the issued, subscribed and paid-up shares of the company. The respondents Nos. 2 and 3 together held 20% of the issued, subscribed, and paid-up capital of the COMPANY and the petitioners together held 80% of issued, subscribed and paid-up capital of the COMPANY.

D. Jurisdiction of the Bench. The petitioners declare that the subject-matter of the petition is within the jurisdiction of this Learned Bench.

E. Limitation. The petitioners further declare that the petition is within the limitation period inasmuch as the cause of action is arising day-to-day.

F. Facts of the case. (a) The respondents Nos. 2 and 3 and the petitioners were the subscribers to the Memorandum and Articles of Association of the COMPANY. The first directors were also the permanent directors of the COMPANY. The respondents Nos. 2, 3 and the petitioner No. 1 were the permanent directors.

(b) Before and at the time of incorporation of the COMPANY in reality it was a partnership firm, the petitioners and the respondents Nos. 2 and 3 were sharing profits and losses of the firm in the ratio of 80:20. Respondents Nos. 2 and 3 were managing the affairs of the COMPANY.

(c) Respondents Nos. 2 and 3 wrongfully issued shares and allotted the same to respondents Nos. 2 and 3 to the exclusion of the petitioners and thereby the total holding of respondents Nos. 2 and 3 increased to 40% each. Your petitioners became a minority of 20% and respondents Nos. 2 and 3 combined holding being 80%.

(d) Respondents Nos. 2 and 3 by virtue of the said purported 80% holding of shares in all matters ousted the petitioners from the management of the company.

(e) The COMPANY made huge business and the turnover increased substantially but the respondents Nos. 2 and 3 manipulated the transactions and did not enter in the books of accounts of the company the real transactions.

(f) The respondents Nos. 2 and 3 did not allow the petitioners to inspect the books of accounts and since last one year have not issued notice of any Board Meeting to the petitioners and thereby prevented the petitioners from attending any Board Meeting or participating in the management of affairs of the company.

(g) The petitioners by several letters from time to time requested the respondents to issue the notice of all Board Meetings by registered post and deposited in advance Rs. 500 towards the cost of such notices by registered post. The respondents have not issued any notice of any Board Meeting to the petitioners.

(h) The respondents have manipulated the accounts and syphoned the funds of the COMPANY for the benefit of the respondents Nos. 2 and 3 to the prejudice of the petitioners.

(i) Respondent No. 2 is also diverting the business of the COMPANY to another business in the name of MN Co. and thereby making undue profits at the cost of the company and to the prejudice of the petitioners.

(j) Respondents Nos. 2 and 3 have been acting in a manner harsh, burdensome and oppressive to the petitioners and have purported to conduct the affairs of the COMPANY in a manner prejudicial to public interest. Respondents Nos. 2 and 3 have been managing the affairs of the COMPANY in a manner oppressive to the petitioners and the COMPANY and conducting the affairs of the COMPANY in a manner prejudicial to the interest of the COMPANY and to the public interest. Some of the instances of the wrongful acts and conduct of respondents Nos. 2 and 3 are given hereunder:

- (i) Respondents Nos. 2 and 3 purported to have held the Board Meetings without giving notice to the petitioners;
- (ii) Respondents Nos. 2 and 3 have, with the assets, products, funds and know-how of the COMPANY, been carrying on their separate businesses with the company's customers and others;
- (iii) Respondents Nos. 2 and 3 have been misappropriating the funds of the COMPANY and manipulating the accounts.

(k) The first petitioner informed the Regional Director, Department of Company Affairs, Eastern Region Bench of the said misconduct of the respondents Nos. 2 and 3 and the said Regional Director has asked the

Registrar of Companies to make enquiries and the Registrar of Companies has found certain irregularities in the management of the company.

(l) From the records of the Registrar of Companies, it appears that the respondents Nos. 2 and 3 have held several Board Meetings and purported to pass several Resolutions which were prejudicial to the interest of the petitioners and in respect of such Board Meetings no notice was served to your petitioners and your petitioners were prevented from attending the Board Meetings.

(m) The purported resolutions copies whereof are annexed hereto were passed in violation of the provisions of sections 299, 300 and 287 of the Companies Act 1956 and are thus void and liable to be set aside.

(n) Respondents Nos. 2 and 3 are lacking in commercial probity in relation to their dealings with the affairs of the COMPANY and also in relation to the petitioners and it is not safe to leave the affairs of the company in the hands of the respondents Nos. 2 and 3 any more.

(o) The whole object of the respondents Nos. 2 and 3 is to exclude the petitioners from the management of the company and to usurp absolute control of the management of the company so that the respondents Nos. 2 and 3 can continue with their acts of mismanagement and syphoning away the funds and assets of the company to the prejudice of the company, its shareholders, petitioners, employees and creditors of the company.

(p) Unless appropriate directions are given by this Hon'ble Board the company and its shareholders including the petitioners will be seriously prejudiced.

(q) The petitioners are being prevented from taking part in the conduct of the business of the company.

(r) Respondents Nos. 2 and 3 have caused loss to the company by fraudulent and unlawful conduct and are liable to indemnify the company to the extent of Rs. 90 lakhs which is the sum your petitioners have very conservatively assessed.

(s) All the Board Resolutions passed during the last one year are invalid and of no effect inasmuch as your petitioners were wrongfully excluded and prevented from attending any Board Meetings in spite of the fact that the cost of sending by registered post the notices of all such Board Meetings was deposited with the company.

(t) The conduct of the respondents Nos. 2 and 3 is wrongful and has been continuing and the same being oppressive and prejudicial to the petitioners and also to the interest of the company's creditors and employees call for intervention by this Hon'ble Board. Respondents Nos. 2 and 3 have failed to act with commercial probity and morality.

G. Matters not previously filed or pending with any other Court or Bench. The petitioners further declare that they have not previously filed any application, writ petition or suit regarding the matter in respect of which this petition has been made before any Court of Law or any other authority or any other Bench of the Board, and no application, writ petition or suit is pending before any one of them.

H. Reliefs sought. In view of the facts mentioned in paragraph F above, and in view of the fact that the wrong-doers are in control and purporting to continue in control of the management of affairs of the company and denuding the petitioners of any say in the management of affairs of the company, and manipulating the accounts, misappropriating the funds of the company and as redressal of the petitioners' grievances is not possible in the domestic forum and it is a fit case for winding-up of the company but that would prejudicially affect the petitioners and employees and as such the petitioners pray for the following reliefs:

- (a) A scheme be framed by this Hon'ble Bench for management and administration of affairs and assets of the company;
- (b) An Administrator be appointed to manage the affairs of the company;
- (c) A Committee of Directors be appointed consisting of the petitioners and respondents Nos. 2 and 3 to assist the Administrator;
- (d) Declaration that the respondents Nos. 2 and 3 are liable to reimburse the company of the assets and funds syphoned by them;
- (e) Enquiry into the losses and damages caused to the company by the wrongful acts of respondents Nos. 2 and 3;
- (f) Declaration that the Board Meetings and Resolutions thereunder during the last one year are all invalid, illegal and null and void;
- (g) All Minutes and Resolutions relating to the Board Meetings during the last one year be delivered up to this Hon'ble Bench and the same be cancelled and adjudged void;
- (h) *Ad interim* Orders in terms of the prayers above be passed.
- (i) Costs of this application be paid by the respondents Nos. 2 and 3;
- (j) Further and other Orders be made and directions be given as to this Learned Bench may deem fit and proper to afford complete relief to the petitioners.

I. Interim Orders if any prayed for. Pending final decision on the petition, the petitioners seek issue of the following Interim Orders:

- (a) Injunction restraining the respondents 2 and 3 from diverting any funds or assets of the COMPANY in any manner whatsoever;

- (b) Injunction restraining the respondents Nos. 2 and 3 from utilising the funds and assets and properties of the COMPANY for their own business;
- (c) That a Special Officer be appointed to make an inventory of the assets and properties of the COMPANY and to initial books and accounts and records of COMPANY;
- (d) *Ad interim* Orders in terms of prayers above;
- (e) Further and other Orders be made and directions be given as to this Learned Bench may deem fit and proper.

J. Particulars of Bank Draft Evidencing payment of fee for application made.

- (i) Brabourne Road Branch, Calcutta of Punjab National Bank on which the bank draft has been drawn;
- (ii) Brabourne Road Branch, Calcutta of Punjab National Bank issued the demand draft;
- (iii) Demand Draft No. 1234 dated for Rs.

K. List of Enclosures

- (i)
- (ii)
- (iii)
- (iv)

Place

Signature of the
Petitioners

Date

(Cause Title of the Petition)

Affidavit verifying the Petition

We AB residing at CD, residing at
, EF residing at, GH, residing at
 and JK residing at do
 hereby solemnly affirm and say as follows:

1. That we are the Petitioners. We know and we have made ourselves acquainted with the facts and circumstances of this case and we are able to depose thereto.

2. That the statements contained in paragraphs of the petition shown to us and signed by the petitioners and marked with the letter "X" are true to our knowledge and those mentioned in the paragraphs of the petition are based on information derived from the records in our possession and believed by us to be true and those mentioned in the paragraphs of the petition are our humble submissions to this Hon'ble Bench.

3. The statements in paragraphs 1 and 2 hereinabove are true to our knowledge.

Solemnly affirmed by the said AB,
CD, EF, GH & JK at Calcutta
this day of 2000

1.
2.
3.
4.
5.

Signatures
of the
Deponents

Before me
Notary Public

Application for Relief from Certain Liabilities

Company Petition No. of 1999

In the High Court at Calcutta
Original Jurisdiction

In the matter of:
The Companies Act 1956

And

In the matter of:
An application under section 633(2) of the
said Act

And

In the matter of:
X Company Ltd. a company registered
under the Companies Act 1956 and
having its Registered Office at
Calcutta within the said jurisdiction

And

In the matter of:
An application by:

1. AB residing at Calcutta
2. CD residing at Calcutta
3. EF residing at Calcutta

..... *Petitioners*

To

The Hon'ble Mr. Chief
Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of AB, CD and EF
the petitioners above-named most
respectfully

SHEWETH:

1. X Co. Ltd. (hereinafter referred to as the COMPANY) was incorporated in or about 1980 under the provisions of the Companies Act 1956.

2. The registered office of the COMPANY is at Calcutta.

3. The authorised, issued, subscribed and paid-up capital of the COMPANY is Rs. divided into Equity Shares of Rs. 10 each.

4. The objects for which the COMPANY was formed are set out in Clause III of the Memorandum of Association of the COMPANY to which your petitioners will crave leave to refer. The principal object of the COMPANY was to carry on trading business. Soon after incorporation the COMPANY commenced the business and is still carrying on the business.

5. Your petitioner No. 1 was the Director of the COMPANY till 1997. Your petitioner No. 2 was the Managing Director of the COMPANY but resigned in January 1998. Your petitioner No. 3 is an ordinary Director and excepting attending the Board Meetings did not take part in the management of affairs of the COMPANY. Since January 1997 a new set of directors were elected and they are in control and management of affairs of the COMPANY. The new management did not prepare the final accounts and Balance-sheets and Profit and Loss Accounts of the COMPANY for year-ending 30th March 1996, 30th March 1997 and 30th March 1998 and no such accounts have been published or was filed with the Registrar of Companies.

6. The said new management and the incoming directors have not held the Annual General Meeting for the last three years in spite of the requests of the petitioner No. 3 to that effect.

7. Your petitioners state that due to mismanagement of affairs of the COMPANY by the incoming Directors there have been violations of provisions of the Companies Act 1956 inasmuch as in respect of the last three years Annual General Meetings were not convened, Balance Sheets and Profit and Loss Accounts and Annual Returns were not filed with Registrar of Companies in compliance with the provisions of the Companies Act 1956.

8. Your petitioners reasonably apprehend that the Registrar of Companies might take legal action against your petitioners for the defaults of the incoming directors.

9. Your petitioners state and submit that your petitioners have repeatedly requested the said incoming directors to comply with the provisions of the said Act and final accounts and Returns be filed with the Registrar of Companies. The incoming directors and the present management have not yet complied with the provisions of the said Act and made defaults in filing the accounts and the Returns with the Registrar of Companies, West Bengal.

10. Your petitioners reasonably apprehend that the Registrar of Companies may start legal proceedings against your petitioners or either of them in respect of the said defaults in not holding the Annual General Meeting and/or not filing the Balance Sheets and Profit and Loss Account and the Annual Returns with the Registrar of Companies, West Bengal.

11. Your petitioners state and submit that the said defaults have been caused due to circumstances beyond the control of your petitioners and mainly due to mismanagement of affairs of the COMPANY by the incoming directors and in spite of your petitioners being diligent and vigilant in complying with the provisions of the Companies Act 1956.

12. Your petitioners have acted honestly and reasonably and have not committed any defaults and should not be made liable to any penalties or exposed to any legal proceedings and having regard to circumstances above-referred to, your petitioners ought fairly to be excused and relieved wholly from any liability for any such default in not convening the said Annual General Meetings, preparing the final accounts and laying them before the General Meetings or filing the final accounts and Returns with the Registrar of Companies, West Bengal.

In the premises your petitioners humbly pray Your Lordships for the following orders:

- (a) Your petitioners be excused and/or relieved from any liability in respect of any defaults in convening and holding the Annual General Meetings for the years ending 30th March, 1996, 30th March 1997 and 30th March 1998 and in not laying the Audited Balance Sheets and Profit and Loss Accounts for the said years before the Annual General Meetings and in not filing the final accounts and returns in respect of the said years with the Registrar of Companies, West Bengal in compliance with the provisions of the Companies Act 1956;
- (b) Further Orders be made and directions be given as to this Hon'ble Court may deem fit and proper to afford complete relief to your petitioners.

And your petitioners as in duty-bound shall ever pray.

Verification

I, AB, residing at do hereby solemnly affirm and say as follows:

- 1. I am petitioner No. 1 above-named and I know the facts and circumstances of the case and I am able to depose thereto. I am authorised by petitioners Nos. 2 and 3. I do affirm and verify the aforesaid petition for self and on behalf of petitioners Nos. 2 and 3.
- 2. The statements in paragraphs 1 to 12 of the foregoing petition are true to my knowledge based on information derived from records maintained by me and petitioners Nos. 2 and 3 and on inspection of the records of Registrar of Companies and I believe them to be true.
- 3. The statements in paragraphs 1 and 2 are true to my knowledge.

Solemnly affirmed by the said AB at the Court House in Calcutta on this day of 2000

Before me
Commissioner

Petition for Winding-up of a Company

Company Petition No. of 1999

In the High Court at Calcutta
Original Jurisdiction

In the matter of:
The Companies Act 1956

And

In the matter of:
An Application under sections 433, 434
and 439 of the Companies Act 1956

And

In the matter of:
X Co. Ltd., a company registered under
the Companies Act 1956 and having its
Registered Office at
Calcutta within the said jurisdiction

And

In the matter of:
AB residing at Calcutta
within the said jurisdiction

Petitioner

To
 The Hon'ble Mr.
 Chief Justice and His Companion
 Justices of the said Hon'ble Court

The humble petition of AB the petitioner
 above-named most respectfully

SHEWETH:

1. The address of your petitioner for the purpose of service of notices, processes etc. is that of its Advocate-on-Record M/s EF & Co. having its office at Calcutta 700 001.

2. X Co. Ltd. (hereinafter referred to as the said COMPANY) was incorporated on 5th March 1982 under the Companies Act 1956.

3. The registered office of the COMPANY is at Calcutta within the said jurisdiction.

4. The authorised, issued subscribed and paid-up capital of the COMPANY is Rs. divided into equity shares of Rs. 10 each.

5. The main objects for which the COMPANY was formed and incorporated are contained in the Memorandum of Association of the COMPANY and include mainly trading business in all commodities and articles.

6. On or about at the request of the COMPANY your petitioners sold and delivered goods of certain quantity, at an agreed price. The COMPANY accepted the goods and appropriated the same.

7. Your petitioner submitted bills which were duly accepted and never disputed by the COMPANY.

8. The COMPANY paid a sum of Rs. 10,000 by way of part payment and promised to pay the balance of Rs. 90,000 within a month. This period has expired on 30th March 1998.

9. In spite of demand the COMPANY has failed to pay the said Rs. 90,000 or any part thereof and deferred payment thereof on some pretext or the other. By its letter dated the COMPANY requested for six months' time to pay the balance amount of Rs. 90,000. A copy of letter is annexed hereto. The COMPANY has not paid any further amount in spite of the said promise.

10. Your petitioner through its Advocate on Record issued a notice to the COMPANY demanding payment of Rs. 90,000 with interest at 18% per annum from the due date of payment till realisation. Such rate of interest is a part of the agreement, which will appear from the bills of your petitioner copies whereof are annexed hereto.

11. More than three weeks have passed but the COMPANY has not yet replied to the notice nor paid any portion to your petitioner.

12. The petitioner claims a sum of Rs. 90,000 with interest amounting to a sum of Rs. 5,000 aggregating to Rs. 95,000.

13. The COMPANY has failed and neglected and refused to pay the said sum of Rs. 95,000 or any portion thereof.

14. The COMPANY is unable to pay its creditors, its liability far exceeds its present and probable assets. It is commercially insolvent. In the premises it is just, fit and equitable that the company should be and be wound up under the provisions of the Companies Act 1956.

15. This application is made *bona fide*, in the interest of justice, and the balance of convenience is also in favour of passing the Orders prayed for herein.

The petitioner therefore humbly prays Your Lordships for the following Orders:

- (a) X Co. Ltd. be wound up under the provisions of the Companies Act 1956;
- (b) Official Liquidator be appointed as Liquidator of the company to take possession of the assets, properties, books and records of the company forthwith;
- (c) Further Orders be made and directions be given as to this Hon'ble Court may deem fit and proper.

And Your petitioner as in duty bound shall ever pray.

Date:
Place:

Sd/- AB
(EF & Co.)

Advocates for the petitioner

(Same Cause Title)

Affidavit verifying the petition

I, AB residing at Calcutta do hereby solemnly affirm and say as follows:

1. That I am one of the creditors of the COMPANY. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto.

2. The statements contained in paragraphs 1 to 10 of the petition herein now shown to me and marked with the letter "X" are true to my knowledge and those contained in paragraphs 11 to 13 hereof are based on information derived from records in my possession, and believed by me to be true and correct and those contained in paragraphs 14 and 15 hereof are my humble submissions to this Hon'ble Court.

3. The statements contained in the foregoing paragraphs of this Affidavit are true to my knowledge.

Solemnly affirmed by the said AB
at the Court House in Calcutta
on this day of 2000

AB
(Signature)

Before me
Commissioner

Application for Relief from Certain Liabilities

In the Court of the Metropolitan Magistrate at Calcutta

In the matter of:
The Companies Act 1956

And

In the matter of:
An application under section 633(1) of the
said Act

And

In the matter of:
An application by:

1. AB residing at
2. CD residing at
3. EF working for gain at
Calcutta

Petitioners

The humble petition of AB, CD and EF
the petitioners above-named

MOST RESPECTFULLY SHEWETH:

1. That the State through Registrar of Companies, West Bengal filed two complaints and two cases were started against your petitioners being Case Nos. and under sections 210(3) and 220(3) of the Companies Act 1956. In both the cases your petitioners pleaded guilty and the said pleas were accepted by the Learned Magistrate and your petitioners were fined Rs. 100 in each of the two cases and your petitioners were directed to file the relevant Returns with the Registrar of Companies,

West Bengal by 20th February 2000, with additional fees. Your petitioners have paid the fines.

2. Your petitioners in spite of the best efforts were unable to file the Balance Sheets and Annual Returns for the year-ended 30th March 1998 due to labour trouble and the factory and Head Office remaining closed, and the books of Accounts and records were not available to prepare the Balance Sheets or the Annual Returns.

3. In spite of negotiations your petitioners failed to get the requisite documents and access to the books of accounts. Any application for the Search Warrants would have aggravated the situation.

4. The State through the Registrar of Companies again filed two Complaints under section 614A(2) of the Companies Act 1956 complaining that the Order dated has not been complied with.

5. Your petitioners could not comply with the order in the circumstances mentioned above in spite of their best efforts and as such default or non-compliance has been caused due to circumstances beyond the control of the petitioners and mainly due to the labour trouble.

6. Your petitioners have acted honestly and reasonably and have not committed any default within the meaning of the Companies Act 1956 and could not be made liable to any legal proceedings and pray that your petitioners be excused and relieved fully from any liability for such defaults in filing the Balance Sheets and Annual Returns with the Registrar of Companies and/or non-compliance with the said Orders.

In the circumstances your petitioners therefore most humbly pray Your Honour that:

- (a) The petitioners be excused and/or relieved from any liability in respect of any defaults in filing the Balance Sheets and Profit and Loss Accounts and the Annual Returns with the Registrar of Companies and/or complying with the Order dated of this Learned Court;
- (b) The complaints filed and/or the Prosecution Cases Nos. be not proceeded with and your petitioners be discharged therefrom;
- (c) Such further and other Orders be made and/or directions be given as to this Learned Court may seem fit and proper to afford complete relief to your petitioners.

And your petitioners as in duty bound shall ever pray.

Verification

I, AB, residing at do hereby solemnly affirm and say as follows:

1. I am the petitioner No. 1 above-named and I know the facts and circumstances of the case and I am able to depose thereto. I am authorised by petitioners Nos. 2 and 3. I do affirm and verify the aforesaid petition for self and on behalf of petitioners Nos. 2 and 3.
2. The statements in paragraphs 1, to 6 of the foregoing petition are true to my knowledge based on information derived from records maintained by me and petitioners Nos. 2 and 3 and on inspection of the records of Registrar of Companies and I believe them to be true.
3. The statements in paragraphs 1 and 2 are true to my knowledge.

Solemnly affirmed by the said AB,
at the Court House in Calcutta on
this day of 2000

Before me
Commissioner