
Disclaimer

A proposed or named beneficiary may renounce his interest under the Trust by a Disclaimer addressed to the Trustee.¹ The intended Trustee may within a reasonable period disclaim it. Such disclaimer shall prevent the trust property from being vested in him. A disclaimer by one of two or more Co-trustees vests the trust property in other or others and makes the other or others the sole trustee or trustees from the date of creation of the trust.²

A person who has been appointed Trustee may disclaim the trust before acceptance of office but not afterwards. Such disclaimer must be before he does any act with reference to the trust estate. A person may have consented to act as trustee during the Testator's lifetime but after the death of the Testator he may disclaim the trust and refuse to act as a Trustee. Such disclaimer must be within a reasonable time and before the appointed trustee takes any step in the matter. The disclaimer need not be in any particular form, it may be by a deed or by mere writing or by conduct. The intention must be clear. The disclaimer may be in the form of release or even by conveyance in favour of other trustees or in some other form of writing or by conduct.

A Disclaimer must be total, it cannot be partial. A Disclaimer has the effect of vesting the trust estate in co-trustees. Mere appointment of a trustee does not vest the property in the trustee until he accepts it. A person after disclaiming the position of a trustee cannot act as a trustee thereafter even though he changes his mind by persuasion or otherwise.

The term Disclaimer has been used in the Law of Trusts, Law of Patents, Law of Landlord and Tenant and in the Law of Bankruptcy.

- 1 Section 9 of the Indian Trusts Act 1882.
- 2 Section 10 of the Indian Trusts Act 1882.

The term Disclaimer refers to the renunciation, by amendment of the specification, of a portion of an inventor's claim to protection. It means repudiation of landlord and tenant relationship by some act on the part of a tenant. Disclaimer means renunciation by a tenant of his character as such by setting up a title in a third person or by claiming title in himself. In Bankruptcy the term Disclaimer refers to the surrender by the Trustee of property belonging to a bankrupt, which is of an onerous character.

Disclaimer signifies utterly to renounce. It is an express denial or complete renouncing of a thing.

FORMS

Disclaimer of Benami Property

THIS INDENTURE is made this day of 2000 BETWEEN son of by caste by occupation residing at hereinafter called the RELEASOR, which expression shall, where the subject or context allows or admits of, be deemed to include his heirs, executors, administrators and representatives of the ONE PART and son of deceased by caste by occupation residing hereinafter called the RELEASEE which expression shall, where the subject or context allows or admits of, be deemed to include his heirs, executors, administrators, representatives and assigns of the OTHER PART.

AND WHEREAS the RELEASOR is the son of the RELEASEE AND WHEREAS the property fully mentioned and described in the schedule hereto was in fact and truth acquired by the RELEASEE under conveyance dated executed by and registered in Book I, vol. page to being No. of the office of Sub-registrar of with his own moneys and was at all material times owned, possessed and enjoyed by the RELEASEE for his use and benefit though in the name of the RELEASOR but not intending to make a gift or otherwise settle or to confer any estate or benefit thereof upon the RELEASOR under any circumstances AND WHEREAS in the circumstances the RELEASOR was a mere *benamdar* and/or name-lender or alias for the RELEASEE AND WHEREAS ever since the date of the said purchase and notwithstanding the fact of the name of the RELEASOR as the owner mentioned therein the RELEASOR never asserted nor claimed any ownership in respect of the same. And whereas the RELEASEE was at all material times and is still in lawful possession, control and enjoyment of the said property and every part thereof AND WHEREAS all the documents of title of the said property were at all material times and are also still in the possession and custody of the RELEASEE and all its outstandings and liabilities such as ground rent,

municipal taxes, etc., are paid, discharged and satisfied by the RELEASEE without any aid or contribution of the RELEASOR AND WHEREAS in the circumstances and in the absence of any evidence as to advancement or gift by the RELEASEE in his favour the RELEASOR had never, nor presently has any right, title, interest or claim whatsoever in the said property or in any portion thereof—he being a benamdar and/or pretended trustee for the RELEASEE which the RELEASOR doth hereby admit and acknowledge AND WHEREAS by reason of the fact of the purchase of the property being in the name of the RELEASOR and in view of the relationship between the parties, it may be alleged or contended on any occasion that the RELEASOR had or has or the releasee intended or pretended to settle or confer upon the releasor any right, title or interest in the said property or any part thereof the RELEASOR has agreed to disclaim the said property and to execute and register a declaration and conveyance thereof in terms herein mentioned AND WHEREAS such declaration and conveyance is also necessary and/or expedient so as to remove in future the possibility of all doubts, disputes, differences on the question of the title of the releasee in, to, upon and concerning the said property and with a view to enabling the RELEASEE to enjoy better and deal with the same in any manner which he may deem fit and proper without any concurrence of the RELEASOR or any impediment whatsoever by the heirs, executors, administrators and representatives of the RELEASOR after his death NOW THIS INDENTURE WITNESSTH that in the circumstances hereinbefore stated and for good reasons and considerations as aforesaid, it is hereby agreed and declared by and between the parties as follows:

The RELEASOR doth hereby and hereunder absolutely disclaim, disown and relinquish and for ever discharge all and every such pretended right, title, interest, claim or demand or cause of action which may now or hereafter be alleged or contended or construed in his favour because of the said conveyance and/or the said property and otherwise relating thereto or concerning the same or any part thereof by virtue of the conveyance thereof having been made in the name of the releasor as hereinbefore stated or his relationship with the Releasee as aforesaid.

The RELEASOR doth hereby and hereunder further agree, declare, confirm and acknowledge the good right, full power and absolute authority and indefeasible title of the RELEASEE to grant, convey, sell and transfer the said property or to make a gift thereof or otherwise to deal with the corpus or income thereof in any manner and on any terms as the RELEASEE shall or may think fit and proper and even without the consent or concurrence of or any reference to the RELEASOR or his heirs, executors, administrators or representatives under any circumstances AND the RELEASOR doth hereby covenant with the RELEASEE that the RELEASOR had not done, executed, performed, nor been party or privy to any act, deed or thing whereby or whereunder or by reason or means whereof the said property or any part thereof may be in any manner charged, encumbered or otherwise affected or

prejudiced in title or estate or the RELEASOR may be hindered or prevented from transferring the said property unto and to the use of the RELEASEE in the manner hereinbefore indicated.

The estimated value of the property is Rs.

The Schedule above referred to

IN WITNESS WHEREOF the RELEASOR hath hereunto set and subscribed his hand and seal the day, month and year first above-written.

Signed, sealed and delivered by the RELEASOR within named at in the presence of:

Executed by the RELEASEE in the presence of:

N.B.: It was held by the Supreme Court in *Controller of Estate Duty v Alok Mitra*³ that a benamdar has no interest in the property. He is not even a mere trustee unless he is in possession of the property.

Disclaimer by Trustee Appointed under a Will

TO ALL WHOM THESE MAY CONCERN

KNOW ALL MEN by these presents I, AB son of CD do hereby and hereunder make known and declare as follows:

1. I for personal reasons and considerations disclaim all my office as trustee appointed under and by virtue of the will dated of CD son of MN of No. of which probate was granted to EF of No. by the court of

2. I also disclaim all estate interest, claims, profits and benefits thereof intended to be devised ~~and powers~~ provided under and by virtue of the said will in my favour.

I declare that I never assented to nor otherwise agreed expressly or impliedly nor did in any manner act deed or thing or participate in the execution or management of the trust or affairs ancillary or incidental thereto nor exercise any of those powers.

IN WITNESS WHEREOF I have set and subscribed my hand and seal this..... day of 2000.

Signed, sealed and delivered

Disclaimer by Trustee Appointed under a Deed of Trust

TO WHOM IT MAY CONCERN

WHEREAS by a deed of trust dated made between (*names, address and description of the parties*) the following properties appear to have been conveyed unto and in favour of AB, *viz.* myself TO HAVE AND TO HOLD the same in trust *inter alia* for the objects and purposes mentioned therein, AND WHEREAS for reasons of health and other good reasons and considerations I, the said AB, am unable to take upon myself the responsibility of execution of the trust and carry out the objects to which I never gave my consent.

Now know ye ALL I, the said AB, do hereby declare and confirm that I have all along disclaimed and do hereby also disclaim the office of the trustee under the said deed of trust and all estate and interest in the properties intended to be conferred upon me which did never in fact or truth vested in me.

I further declare that I shall not at any time hereafter claim the said office nor any of the powers.

IN WITNESS WHEREOF I have hereunto set and subscribed my hand and seal this 2nd day of June 2000.

Schedule of properties

Signed, sealed and delivered

AB

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Distributorship

A manufacturing concern normally appoints a dealer or distributor to sell the manufactured goods. A distributor is an agent who distributes the goods of manufacturer to the consumers. The distributor acts for and on behalf of the manufacturer. The transactions between them are not generally transactions of sale as a principal to principal. The distributor acts for the principal and earns a commission. He is not a buyer of goods from the manufacturer in his own account, he does not himself pay the price of the goods before the property in the goods passes to the consumers. However, a distributor by a special agreement may purchase the goods on payment of the commercial price to the manufacturer and then sell the same to the consumers or retailers. In such a case he is really a wholesale buyer and the property in the goods passes to him.

If a manufacturing concern after appointing a sole distributor for its products for a specified region for a specified period prematurely terminates the agreement then the manufacturing concern may have to pay compensation to the distributor. However, the relationship between the manufacturer and the distributor and their rights and obligations would be governed by the agreement appointing the distributor.

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Appointment of Overseas Distributors with Exclusive Rights

THIS AGREEMENT IS MADE on this 10th day of June 2000 BETWEEN AB Ltd., a company registered under the Companies Act 1956 and having its registered office at (hereinafter called the

COMPANY which expression shall unless repugnant to the context include its successors and assigns) of the One Part and CD Co. Ltd., a company registered under the appropriate laws of South Africa and carrying on business as distributor of diverse goods at South Africa (hereinafter called the DISTRIBUTOR which expression shall unless repugnant to the context include its permitted assigns).

WHEREAS the COMPANY manufactures diverse kinds of electronic goods under its trade name and the DISTRIBUTOR carries on business as wholesaler and retailer through its several outlets in South Africa and has approached to be appointed as the sole distributor of the COMPANY'S products in South Africa to which the COMPANY has agreed.

NOW THESE PRESENTS WITNESSTH and parties hereby agree as follows:

1. The COMPANY hereby grants to the DISTRIBUTOR the exclusive right during the continuance of this agreement to purchase for resale in the territory of South Africa the COMPANY'S products subject to the terms and conditions hereinafter appearing.

2. This agreement shall be in force for 5 years from 10th June 1999 and thereafter renewal for 5 years at a time on terms and conditions to be mutually agreed upon.

3. Orders for the products shall be placed by the DISTRIBUTOR on the COMPANY and the COMPANY shall sell the products to the DISTRIBUTOR at such prices as the COMPANY shall from time to time fix. The COMPANY shall execute orders of the DISTRIBUTORS for the products with all reasonable dispatch but shall not be liable for any loss of trade or profit, damages or expenses in the event of non-delivery of the products in time or at all due to labour trouble, strike, riots, lockouts, trade disputes, acts or restraints of governments, the imposition of restrictions on exportation or from any other cause not within the control of the COMPANY.

4. The title to the products shall pass to the DISTRIBUTOR when the invoiced products are placed on board the vessel at any Indian port and payment therefor shall become due from and payable by the DISTRIBUTOR in Indian Currency on receipt of shipping documents or on negotiation of shipping documents against Letter of Credit and/or on terms for payment as may from time to time be agreed upon by the parties.

5. The DISTRIBUTOR agrees and undertakes that it will at all times during the continuance of this agreement observe and perform the terms and conditions set out in this agreement.

6. The DISTRIBUTOR shall use at all times its best endeavours to promote sales of the products throughout the South Africa to all potential purchasers thereof and work diligently to obtain orders therefor by means of personal visits to and by correspondence with such purchasers, by advertising and

by the distribution of printed matter in the approved form, manner, extent and wording of such advertising and such distributed matter shall be at the costs and expenses of the DISTRIBUTOR.

7. The DISTRIBUTOR covenants that it will not without the previous consent in writing of the COMPANY be concerned or interested directly or indirectly in the manufacture, production, importation, sale or advertisement of any goods in South Africa which are similar to or which either alone or in conjunction with some other product perform or are designed to perform the same or a similar function to or which might otherwise compete or interfere with the sale of any of the COMPANY'S products.

8. The DISTRIBUTOR agrees and undertakes that it will not either directly or through any agent sell any of the products outside South Africa or knowingly allow to be resold the products to any person within South Africa with a view to their resale outside South Africa.

9. The DISTRIBUTOR shall in all correspondence and other dealings relating to the sale or disposition of the products clearly indicate that it is acting as principal.

10. The DISTRIBUTOR shall not incur any liability on behalf of the COMPANY or in any way pledge or purport to pledge the COMPANY'S credit or accept any order or make any contract sought to be binding on the COMPANY without prior written consent of the COMPANY.

11. The DISTRIBUTOR shall not sell the products at any price other than that for the time being fixed by the COMPANY for the sale of the products in South Africa without the previous consent in writing of the COMPANY.

12. The DISTRIBUTOR shall bring to the attention of the COMPANY any improper or wrongful use of the COMPANY'S patents, trade marks, emblems, designs, models or other similar industrial or commercial rights which comes to its notice and take all steps to safeguard the property rights and interests of the COMPANY and will assist the COMPANY in taking all steps to defend the rights of the COMPANY.

13. The DISTRIBUTOR shall keep proper and up-to-date books of account and records showing clearly all inquiries, transactions and proceedings relating to the distributorship and will allow the authorised officers of the COMPANY to have access to the said books and records and to take such copies thereof as they may require.

14. The DISTRIBUTOR shall from time to time upon the request of the COMPANY supply to the COMPANY reports, returns and other information relating to the distributorship and market conditions.

15. The DISTRIBUTOR shall not assign, transfer, charge or in any manner make over this agreement or their rights hereunder or any part thereof without the written consent of the COMPANY.

16. The DISTRIBUTOR shall be bound by the COMPANY'S conditions of sale that may from time to time be in force and in selling the products enforce similar terms and conditions and shall not make any promises, representations, give warranties or guarantees with reference to the products except such as are consistent with those conditions or as are expressly authorised by the COMPANY in writing.

17. The DISTRIBUTOR shall not alter, remove, conceal or otherwise interfere with any markings or nameplates or other indication of the source or origin of the goods which may be placed by the COMPANY on its products.

18. The COMPANY hereby agrees with the DISTRIBUTOR that it will not during the continuance of the agreement sell any of the products to any person in South Africa other than to the DISTRIBUTOR or to any person outside the South Africa with a view to the resale thereof within the territory of South Africa save as provided in this agreement.

19. The COMPANY shall at its own expense supply the DISTRIBUTOR with such amount of samples and patterns, instructions, books, technical pamphlets, catalogues and advertising material as it considers reasonably sufficient to promote sales of the products within the territory of South Africa.

20. The COMPANY shall use its best endeavour to safeguard the sole and exclusive rights hereby granted to the DISTRIBUTOR including the taking of such steps as may be available to it to prevent the infringement of those rights by other distributors or agents of the COMPANY and to prevent the infringement of its patents, trade marks, emblems, designs and other similar industrial or commercial monopoly rights within the territory of South Africa.

21. The COMPANY reserves to itself the right to supply the products to customers within the territory of South Africa in pursuance of firm orders placed with the COMPANY before the commencement of this agreement or in pursuance of orders resulting from negotiations pending at that date and no right to any payment shall accrue to the distributor in respect thereof provided that information relating to all such orders and negotiations shall be given to the DISTRIBUTOR within 7 days of the commencement of this agreement and in the event any products are sold by the COMPANY with knowledge that they are for use in the said territory the DISTRIBUTOR shall be entitled to be paid a commission of 20% on the net price f.o.b. (before carriage, freight, insurance or duty have been added) Indian port in consideration of the DISTRIBUTOR assisting the COMPANY to obtain business from the territory as and when requested and on receipt by the COMPANY of payment in full for the products.

22. It is agreed that (a) the DISTRIBUTOR shall not be entitled to commission on any sale in respect of which it has failed to render such assistance as was required of them; (b) the DISTRIBUTOR shall be entitled to such commission

as the COMPANY may in its absolute discretion determine on any sale direct by the Company to any Government Department or Agency, State-owned public utility or industry in the territory; (c) the Company may decline to submit a tender on any inquiry or to accept any order from the DISTRIBUTOR and by so declining shall not incur any obligation to the DISTRIBUTOR.

23. The COMPANY may vary the first schedule hereto defining the products either by withdrawing therefrom a class or classes of products named therein in the event of the company ceasing to manufacture that class or classes of products or by the addition thereto after consultation with the DISTRIBUTOR of further classes of products of the COMPANY.

24. If in the opinion of the COMPANY the DISTRIBUTOR becomes unable to effect adequate sales coverage throughout the whole of the territory without prejudice to any other rights the COMPANY may vary the First Schedule hereto so as to exclude from this agreement such part or parts of the territory therein defined as it thinks fit or to vary the Second Schedule hereto so as to exclude from this agreement such one or more of the products herein defined as it thinks fit or to take both these courses of action save that neither such course of action shall be taken under this clause without prior consultation with the DISTRIBUTOR.

25. The COMPANY shall be entitled to take such steps as may seem necessary or expedient including and without prejudice to the generality of the reserved right to appoint a representative in the said territory of South Africa and to notify the DISTRIBUTOR of any person, firm or body-corporate carrying on business in the territory who might appear to the COMPANY to be potential purchaser of its products.

26. The DISTRIBUTOR undertakes that they will not at any time divulge any information in relation to the COMPANY'S affairs or business or method of carrying on business.

27. The COMPANY shall have the right at any time by giving notice in writing to the DISTRIBUTOR to terminate the agreement forthwith (a) if the DISTRIBUTOR commits any breach of any terms or conditions of this agreement; (b) goes into compulsorily or voluntarily liquidation or compounds with its creditors or a receiver is appointed.

28. Before the expiration of the original term of agreement either party shall have the right to determine this agreement by giving one calendar month's notice in writing to the other party.

29. Upon the termination of this agreement from any cause or at any time previous to such termination at the request of the COMPANY the DISTRIBUTOR shall promptly return to the COMPANY or otherwise dispose of as the COMPANY may instruct all samples, patterns, instruction books, technical pamphlets, catalogues, advertising materials, specifications and other materials, goods documents and papers whatsoever sent to the

DISTRIBUTOR and relating to the business of the COMPANY at the cost of the DISTRIBUTOR.

30. Nothing in this agreement shall constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute the DISTRIBUTOR as agent of the COMPANY for any purpose whatsoever. The DISTRIBUTOR shall have no authority or power to bind the COMPANY or to enter into contract in the name of the COMPANY or create any liability against the COMPANY in any way for any purpose.

31. Any dispute, difference or question which may arise at any time hereafter between the COMPANY and the DISTRIBUTOR touching the true construction of this agreement or the rights and liabilities of the parties hereto shall be referred to the decision of a single arbitrator to be agreed upon between the parties or in default of agreement to be appointed at the request of either party in accordance with and subject to the provisions of the Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

32. This agreement shall be deemed to have been made in India and the construction, validity and performance of this agreement shall be governed in all respects by the laws of India, arbitration shall be held in India and the Courts in India shall have the jurisdiction over any dispute and the Indian law shall govern this agreement.

First Schedule

The Territory

South Africa

Second Schedule

All kinds of Electronic Products

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

Signed, sealed and delivered by
Mr. MN pursuant to Board
Resolution dated 1st June 2000 of
AB Ltd., in the presence of:

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

Distributorship Agreement

THIS AGREEMENT OF DISTRIBUTORSHIP is made on this 16th day of December 2000 BETWEEN X Co. Ltd. a company registered under the English Companies Act, and carrying on business at, hereinafter called the MANUFACTURER (which term shall include its successors and assigns) of the one part and DC Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at, hereinafter referred to as the DISTRIBUTOR (which term shall unless excluded by or repugnant to the context shall include its successors and permitted nominees and assigns) of the other part.

WHEREAS the MANUFACTURER is manufacturing Tele-communications Instruments, Computers, Softwares and Hardwares and exporting and marketing them in India and abroad.

AND WHEREAS the MANUFACTURER intends to strengthen its distribution machinery in the backward areas in India and in unexplored areas in the East Asian markets.

AND WHEREAS the DISTRIBUTOR approached the manufacturer for having the distributorship of the manufacturer's products in backward areas in India and unexplored areas in the East Asian and foreign markets.

AND WHEREAS the MANUFACTURER has agreed to the proposals of the distributor on certain terms and conditions.

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

1. The MANUFACTURER hereby appoints and the DISTRIBUTOR accepts such appointment as the SOLE DISTRIBUTOR of the products of the MANUFACTURER in respect of its products and the areas mentioned in the Schedule hereunder.

2. The DISTRIBUTOR will have to deposit by way of Security Money free from interest a sum of Rs. 5 lakhs before the MANUFACTURER delivers any goods to the DISTRIBUTOR. The DISTRIBUTOR agrees and undertakes to lift the products of the MANUFACTURER and store them in the DISTRIBUTOR'S godown for ultimate distribution to the wholesalers or retailers as the case may be.

3. The DISTRIBUTOR agrees to lift such products of the MANUFACTURER not less than worth Rs. 5 lakhs at a time and always store in its godown goods worth not less than Rs. 4 lakhs.

4. The DISTRIBUTOR hereby agrees and undertakes not to deal with similar products of any other MANUFACTURER in respect of the scheduled areas for which the DISTRIBUTOR has been offered the distributorship of the MANUFACTURER'S products.

5. The DISTRIBUTOR shall ensure that the products are sold to the consumers at the prices marked on the commodities or on the packing.

6. The MANUFACTURER will pay to the DISTRIBUTOR a commission of 30% on the prices marked on the commodities and the DISTRIBUTOR, in turn, may grant a commission not more than 10% on the prices marked on the commodities or its packing to the wholesalers or retailers as the case may be.

7. The DISTRIBUTOR shall advertise the products and popularise the same and the actual expenses incurred will be reimbursed by the MANUFACTURER.

8. The DISTRIBUTOR shall lift the goods from the factory or godown of the MANUFACTURER and the entire costs of transport will be borne by the DISTRIBUTOR.

9. The DISTRIBUTOR shall submit quarterly reports to the MANUFACTURER about the efforts made to popularise the products of the MANUFACTURER. The DISTRIBUTOR shall submit quarterly statements of accounts of the goods lifted from the MANUFACTURER and distributed or sold by the DISTRIBUTOR. The DISTRIBUTOR shall also submit every quarter a market survey report in relation to the products of the MANUFACTURER and also available information regarding similar products of other manufacturers.

10. The DISTRIBUTOR shall at its own cost keep the products of MANUFACTURER fully insured against all insurable risks of such products from the time of lifting of the products from the premises of the MANUFACTURER till these are sold by the DISTRIBUTOR. The insurance policy to be taken will be in the joint names of the MANUFACTURER and the DISTRIBUTOR and the insurance policy when received and the receipt for premium paid will be forwarded to the MANUFACTURER within 7 days of the receipt thereof.

11. The DISTRIBUTOR shall inform the MANUFACTURER of any infringement of the brand name, trade mark or patent rights of the MANUFACTURER in any of the products in respect of which the agreement has been entered into and executed with the MANUFACTURER and take and permit to be taken all such actions as will be necessary to protect the right, title and interest of the MANUFACTURER in the aforesaid products.

12. The DISTRIBUTOR shall pay for the products lifted by it every quarter and if there be any delay in payment for goods lifted, interest at 15% shall be charged on the outstanding amount with quarterly rests.

13. This agreement is subject to the compliances by both parties of all rules, regulations and laws applicable to the agreement and the transactions as may be entered into by the MANUFACTURER and/or the DISTRIBUTOR.

14. This agreement is terminable by giving three months' notice by either side.

15. It is agreed and the DISTRIBUTOR covenants that in respect of products lifted by it from the MANUFACTURER if not paid for will remain the property of the MANUFACTURER and no right, title or interest will pass to the DISTRIBUTOR until full payment has been made for such products.

16. All disputes and differences that might arise in relation to or touching the agreement or the transactions between the parties or claims, liabilities and rights of the parties shall be referred to Mr. MN, Advocate of Old Post Office Street, Calcutta for adjudication by Arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996 including any modifications thereof for the time being in force.

The Schedule

(Particulars of the products and the areas for which the distributorship is obtained).

IN WITNESS WHEREOF the parties herein 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 Manufacturer in Calcutta in
presence of:

Signed, sealed and delivered by
Mr. pursuant to
Board Resolution dated
of the Distributor in Calcutta in
presence of:

Agreement of Bottling Beverages

THIS AGREEMENT IS MADE on this 10th day of October 2000 BETWEEN AB Co. Ltd., registered under the appropriate laws of Scotland and carrying on business at, Scotland hereinafter referred to as the PRINCIPAL (which term shall unless excluded by or repugnant to the context include its successors and assigns) of the one part and the CD Ltd., a company registered under the Companies Act 1956 and having its registered office at, hereinafter referred to as the BOTTLER (which term shall unless excluded by or repugnant to the context include its successors and permitted nominees and assigns) of the other part.

WHEREAS the PRINCIPAL is carrying on business as manufacturer of and dealer in Beverages under the trade name SCOTCH.

AND WHEREAS the PRINCIPAL intends to extend its business to India and South-East Asia but the cost of setting up a new manufacturing unit would not be economical and transportation of beverages from Scotland to the distant areas will not be commercially viable.

AND WHEREAS the BOTTLER has a plant for bottling aerated waters and the same has been recently modernised and is suitable for bottling the beverages manufactured by the PRINCIPAL.

AND WHEREAS the BOTTLER has approached the PRINCIPAL for arrangement of obtaining concentrates for the PRINCIPAL'S beverages for the purpose of bottling the same in India and selling it under the trade name of the PRINCIPAL on certain terms and conditions to which the PRINCIPAL has agreed.

NOW THESE PRESENTS WITNESSETH and the parties hereto hereunder agree as follows:

1. The PRINCIPAL appoints the BOTTLER as its Sole Bottling Agent in India for a period of 5 years which is renewable for another 5 years at a time on mutually agreed terms and conditions.

2. The BOTTLER shall maintain its Bottling Plant in good condition and repair at its own cost subject to periodical inspection by the representative of the PRINCIPAL. The BOTTLER shall use the water available from the Corporation of Calcutta or from the tubewell sunk by it and the same be filtered through a machine to be supplied by the PRINCIPAL free of cost.

3. The water so purified will be tested by a named organisation as to its purity and fitness for using for beverages and human consumption.

4. The PRINCIPAL shall supply the concentrates to be used with water and other permissible ingredients for the purpose of bottling the mixed liquid. After the concentrates converted into liquid is bottled, the same will be properly capped and labelled. All these are to be untouched by hand and to be done automatically by the plant.

5. The finished product in the bottles will be branded as SCOTCH and sold as soft drink at a price to be fixed by the PRINCIPAL.

6. The BOTTLER shall have arrangements for distribution to the retailers of the said Scotch Beverages and to be sold in retail at a price to be fixed from time to time by the PRINCIPAL.

7. The Bottles to be manufactured for the purpose of the said Scotch Beverages would be according to the specifications and designs of the PRINCIPAL and the cost whereof shall be reimbursed by the PRINCIPAL.

8. All breakages of bottles and missing bottles will be replaced by the BOTTLER at its own costs.

9. The PRINCIPAL will allow the BOTTLER for the said bottling and distribution a commission of 50% on the retail sale price of the Scotch bottles of beverages.

10. The BOTTLER shall publicise and popularise the said Scotch Beverages by advertisement in newspapers, posters, journals and otherwise, the

costs whereof will be borne in equal proportions by the PRINCIPAL and the BOTTLER.

11. The composition of the concentrate is a secret and the BOTTLER shall not make any effort to find out the composition thereof or discuss with anybody or furnish any sample of the concentrate to anybody so that composition of the concentrate remains a secret.

12. The said beverage Scotch is the registered trade mark of the PRINCIPAL and the BOTTLER shall inform the PRINCIPAL immediately on coming to know of any alleged infringement or passing off of the product and take immediate steps to protect the interests of the PRINCIPAL the expenses whereof will be reimbursed by the PRINCIPAL.

13. The plant of the BOTTLER shall be maintained in perfect condition subject to the supervision of the Engineer of the PRINCIPAL and such plants should not be used for bottling any other product except the Scotch Beverage.

14. The BOTTLER shall be responsible for complying with all local laws and paying all taxes, rates, cesses and other levies in connection with the said plant, maintenance thereof, manufacturing of the said beverage and selling the same through retail outlets.

15. In consideration of the PRINCIPAL granting the bottling rights of the Scotch Beverage to the BOTTLER, the BOTTLER will keep in deposit with the PRINCIPAL Rs. 10 lakhs free of interest which will be adjusted on the expiry or termination of this Agreement.

16. The BOTTLER shall render quarterly accounts of the concentrates supplied, the bottling made and the Scotch Beverage sold through retail outlets or otherwise and pay the sale proceeds of the Scotch Beverages after deducting the commission of the BOTTLER.

17. The BOTTLER shall submit statements of accounts and other expenses every quarter and on such accounts being furnished, the same would be settled by adjustment or payment.

18. In default of the BOTTLER in complying with any of the terms and conditions of this agreement, the PRINCIPAL will have the liberty to terminate this agreement by giving 3 months notice.

19. In default of payment of any money due from the BOTTLER, interest would be charged at 15% per annum with quarterly rests by way of compensation for withholding the payment.

20. The BOTTLER shall ensure proper customer satisfaction and from time to time make a market research to ascertain the customer reaction to the Scotch Beverage, nature of storing the bottles and the cooling arrangement therein as also suitability of retail outlets.

21. The BOTTLER shall on market research ascertain whether any plastic crates should be supplied free of cost to specified retailers for storage of the Scotch Beverages and also to supply to limited retailers Ice Box or Mini Refrigerators for the cooling arrangement of the Scotch Beverages. The cost of crates and Mini Refrigerators will be borne by the BOTTLER but for which the PRINCIPAL would make advances to be adjusted against the commission payable by the PRINCIPAL to the BOTTLER inasmuch as such an arrangement will directly benefit the BOTTLER in increasing the sales in competition with other market products.

22. The BOTTLER shall after manufacture of every lot of bottles of Scotch Beverages make random chemical tests by a competent person as to the suitability thereof for human consumption and should ensure that the same is free from any bacteria or harmful elements. The BOTTLER shall be solely responsible for any claims, proceedings, losses or damages due to any defect in the Scotch Beverages and the BOTTLER hereby undertakes and covenants to keep the PRINCIPAL harmless from and indemnified against all claims, proceedings, costs charges and expenses in relation to the Scotch Beverages manufactured, sold and distributed through outlets of the BOTTLER.

23. The BOTTLER shall be free to sell Scotch Beverages bottled by it in India or outside India without any restrictions.

24. All disputes and differences arising out of this agreement or in relation thereto or touching it or in relation to any transactions covered by this agreement or otherwise affecting the relationship of the PRINCIPAL and the BOTTLER shall be referred to the Bengal Chamber of Commerce for adjudication under its rules and/or the provisions of the Arbitration and Conciliation Act 1996 or any statutory modifications thereof for the time being in force.

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. Power-of-Attorney
Holder from the AB Co. Ltd., and
authorised representative in
Calcutta in the presence of:

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

Agreement for Distributorship

THIS AGREEMENT IS MADE on the 10th day of October 2000 BETWEEN AB Co. Ltd., a company registered under the Companies Act 1956 and having its registered office and carrying on business at (hereinafter called the COMPANY) and CD Ltd., a Company registered under the Companies Act 1956 and carrying on business at (hereinafter called the DISTRIBUTOR).

WHEREAS the COMPANY carries on business as publisher and seller of books on legal and allied subjects.

AND WHEREAS the DISTRIBUTOR has a book shop at Bangalore with spare capacity with sales outlets.

AND WHEREAS the DISTRIBUTOR has approached the COMPANY for being appointed as the sole distributor of the COMPANY's publications in Bangalore and within a radius of 5 miles thereof to which the COMPANY has agreed.

NOW THESE PRESENTS WITNESSETH and the parties agree as follows:

1. The COMPANY hereby appoints the DISTRIBUTOR to be its sole DISTRIBUTOR and the DISTRIBUTOR agrees to act as such to establish, promote and extend the sale of publications of the company in Bangalore and within a radius of 5 miles thereof (hereinafter called the said TERRITORY).

2. The agreement shall commence on the 10th day of October 2000 and shall continue for a period of 5 years and thereafter will stand extended from year to year until terminated by 6 months' notice in writing given by either party to the other.

3. The DISTRIBUTOR shall not engage in selling or otherwise being concerned in the sale of books competing with or in the same class as the publications of the COMPANY.

4. The COMPANY shall not sell the publications to any other person in the territory or outside the territory who the company knows or has reason to believe intends to resell the publications within the territory. The COMPANY further agrees to refer all inquiries for its publications reaching it from the territory to the DISTRIBUTOR.

5. The DISTRIBUTOR agrees to pay for all publications of the COMPANY ordered and accepted by it within 30 days of delivery.

6. All publications shall be dispatched by road transport or by goods train carriage paid or by such other means as may be agreed.

7. The COMPANY shall allow the distributor a discount or rebate of 30 per cent on the quoted price and shall allow a further discount/rebate of 10 per cent on the net value of all publications which the DISTRIBUTOR takes delivery of and pays for in any period of twelve calendar months in excess of the amount of Rs. 2 lakhs.

8. The DISTRIBUTOR shall at all times during the continuance of this agreement offer for sale and sell the publications without giving any warranty of any sort. The DISTRIBUTOR shall at all times during the continuance of this agreement maintain a stock of all the publications for display purposes. The DISTRIBUTOR shall have no right of action against the COMPANY in respect of any loss occurring to it by reason of any delay in delivery occasioned by shortage of stock or delays in transit or delays caused by accidents or strikes or for reasons beyond the control of the COMPANY. The DISTRIBUTOR shall not assign the benefit of this agreement without the prior written consent of the COMPANY.

9. The COMPANY reserves the right to grant licences for the printing of the Company's Publications within the territory and itself to establish shops for the sale or distribution of the products within the territory without being liable in any way to remunerate the DISTRIBUTOR in respect of sales of the products thereafter printed within the territory.

10. The DISTRIBUTOR shall submit its scheme for publicity for approval of the COMPANY at intervals and 3 months ahead of the date from which it is proposed that it should commence and the COMPANY agrees to reimburse the DISTRIBUTOR to the extent of 50% of its publicity costs provided that the liability of the COMPANY shall not exceed 3% of the value of the product ordered by the DISTRIBUTOR.

11. The DISTRIBUTOR shall report to the COMPANY from time to time upon the development of business and generally upon trade conditions in the territory.

12. This agreement shall not be construed as a partnership between the parties hereto or constitute or be deemed to constitute the DISTRIBUTOR an agent of the COMPANY for any purpose whatever and the DISTRIBUTOR shall have no authority or power to bind the COMPANY or to contract in the name of and create any liability against the COMPANY in any way or for any purpose.

13. The COMPANY shall have the right at any time by giving notice in writing to the distributor to terminate the agreement forthwith if the DISTRIBUTOR commits a breach of any term or condition of this agreement or winding up proceedings are initiated.

14. Any dispute, difference or question which may arise at any time hereafter between the COMPANY and the DISTRIBUTOR touching the true construction of this agreement or the rights and liabilities of the parties hereto shall be referred to the decision of a single arbitrator to be agreed upon between the parties or in default of agreement to be appointed at the request of either party in accordance with and subject to the provisions of the Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

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. XY pursuant to Board
Resolution of 2nd October 2000 of
AB Co. Ltd. in the presence of:

Signed, sealed and delivered by
Mr. MN pursuant to the Board
Resolution of 3rd October 2000 of
CD Ltd. in the presence of:

Petrol Station Agreement

THIS AGREEMENT IS MADE on the 15th day of December 2000 BETWEEN AB Co. Ltd., a company registered under the Companies Act 1956 and carrying on business at (hereinafter called the COMPANY) of the one part and ML carrying on business under the name and style of Auto Fil at (hereinafter called the AUTO FIL) of the other part.

WHEREAS ML owns a plot of land being premises No. and is desirous of setting up of a Petrol Station there and approached the COMPANY for dealership.

AND WHEREAS the COMPANY has supplied at the cost of AUTO FIL equipment for the installation of a petrol pump at and the installation is almost complete.

AND WHEREAS the AUTO FIL has assured the COMPANY that it will store the petrol and petroleum products of the COMPANY for the purpose of sale.

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

1. The COMPANY shall supply as much petrol as it conveniently can do to AUTO FIL for storage in the tank installed underneath the petrol pump station and petroleum products in its rooms on the said premises being the AUTO FIL.

2. AUTO FIL shall maintain the equipment and the construction of the said petrol pump in good state of repair so as to keep it free from leakage, theft, fire and other like hazards.

3. AUTO FIL shall not store or handle petrol supplied by another person, firm or company or State.

4. AUTO FIL shall sell the petrol and petroleum products at the rate fixed by the COMPANY.

5. AUTO FIL shall not encumber or dispose of the installation or the equipment in any manner whatsoever or do or suffer anything to be done whereby the said petrol pump or any part thereof may be seized or possessed by any other person or authority.

6. AUTO FIL shall submit weekly accounts of the receipt and disposal of the petrol and petroleum products supplied to it and pay the price thereof forthwith along with the said accounts. The COMPANY shall be entitled to check, inspect, measure and investigate into the conditions, state, quantity of the petrol, petroleum products and the equipment as well as the installation and to verify any fact mentioned in the said accounts or otherwise at its discretion.

7. This agreement shall continue for a period of 5 years from the date hereof unless sooner terminated by service of 30 days notice on either side.

8. If AUTO FIL should commit any breach of the agreement the COMPANY shall be entitled to terminate this agreement by 7 days notice. On the expiry of the period so fixed in the notice the agreement so far as the rights of AUTO FIL are concerned shall be deemed to have come to an end but it shall be bound by the obligations undertaken hereunder.

9. AUTO FIL shall be entitled to receive from the COMPANY commission of 5% on the sale of petrol and petroleum products. AUTO FIL will be liable for and shall furnish a Bank Guarantee for payment of the price of petrol and petroleum products supplied to it. No commission shall be payable unless the price of petrol and petroleum products has actually been paid to the COMPANY.

10. AUTO FIL shall keep a sum of Rs. 5 lakhs interest-free deposit with the COMPANY as security for the due performance of the conditions of the agreement in addition to the Bank Guarantee. This is without prejudice to the terms and conditions mentioned above in respect of termination of this agreement.

11. On termination of this agreement after adjustments of the COMPANY'S claims against AUTO FIL the security deposit would be returned.

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 10th December 2000
of AB Co. Ltd. in the presence of:

Signed, sealed and delivered by
Mr. ML proprietor of AUTO FIL in the
presence of:

Divorce—Nullity of Marriage and Judicial Separation

Marriage is a social institution which is known all over the world and common to all people. Every country, however, has its own laws and customs with regard to it.

Professor Edwin S. Bundell said: Marriage is the best insurance in the world—insurance against (a) crime, (b) insanity, (c) poverty and (d) premature death.¹

Any two persons of opposite sex, who are desirous of marrying each other, may do so with the exception of (a) minors under certain ages according to the laws by which they are governed, (b) persons within the prohibited degrees of relationship, (c) persons who are already married to a living spouse, and (d) persons mentally deficient of contracting marriage.² The Hindu and Mahomedan marriages were and are still in many aspects regulated not by any legislation but governed by the personal law of the communities and customs. The idea behind those marriages is essentially different *inter se* from the background behind a Christian marriage—a contract between the parties. The Hindu Law permitted polygamy until the Hindu Marriage Act 1955, was enacted³ and amended in 1964 (Act 44 of 1964). Although monogamy was the general rule, polygamy, though an exception, existed side by side. The Muslim Law permits marriages up to four wives.⁴ Marriages contracted under the Special Marriage Act⁵ are monogamous.

1 Mital: *Law of Marriage*, Preface.

2 Grant: *Marriage, Divorce and Separation*, p. 11.

3 Section 5 of the Hindu Marriage Act.

4 Baillie 30, 154; Ameer Ali: *Mahomedan Law*, 5th Ed., vol. 2, p. 280; Kader: *Muslim Law of Marriage & Succession in India*, 1st Ed. (1998), p. 79.

5 Section 4 of the Special Marriage Act 1954.

Breach of promise to marry. An engagement between a man and a woman imposes an obligation on both to marry each other in due course. This obligation is irrevocably binding unless (a) the parties at any time before marriage mutually agree to release each other from their mutual promises to marry, or (b) one of them breaks off the engagement for any reason which the law considers justifiable.⁶ Law allows recovery of damages in certain cases.⁷

Husband and wife. Marriage imposes a duty upon both the spouses to live together and to cohabit with each other as husband and wife. Even in days gone by, a husband could enforce his wife's obligation of staying with him. If any of the parties without just cause refuses him or her the society of the other, the court will by judicial process reconstitute the conjugal rights.⁸ A decree in all such suits can be enforced under Or. 21, rr. 32, 33 of Code of Civil Procedure.

The Statutory Law of Marriage in India, e.g. Indian Divorce Act 1869, Hindu Marriage Act 1955 as amended by the Hindu Marriage (Amendment) Act 1964; Parsi Marriage and Divorce Act 1936 and Special Marriage Act 1954 provides four types of remedies to parties to the marriage: (i) Divorce, (ii) judicial separation, (iii) nullity of marriage, (iv) restitution of conjugal rights and (v) mutual divorce. A judicially separated wife is considered a *fame sole*. Hindu law did not allow divorce except when the same was permitted by customs. Hindu Woman's Right to Separate Residence and Maintenance Act 1946, was repealed by s. 29 of the Hindu Adoptions and Maintenance Act 1956. Under s. 19 of the latter Act, a Hindu wife is entitled to live separately without forfeiting her claim as to maintenance in case of desertion, cruelty, change of religion on the part of the husband and other good causes. The Hindu Marriage Act 1955, as amended by Act 44 of 1964 is an overriding statute.⁹ So all previous customs, usages, etc., have been repealed by the said Act. See also the Marriage Laws (Amendment) Act 1976.

Mahomedan law recognises marriage as a contract of the nature of contract of service and so the husband enjoyed the one-sided liberty of divorce which he could avail of by paying the wages in full,¹⁰ whereas the wife had very limited power in that behalf until the enactment of Dissolution of Muslim Marriage Act 1939.¹¹

6 Section 73 of the Indian Contract Act.

7 Desai's *Contract Act*, 7th Ed., p. 268.

8 Section 9 of the Hindu Marriage Act, s. 32 of the Indian Divorce Act, s. 36 of the Parsi Marriage and Divorce Act.

9 Section 4 of the Hindu Marriage Act.

10 Manchand's *Law and Practice of Divorce*, 2nd Ed., p. 435.

11 Section 2 of the Dissolution of Muslim Marriage Act.

Principles of *res judicata*. Under s. 45 of the Indian Divorce Act, the principles of *res judicata* as laid down in the Code of Civil Procedure applies to proceedings under the Indian Divorce Act.

Dissolution of Marriage

It is now a creature of statute. The law relating to marriage, divorce and other matrimonial causes is not uniform. Matrimonial causes between persons professing Christian religion are governed by the Indian Divorce Act 1869¹² or if the marriage had been solemnized under the Special Marriage Act 1954, by the latter Act.¹³ In regard to Hindu marriages, matrimonial causes are governed by the Hindu Marriage Act 1955.

A Hindu marriage does not *ipso facto* stand dissolved by reason of the conversion of one party into some other religion but such conversion is one of the grounds for divorce.¹⁴

Matrimonial causes in regard to Muslim marriages are governed by the Mahomedan law and the Dissolution of Muslim Marriage Act 1939.¹⁵ Divorce by a Muslim husband is outside the scope of the said Act. A Mahomedan husband has always the sanction of the *Koran* to give his wife *Talak*. Section 28 of the Special Marriage Act 1954 further provides for divorce by mutual consent.

When husband or wife can petition for dissolution of marriage. Under s. 10 of the Indian Divorce Act, any husband can present a petition to the District Court, or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

Any wife can also present a petition to the District Court, or to the High Court, praying that her marriage may be dissolved, on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

- or has been guilty of incestuous adultery,
- or of bigamy with adultery,
- or of marriage with another woman with adultery,
- or of rape,
- or, sodomy or bestiality,

12 Section 10 of the Indian Divorce Act.

13 Section 13 of the Indian Divorce Act.

14 Section 13(i) and 13(ii) of the Hindu Marriage Act.

15 Section 2 of the Dissolution of Muslim Marriage Act.

or of adultery coupled with such cruelty as, without adultery, would have entitled her to a divorce *a mensa et toro*,

or of adultery coupled with desertion, without reasonable excuse for two years or upwards.

A husband may present a petition for divorce against his wife on the simple ground of adultery, but the wife in order to get divorce must establish certain other facts.

Extent of court's power to grant relief.¹⁶ No court is authorised to grant any relief under the Indian Divorce Act, except in cases where the petitioner (or respondent) professes the Christian religion.

Or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time of the presentation of the petition.

Or to make decrees of nullity of marriage except where the marriage has been solemnized in India, and the petitioner is resident in India at the time of presenting the petition.

Or to grant any relief under this Act, other than a decree for dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.

Contents of petition. Every petition for dissolution of marriage must distinctly state the grounds or facts upon which the petitioner seeks the relief. Every petition for dissolution of marriage must state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Upon such petition presented by a husband, the petitioner must make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the court:

- (i) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;
- (ii) that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it;
- (iii) that the alleged adulterer is dead.¹⁷

Decrees for dissolution will be nisi—confirmation of decrees. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, will, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six

16 Section 2 of the Indian Divorce Act.

17 Section 11 of the Indian Divorce Act.

months from the pronouncing thereof, as the High Court, by general or specified order, from time to time directs.

Every decree for nullity of marriage made by the District Judge or by a Judge of the City Civil Court or of the Family Court is subject to confirmation by the High Court.¹⁸ If the petitioner fails to apply to make the decree absolute, the other party may apply for rescission of the decree.¹⁹ The effect of the rescission of the decree is dismissal of the suit.

Nullity of Marriages

Petition for nullity of marriage.²⁰ Any husband or wife can present a petition to the District Court or to the High Court praying that his or her marriage may be declared null and void. Such decree will be made on any of the following grounds:

- (i) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (ii) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- (iii) that either party was a lunatic or idiot at the time of the marriage;
- (iv) that the former husband or wife of either party was living at the time of the marriage with such former husband or wife was then in force.

Nothing will affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud. It will be interesting to note here that it is not necessary that the domicile of the parties should be Indian in order to present a petition for nullity of marriage as required in the case of divorce.

Every decree of nullity of marriage made by a District Judge or by a Judge of the City Civil Court or of the Family Court is subject to confirmation by the High Court.¹

Children of annulled marriage. When a marriage is annulled on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made will be specified in the decree and will be entitled to succeed, in the

18 Section 20 of the Indian Divorce Act.

19 *Manchand's Law and Practice of Divorce*, 2nd Ed., p. 162.

20 Sections 18 and 19 of the Indian Divorce Act.

1 Section 20 of the Indian Divorce Act.

same manner as legitimate children, to the estate of the parent who, at the time of the marriage, was competent to contract.²

Judicial Separation

Application for judicial separation. Application for judicial separation on the ground of adultery or cruelty, or desertion without reasonable excuse for two years or upwards, can be made by either husband or wife by petition to the District Court or the High Court. The decree obtained will have the effect of a divorce *a mensa et thoro* under the existing law.³

Separated wife deemed spinster. In every case of judicial separation, the wife is, from the date of the decree and whilst the separation continues, considered as unmarried with respect to property of every description which she may acquire, or which may come to, or devolve upon, her. Such property can be disposed of by her in all respects as an unmarried woman, and, on her decease, the same will, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property, as she may be entitled to when such cohabitation takes place, will be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.⁴

In every case of judicial separation, the wife will, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband will not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation:

Provided that, where, upon such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he will be liable for necessaries for her use:

Provided also that nothing will prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.⁵

Alimony, Damages and Costs

Alimony pendente lite. In any suit under the Divorce Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife can present a petition for alimony pending the suit. Provided that alimony pending the suit will in no case exceed one-fifth of the husband's average net income for the three years next

2 Section 21 of the Indian Divorce Act.

3 Sections 22 and 23 of the Indian Divorce Act.

4 Section 24 of the Indian Divorce Act.

5 Section 25 of the Indian Divorce Act.

preceding the date of the order, and will continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.⁶

Claim of damages from adulterer. Any husband can either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition must be served on the alleged adulterer and the wife unless the court dispenses with such service, or directs some other service to be substituted.⁷

Power to order adulterer to pay costs. Wherever in any petition presented by a husband, the alleged adulterer has been made a co-respondent, and the adultery has been established, the court can order the co-respondent to pay the whole or any part of the costs of the proceedings.

Provided that the co-respondent will not be ordered to pay the petitioner's costs—

- (i) if the respondent was, at the time of the adultery, living apart from her husband, and leading the life of a prostitute, or
- (ii) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.⁸

Dissolution of Hindu Marriage

Law as to Hindu marriage. Law as to Hindu marriage has been revolutionized by the Hindu Marriage Act 1955 as amended by Act 68 of 1976. The Act applies to any person who is a Hindu, Buddhist, Jain or Sikh by religion.⁹

Conditions for a Hindu marriage. A marriage between any two Hindus may be solemnized if the following conditions are fulfilled, namely—

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party—
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity;

6 Section 36 of the Indian Divorce Act.

7 Section 34 of the Indian Divorce Act.

8 Section 35 of the Indian Divorce Act.

9 Section 2 of the Hindu Marriage Act.

- (iii) the bridegroom has completed the age of 21 years and the bride the age of 18 years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not *sapindas* of each other, unless the custom or usage governing each of the permits of a marriage between the two.¹⁰

Judicial separation. (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-sec. (1) of s. 13, and in the case of a wife also on any of the grounds specified in sub-sec. (2) thereof, as grounds on which a petition for divorce might have been presented.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.¹¹

Void marriages. Any marriage solemnized after the commencement of Hindu Marriage Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in cls. (i), (iv) and (v) of s. 5.¹²

Voidable marriages. (1) Any marriage solemnized, whether before or after the commencement of Hindu Marriage Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

- (a) that the marriage has not been consummated owing to the impotence of the respondent; or
- (b) that the marriage is in contravention of the condition in cl. (ii) of s. 5; or
- (c) that the consent of the petitioner or where the consent of the guardian in marriage of the petitioner is required under s. 5, as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material facts or circumstances concerning the respondent;

10 Section 5 of the Hindu Marriage Act 1955.

11 Section 10 of the Hindu Marriage Act.

12 Section 11 of the Hindu Marriage Act.

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-sec. (1) no petition for annulling a marriage—

(a) on the ground specified in cl. (c) of sub-sec. (1) shall be entertained if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in cl. (d) of sub-sec. (1) shall be entertained unless the court is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that the proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.¹³

13. *Divorce.* (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) has, after the solemnization of the marriage, voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

- (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation. In this clause,—

- (a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
- (b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or
- (iv) has been suffering from a virulent and incurable form of leprosy;
or
- (v) has been suffering from venereal diseases in a communicable form;
or
- (vi) has renounced the world by entering any religious order; or
- (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it and that party been alive.

Explanation. In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

- (i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

- (ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or
- (iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act 1956, or in a proceeding under section 125 of the Code of Criminal Procedure 1973 (or under the corresponding section 488 of the Code of Criminal Procedure 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or
- (iv) that her marriage (whether consummated or not) was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining the age of 18 years.

Explanation. This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act 1976.

13A. *Alternate relief in divorce proceedings.* In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead of a decree, for judicial separation.

13B. *Divorce by mutual consent.* (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than 18 months after the said date, if the petition is not

withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.¹⁴

Jurisdiction and procedure. Every petition under the Hindu Marriage Act shall be presented to the District Court within the local limits of whose ordinary civil jurisdiction (i) the marriage was solemnized; (ii) the respondent at the time of presentation of the petition resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of presentation of the petition in a case when the respondent is at that time, residing outside the territories to which the Act extends or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.¹⁵

Every such petition shall state distinctly the facts on which the claim to relief is founded and shall also state that there is no collusion between the petitioner and the other party to the marriage.¹⁶ The statements in such petition shall be verified just as a plaint. Before passing a decree the court must be satisfied that the petition is not presented or prosecuted in collusion with the respondent and that there has not been any unnecessary or improper delay in instituting the proceeding and that there is no other legal ground why relief should not be granted. Before granting any relief, the court should make every endeavour to bring about a reconciliation between the parties.

Where any party to such proceeding has no independent income sufficient for his or her support and maintenance and the necessary expense of the proceeding, the court may order the respondent to pay to the petitioner the expenses of the proceeding and such monthly sum during the proceeding as may seem to the court reasonable. At the time of passing the decree or subsequent thereto, the court may order the respondent to pay, while the applicant remains unmarried, such monthly or periodical sum as may seem to the court just and the court may also secure such payment by a charge on the immovable property of the respondent.

Present Forum. The Family Courts Act 1984 has conferred jurisdiction of District Courts and subordinate Courts on the Family Court by section 7. It shall exercise jurisdiction of Magistrate under Cr PC for ordering payment of maintenance. The Forms given hereunder give only indications which should be adapted according to Rules and practices of the concerned Forum.

14 Sections 13, 13A and 13B of the Hindu Marriage Act.

15 Section 19 of the Hindu Marriage Act.

16 Section 20 of the Hindu Marriage Act.

*Petition under the Indian Divorce Act***FORMS****Petition by Husband for a Dissolution of Marriage
with Damages against Co-respondent by Reason of Adultery**

In the High Court of

To the Hon'ble Mr. Justice
(or to the Judge of)AB *Petitioner**versus*CB *Respondent*XY *Co-respondent*The humble petition of AB of (full name
and address)**SHEWETH:**

1. That the parties to the petition were and are domiciled in India and Christian by faith and religion.

2. That on the day of your petitioner was lawfully married to CB, then CD, a spinster aged about years at and the said marriage is still subsisting.

3. That ever since his said marriage, your petitioner lived and cohabited with his said wife from time to time at various places, viz. and lastly at in or about and that your petitioner and his said wife have had several issues of their said marriage, viz., children named who are aged respectively and years, the respective dates of their birth being day of and day of

4. That during the years immediately preceding the day of, XY was constantly, with few exceptions, residing in the house of your petitioner at aforesaid and that on diverse occasions during the said period, the dates of which are unknown to your petitioner, the said CB in your petitioner's said house committed adultery with the said XY.

State briefly the circumstances from which the petitioner came to the conclusion as to adultery.¹⁷

17 If the marriage was solemnised out of India, the adultery must be shown to have been committed in India.

5. That there was never nor is at present any collusion or connivance between the petitioner and his said wife for the purpose of obtaining a dissolution of their said marriage or for any other purpose.

6. That your petitioner has not condoned any of the acts of adultery on the part of the respondent.

Your petitioner, therefore, prays that this (Hon'ble) Court might be pleased to pass a decree for dissolution of the said marriage and that the said XY do pay the sum of Rupees as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

Signed

AB

Verification

I, AB, son of aged by occupation service residing at do hereby solemnly affirm and say as follows.

I am the petitioner above-named and I know the facts and circumstances of the case.

The statements in paragraphs 1, 2, 3, 4, 5 and 6 of the petition are true to my knowledge and belief and that I have not suppressed any material fact.

I sign this verification this day of at the Court House at

Before me

Signature

Notary

Advocate

Petition of Wife for Decree of Nullity of Marriage

(See sections 18 and 19)

In the High Court of

AB *Petitioner*

versus

CD *Respondent*

To the Hon'ble Justice or
to the Judge of

The humble petition of AB of (full name,
occupation and address)

SHEWETH:

1. That at all material times the parties of these proceedings were and are at present Christian by faith and religion.

2. That on the day of your petitioner, then a spinster, aged about years went through a form of pretended marriage with the respondent (*at some place in India, state the place*) and was thereby and since that date known as married in fact, though not in law, to CD, then a bachelor of about 30 years of age.

3. That ever since the said marriage on the day of and until the day of your petitioner and the respondent lived and cohabited with each other at various places such as and lastly at

4. That the said CD has never consummated the said pretended marriage by carnal copulation.

5. That at the time of the celebration of your petitioner's said pretended marriage, the said CD was and still is by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

(State other grounds if applicable, *e.g.*, prohibited degree, lunacy, idiocy, etc.)

6. That there is no collusion or connivance between the parties with respect to the subject of these proceedings.

Your petitioner therefore prays that this (Hon'ble) Court might be pleased to declare the said marriage as null and void.

Signed

AB

Verification

I, AB daughter of aged by occupation service residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know the facts and circumstances of this case.

The statements made in paragraphs Nos. 1 to 6 of the petition are true to my knowledge and belief and that I have not suppressed any material fact.

I sign this verification on this day of at the Court House at

AB

Before me

Signature

Notary

Advocate

Petition by Wife for Judicial Separation on the Grounds of her Husband's Adultery

(See section 22)

In the High Court of

CB Petitioner

versus

AB Respondent

To the Hon'ble Mr. Justice (or to the Judge of)

The humble petition of CB of No. the wife of AB residing at

SHEWETH:

1. That on the day of your petitioner, then CD (maiden name) was lawfully married to the respondent AB lived and cohabited at and and the said marriage is still subsisting.

2. That ever since the said marriage, your petitioner and the respondent AB lived and cohabited at and they have the following issue living of their said marriage.¹⁸

3. That on diverse occasions between the month of and the month of the respondent AB while staying at committed adultery with one EF who was then in the service of the said AB and your petitioner at their said residence aforesaid against the wishes of and in spite of protest from your petitioner.

4. That your petitioner has not condoned any of the acts of adultery on the part of the respondent.

5. That there is no collusion or connivance between your petitioner and the said AB with respect to the subject of the present suit. Your petitioner therefore prays that this (Hon'ble) Court might be pleased to pass a decree of a judicial separation of your petitioner from her said husband by reason of his aforesaid act of adultery.

Signed

CB

Verification

I, CB wife of AB daughter of XY aged about years residing at do hereby solemnly affirm and say as follows:

18 State the respective ages of the children.

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements made in paragraphs 1 to 5 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of CB

Before me

Signature of Advocate

Notary

Petition for Protection Order

(See section 27)

In the High Court of

CB *Petitioner*

versus

AB *Respondent*

To the Hon'ble Mr. Justice
(or To the Judge of)

The humble petition of CB of
..... the wife of AB residing
at

SHEWETH:

1. That on the day of your petitioner was lawfully married to the respondent AB at according to the Christian rites.

2. That ever since the marriage your petitioner lived and cohabited with the said AB for years together at and thereafter also at and has had children, being issues of her said marriage of whom one is now living with your petitioner and wholly dependent upon her earnings.

(Dates of birth to be given)

3. That on or about the day of the said AB suddenly and without any reasonable cause withdrew himself from the society, left and deserted your petitioner and has ever since remained and is still remaining separate and apart from her without any reason whatsoever.

4. That since the desertion by her said husband your petitioner has maintained and is still maintaining herself by her own labour and industry

(or on her own property, as the case may be) and has also acquired certain other property consisting of (here state generally the nature of the property).

5. That the said AB is a man of most extravagant habits and always goes beyond his means and very often incurs debts in the market beyond his capacity to repay.

Your petitioner prays an order for the protection of her earnings and property acquired since the said day of from the said AB and from all creditors and persons claiming under him.

Verification

I, CB wife of AB aged years by occupation service residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know the facts and circumstances of the case.

The statements made in paragraphs Nos. 1, 2, 3, 4, and 5 of the petition are true to my knowledge and belief and that I have not suppressed any material fact.

I sign this verification this day at the Court House at

Before me
Notary

Signature of CB
Signature of Advocate

Petition for Alimony Pending the Suit

(See section 36)

In the High Court of

Cause Title

To the Hon'ble Mr. Justice
..... (or To the Judge of))

The humble petition of CB, the lawful wife of AB

SHEWETH:

1. That on the day of the above suit was instituted by your petitioner against the respondent (state briefly the nature of relief asked for and the position of the suit).

2. That the said AB is in most affluent circumstances for some years past by reason of the business (state briefly the nature of the business)

carried on by him at under the name and style of and he alone receives the net annual income of Rs. or thereabout from such business every year. The said business is prospering year after year and yielding good returns.

3. That over and above the said business, he has other resources and incomes, e.g., the house property at No. which alone fetches an income of Rs. per month and various shares and securities (state briefly the particulars) all of which he acquired in the right of your petitioner as his wife or purchased with money received through her, of the aggregated value of Rs.

4. That the said AB is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs.

Your petitioner, therefore, prays that this (Hon'ble) Court will order for payment of such sum or sums of money by way of alimony, pending the suit, as this (Hon'ble) Court may deem fit.

Verification

I, CD, wife of AB and daughter of XY aged about years by occupation housewife residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 4 of the petition hereinabove are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of CD

Signature of Advocate

Before me

Notary

Petition for a Judicial Separation by Reason of Cruelty

(See section 22)

In the High Court of

To the Hon'ble Mr. Justice
(or To the Judge of))

The humble petition of AB (wife of CB)
of

SHEWETH:

1. That at all material times the parties to the above proceedings were Christian by birth and religion and domiciled in India.

2. That on the day of your petitioner, then AD (spinster), was lawfully married to CB according to law governing them and the said marriage is still subsisting.

3. That there is no issue of the said marriage.

4. That ever since her said marriage, your petitioner lived and resided with her said husband all along except short stays outside at within the jurisdiction of this court until the day of when your petitioner's said husband wrongfully separated from and deserted her as hereinafter more particularly mentioned.

5. That the married life of your petitioner was most unhappy ever since and throughout the marriage as the said CB forced her to do all sorts of menial work in the house against her wish and desire and on failure or refusal thereof he insulted her, behaved roughly, habitually misconducted himself towards her and treated your petitioner with great harshness, negligence and cruelty, frequently abusing her in the coarsest and most insulting language and beating her at times violently with kicks and blows, sometimes with a cane, or with some other weapon.

6. That some particulars of harshness, neglect and cruelty are *inter alia* as follows:

(a) Throughout their married life and without any exception the said CD by words and deeds made it quite clear that he had no heart nor any love and affection for her but married simply for enriching himself with the wealth of her parents.

(b) That one evening in or about the month of the said CD tried to kick her out of the house in which your petitioner and the said CB were then residing at aforesaid, but was only prevented from so doing by the interference of FD, your petitioner's brother.

(c) That subsequently on the following evening, the said CB in his said house at aforesaid, struck your petitioner with a violent blow on her face.

(d) That on one night in the month of May 2000 the said CB in without provocation threw a knife at your petitioner thereby inflicting a severe wound on her right hand.

7. That in the afternoon of the day of the cruel behaviour and mental torture of the respondent reached such a climax that

your petitioner had no other alternative but to withdraw herself from and leave the house, and by reason of the continued cruelty practised on her she had to come also to the house of her father at and since then your petitioner has lived separate and apart from her husband and has never returned to his house or had cohabitation with him.

8. That your petitioner never condoned any of the acts of cruelty of the respondent and in any event even if there was any condonation (which is denied) each subsequent matrimonial offence or misconduct would revive all acts of cruelty.

9. That there is no collusion or connivance between your petitioner and her husband with respect to the subject of the present suit.

10. (State previous proceedings if any).

Your petitioner, therefore, prays that this (Hon'ble) Court might be pleased to pass a decree of judicial separation between your petitioner and the said CB and also order that the said CB do pay the costs of and incidental to the proceedings.

Signed

AB

Verification

I, AB, wife of CB aged about years by occupation service residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 10 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Before me

Signature of Advocate

Notary

Petition for Reversal of Decree of Separation

(See section 26)

No. of suit and cause title

In the High Court of

To the Hon'ble Mr. Justice
..... (or To the Judge
of))

The petition of AB of

SHEWETH:

1. That your petitioner was on the day of lawfully married to and such marriage is still subsisting.

2. That on the day of this (Hon'ble) Court on the petition of pronounced a purported decree affecting the petitioner to the effect following, to wit,—

(Here set out the decree)

3. That such decree was obtained in the absence of and by practice of fraud on your petitioner, who was then residing at and thus kept completely ignorant of the same. (State facts tending to show how the petitioner came to know of the proceedings; and, further, that had he known. He might have offered a sufficient defence).

Or

That there were nor are any reasonable grounds for your petitioner leaving his said wife, for that his said wife (here state any legal grounds justifying the petitioner's separation from his wife).

Your petitioner, therefore, prays that this (Hon'ble) Court might be pleased to reverse the said decree.

Signed

AB

Verification

I, AB, son of aged about years by occupation service residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 3 of the petition are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Before me

Signature of Advocate

Commissioner

*Matrimonial Causes under Hindu Marriage Act 1955***Petition of Divorce**

In the Court of at

Matrimonial JurisdictionIn the matter of s. 13 of the Hindu
Marriage Act 1955

In the matter of

AB *Petitioner**versus*CD *Respondent*EF *Co-respondent*The humble petition of (full
name and address)**MOST RESPECTFULLY SHEWETH:**

1. That at all material times the parties to proceedings were and are Hindus governed by the Hindu Marriage Act 1955.

2. That on the day of your petitioner was duly married to CD at etc., and the said marriage was solemnised according to Hindu rites and customs. (An extract from the Marriage Register or an affidavit duly attested to be filed.)

3. That ever since the said marriage your petitioner and the said CD lived together as husband and wife at until the day of (state reasons of separation).

4. That the following are the issues of the said marriage (state name, address, date of birth, age and sex).

5. That on diverse occasions between and the respondent committed adultery with at against the wish of your petitioner and in spite of her protests.

6. That your petitioner has come to know of the same on and since then she has not in any manner been accessory to or connived at or condoned such adultery.

7. (When the applicant is the wife.) That the said CD had married on the day of Sm. and she is now living at

Or

That the said CD has, since the solemnization of the marriage, been guilty of rape (or sodomy or bestiality) on

8. That there is no collusion or connivance between the parties with respect to the subject-matter of the present petition.

9. That there were no previous proceedings between the parties relating to their marriage.

10. The marriage was celebrated at or the parties last lived and resided at !..... within the jurisdiction of this Court.

Your petitioner therefore prays that the court might be pleased to pass a decree dissolving the marriage of your petitioner with CD.

Signed AB

Verification

I, AB, wife of CD aged about years by occupation service residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 10 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Before me

Signature of Advocate

Notary

Petition for Judicial Separation

In the Court of at

Matrimonial Jurisdiction

In the matter of s. 10 of the Hindu Marriage Act 1955, and in the matter of:

AB Petitioner

versus

CD Respondent

The humble petition of of No. (full name and address)

MOST RESPECTFULLY SHEWETH:

1. That at all material times and at present the parties to the proceedings were and are Hindu and so governed by the Hindu Marriage Act 1955.

2. That on the day of the applicant was duly married to CD at and the said marriage was solemnised according to Hindu rites. (An extract from the Marriage Registrar or an affidavit duly attested to be filed).

3. That the following are the issues of the said marriage (name, date of birth, age and sex).

4. That ever since the said marriage and until the day of the applicant and the said CD lived and cohabited as husband and wife at etc. when he withdrew himself from the society of the applicant without any reasonable or probable cause and thereby deserted her to all intents and purposes.

5. That from and shortly after the marriage the said CD habitually and with very few exceptions conducted himself towards the applicant with severe harshness and cruelty and at times abused her in most filthy language (state particulars of cruelty).

6. That the applicant has not in any manner been accessory to or connived at or condoned any of the said acts of CD.

7. That the said CD further falsely, maliciously charged the applicant as having committed adultery, abused the applicant in various ways and treated the applicant with such cruelty as to cause a reasonable apprehension in the mind of the applicant that it will be most harmful or injurious for the petitioner to live further with the said CD.

8. That there were no previous proceedings between the parties and there is no collusion between the applicant and CD with respect to the subject-matter of the present petition.

9. That the applicant has come to court with the greatest promptitude and least delay (in case of delay the same must be explained).

10. That this court has jurisdiction to entertain this application as the marriage was celebrated at (*the parties reside or last resided within the jurisdiction of this court*).

The applicant therefore prays for a decree for judicial separation between the applicant and the said CD.

Signed

AB

Verification

I, AB, daughter of XY and wife of CB aged about years by occupation service residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 10 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Signature of Advocate

Before me

Notary

Petition for Decree of Nullity of Marriage

(Title as in the previous precedents)

In the matter of nullity of marriage under s. 11 of the Hindu Marriage Act 1955.

AB *Petitioner*
(Full name and address)

versus

CD *Respondent*
(Full name and address)

The humble petition of AB

MOST RESPECTFULLY SHEWETH:

1. That at all material times the parties to the petition were and are Hindu governed by the Hindu Marriage Act 1955 (Act 25 of 1955).

2. That a pretended marriage was however on the day of celebrated at between the applicant then a spinster aged with the respondent then known as aged declared as a bachelor under the purported Hindu rites and customs (an extract from the Marriage Register or an affidavit duly attested to be filed).

3. That the purported marriage was a fraud practised by the respondent upon the petitioner and is void *ab initio* inasmuch as the respondent had already a married wife named then and this fact was suppressed from the petition and she is still now alive.

4. That since the said marriage with CD, the applicant lived and cohabited with CD at etc., without having any issue of such purported marriage until the day of

Or

That the applicant and the said CD are within the prohibited degrees of relationship, the applicant being the first cousin sister of the said CD.

Or

That the said CD was impotent at the time of such marriage and continued to be so until the institution of the present proceeding (if this ground is alleged then omit the words "and cohabited" in para 4).

5. That the applicant is entitled to get the sum of Rs. per month from the said CD for her maintenance and support until she is married.

6. That there is no collusion between the applicant and the said CD in making this application.

7. That there were no previous proceedings with regard to the marriage in question by or on behalf of any party.

8. That this court has jurisdiction to entertain this application as the marriage was celebrated within the jurisdiction or the parties live and reside or last lived and resided within the jurisdiction.

The applicant therefore prays that the court may be pleased to declare that the said marriage between the applicant and CD is null and void and the said CD be ordered to pay to the applicant for her support and maintenance a sum of Rs. per month or such other monthly sum as the court thinks fit as long as the applicant remains unmarried.

Verification

I, AB, daughter of XY and wife of CD aged about years by occupation service residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 8 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Signature of Advocate

Before me

Notary

Petition for Maintenance and Expenses of Proceedings

(Title as in previous precedents)

In the matter of maintenance *pendente lite* and expenses of proceedings under s. 24 of the Hindu Marriage Act 1955

The applicant above-named respectfully states as follows:

1. That on the applicant was married to the respondent according to the Hindu rites and customs and the said marriage is subsisting.

2. That the above suit is for divorce (or judicial separation or nullity of marriage) instituted by the applicant against the respondent (state briefly the grounds and the position of the suit).

3. That the applicant has no independent source of income sufficient for her maintenance and support as well as to meet the necessary expenses of the proceedings brought by her. The applicant and her two children are now dependent on the applicant's father Sri

4. That the respondent is an employee of Messrs drawing a salary and allowance of Rs. per month.

5. That the respondent has a house and considerable landed properties at wherefrom he gets Rs. per month as rent.

6. That the respondent has inherited from his father G.P. Notes and other securities and shares of the face value of Rs. The respondent gets Rs. per year as interest, dividend etc.

7. That the applicant requires Rs. per month for maintenance for herself and her two children.

8. That the applicant requires a sum of Rs. for expenses of the above proceedings.

The applicant therefore prays that this Hon'ble Court would order the respondent to pay to your petitioner the said sum of Rs. for expenses of the above proceedings and Rs. per month during the proceedings for maintenance or such sum as may seem to the court to be reasonable.

Verification

I, AB, wife of CB daughter of XY aged about years by occupation housewife do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 8 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Signature of Advocate

Before me

Notary

**Form of Petition for Restitution of
Conjugal Rights under s. 9 of the Hindu Marriage Act 1955**

In the District Court

AB *Petitioner*
(full name and address)

versus

WB *Respondent*
(full name and address)

The humble petition of Sri AB
of

1. That a marriage was solemnised between the parties on
at

(An extract from the Hindu Marriage Register is filed herewith. An affidavit, duly attested as the case may be).

2. That the status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were and are as follows:

	<i>Husband</i>		<i>Wife</i>	
	<i>Status</i>	<i>Place of residence</i>	<i>Status</i>	<i>Place of residence</i>
(i) Before marriage				
(ii) At the time of filing the petition				

(Whether a party is a Hindu by religion
or not is a part of his or her status)

3. (In this paragraph particulars and places of cohabitation of the parties as husband and wife and the children from the marriage, if any, should be given. The date and place of birth and name and sex of each child and the fact whether he/she/they/is/are alive/dead should also be stated).

4. That on day of the respondent, without reasonable excuse and with a view to break the matrimonial home withdrew from the society of the petitioner (cause of the estrangement as known to the petitioner may be stated).

5. That this petition is not presented in collusion with the respondent.

6. There has not been any unnecessary or improper delay in filing this petition.

7. There is no legal ground why relief should not be granted.

8. There has not been any previous proceeding with regard to the marriage by or on behalf of any party.

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties but the bar of *res judicata* does not apply.

Serial No.	Name of parties	Nature of proceedings with section of the Act	Number and year of the case	Name and the location of Court	Result
(i)					
(ii)					
(iii)					
(iv)					

9. The marriage was solemnised at on The husband and wife live at The husband and wife last resided together within the local limits of the ordinary original civil jurisdiction of this court.

10. The petitioner prays for a decree for restitution of conjugal rights against the respondent.

Sd/- Petitioner

Verification

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

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 10 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Before me
Notary

Signature of Advocate

Petition for Divorce by Mutual Consent

In the Court of the

MC. No. of 1983

BETWEEN:

WB *First Petitioner*

And

AB *Second Petitioner*

Application under section 13B of the Hindu Marriage Act of 1955

The petitioners above-named beg to state as follows:

1. The address of the petitioners for the service of all notices and process is that of their advocates and Mr.

2. The first petitioner and the second petitioner are wife and husband respectively having been married at on the and the said marriage is still subsisting. The marriage was performed in accordance with Hindu Vedic Rites. A copy of the marriage invitation is filed herewith and marked 'A'. There are no children by the marriage.

3. The first petitioner and the second petitioner after the marriage lived and resided at and elsewhere and finally at at the address of the petitioner given above, whence they separated on the

4. Soon after the marriage owing to differences in temperament, habits, tastes, thoughts, and increasing incompatibility, the relationship between the first petitioner and the second petitioner deteriorated. Frequent quarrels resulted as between them with several reconciliations which did not, however, last for any length of time. Finally, after a very serious quarrel and in order to avoid further deterioration in relationship which might reflect on their families and friends, the first petitioner and the second petitioner out of free will and accord separated on the never to return to each other. The petitioners, therefore, finally separated owing to irreconcilable differences in habits and temperament on the within the jurisdiction of this Hon'ble Court.

5. Further efforts and attempts were made by mutual friends and acquaintances to effect a reconciliation and for a resumption of the marital relationship but it has not been possible owing to the vital differences in temperament and total incompatibility giving rise to invincible repugnance which had rendered normal married life impracticable and impossible and fraught with dangerous adverse physical and mental consequences.

6. The first petitioner states that she and the second petitioner have been separated and living apart for more than two years and the duration of cohabitation prior thereto was not in any case for much more than a year.

7. In the circumstances the first petitioner and second petitioner have mutually agreed and decided that there is no point for the continuance of the marital relationship and have further agreed upon the dissolution of the marriage tie by a decree of divorce.

8. The petitioners state and submit that in the circumstances aforesaid it is therefore desirable and necessary that the marriage should be dissolved in the mutual interests of the parties, there being no chance of reconciliation.

9. The cause of action for this petition arose on the when the first and the second petitioner were married and on the within the jurisdiction of this Hon'ble Court when the first petitioner and the second petitioner finally agreed to separate with the departure of the second petitioner.

10. A court-fee of Rs. is paid under of the

11. Both the first and the second petitioner state that there is no impediment to the dissolution of the marriage and the decision to separate and apply for a divorce has been arrived at after such consideration and after having given the utmost importance to all aspects of the case.

12. The first and the second petitioner therefore pray that this Hon'ble Court be pleased to pass a decree declaring the marriage solemnised between the first and the second petitioner under the Hindu Vedic Rites on be dissolved and for such other reliefs as this Hon'ble Court may deem fit.

First Petitioner

Second Petitioner

Verification

I, WB wife of AB aged about years residing at do hereby solemnly affirm and say as follows:

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 13 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of WB

Signature of Advocate

Before me

Notary

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

I am the petitioner above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 13 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Signature of Advocate

Before me

Notary

Petition of Divorce by Mutual Consent

(ANOTHER FORM)

In the City Civil Court at Calcutta
Matrimonial Suit No. of 2000

In the matter of Hindu Marriage Act 1955
(Act 25 of 1955)

And

In the matter of section 13B of the said
Act

And

In the matter of son of
..... of Husband

And

Sm. wife of the said
..... and daughter of
of

Petition for a decree for dissolution
of marriage by mutual consent
under section 13B of the Hindu
Marriage Act (Act 25 of 1955).

The humble petition of the said

MOST RESPECTFULLY SHEWETH:

1. That the parties to this present petition are both by faith and religion Hindus and they were married according to Hindu rites and customs at

..... on and the said marriage is still subsisting. They are of age above 21 years.

2. That the status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were and are as follows:

	Husband		Wife	
	Status	Place of residence	Status	Place of residence
	Bachelor		Spinster	
At the time of presenting this petition	Married		Married	

3. The parties ever since the marriage did not pull on together being of different ideas, habits, tastes, and thoughts and so being completely of different temperament and nature did not and could never adjust themselves even for a few days and so had no heart nor love for each other and there is no chance of reconciliation between them in future.

4. That the parties last lived and cohabited at No. within the jurisdiction of this court when your petitioner for reasons of her own and out of free will and accord broke the matrimonial home and withdrew herself from the society of the said with all her personal belongings and since then she has been living and residing at her father's place and has no desire nor any wish for any union with the husband.

5. That save as hereunder mentioned there was no other proceedings between the parties particulars whereof are given below:

Number and year of the case	Name of the parties	Date of decision	Remarks

6. That the above petition is *bona fide* and not presented in collusion between the parties.

7. That there has not been any unnecessary or improper delay presenting this petition.

8. That there is no legal grounds why the relief should not be granted.

Your petitioners therefore pray for a Decree of dissolution of marriage by

mutual consent under section 13B of the Hindu Marriage Act 1955 and further and other Orders be made as to this Learned Court may deem fit and proper. And your petitioners as in duty bound shall ever pray.

Verification

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

I am the petitioner No. 1 above-named and I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 8 are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of AB

Before me
Notary

Signature of Advocate

Verification

I, CD, wife of AB daughter of X, aged about years by occupation housewife residing at do hereby solemnly affirm and say as follows:

I am the petitioner No. 2 above-named. I know and I have made myself acquainted with the facts and circumstances of this case.

The statements in paragraphs 1 to 8 of the petition hereinabove are true to my knowledge and belief.

I sign this verification on this day of at the Court House at

Signature of CD

Before me
Notary

Signature of Advocate

Endowment

The word "Endowment" means that it is a deed settled on any person or institution. It is an act of settling a fund, a permanent provision for the performance of a public institution, charity, hospital, college etc. and it may consist of property set apart for the worship of some particular deity or for the establishment or maintenance of a religious or Charitable institution or for the benefit of public or some section of the public in the advancement of religion commerce, health, safety or any other object beneficial to mankind.

FORM

Deed of Endowment for Beds in a Hospital

THIS DEED OF ENDOWMENT is made on this 4th day of July 2000 BETWEEN Mr. D of (hereinafter called the DONOR) of the one part and Mr. AB and Mr. CD of (hereinafter called the TRUSTEES which expression unless the context otherwise requires shall include the Trustee or Trustees for the time being) of the other part.

WHEREAS the DONOR is the Owner of certain stocks, shares and securities and investments particulars whereof are given in a Schedule hereunder.

AND WHEREAS the DONOR is desirous of establishing an Endowment Fund for three paying beds in the Charitable Hospital (hereinafter called the HOSPITAL) and the maintenance of the same for persons who may be unable to pay the charges and expeshes of the Hospital as a private patient.

AND WHEREAS the DONOR is about to transfer to the said TRUSTEES the Donor's stocks, shares, fund, securities and investments mentioned in the

Schedule hereunder (hereinafter called the FUNDS) whose present value is Rs. 30 lakhs and the monthly income is Rs. 30,000.

AND WHEREAS the DONOR is desirous of declaring such Trust funds as the D Trust (hereinafter called the TRUST) and shall be governed by the rules set out in the Second Schedule hereunder which rules have been approved by the Management Committee of the HOSPITAL. The present income of the Trust Funds and estimated future income will be sufficient for the maintenance of three beds occupied 365 days a year and there is every possibility of the income being increased to support the treatment of four patients for 4 beds in the HOSPITAL at any point of time.

AND WHEREAS the Management Committee of the HOSPITAL has agreed to appropriate and set apart for the TRUST three beds named D Ward in the HOSPITAL to be maintained out of the income of the Trust Funds which in all reasonable probability will be sufficient to maintain even 4 beds in the HOSPITAL.

NOW THIS DEED OF ENDOWMENT witnesseth as follows:

1. I, the DONOR do hereby convey in TRUST into the TRUSTEES the said FUNDS and the TRUSTEES shall be in possession of the Trust Fund and shall hold the same upon the TRUST for the purposes of maintaining the said Trust pay-beds in the said HOSPITAL.

2. The TRUSTEES shall be entitled to alter the investments at their sole discretion for the benefit of the said TRUST.

3. The TRUSTEES shall pay or apply the income of the Trust Fund in paying all costs, charges and expenses of the TRUSTEES in relation to the administration of the Trust Fund and shall pay or apply the net income of the Trust Funds in accordance with the rules of the TRUST set out in the Second Schedule hereto or the rules of the TRUST that might be in force for the time being.

4. The TRUSTEES shall hold meetings at least once a year. A special meeting may be called by any of the TRUSTEES by giving seven days' notice in writing mentioning the business to be transacted or discussed at such meetings. The Senior Trustee shall preside over the meetings and all decisions shall be of the meeting, but if at the said meeting both the TRUSTEES cannot agree, the presiding TRUSTEE shall have a second or casting vote.

5. The TRUSTEE may appoint an Honorary Secretary who shall cause the Minute Books and proper books of accounts to be maintained.

6. The TRUSTEES may from time to time make rules as regards meetings, conduct of business and management of the TRUST.

First Schedule

(Particulars of shares, stocks, investments, securities and assets transferred to the TRUSTEES)

The Second Schedule

(Rules of the Trust)

7. The TRUST shall be called "D Trust". In these rules the "D Trust" shall be referred as the TRUST. HOSPITAL means the "Charitable Hospital". The TRUSTEES means the Trustees or the TRUSTEE for the time being of the Trust. The Council means a "Council of Management" for the time being constituted by these rules. Hospital Committee means the "Management Committee of the Hospital" for the time being. "Endowment Beds" means the three pay-beds. "Trust Funds" means shares, stocks, investments and other assets for the time being subject to the Trust. Beds subject to these rules shall be Beds for the time being appropriated by the hospital Committee with the concurrence of the Trustees to be managed wholly out of the income of the Trust.

8. The Endowed Beds shall be for persons male, female, child who are in the opinion of the Council unable to pay the usual fees and charges as private patients in the HOSPITAL.

9. The power of nominating patients for reception in the Endowed Beds shall be vested in the Council of Management which shall consist of 3 members namely the TRUSTEES for the time being and a member to be appointed from time to time by the Council.

10. A member of the Council who is absent from all meetings of the Council for a period of 3 months or who becomes insolvent or incapacitated from acting or absent from India for 3 months or who resigns from Office shall thereupon cease to be a member of the Council.

11. The Council may from time to time make such rules as to its meetings and conducting business. A quorum at the meeting of the Council shall be 2 members present. The Council shall act upon a majority decision and in case of equality the Presiding Officer shall have second or casting vote. In the event the number of members is reduced to one then the sole member may appoint another person as a member of the Council to carry on the transactions of the TRUST.

12. The Council may nominate a person for reception of the patients in the Endowed Beds.

13. The Council shall from time to time communicate with the Committee of the Hospital the names of the members of the Council who are entitled to nominate for the Endowed Beds.

14. The nomination of patients for the Endowed Beds shall be signed by the persons nominating for this purpose or by two members of the Council.

15. The Council shall maintain the books of accounts and Minutes Books of the meetings.

16. The Endowed Beds shall be for use of patients nominated by the Council or a member on whom the power has been delegated. Three Beds shall be reserved for that purpose. It will be at the sole discretion of the Council to judge whether the patient is in a position to pay the charges of the Hospital or he is eligible to its Endowed Beds.

17. In the event the other beds of the HOSPITAL are full and the Council has not nominated anybody for the Endowed Beds, the same may be used by the HOSPITAL for other patients who are likely to be discharged within a short period.

18. All patients nominated for the Endowed Beds shall be subject to the rules and regulations of the HOSPITAL.

19. The net income of the TRUST shall from time to time be paid by the TRUSTEES to the Hospital Committee for applying the same in the maintenance of the Endowed Beds in the HOSPITAL called "D Beds" intended to be reserved for the persons nominated by the Council.

20. If the Council is of the opinion that the HOSPITAL has refused to accept the nominated patient or discharged a patient prematurely, the Council shall make a report to the TRUSTEES who may suspend either wholly or in part payments to the Hospital Committee and make alternative arrangement with some other hospital.

21. The TRUSTEES may from time to time with the consent of the Hospital Committee or the Management revoke and/or amend or alter the rules and make such new rules as they may think fit, provided that any such rules so made shall provide for the application of the net income of the TRUST for the maintenance of the three beds in the said hospital or if circumstances so require in another hospital.

22. IN WITNESS WHEREOF the DONOR has executed these presents and the TRUSTEES have accepted the TRUST and agreed to act as the TRUSTEES and have also hereby put their signatures hereon on the day, month and year first above-written.

Signed and delivered by Mr. D
in the presence of:

Signature

Signed and delivered by Mr. AB
in the presence of:

Signature

Signed and delivered by Mr. CD
in the presence of:

Signature

Exchange

Exchange. It is a sort of barter where two persons mutually transfer the ownership of one thing for the ownership of another; neither thing or both things being money only, the transaction is called an exchange.¹

In addition to the transfer of property there may be payment of money by one party to equalise the exchange and such payment will not make the exchange lose its character as such. Under s. 119 of the Transfer of Property Act, if any party to an exchange or any person claiming through or under him is by reason of any defect in title of the other party is deprived of the thing or any part thereof then in the absence of a contrary intention appearing from the terms of the exchange such other party shall compensate for the loss or return of the thing transferred if still in his possession or in the possession of his legal representative or a transferee from him without consideration. On an exchange of money each party warrants the genuineness of the money.²

Rights and liabilities of parties. Each party has the right, and is subject to the liabilities of a seller as to that which he gives, and has the right and is subject to the liabilities of a buyer as to that which he takes.³ On exchange of money, each party warrants the genuineness of money given by him.

Exchange, how made. A transfer of property in completion of an exchange can be made only in a manner provided for the transfer of such property by sale, and registration will or will not be compulsory according to the nature and the value of the properties involved. In a transaction of exchange, money can be added to the property or goods to equalize the consideration.

1 Section 118 of the Transfer of Property Act.

2 Section 121 of the Transfer of Property Act.

3 Section 120 of the Transfer of Property Act.

Part performance. The doctrine of part performance applies in the case of the exchange. So, if the parties have taken possession without registered conveyance, each party will be entitled to defend his title and continue in possession under s. 53A of the Transfer of Property Act. Covenant as to title was implied in exchange⁴ before the Transfer of Property Act. Section 119 of the Act, which was introduced by the Amending Act (20 of 1929), gave the right to return of the property in cases where the same is in possession of the other party or his heirs and legal representative. This, however, is subject to the terms of the deed itself. The English Common Law contained a similar right of re-entry on eviction in an exchange of real properties, but the position was altered by the Real Property Act 1845.⁵ So there is no remedy in case of defect in title in English law except on the ground of fraud or covenant as to good title.

The Rule of Estoppel enacted under s. 43 of the Transfer of Property Act is applicable⁶ in the case of exchange.

FORMS

Deed of Exchange of Properties

THIS DEED OF EXCHANGE is made this day of 1999
BETWEEN AB, son of residing at of the one part and CD,
son of residing at of the other part.

WHEREAS the said AB is the sole and absolute owner in possession of the property comprised in Schedule "A" hereto AND WHEREAS the said CD is the sole and absolute owner in possession of the property comprised in Schedule "B" AND whereas the parties have agreed to mutually exchange and transfer of the ownership of the said properties as between them, viz., that the said AB shall convey the property in Schedule A to CD who will convey in lieu thereof of the property in Schedule B to AB.

NOW THIS DEED WITNESSES that in pursuance of the aforesaid agreement, and in consideration of the transfer effected by CD as hereunder appearing, the said AB as beneficial owner do hereby grant, convey, transfer, assign and assure unto and in favour of the said CD, free from encumbrances, the house and premises, etc., comprised in Schedule A to HAVE AND TO HOLD the

4 *Balusu v Bopana* (1916)31 Mad LJ 380.

5 8 & 9 Vict C 106, section 4 now replaced by section 59 of the Law of Property Act 1925.

6 *Bhairab v Jiban* (1921)33 CLJ 184; 60 IC 819.

same absolutely and forever in exchange for what is hereunder transferred by the said CD in favour of AB. AND THAT the said CD in further pursuance of the said agreement and in consideration of the transfer effected by AB as beneficial owner do hereby grant, convey, transfer, assign and assure unto and in favour of the said AB, free from encumbrances, the land, etc., comprised in Schedule B hereto TO HAVE AND TO HOLD the same absolutely and forever in exchange for the transfer as aforesaid effected by AB in favour of CD as aforesaid.

IT IS HEREBY AGREED AND DECLARED that each party hereto has good right, full power, absolute authority and indefeasible title to give, grant, transfer and convey the property exchanged by this deed: AND that each party shall at all times hereafter peaceably and quietly hold, possess and enjoy the same without any claim, demand or interruption by the other and will, at the request and costs of the other, execute every such assurance or assurances and further do execute and perform every such act, deed or thing as shall reasonably be required by the other for further and more perfectly assuring to the other the property hereby conveyed to him.

IT IS HEREBY FURTHER DECLARED that the value of the property specified in each of the schedules is equal and the same is Rs. only.

Schedule A above referred to

Schedule B above referred to

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

Signed, sealed and delivered by AB
in the presence of:

Signed, sealed and delivered by CD
in the presence of:

Deed of Exchange of Properties where Money is Paid to Equalize

THIS DEED OF EXCHANGE, made the day of BETWEEN AB of, etc., of the one part, and CD of, etc., of the other part whereas AB is the sole and absolute owner in possession of the property described in Schedule A hereto AND whereas CD is the sole and absolute owner in possession of the property described in Schedule B and whereas the parties hereto have agreed as to mutual exchange of their said respective properties, viz., that the said AB shall grant, transfer and convey to the said CD the property in Schedule A and that said CD shall in lieu thereof grant, transfer and convey to AB the property in Schedule B. And whereas the property in Schedule A being of greater value the said CD shall pay a sum of Rs.

to AB for equality of exchange. Now this Deed WITNESSES that in pursuance of the said agreement and in consideration of the conveyance of the property described in Schedule B as hereunder effected by the said CD and of the sum of Rupees paid to the said AB by the said CD on (or before) the execution of this deed for equality of exchange (the receipt whereof the said AB do hereby admit, acknowledge and confirm) the said AB as beneficial owner do hereby grant, transfer and convey unto and to the use of the said CD, free from encumbrances, ALL THAT etc. (*describe the property*): TO HAVE AND TO HOLD the same absolutely and forever in lieu of and in exchange of the property effected by him in favour of the said AB as hereunder appearing AND THIS DEED ALSO WITNESSES that in consideration of the conveyance of the property in Schedule A by the said AB hereinbefore effected, the said CD as beneficial owner do hereby grant, transfer and convey to the said AB free from encumbrances ALL THAT, etc. (*describe the property*): TO HAVE AND TO HOLD the same to the said AB absolutely and forever in lieu of and in exchange for the property transferred by him as hereinbefore appearing.

IT IS HEREBY AGREED and declared that each party hereto has good right full power absolute authority and indefeasible title to give grant transfer and convey the property exchanged by this Deed AND that each party shall at all times hereafter peaceably and quietly hold possess and enjoy the same without any claim demand or interruption by the other and will at the request and cost of the other execute every such assurance and further would execute and perform every such act deed or thing as shall reasonably be required by the other for further and more perfectly assuring to the other the property hereby conveyed to him.

*Schedule A containing description of
AB's property transferred to CD and its value*

*Schedule B description of property
of CD transferred to AB and its value*

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

Signed, sealed and delivered by AB
in the presence of:

Signed, sealed and delivered by CD
in the presence of:

Deed of Exchange of Properties by separate Mutual Conveyances

THIS INDENTURE MADE the day of BETWEEN CD of, etc., of the one part, and AB of, etc., of the other part.

WHEREAS the said AB was the sole and absolute owner of the property described in Schedule A hereto and whereas the said CD was and presently is the sole and absolute owner of the property comprised in Schedule B hereto AND whereas the parties are in uninterrupted possession and enjoyment of their respective properties AND whereas the parties having agreed as to mutual transfer by way of exchange of their said respective properties and in part performance thereof by a deed bearing even date with these presents and made between the said AB of the one part and the said CD of the other part, the property comprised in Schedule A hereto has been granted, transferred and conveyed by the said AB unto and to the use of the said CD absolutely and forever TO HAVE AND TO HOLD in exchange for the property hereunder transferred and conveyed by the said CD in favour of AB. Now THIS INDENTURE WITNESSES that in further pursuance of the aforesaid agreement and in consideration of the premises, the said CD as beneficial owner do hereby grant, transfer and convey to the said AB free from encumbrances the property comprised in Schedule B hereto: TO HAVE AND TO HOLD the same unto and to the said AB, his heirs, executors, administrators or assigns absolutely and forever in exchange of the property transferred and conveyed by the said AB unto and in favour of CD as hereinbefore recited.

IT IS HEREBY AGREED that the said CD will, at the request and costs of the said AB, execute every such assurance and do every such act, deed or thing as shall reasonably be required by the said AB for further or more perfectly assuring to the said AB the property hereby conveyed to him.

IT IS HEREBY DECLARED that the value of the property hereby conveyed is Rs.

Schedule A—Description of the property conveyed to CD

Schedule B—Description of the property conveyed to AB

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

Signed, sealed and delivered by CD
in the presence of:

Signed, sealed and delivered by AB
in the presence of:

Deed of Exchange of Properties Adjusting Boundary

THIS EXCHANGE IS MADE the day of BETWEEN AB of, etc., of the one part, and CD of, etc., of the other part.

WHEREAS the said AB is the sole owner in possession, free from encumbrances, of the property situate at, etc., which is more particularly delineated in the plan annexed hereto and therein coloured pink and yellow, and the said CD is also the sole owner in possession, free from encumbrances, of the adjoining land and property which is more particularly delineated in the plan annexed hereto and therein coloured blue and green AND WHEREAS the said AB and CD have agreed to adjust, settle and demarcate the boundaries in respect of their respective properties by making conveyances of lands as hereinafter appearing, and by fixing and providing for a new boundary as hereinafter mentioned: NOW THIS DEED WITNESSES as follows:

1. In pursuance of the said agreement and in consideration of the conveyance by and agreement on the part of the said CD hereinafter contained, the said AB as beneficial owner do hereby grant, convey and transfer unto and to the use of the said CD ALL the several pieces or parcels of land situate at, etc. aforesaid and containing respectively and square feet approximately which several pieces or parcels of land are more particularly described in Schedule A hereunder and delineated in the plan annexed hereto and therein coloured yellow: TO HOLD the same to the said CD absolutely.

2. In further pursuance of the said agreement and consideration of the conveyance by the said AB hereinbefore contained, the said CD as beneficial owner hereby conveys and transfers unto and to the use of the said AB ALL THAT piece or parcel of land situate at, etc., aforesaid and containing square feet approximately, which piece or parcel of land is more particularly described in Schedule B hereunder and the delineated in the plan annexed hereto and thereon coloured green: TO HOLD the same to the said AB absolutely.

3. IT IS HEREBY AGREED AND DECLARED that henceforth the boundary between the said adjoining lands and properties of the said AB and CD between the points marked "A" and "B" in the said plan annexed hereto, shall henceforth be treated as demarcated and delineated, in the said plan by a red line drawn between the said points.

4. It is hereby declared that the value of the property described in each of the Schedules is Rs.

Schedule A above referred to

Schedule B above referred to

THE PLAN

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

Signed, sealed and delivered by AB
in the presence of:

Signed, sealed and delivered by CD
in the presence of:

Foreign Collaboration and Joint Venture

Some foreign individuals, firms and companies have adequate investible funds, modern technologies and know-how for manufacturing goods and rendering services and registered Trade Marks, patents and designs to market their products. In some sectors Indian business houses may work in association with such foreign business concerns. This association may be general collaboration almost like partnership or it may be mainly financial or technical or a combination thereof.

Such association or collaboration with a foreign entity involves the foreigner in acquiring shares in Indian companies, acquiring immovable properties, establishing offices, appointing agents in India and repatriation of royalties, dividends, interests, rents and other incomes derived from transactions in India.

The Indian laws have put certain restrictions on such activities of the foreigner with a view to protect Indian trade and industries and to have a control over outflow of foreign exchange.

For association or collaboration with a foreign business concern the prior permission or sanction of Reserve Bank of India and/or Government of India is necessary. Any foreign Collaboration Agreement should be got sanctioned by the Government Authority or Reserve Bank of India.

The guidelines for foreign collaboration are however changing from time to time.

Prior approvals of collaboration agreement. Foreign companies and foreign nationals are required to obtain prior permission of the Reserve Bank of India for accepting payment as agent in India of any person or company in its trading and commercial transactions or to carry on in India any activities of a trading, commercial or industrial nature or to establish in India a branch, an office or other place of business. Such permission is also required by

foreign companies intending to set up a liaison office in India or to post a representative for liaison activity or to set up any office for promotion of exports from India. Whenever a foreigner wants the facilities of repatriation of dividends, royalties, technical fees and other monetary receipts out of investments or services rendered in India permission of Reserve Bank is necessary.

All proposals for foreign collaboration with or without equity participation are subject to approval of Reserve Bank of India and/or Government of India. The applications have to be made to the authorities concerned, namely, the Secretariat for Industrial Assistance (SIA) Department of Industrial Development, Ministry of Industry, Government of India, New Delhi or the Foreign Investment Promotion Board (FIPB) or Development Commissioner of the Export Processing Zone concerned, as the case may be. In relation to the dealings in immovable property by a foreigner, permission has to be obtained from the Central Office of Reserve Bank of India and Foreign Investment Division.

Prior approvals for remittances. (a) For remittance from India of profits, dividends, royalties, technical and other fees, generally the application is to be made to the bank which is a foreign exchange dealer in the prescribed form; (b) Royalty upto 15% of the published price of the reprint of foreign books in India can be repatriated through bank; Royalty up to 30% of the published price of Software produced from overseas Copyright-holder may be remitted; (c) In excess of 30% specific permission of Department of Electronics, Government of India is necessary; (d) Payment for Royalty and technical know-how fees through a foreign exchange dealer (Bank) designated for the purpose can be made if the technical collaboration agreement had been approved by Government of India or Reserve Bank of India. Generally Royalty at 5% of the domestic sales and 8% of the export sales is permitted to be repatriated subject to Indian Income-tax; (e) Foreign investment in India in equity shares upto 51% is permitted in priority industries and in trading companies primarily engaged in export activities; (f) Other foreign investments are subject to approval by the Secretariat for Industrial Approvals, Ministry of Industry, Government of India or the Foreign Investments Promotion Board, Government of India, New Delhi.

Foreign Institutional Investors (FII) may invest in shares, debentures, bonds and other securities in primary and secondary markets. Special incentives, concessions and facilities are given to non-residents of Indian origin and Overseas Corporate Bodies (OCB) mainly owned by NRIs to invest in India with or without repatriation benefits.

In respect of foreign investment in Consumer Goods Industries the out-flow of foreign exchange should not exceed the inflow of foreign exchange from export earnings. This applies to Consumer Goods Industries and limited for a period of 7 years from the date of commercial production of each unit.

FORMS

Foreign Collaboration Agreement

THIS AGREEMENT IS MADE at Calcutta this day of 2000 BETWEEN AMCO INC incorporated under the appropriate laws of the United States of America having its office at 3 Broadway, New York (hereinafter referred as AMCO) of the one part and CALCO LTD. a company registered under the Companies Act 1956 and carrying on business at 100 Netaji Subhas Road, Calcutta 700 001 (hereinafter referred to as CALCO) of the other part.

WHEREAS AMCO is carrying on business as manufacturer of and dealer in and exporter of Computers, Computer Hardwares and Softwares and intends to further expand its business in India and other East Asian countries.

WHEREAS CALCO is now carrying on business in a small way in manufacturing and exporting Computers, Computer Hardwares and Softwares and intends to improve its products and marketing and all-round development with the technical assistance from AMCO.

WHEREAS AMCO and CALCO have agreed to co-operate and collaborate in developing, manufacturing and marketing of Computers, computer Hardwares and Softwares and accessories in relation thereto for mutual benefit.

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

1. AMCO will supply to CALCO plant, machinery and equipments for the purpose of improving and adding to the existing factory and instal the same for manufacture of Computers, Computer Hardwares and Softwares and all related accessories.

2. AMCO will supply the necessary Designs, Lay-out, Drawings and other forms of technical know-how for the successful operation of the plant of CALCO so as to enable it to manufacture quality goods capable of competing with world players in world markets.

3. AMCO will render assistance by deputing experts and technicians for improvement in and development of the manufacturing processes, quality control, marketing and after-sales servicing.

4. AMCO will give appropriate training to selected employees of CALCO in Calcutta so that CALCO can operate more efficiently its plant, market its products and export the same to the best advantage possible.

5. AMCO will give advice on any new developments in technology or marketing or in any of the aspects of the business so that CALCO may successfully compete with global manufacturers in global markets.

6. The consideration for rendering these services will be 10% of the net profit of CALCO to be paid to AMCO, according to the Balance Sheet and Profit and Loss accounts finalised, approved by General Meeting and filed with the Registrar of Companies, West Bengal.

7. AMCO will by mutual agreement allow its Trade Marks, Patent Rights and other rights in relation to its products to be used by CALCO.

8. This agreement will be for a period of five years, renewable for another five years by mutual agreement and on terms and conditions mutually agreed upon.

9. During the subsistence of this agreement AMCO will not enter into any other agreement of any nature with any other company, partnership or concern in India or set up its branch or subsidiary in India or do anything which might adversely affect the business and profitability of CALCO.

10. This agreement is entered into subject to obtaining the necessary approvals from Government of India and other authorities concerned.

11. Any differences or disputes that might arise in relation to this agreement, performance or non-performance thereof or breach thereof or in relation to any other matter covered by this agreement, will be referred to Indian Chamber of Commerce for Arbitration and their decision shall be final and binding on both the parties herein.

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

Signed, sealed and delivered by
Mr.
pursuant to the Board Resolution
dated of AMCO INC.

Signature

In the presence of:

- 1.
- 2.

Signed, sealed and delivered by
Mr.
pursuant to the Board Resolution
dated of CALCO LTD.

Signature

In the presence of:

- 1.
- 2.

Collaboration Agreement

THIS AGREEMENT IS MADE at Calcutta on this 15th day of July 1999 BETWEEN Delco Limited, a company registered under the Companies Act 1956 and carrying on business at 5 Indra Prastha Marg, New Delhi 110 002, India (hereinafter referred to as the DELCO which term shall include, unless the context otherwise requires, its successors and assigns) of the one part and Japan Co. Ltd., a company registered under the appropriate laws of Japan and carrying on business at Cobe Road, Japan (hereinafter referred to as the JAPCO which expression shall, unless its context otherwise requires, include its successors and assigns) of the other part.

WHEREAS DELCO is carrying on business as manufacturer of, dealer in and exporter of electronic goods and has considerable technical knowledge regarding the manufacture of electronic products and information about the marketing possibilities of such products.

AND WHEREAS JAPCO is also carrying on business as manufacturer and exporter of electronic goods and has considerable know-how in this regard and intends to expand its business in collaboration with DELCO.

AND WHEREAS a joint team of DELCO and JAPCO made a detailed study of possibilities of setting-up of a Joint-manufacturing and exporting unit in India availing of the local infrastructure advantages and the expertise of DELCO and JAPCO to the mutual benefits of the parties herein.

AND WHEREAS the parties have agreed to procure formation and incorporation in West Bengal of a company with the main object of manufacturing electronic goods for exports.

AND WHEREAS the parties have agreed to assist each other and the said company to be incorporated by making available to the new company latest plant, machinery and the technical know-how, technical services, technical assistance and arranging for buy-back and exporting the products of the new company.

AND WHEREAS JAPCO has agreed to make a feasibility study and supply to the new company the latest plant, machinery, furnish latest technical know-how, information, assistance and trained personnel in the manufacture of electronic products by the said new company and to render financial assistance by subscribing to the shares of new company that may be issued to the extent of 49% and also in supplying on credit plant, machinery, technical know-how information and assistance which will be liquidated gradually by the new company within 10 years.

AND WHEREAS the parties have agreed that this collaboration will be subject to obtaining all necessary approvals, licences, permissions, authorisations and consent of the concerned authorities and that the said consents, approval or authorisations will be applied for and obtained by both parties jointly and/or severally assisted by the other.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed by and between the parties hereto as follows:

1. The new company to be formed shall be a public limited company to be incorporated under the Companies Act 1956 in accordance with the terms of this agreement having its registered office at under the name and style of "Joint Co. Ltd." (hereinafter referred to as the "JOINT CO.").
2. The JOINT CO. will have as its principal objects the manufacturing of all kinds of electronic products, machinery, consumer goods and all sorts of articles for sale in the domestic market as also export to other countries.
3. The JOINT CO. would have an authorised share capital of Rs. 1,000 crores divided into 100 crores Equity shares of Rs. 10 each. The initial issued, subscribed and paid-up capital would be Rs. 800 crores.
4. The Memorandum of Association and Articles of Association of the JOINT CO. proposed to be registered with the Registrar of Companies have to be approved by the Board of Directors of DELCO and JAPCO.
5. DELCO, Financial Institutions and members of the public shall be offered for subscription 51% of shares proposed to be issued for subscription by the JOINT CO.
6. JAPCO shall subscribe to and pay for the shares of JOINT CO. to the extent of 49% of the proposed issue of shares and pay for the same either in cash or kind.
7. The JOINT CO. shall have directors not less than five and not more than eleven.
8. DELCO and JAPCO shall exercise their voting rights at the General Meetings or Board Meetings in accordance with the terms and spirit of these presents.
9. The parties herein shall not without consent of each other in writing cause or allow any increase in or reorganisation of the share capital or alter the provisions of Memorandum of Association or the Articles of Association contrary to the rights and obligations of the parties herein.
10. The parties herein will have access to the books of accounts and other records of the JOINT CO. through their authorised representatives.
11. The JOINT CO. after incorporation shall ratify, consent, adopt and agree to be bound by the provisions of these presents.
12. In the event of impossibility of carrying on business of JOINT CO. in collaboration between the parties each party would be entitled to buy the shares of the other party at the valuation to be made by appointing an Auditor to be approved by the parties. In the event of such an arrangement

failing then the party, intending to going out of the Collaboration Agreement may dispose of its shares in the JOINT CO. in the manner it thinks best.

13. DELCO agrees to procure suitable land for the purpose of setting up of a factory for the JOINT CO. DELCO agrees to take up the work of construction of the factory premises in accordance with the plan and design to be prepared by the parties herein jointly.

14. The cost of land and the cost of construction will be reimbursed by the JOINT CO. either by payment of cash or by the allotment of shares.

15. It is agreed that JAPCO shall make the feasibility study of the proposed project, market survey, profitability, cash-flow projections and prepare comprehensive project report, provide manufacturing technology, assist in manufacture and development of electronic goods, assist in research and quality control of raw materials and finished products and explore the possibilities of obtaining local substitutes acceptable to customers, advice proper marketing, selling and distribution techniques, advice production planning to achieve optimum capacity utilisation of plant and machinery, assist in setting up infrastructure, including ancillary small and medium-scale industries for the growth and development of the business of JOINT CO. and generally to assist and advise to adapt to the changed situation in technology demand pattern of all markets.

16. JAPCO guarantees that the plant proposed to be set up by import of plant machinery and other articles from JAPCO would be capable of producing electronic goods in the required quantities and of the world standard of quality.

17. JAPCO shall furnish and/or provide to the JOINT CO. (a) detailed plans, blue prints, specifications, information and other data to enable the contractors to construct and make arrangement for production facilities at the factory site, capable of utilising the optimum capacity of the plant and machinery to be supplied and installed for production and for additions and expansions;

(b) technical information data and render all assistance necessary to ensure effective operation and maintenance of the machinery and equipment, supply spare parts, maintenance manuals, operating instructions, manuals relating to the construction and assembly of each plant, machinery and equipment and instructions regarding start up and shut down and shall depute a technical personnel to explain and train the employees of JOINT CO. in proper maintenance of the whole unit;

(c) all technical assistance and advice for operation for the plant including scheduling of material, specifications and ordering, production techniques, production planning, quality control, recommended safety procedures and methods and other industrial engineering activities in connection with the organisation, planning and development and operating tactics to obtain most

efficient use of production facilities and on all aspects of plant operation and training of the personnel of JOINT CO. in giving effect to the aforesaid;

(d) all technical information and assistance as shall be necessary to keep the JOINT CO. abreast with the latest advancement in technology and utilise the same in its manufacture, sale and export of electronic goods;

(e) training and technical assistance to five operating employees of JOINT CO. for at least 3 months each for which the JOINT CO. shall bear and pay only for the transport expenses and salaries of such trainees and all other expenses and costs of these trainees shall be borne by JAPCO. JAPCO shall make arrangements for compliance with all formalities for such trainees for entering into and staying in Japan and obtaining training in the factory of JAPCO;

(f) qualified personnel for assembly and installation of plant and equipment supplied by JAPCO and JOINT CO. Such qualified personnel shall be responsible for start up production and continue to remain with the JOINT CO. till the commercial production starts;

(g) a competent personnel to plan and organise to procure raw materials, production in the factory of JOINT CO., marketing and exporting electronic goods to the world markets. JOINT CO. will bear and pay for all expenses of the personnel that JAPCO may depute at the factory of the JOINT CO. but their salaries shall be paid by JAPCO.

18. JAPCO shall assign to the JOINT CO. all the JAPCO's right, title and interest in all its present and future Patents, Trade Marks and Trade Names in relation to electronic goods.

19. JAPCO shall grant to JOINT CO. the right of an exclusive Licensee for the whole world for all Patents in relation to electronic goods for their production, manufacture, use, sale and export anywhere in the world.

20. JAPCO shall assign its right, title and interest in all licences held by it for production, manufacture, use and export of electronic goods.

21. The right, title and interest in or to the use of technical data which JAPCO at any point of time is entitled to use shall be assigned to JOINT CO. for production, sale, marketing the export of electronic goods.

22. JAPCO agrees to execute all such documents as JOINT CO. may require to give effect, perfect, confirm, record assignments and transfers to the JOINT CO. all the JAPCO'S Patents, Licences, Sub-licences and technical data.

23. JAPCO will be responsible for maintaining standards and quality of the products of JOINT CO. and for making available all technical know-how and other assistance to JOINT CO. for making the venture a success.

24. JAPCO will depute its trained personnel both technical and managerial every half year to inspect and examine the operation of plant and machinery,

product quality, marketing and export and suggest improvement in production techniques, marketing and exporting the products to enable JOINT CO. to remain efficient and competitive compared to similar industries in the world. Cost and expenses of such personnel other than salaries and remuneration shall be borne and paid by the JOINT CO.

25. JAPCO will not charge any Royalty or fees for rendering the services or furnishing know-how or deputing technical hands or assisting in production, improvement thereon and export of the same but would be entitled to reimbursement of actual extra costs incurred for rendering these services. JOINT CO. will reimburse the expenses of the technical personnel while stationed in West Bengal.

26. JAPCO will purchase from JOINT CO. at least 80% of its products on cost plus 30% profit basis and assist in exporting the balance quantity of products of the JOINT CO. to the World market.

27. It is hereby agreed and declared that all feasibility study report and reports of the project, market survey, profitability, drawings, specifications, advises and all other documents of DELCO, JAPCO and JOINT CO. shall be held in strict confidence and secrecy and shall not be disclosed by any of the parties herein or the JOINT CO. or any of the employees of any of these three companies without obtaining prior written permission from all these three companies.

28. It is agreed and understood that this agreement shall be subject to prior approvals being obtained by DELCO from the authorities concerned in India, JAPCO from the appropriate authorities in India and Japan and compliance of the provisions of law by JOINT CO. If the requisite approvals cannot be obtained within 36 months from the execution hereof then, unless the parties otherwise agree, this Agreement shall stand terminated.

29. It is agreed that no party to this agreement shall be responsible for any failure or delay on its part in performing any of its obligations or for any loss or damage, costs, charges and expenses incurred or suffered by the other party by reason of such failure or default or delay caused due to any *force majeure* conditions, acts of God, laws and regulations of the Government, strikes, lock-outs, riots, violence, war or any other cause beyond its control.

30. The parties hereby agree that this agreement as also the rights and obligations of the parties herein and in the JOINT CO. shall be governed by the laws of India.

31. Any dispute or difference or claim arising out of or in relation to this agreement shall be referred to the Bengal Chamber of Commerce for settlement in accordance with the Arbitration and Conciliation Act 1996

and the Award of the Bengal Chamber of Commerce shall be final and binding on both the parties to this agreement.

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 a Board Resolution
dated of Delco Ltd.,
at Calcutta in the presence of:

Signature

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

Signature

Collaboration Agreement

THIS AGREEMENT IS MADE on this day of 1999 BETWEEN AMCO INC incorporated under the appropriate laws of America having its office at 5 Broad Street, New York (hereinafter referred to as AMCO) of the one part and INDCO LIMITED, a company registered under the Companies Act 1956 having its office at 99 Chowringhee Road, Calcutta 700 071 (hereinafter referred to as INDCO) of the other part.

WHEREAS AMCO carries on business as manufacturer of, dealer in and exporter of Computers, Computer Hardwares and Computer Softwares and has worldwide market and intends to extend its presence in Asian Countries.

AND WHEREAS INDCO is carrying on business as manufacturer of Computers, Computer Hardwares and Computer Softwares and intends to develop its industrial unit by adopting modern technology and technical skill and expertise in the field of manufacturing Computers, Computer Hardwares and Computer Softwares and Accessories in relation thereto with the assistance of technical services from AMCO.

AND WHEREAS AMCO has agreed to render comprehensive technical services including preparation of development project, feasibility study, market survey and a comprehensive report in relation to production, sales, exports and after-sales service. The technical assistance would also include manufacturing and engineering technology in relation to design, production methods, manufacturing and testing, adaptation of local technology and expertise and assisting INDCO in regular research, quality control of raw materials and finished products and to explore the possibilities of substitutes.

It would include exploration of marketing, selling and distribution techniques tendering advices regarding procurement of appropriate raw materials and to explore import substitutes and optimum utilisation of the production capacity of the existing plant and machinery. The technical services would also include advices and measures to be adopted against piracy and prevention of any mischief being done in the line of production or use of Computers, Hardwares and Softwares.

AND WHEREAS AMCO has agreed to render technical services as also to depute technical personnel to the factory of INDCO for a consideration mentioned hereinafter.

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

1. AMCO will render technical services to INDCO with the object of improving and developing the manufacturing, production, sales and exports of Computers, Computer Hardwares, Computer Softwares, Computer Accessories and other things and articles in relation to Computers for a consideration of Rs. 1,00,000 per month and 10% of the net profit after tax of INDCO.

2. AMCO will depute technical personnel at least for 3 months every year to have thorough inspection of the method of production and giving suggestions for improvement and to train technical personnel of INDCO in its factory.

3. The technical personnel of AMCO will test the working of the plant and machinery and the products and suggest and assist to improve the quality of the products.

4. AMCO will every 6 months submit a report regarding market survey and suggest the prospective markets for exports of INDCO'S products.

5. AMCO will be paid in consideration of the aforesaid services of the technical personnel a sum of Rs. 1,00,000 per month and all expenses of board and lodging of the technical personnel including their air-fare for the entire journey.

6. AMCO shall purchase 60% of the entire products of INDCO at the prevailing market price and/or INDCO'S cost price plus 40% thereof.

7. This agreement will remain in force for 5 years from the date of execution of the agreement with option to extend the period by another 5 years on terms and conditions to be mutually agreed upon.

8. This agreement is subject to obtaining sanctions, approvals and permissions from the Government of India and other concerned authorities.

9. AMCO with a view to facilitate the development of marketing and exporting of INDCO'S products allow its Trade name or patent rights to be utilised by INDCO during subsistence of the agreement.

10. Any addition or alteration to the terms and conditions mutually agreed upon can be made by execution of a supplemental agreement.

11. All differences and disputes arising in relation to this agreement, its construction, validity, performance, breach or any other question arising in relation thereto shall be referred to the Indian Chamber of Commerce for settlement by arbitration or conciliation in Calcutta and the decision of the Arbitral Tribunal shall be final and binding on both the parties.

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

Signed, sealed and delivered by
Mr. pursuant
to Board Resolution dated.....
of AMCO INC at Calcutta
in the presence of:

Signature

1.

2.

Signed, sealed and delivered by
Mr. pursuant to
Board Resolution dated of
INDCO LIMITED in the presence of:

Signature

1.

2.

Joint Venture Agreement—Financial

THIS AGREEMENT IS MADE this day of 2000 BETWEEN AMCO INC incorporated under appropriate laws of the United States of America having its office at 3 Broadway, New York (hereinafter referred to as AMCO) of the One Part and Indco Ltd. a company registered under the Companies Act 1956 and carrying on business at 100 Netaji Subhas Road, Calcutta 700 001 (hereinafter referred to as the INDCO) of the Other Part.

WHEREAS the parties herein have agreed to carry on business of manufacturing of and dealing in Computers, its accessories, Softwares and Hardwares in collaboration with each other.

AND WHEREAS the parties have agreed that for better organisational, financial and marketing of the said goods the parties herein would float or incorporate a new company to which the parties herein would give all financial assistance along with technical know-how to make the venture a success.

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

1. The new company will be incorporated in India with the name CALCO LTD. or any modification thereof.
2. The Memorandum and Articles of Association of the new company would be prepared and filed with the Registrar of Companies West Bengal and would be registered subject to the modifications the Registrar of Companies might suggest.
3. The new company will have an Authorised Share Capital of Rs. 100 lakhs divided into one lakh equity shares of Rs. 100 each.
4. AMCO will subscribe to 49% of the shares in the new company and INDCO will subscribe to the extent of 51% of the shares in the new company.
5. The shares would be issued as fully paid-up.
6. The consideration for issue of 49% of the shares of new company to AMCO will be mainly in cash and partly by way of supply of plant, machinery, equipments, know-how and technical services to be rendered by AMCO to the said new company.
7. The management of the new company would be governed by the provisions in the Memorandum and Articles of Association of new company.
8. AMCO will render, *inter alia*, following assistance to the new company:
 - (a) it will make available know-how of manufacturing and sourcing of raw materials, marketing finished products including exporting the same to Global markets;
 - (b) it will depute technicians to study the operations of said company's plant and machinery, production and sales mechanism and train Indian personnel of the new company in all the phases of acquiring raw materials, manufacturing products, marketing the same and exporting to foreign countries;
 - (c) it will allow use of its patent rights, Trade Marks, and other exclusive rights so that the products of new company can be sold and compete in the world market.
9. AMCO will buy from new company its products to the extent of 60% at the cost plus 40% basis or the market price whichever is higher.
10. INDCO shall make available to the new company its own know-how, business contacts, sources of raw materials and equipments, financing from Banks, Financial Institutions and other sources, personnel recruitment, rendering administrative, fiscal and legal services and obtaining factory sites, and office premises for the new company.

11. The pre-incorporation expenses in promotion of the new company will be shared by AMCO and INDCO in the proportion of 49% and 51% respectively.

12. The pre-incorporation expenses so borne will be paid and recovered from the new company and the new company when incorporated will ratify and consent to such payment.

13. This agreement is subject to obtaining all necessary permissions, approvals and consent of Government of India and other authorities.

14. This agreement shall be governed by the laws of India.

15. All disputes and differences in relation to this agreement will be decided by the Indian Chamber of Commerce of Arbitral proceedings to be held in Calcutta and its decision shall be final and binding on both parties to the agreement.

IN WITNESS WHEREOF the parties hereto have signed, sealed and delivered these Presents on the day, month and year first above-written.

Signed, sealed and delivered by Mr. pursuant to Board Resolution of AMCO INC. dated in Calcutta in the presence of:

Signature

- 1.
2.

Signed, sealed and delivered by Mr. pursuant to Board Resolution of INDCO LTD. dated in the presence of:

Signature

- 1.
2.

Joint Venture with Foreign Company

THIS AGREEMENT IS MADE on this day of 2000 BETWEEN AMCO INC. incorporated under the appropriate laws of the United States of America having its office at 5 Seventh Street, New York of the ONE PART and INCO LTD. a company registered under the Companies Act 1956 having its office at 99 Chowringhee Road, Calcutta 700 071 of the OTHER PART.

WHEREAS AMCO INC. (hereinafter referred to as AMCO) carries on business as manufacturer of and dealer and exporter in Computers, Computer

Hardwares and Softwares and has worldwide market and intends to extend its market here in India and elsewhere.

WHEREAS Inco Ltd. (hereinafter referred to as INCO) carries on business as manufacturer of, dealer in and exporter of Computer Softwares and intends to expand its business in India and abroad.

WHEREAS AMCO and INCO intend to co-operate in manufacturing, dealing in and exporting Computers, Hardwares and Softwares in India and abroad for mutual benefit by setting up a new company.

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

1. A Joint-stock company would be formed under the name and style of INDO-AMERICAN COMPANY PVT. LTD. under the Companies Act 1956 having its Registered Office at 99 Chowringhee Road, Calcutta 700 071.
2. AMCO and three of its nominees and INCO and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between AMCO and INCO.
4. The Memorandum and Articles of Association of the company proposed to be incorporated would be settled in mutual consultation and the same would govern the rights and obligations of AMCO and INCO in relation to the said proposed company.
5. AMCO will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by AMCO to the new company and in consideration for assignments by AMCO of its Patent Rights, Trade Marks, Trade Names and Licences in favour of the new company to be incorporated. The consideration for allotment of shares to AMCO would also include the supply and transfer of technical formula, new inventions, secret processes, technical information concerning the production, manufacturing, testing, specifications, instructions and information as to the manufacture of, development, use and servicing, maintenance and improvement of quality of Computers, Hardwares and Softwares and generally in connection with the successful carrying on of the said business by the said new company to be incorporated.
6. AMCO will furnish necessary technical assistance and expertise to the new company for assembling, installation, start-up and for smooth running of the manufacturing and selling processes as might be required by the new company from time to time.
7. AMCO will furnish to the new company all other technical assistance and advice in relation to the operation of the plant and machinery, repairs thereof, testing facilities, training facilities and Research & Development

facilities should be arranged for, provided and continued for successful running of the business of the new company.

8. The shares that would be allotted by the new company should not be transferred by either AMCO or INCO within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.

9. The new company will manufacture Computers, Hardwares and Softwares and allied accessories and products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by AMCO and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.

10. AMCO will buy 75% of the products of new company for exporting to other countries through its own organisations or outlets at a remunerative price not below the price at which the products are sold in India.

11. Neither party shall carry on their own business in a manner which will directly adversely affect the business and profitability of the new company.

12. The expenses for the setting up and promotion of the new company would be shared equally by AMCO and INCO.

13. The consideration for allotment of shares of the new company to INCO shall be paid in cash and in kind such as by transfer of immovable properties for the setting up of factory and making arrangement for the office accommodation of the new company. The valuation of such immovable properties including office accommodation would be decided by mutual agreement between AMCO and INCO.

14. Any disputes or differences arising in relation to this agreement, its construction, validity, performance, breach or any other question shall be referred to the Indian Chamber of Commerce for settlement by Arbitration or Conciliation in Calcutta and the decision of the said Arbitrator shall be final and binding on both the parties.

15. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.

16. In the event certain additions or alterations are required under this agreement due to imposition of certain terms and conditions by Government of India or appropriate authority granting the approval shall be incorporated in this agreement by way of a supplemental agreement and if required the Memorandum and Articles of Association of the new company would also be

in conformity with such directions or approvals of the appropriate authorities.

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

Signed, sealed and delivered by

Mr.
Pursuant to the Board Resolution
dated of AMCO INC.
in Calcutta in the presence of:

Signature

1.

2.

Signed, sealed and delivered by

Mr.
pursuant to the Board Resolution
dated of INCO LTD.
in the presence of:

Signature

1.

2.

Foreign Collaboration Agreement (Financial)

THIS AGREEMENT MADE this 15th day of December 2000 BETWEEN US Company Ltd., a company registered under the appropriate laws of the USA and carrying on business at San Francisco, USA hereinafter referred to as the FOREIGN COMPANY (which term shall unless excluded by or repugnant to the context include its successors and assigns) of the ONE PART and Ind Co. Ltd., a company registered under the Companies Act 1956 and having its Registered Office at Calcutta hereinafter referred to as the INDIAN COMPANY (which term shall unless excluded by or repugnant to the context include its successors and assigns) of the OTHER PART.

WHEREAS the parties herein have agreed subject to all necessary approvals, consents, validations, permissions and licences to procure the formation and incorporation in the State of West Bengal an INDIAN COMPANY with a Memorandum of Association as its principal objects, *inter alia*, of manufacturing and marketing and exporting Computers, setting up of infrastructures and to do acts incidental thereto.

AND WHEREAS the parties hereto have agreed to assist each other on certain matters to ensure the success of the operation of the INDIAN COMPANY.

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

1. The INDIAN COMPANY shall be the new Public Limited Company to be incorporated on terms of this Agreement in India with the name "New Company Ltd." (hereinafter referred to as the NEW COMPANY).

2. "Shares" shall mean Equity Shares of the NEW COMPANY to be subscribed by the Foreign Company and INDIAN COMPANY upon the terms hereof:

- (a) the company will be incorporated with the name New Company Limited;
- (b) Memorandum of Association of the New Company Ltd. will have as its principal objects manufacturing and marketing of Computers and Softwares and rendering services in relation thereto both in India and abroad and to engage in infrastructure and associated activities;
- (c) the authorised share capital of the NEW COMPANY will be Rs. 50 crores, divided into 50 lakhs equity shares of Rs. 100 each out of which issued subscribed and paid-up capital shall be Rs. 40 crores divided into 40 lakhs Equity shares of Rs. 100 each;
- (d) The Memorandum and Articles of Association of the new company shall be approved by the Foreign Company and the Indian Company.

3. The FOREIGN COMPANY shall subscribe to and pay for the shares of NEW COMPANY in the manner as the Board of Directors of the NEW COMPANY may decide. The FOREIGN COMPANY shall subscribe at any point of time 51% of total shares issued by the NEW COMPANY. The balance 49% of the issued shares of the NEW COMPANY shall be subscribed by the INDIAN COMPANY and its associates, promoters, their friends and relations.

4. The number of directors of the NEW COMPANY shall be minimum five and maximum eleven. The FOREIGN COMPANY and the INDIAN COMPANY shall have equal number of directors in the Board but the Chairman of the Board of Directors as also at the General Meeting shall be one of the directors representing the INDIAN COMPANY. The FOREIGN COMPANY and the INDIAN COMPANY shall exercise their rights as shareholders in accordance with the law and in terms of the present Agreement.

5. The NEW COMPANY shall not without the written consent of the Indian Company increase or reorganise its capital, alter its Memorandum and Articles of Association, sell, release, transfer, mortgage or otherwise dispose of all or substantial portion of its business or assets or take any steps for merger or amalgamation of the NEW COMPANY with another company or for liquidation of the NEW COMPANY. Without the written consent of the INDIAN COMPANY the NEW COMPANY shall not create, acquire or control any subsidiary

or make any substantial investment in any other company or venture or give loans or stand guarantee or extend credit to any person, firm or company except to its customers in the usual course of business.

6. The NEW COMPANY shall maintain proper books of accounts and records as required by law and the FOREIGN COMPANY and the INDIAN COMPANY shall have the right to inspect the books of accounts and records and correspondence of the NEW COMPANY and take copies thereof at its own costs.

7. The FOREIGN COMPANY and the INDIAN COMPANY shall give all requisite assistance to the NEW COMPANY to make the NEW COMPANY a success. The FOREIGN COMPANY shall make available to the NEW COMPANY the know-how required to achieve its objectives, give access to the NEW COMPANY all processes of know-how, requisite financial assistance apart from shareholding, marketing assistance and facilities, advantage of services of the International Network of the FOREIGN COMPANY and the use as Licencee or otherwise the Trade Marks, Patent Rights and goodwill of the FOREIGN COMPANY for the purpose of production, sale and export of the products of the NEW COMPANY.

8. The INDIAN COMPANY shall furnish to the NEW COMPANY with its know-how, technology, technical assistance including the management in the production and marketing of the products of the NEW COMPANY, the business connections of the INDIAN COMPANY, access to Indian know-how, assistance in procurement of raw materials, financial assistance, assistance in the recruitment of personnel and running the administrative, fiscal and legal services. INDIAN COMPANY shall also promote the name and goodwill of the NEW COMPANY and its products.

9. The FOREIGN COMPANY and the INDIAN COMPANY both shall from time to time make available to the NEW COMPANY their qualified employees for providing suitable services so that the NEW COMPANY can achieve its objectives.

10. The parties hereto agree that upon its incorporation the NEW COMPANY shall ratify, adopt, consent and agree to be bound by the terms of these presents. The FOREIGN COMPANY and the INDIAN COMPANY shall in equal proportion pay preliminary expenses for forming the NEW COMPANY and all such expenses shall be reimbursed by the NEW COMPANY within a year from the time it goes into commercial production.

11. In case of breach of any of the terms of this Agreement by a party the other party may give two months notice to rectify the breach in default its intention to terminate the agreement. In the event the breach is not remedied then the other party shall give a second notice that it would terminate the agreement with effect from 30 days from receipt of the said notice.

12. In case of such notice for termination or there being a stalemate in the management of the affairs of the NEW COMPANY, either party may offer to the other to sell its shareholdings at a valuation to be made by the NEW COMPANY'S Auditor and by a second independent Auditor. If the valuation

differs, then the value of shares will be taken as the average of the two valuations. If the offer is not accepted, then the shares shall be sold to outsiders. In the event the FOREIGN COMPANY or INDIAN COMPANY goes into liquidation the other company may buy the shares of the NEW COMPANY at the book value of shares held by the company in liquidation.

13. The agreement shall be governed by the laws of India and the courts in India shall have jurisdiction to entertain any legal proceedings in relation to any dispute in relation to the agreement. In the event any of the clauses or part of the agreement be held to be invalid, that will not affect the other part or clauses which valid portion shall be enforceable.

14. All notices are to be served in the manner permissible under the law at the addresses recorded in the books and records of the NEW COMPANY.

15. The FOREIGN COMPANY shall obtain all necessary permissions and consents of the Government of the FOREIGN COMPANY for entering into this Agreement and carrying on business of the NEW COMPANY in India. The parties hereto shall obtain the necessary sanctions, permissions, authorisations etc. of the Reserve Bank of India, Government of India and other concerned authorities in respect of the present agreement as also for the NEW COMPANY for its incorporation and carrying on its business. In the event necessary approvals, licences, permissions and authorisations are not available, then this agreement shall become void.

16. All disputes and differences between the parties or any claims by any of the parties arising out of or in relation to this agreement including its construction, validity, compliance or breach which the parties have tried to but could not settle shall be referred to the Bengal Chamber of Commerce for settlement by arbitration proceedings in accordance with the law in India in force and the Award of the said Chamber of Commerce shall be final and binding on the parties to this agreement.

IN WITNESS WHEREOF the parties hereto have executed THESE PRESENTS ON the day, month and year first above-written.

Signed, sealed and delivered by the
said Mr.
pursuant to the Board Resolution
of the Foreign Company
dated at Calcutta
in the presence of:

Signature

1.

2.

Signed, sealed and delivered by
 Mr.
 pursuant to the Board Resolution
 of the Indian Company
 dated at Calcutta
 in the presence of:

Signature

1.
2.

Technical Foreign Collaboration

THIS AGREEMENT IS MADE at Calcutta this day of
 2000 BETWEEN Amco Inc., incorporated under the
 appropriate laws of the United States of America having its office at
 3-Broadway, New York (hereinafter referred to as AMCO) of the one part and
 Calco Ltd., a company registered under the Companies Act 1956 and carrying
 on business at 100 Netaji Subhas Road, Calcutta 700 001 (hereinafter
 referred to as CALCO) of the other part.

WHEREAS AMCO is the manufacturer, dealer and exporter of Computers
 Hardwares, Softwares and accessories (hereinafter referred to as the
 PRODUCTS) and has highly developed technical know-how, secret techniques,
 technical information and skilled technical personnel concerning the
 manufacture and marketing of Computers, Hardwares and Softwares and
 accessories (hereinafter referred to as the TECHNOLOGY).

AND WHEREAS AMCO has agreed at the request of CALCO to provide and
 render technical assistance and advice for setting up at the factory of CALCO
 a manufacturing unit for manufacturing, distribution, sale and export of
 the said products and to allow the use of AMCO's Trade Marks, Patents,
 Licences and other rights in relation to the said products and CALCO has
 agreed to accept the same.

NOW THIS AGREEMENT WITNESSETH and the parties hereby agree as follows:

1. AMCO will provide, furnish and make available to CALCO latest
 technology including engineering and manufacturing information, designs,
 production methods, plant, future innovations, improvements relating to
 designs, production methods, manufacture, testing, processes of the said
 products and engineering blue-prints, plant lay-out, drawings, information
 and documents relating to manufacturing processes of the said products
 and all other related information and particulars for successful installation,
 running of and production in the said unit.

2. AMCO shall provide and depute technical personnel for the preparation of the factory site, installation of plant and machinery supplied or selected by AMCO, start up operation and selection and procurement of raw materials either from AMCO or from other sources till the commercial production of the unit is commenced.

3. AMCO will train at the factory of CALCO its personnel so that they may be able to run the unit smoothly and be abreast with all the technical know-how.

4. AMCO will ensure production of quality products at the CALCO's unit with full capacity, marketing and export of the products.

5. AMCO will allow the use of its Trade Marks and Patent Rights and secret formula for the manufacture, sale and export of CALCO'S PRODUCTS.

6. AMCO will buy 60% of the PRODUCTS of the said unit of CALCO for sale or export to places or markets outside India and without impairing the sale of balance 40% of the products of CALCO.

7. AMCO will keep CALCO indemnified against and harmless from any claim or action in relation to the manufacturing, selling or exporting products of CALCO or for any alleged breach of the Trade Marks or Patent Rights.

8. AMCO will pay for the PRODUCTS 60% whereof it would buy from CALCO at the cost price plus 40% thereon and the account would be settled every third month.

9. In consideration of AMCO rendering the aforesaid services, supplying the technology, technical know-how, deputing technical personnel, training the personnel of CALCO and allowing CALCO the use of secret formula, Trade Marks and Patent Rights and miscellaneous other services and assisting export of CALCO'S PRODUCTS, CALCO will pay to AMCO the cost and expenses in relation to the technical personnel to be deputed from time to time by AMCO to the factory of CALCO and all actual expenses incurred in India in relation to the business of CALCO and 20% of the net profits after tax. In the event the profits so calculated does not permit any payment then CALCO would pay a minimum of Rs. 5 lakhs per year to AMCO in full and final satisfaction of its claims for imparting the technology, technical know-how and other services rendered.

10. This agreement will remain valid for a period of 5 years with option to renew the same for another 5 years.

11. This agreement is made subject to obtaining the necessary approvals of the Government of India and other concerned authorities, and subject to Indian laws.

12. Any additions or alterations to this agreement may be made by mutual consent by a Supplemental agreement.

13. All differences and disputes arising out of, in relation to or in connection with this agreement shall be referred to the Indian Chamber of Commerce in Calcutta for settlement by arbitration proceedings and the decision of the Arbitral Tribunal shall be final and binding on the parties.

14. This agreement will be governed by Indian law and the arbitration will be held in Calcutta unless the parties agree to hold the sittings of the Arbitral Tribunal at some other place convenient to the parties and the Arbitral Tribunal but within India.

15. IN WITNESS WHEREOF the parties hereto have signed, sealed and delivered these presents, the day, month and year first above-written.

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution of
AMCO INC. dated in Calcutta

Signature

In the presence of:

- 1.
- 2.

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution of
CALCO LTD. dated

Signature

In the presence of:

- 1.
- 2.

Franchising

In commercial and business sense the word "Franchise" means a permission granted by a manufacturer to a distributor or retailer to sell its products within a specified territory. A franchise can be equated with a licence. A franchise may include a contract whereby the owner of a business grants to another person permission to carry on a particular business using the grantor's know-how and trade mark as the grantee's own business. The grantor may exercise continuing control over the management of the grantee's business and give all possible support in carrying on the said business. This is done for a consideration agreed upon by the parties. The grantor of such licence is in modern terminology called "Franchisor" and the grantee as "Franchisee". In some cases the Franchisee can carry on his existing business and take on the franchised business and both can be run at the same premises by the Franchisee. If required a Franchisee has to set up a factory and install plant and machinery to carry on the franchised business. By such franchise the Franchisor does not control his business but finds an additional outlet for sale of his products. The Franchise Agreement may require the Franchisee to deal exclusively with the franchised articles subject to any statute relating to Monopoly and Restrictive Trade Practices.

Franchising can be done within the same country by division of geographical area or Franchisor appointing the Franchisee in another country to expand its market share of the product.

Franchising can be in respect of an existing business or a new business. Franchising agreement may be in respect of construction business, automobile parts and services, petroleum products, business aids and services, education services, soft drinks, fast foods, restaurants, health, medical, beauty care, commercial and other miscellaneous matters.

A Franchisor appoints a Franchisee to sell his products in a new geographical area in a new market to increase his sales and income. To

capture markets in other countries franchising is one of the methods, the other method may be establishing a subsidiary company or a joint venture or a new company in collaboration with the Franchisee company. It is a pure commercial matter and profit motive is the main criteria for the Franchisor and the Franchisee.

The advantages of a Franchise Agreement is that the Franchisor expands markets of his products and earns more profit and the advantage of the Franchisee is that it deals with a product already having a goodwill and reputation on its own right and thereby expecting a good turnover and consequently substantial profit. The Franchisee gets almost an assured share of the market for the product and as such he runs less risk of operating loss or loss of capital that he may invest for the franchised goods.

The Franchisor to protect his own interest must see that the Franchisee does not act for another franchisor and proper accounts are maintained and royalties and other payments are made regularly to the Franchisor by the Franchisee for use of the franchised items including goodwill. The Franchisor to protect its interest may try to control and regulate to some extent the business of the Franchisee. The Franchisee to earn this extra income by using the goodwill of the Franchisor has to surrender a portion of his liberty and is to carry on his business in consultation with the Franchisor and make utmost efforts to pay royalties and fees in time. Franchisor has an advantage over ordinary distributorship inasmuch as in normal circumstances the owner of the goods do not have sufficient control over the distributor and the distributor may not have any shop or outlet except his own godown. For the purpose of business profits and development a Franchising Agreement is more beneficial for both the manufacturer and the seller.

Before entering into the Franchising Agreement the Franchisee must satisfy himself that the Franchisor has in fact a goodwill and that his goods will be sold at a profit without much efforts. The Franchisor would see that the Franchisee has enough capital to invest and has a good set up to carry on the business of the franchised goods efficiently and profitably, the capital adequacy of the Franchisee and the know-how about the business or matter to be franchised. The Franchisee may be given some training so that he may make himself fully acquainted with the product of the Franchisor and become competent to deal with the customers and give satisfactory services to them. The Franchisor after giving the franchise will pass on the up-to-date technology to the Franchisee so that the products and services of the Franchisor may stand the competition of the market.

The Franchisor is to make sure that he will get payment by way of royalties and/or fees for the goods, services and/or technology transferred to enable the Franchisee to carry on the business in the franchised goods or services. The Franchisor may demand a lump sum payment in the beginning and thereafter royalties on the sale proceeds or on any other basis depending

upon the nature of the transaction. If the Franchisee has no funds the Franchisor may help the Franchisee in raising loans from the Financial Institutions or by issue of shares. The Franchisor may take shares in lieu of lump sum, royalty and services thereby to some extent solving the cash flow difficulty of the Franchisee.

So long the parties are reasonably honest the Franchising Agreement will remain effective and both parties would gain but if one of the parties try to deprive the other of his legitimate dues the Agreement would fail and both will suffer. Therefore good faith and honesty of purpose will be essential in such an arrangement.

The requirement of capital in the business of Franchisee and the extent of control by the Franchisor over the business will depend upon the nature of the subject matter of the franchise. The Franchisor has to supervise to some extent the working of the Franchisee's business and to see that the Franchising Agreement works to the advantage of both the Franchisor and the Franchisee. Unless it is profitable for both the parties the agreement cannot work. There must be also provisions making it difficult for either party to deprive the other of his legitimate dues and/or expectations.

Before entering into the agreement both the Franchisor and the Franchisee should obtain all required information in respect of each other and consider whether in the particular type of business the arrangements would work profitably for both the parties.

The Franchise Agreement may contain all possible safeguards to avoid any misunderstanding at a later date. Both parties must see that the franchising business develops and remains prosperous. Unless the business is running well the Franchisee will not be able to pay the royalties or service charges and the Franchisor will not be able to recover its dues by way of royalties and service charges. Any litigation will damage the image of both the parties. A businessman will be reluctant to enter into any agreement with a Franchisor or a Franchisee who was involved in litigation in respect of its business transaction.

The quantum of lump sum initial payment, the rate of royalty and other payments to be made by the Franchisee are to be calculated taking into consideration the probable turnover in the business of the Franchisee, his capital structure, his access to market, his management efficiency as also capacity. In other words the financial solvency, technical ability, a fund of goodwill and good faith are required from both the parties to make the Franchise Agreement a success.

For foreign investment in India Reserve Bank of India permission will be required. Foreign companies and Nationals will require prior permission of RBI to carry on in India any activity of a trading, commercial or industrial nature or to set up a project or an office or a place of business for carrying

on such activity. For the purpose of execution of any specific project or contract if the foreigner wants to obtain a temporary office then prior permission of RBI will be required. Foreign Franchisor intending to set up any office in India or to post a representative for liaison activity will require prior permission of RBI.

A foreign national or company with the permission of RBI may accept an appointment as an agent in India of a foreign Principal in his trading or commercial transaction. If the foreigner takes up employment in India or acts as an Advisor in India on non-repatriable basis then RBI permission will not be necessary.

Franchise Agreement that provides professional, technical, accountancy or consultancy services being a self-financing unit within India will require RBI approval if any remittance to foreign country is involved.

If a technician of a foreign Franchisor is on a short visit to train or supervise the staff or operation of the Franchisee, the Franchisee can pay for the airfare and expenses in India of the foreign technician in Indian rupees. General permission of RBI is required to import or export Indian Currency.

Permission of RBI is necessary for giving a Guarantee in respect of debts, obligations or liabilities in favour of a person resident outside India. A Franchisee for opening a Performance Guarantee or for issuing a Letter of Credit in favour of the foreign Franchisor will have to obtain prior permission of RBI.

A Franchisee who seeks to obtain technical know-how must obtain the approval of RBI, for technical know-how or the collaboration agreement with the foreign Franchisor, the Franchisee has to obtain RBI permission for lump sum payment, remittance for royalty or technical fees. In approving such agreement RBI designates the branch of the authorised dealer preferably a Bank through whom remittances of the fees and royalty are to be made. In granting such permission RBI may modify the agreement in relation to payment. The authorised bank is under obligation to strictly follow RBI terms and conditions of remittances and of the Franchise agreement. The bank is required to maintain separate records for remittances under the Franchise Agreement till 5 years after termination of the agreement.

The Franchisee has to submit a return by 15th of January every year showing payments made under the agreement during the proceeding year. The Franchisee gives a guarantee to the Income Tax Authorities on behalf of the foreign Franchisor for payment of tax or to deduct tax at source at the applicable rates and deposit the same to the account of Income Tax Authorities. A No Objection Certificate or tax clearance certificate is required from the Income Tax Authorities before any remittance can be made to the foreign Franchisor.

A Franchisee may engage the services of a foreign national on a short term assignment not exceeding 3 months at a time without the approval of

RBI. All payments made in connection with the foreign personnel including payments made locally in rupee towards their travel, living expenses, etc. are liable to a cess at 5% under the Research and Development Cess Act 1996. For employment of a foreign national for technical assistance for more than 3 months Home Ministry's permission has to be obtained. Foreign nationals who are in regular employment with a Franchisee on monthly salary are permitted to make recurring remittances for family maintenance up to 75% of net salary after deduction of Provident Fund contribution and Indian Income Tax. A Franchisor having a branch in India has to obtain permission from RBI for remittance of profits.

Dividend, interest and other income on shares and securities and sale proceeds thereof originally acquired out of the remittance in foreign exchange may be repatriated after obtaining permission of RBI subject to deduction of Indian Income Tax. A Franchisee intending to remit dividends to its non-resident shareholders has to obtain permission of RBI.

In respect of foreign investments in about 22 Consumer Goods Industries, RBI has stipulated remittance of dividend on a balancing system rendering thereby that the amount of foreign exchange outflow by way of dividend should be balanced with similar amount of inflow of foreign exchange by way of export earnings.

A foreign Franchisor or a foreigner requiring permission of RBI to acquire, hold, transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property in India excepting a lease not exceeding 5 years has to apply to Central Office of RBI, Foreign Investment Department in Mumbai.

By a notification dated 26th April 1993 RBI has granted general permission to foreign companies to acquire or hold any immovable property which is necessary for or incidental to any activity permitted by the RBI. On obtaining such permission the company has to submit a declaration to RBI within 90 days of such acquisition.

Foreign citizens, foreign companies, foreign trusts, societies and associations will be permitted to acquire immovable property by RBI provided the immovable property is acquired for consideration and is paid out of the foreign exchange remitted from abroad in convertible currency through normal banking channel and any income or proceeds of the property are to be credited only to the non-resident Rupee account and will not be allowed to be repatriated.

By a notification of 26th May 1993 RBI has granted permission to the foreign citizens of Indian origin who are resident in India or not to acquire or dispose of immovable property other than agricultural land, farm house and plantation property subject to fulfilment of certain conditions.

Foreign Franchisor cannot acquire any business in India as of right. The right of a foreign Franchisor under any Franchise Agreement will be subject to permission of RBI. RBI permission is necessary for acquiring the whole or part of any industry in India in trade and industry.

Provisions should be made to resolve the disputes between the Franchisor and the Franchisee in relation to their transactions. Both parties must consider whether arbitration in a foreign country would be feasible both from economic point of view and conducting proceeding in a foreign country involving huge foreign exchange. Provisions may be made to buy out the business of one party by the other in respect of which Franchise Agreement was entered into in the event of any such dispute.

FORMS

Agreement of Franchise—Gold and Jewellery

THIS AGREEMENT IS MADE on this 5th day of May 2000 BETWEEN AB Limited, a company registered under the applicable laws of South Africa having its office at 5 S.F. Road, Transvaal (hereinafter called the FRANCHISOR which term shall include its successors and assigns) of the first part and Ashok Jewellers Limited, a company registered under the Companies Act 1956 and carrying on business at 56 Ganesh Chandra Avenue, Calcutta (hereinafter called the FRANCHISEE which term shall include its successors and permitted assigns) of the second part.

WHEREAS the FRANCHISOR is engaged in mining and manufacturing Gold Jewellery and trading in gold and gold jewellery in Transvaal, South Africa and has acquired a reputation for supplying high quality ingots and jewellery under the registered Trade Marks in Transvaal for the last 10 years and having all the requisite licences and permission from the appropriate authorities for export and sale thereof through *inter alia* FRANCHISEES in other countries.

AND WHEREAS the FRANCHISOR has a paid up capital equivalent to Rs. 99,000 crores and has assets worth Rs. 10,00,000 crores and has been making regular profits commensurate to its investment.

AND WHEREAS the FRANCHISOR has acquired a reputation for its brand names TRANSVAAL and RAND and goodwill for quality of its gold and jewellery.

AND WHEREAS the FRANCHISEE is a company registered under the Companies Act 1956 with a paid-up capital of Rs. 10 crores carrying on business as a Jeweller having the requisite technical and administrative personnel and turnover of Rs. 20 crores per year with a profit of Rs. 2 crores per year.

AND WHEREAS the FRANCHISEE has several buildings in good localities where existing outlets are situate and where other outlets can be obtained for sale of jewellery.

AND WHEREAS the FRANCHISEE has inspected the relevant Title Deeds, Licences, Balance Sheets and other documents of the Franchisor and satisfied itself about the goodwill, credit-worthiness and ability to keep its commitments, render technical services and maintain good trade relations for mutual benefit.

AND WHEREAS the FRANCHISOR has made local enquiries about the FRANCHISEE, inspected its Title Deeds, Licences, Balance Sheets and other relevant documents and inspected the Works site and had discussions with the technical personnel and satisfied itself about the competence and ability of the FRANCHISEE to promote the sales of the FRANCHISOR'S gold, gold products and jewellery from the FRANCHISEE'S present outlets and its ability to honour its commitments as to the payment of Royalty and other obligations including the improvement and development of the FRANCHISEE company.

AND WHEREAS the FRANCHISOR has given the lists of FRANCHISEE in other countries and in India of the said FRANCHISOR.

AND WHEREAS the FRANCHISOR has been given list of companies of other FRANCHISORS for which the FRANCHISEE is acting in India and the Trade Marks and service marks under which the FRANCHISEE is carrying on business.

AND WHEREAS the FRANCHISOR has agreed to give the FRANCHISEE the right to use the FRANCHISOR'S Trade Marks, service marks, business systems, operation manual and to impart initial and ongoing training to the standard necessary to operate the proposed unit successfully and to give access to the FRANCHISOR'S know-how, technology, development and improvement in relation to the manufacture and sale of jewellery.

AND WHEREAS the parties have agreed to act in good faith towards each other and prevent any damage to the interests of the FRANCHISOR or FRANCHISEE and continuously work to develop and improve the system of manufacture and sale of jewellery under the existing Trade Marks or new Trade Marks or service marks and to protect the reputation and business of the parties herein.

AND WHEREAS the parties on enquiries made by themselves are satisfied about the information obtained from each other and nothing has been suppressed or concealed by any of the parties and they have agreed to enter into a Franchise Agreement for mutual benefit.

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

1. This Agreement will remain in force till either party by giving three month's notice in writing terminates the same.

2. In consideration of the FRANCHISEE paying a lump sum of Rs. 2 crores and agreeing to pay 10% of the FRANCHISEE'S gross turn over of "Rand" gold, gold products and jewellery the FRANCHISOR hereby gives to the FRANCHISEE the licence to manufacture and sell the gold and gold jewellery and other ornaments under the FRANCHISOR'S Trade name RAND which Trade Mark is registered in South Africa. All necessary steps shall be taken by parties herein to get protection of and protect the said Trade Mark under the Indian law.

3. The FRANCHISOR agrees to give practical and theoretical training for six weeks in South Africa to the staff of the FRANCHISEE every year. The costs of travel and accommodation shall be shared equally by the parties herein.

4. The FRANCHISOR shall from time to time make available to the FRANCHISEE technical, administrative and operational know-how free of cost. The Copyrights in all the manuals and other materials shall remain vested in the FRANCHISOR. Such Trade Marks and know-how should be used exclusively for carrying on the business under the Trade Name RAND at the FRANCHISEE'S stores and shops and should not be allowed to be used by any other person.

5. The FRANCHISOR shall take necessary steps to protect its trade name RAND in India by complying with the applicable laws as also of any other territory where the products may be sold. In the event the FRANCHISEE comes to know of any infringement of the Trade Mark or any right of the FRANCHISOR, the FRANCHISEE should immediately inform the FRANCHISOR of the same and take immediate steps to prevent the continuance of such infringement. In any legal proceedings the parties herein shall cooperate and should be agreeable to being impleaded as parties therein.

6. The FRANCHISOR shall obtain necessary permission from South African Governmental authorities for export of gold and jewellery to India on account of FRANCHISEE and get the present agreement duly approved by the concerned authorities.

7. The FRANCHISOR shall have the right to send its representatives to inspect the shops and manufacturing processes of the FRANCHISEE and suggest improvements thereon with a view to maximise the sale of gold, gold products and jewellery under the Trade name RAND.

8. The FRANCHISEE shall sell the products of the FRANCHISOR from the Franchisee's shops and stores and the FRANCHISOR shall send its representatives to make proper arrangement in such shops, stores and arrange for proper display of the products and the Trade Name.

9. The FRANCHISEE should sell the product under the trade name in the whole of territory in India and will export to any other countries the gold jewellery and other products under the trade name RAND as it may think suitable under the market conditions.

10. In the event of termination of this agreement howsoever occurring the licence of the FRANCHISEE shall immediately cease and the FRANCHISEE shall perform such acts and execute such documents as would be required in order to ensure that the sole and exclusive right to use the Trade Marks remain vested in the FRANCHISOR.

11. The FRANCHISEE shall get the present agreement approved by the Indian Governmental authorities including the Reserve Bank of India for importation of gold and gold products including jewellery, sale thereof in India and export outside India.

12. The FRANCHISEE shall get necessary permission and approval of the authorities concerned for import of gold, gold products and jewellery from South Africa and to use the gold for manufacture of jewellery and other items under the trade mark RAND in the local market and also to export the same to other countries and to remit moneys in terms of the present agreement to the FRANCHISOR.

13. The FRANCHISEE shall have the right to carry on its existing business in the usual manner as also to import gold, gold products and jewellery from the Franchisor and manufacture articles and jewellery from the imported gold under the trade name RAND and sell the same in India and abroad.

14. The FRANCHISEE shall by the first week of every month place an order for gold, gold products and jewellery on the FRANCHISOR and the FRANCHISOR shall arrange to deliver the ordered goods through its representative personally at the shop of the FRANCHISEE at the costs and expenses of the FRANCHISOR.

15. The FRANCHISEE will sell the gold, gold products and jewellery under the trade mark RAND at a price which will get for the FRANCHISEE a gross margin of 30% and out of which the Franchisee will pay one-third to the Franchisor as the fee for the licence. Such payment is in addition to the costs of the goods sold and delivered to the Franchisee.

16. To ascertain the exact entitlement of the FRANCHISOR, namely, 10% of the total turnover of the goods sold under the brand name RAND the FRANCHISOR'S representative will have the right to inspect and take copies of the accounts maintained by the Franchisee.

17. The FRANCHISEE shall make payment of the price of the goods delivered within 24 hours and will make payment of licence fee up to 10% of the turnover by the first week of a month in respect of sales during the preceding month. The FRANCHISEE shall pay and bear all expenses incurred in India in connection with the present agreement entered into and the FRANCHISOR will pay and bear all the expenses that may be incurred in South Africa.

18. The FRANCHISEE shall not do anything which will cause injury to the trade name or reputation of the FRANCHISOR and that the FRANCHISEE agrees

to indemnify and keep the FRANCHISOR indemnified against all liabilities, claims, damages or injury of every description which may occur or affect the FRANCHISOR from any failure by the FRANCHISEE to perform its obligations under this agreement or from any act or omission whatsoever on the part of the FRANCHISEE or its servants or agents.

19. In the event the FRANCHISEE finds the goods delivered are not according to the standard specifications the FRANCHISEE shall immediately report the same with particulars of defects and the FRANCHISOR shall give appropriate credit to the FRANCHISEE for such defective goods.

20. Upon termination of this agreement, the FRANCHISEE will be entitled to sell the existing stocks under the brand name RAND or otherwise and that the FRANCHISOR shall take no responsibility of taking back the goods or pay for it.

21. It is agreed and declared that both the FRANCHISOR and the FRANCHISEE shall comply with all laws rules and regulations governing the transactions covered by the present agreement and that this agreement is entered into subject to obtaining the necessary approval of the authorities concerned.

22. If any term or any provision of the present agreement is declared by the court or by any governmental authority to be in conflict with the laws or any term is unenforceable that will not affect the validity and enforceability of the remainder of this agreement and in that event the offending part shall be deemed not to be part of this agreement and the resulting consequential amendment shall be deemed to have been incorporated therein.

23. This agreement shall not constitute the FRANCHISEE as the agent of the FRANCHISOR or a Partner or a representative or *vice versa* and that no act of the FRANCHISOR will affect the FRANCHISEE and no act of FRANCHISEE shall affect the FRANCHISOR.

24. No forbearance, delay or indulgence by either party in confirming any of the terms and conditions of this agreement shall prejudice its rights and remedies under this agreement or under the laws of their respective countries nor shall any waiver or any breach of any of the terms hereof shall operate as a waiver of any subsequent breach of the agreement. Any waiver or variation of any of the terms or conditions of the agreement shall not be valid unless the same is in writing and signed by the authorised officer of the FRANCHISOR and/or the FRANCHISEE, as the case may be.

25. Neither party shall disclose to any third party any information as to the methods of manufacture, operation, publicity, financial plans, present or future plans or the policy of the other which information is not in public domain and is not compulsorily disclosable under any Statute.

26. The FRANCHISOR and the FRANCHISEE shall take necessary steps for registration of the agreement in their respective countries for continuance

and validity of the agreement and each one will bear the costs therefor as also all rates, taxes, cesses, levies and other impositions in their respective countries.

27. Both the FRANCHISOR and the FRANCHISEE shall jointly act whenever necessary to obtain any permission from the governmental or other authorities in connection with the business under the agreement including payment of the licence fees, registration charges and expenses to be incurred by the representatives of the FRANCHISOR residing in India or the FRANCHISEE residing in South Africa.

28. No liability would lie on any of the parties for any breach of the agreement if caused by force majeure circumstances beyond its control.

29. This agreement is not assignable either by the FRANCHISOR or the FRANCHISEE without prior written approval.

30. All notices and reports are to be sent at the addresses given herein either by speed post or by telex or by courier service.

31. This agreement shall be governed by and construed in accordance with the Indian law and both parties agree to submit to the jurisdiction of Indian Courts.

32. All payments and transactions are to be expressed in Indian Rupees having no connection with the exchange rate of South Africa or any other Currency.

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. Director
pursuant to Board Resolution
dated of AB Ltd. in
Calcutta in presence of:

Signature

Signed, sealed and delivered by
Mr. Director
pursuant to the Board Resolution
dated of Ashok
Jewellers Ltd. in presence of:

Signature

Franchise Agreement—Washing Machines

THIS FRANCHISE AGREEMENT is made on this 10th day of May 1999 BETWEEN ELH Limited, 56 G.C. Avenue, Kobe, Japan (hereinafter referred to as the FRANCHISOR which term unless excluded by or repugnant to the context shall

include its successors and assigns) of the one part and Sales Limited, a Company registered under the Companies Act 1956 having its registered office at 5 N.K. Road, Chennai, India (hereinafter referred to as the FRANCHISEE which term shall unless excluded by or repugnant to the context include its successors and permitted assigns) of the other part.

WHEREAS the FRANCHISOR is carrying on business as a manufacturer of and dealer in different kinds of Washing Machines and has established a reputation and demand for its high quality Washing Machines and after-sales-service.

AND WHEREAS the FRANCHISOR through its exclusive research and practical business experience has developed secret, substantial and identified know-how which forms a system for appropriate operation of business in the selling and servicing of washing machines and which is contained in the Franchisor's Operational Manual, which is the FRANCHISOR'S sole property.

AND WHEREAS the said washing machine has been patented under the name and style of "EL" Washing Machines.

AND WHEREAS the FRANCHISOR has a package of non-selected practical information resulting from experience and testing by the FRANCHISOR which is the secret, substantial and identified and hereinafter called KNOW-HOW.

AND WHEREAS the FRANCHISOR'S KNOW-HOW in the body or in the precise configuration and assembly of its components is not generally known or easily accessible and not limited in the narrow sense the individual component of know-how should be totally unknown or unobtainable outside the FRANCHISOR'S business and such KNOW-HOW is "secret" to the FRANCHISOR.

AND WHEREAS the KNOW-HOW includes the information which is of importance for sale of washing machines and its components and spares with the provision of service to the consumers end-users and in particular for the presentation of washing machines for sale, the processing of components in connection with the provision of services, methods of dealing with customers, administration and financial management, the KNOW-HOW is useful for the FRANCHISEE by being capable at the date of conclusion of the agreement, of improving the competitive position of the Franchisee, *inter alia*, by improving its performance and helping it to enter a new market. All these are termed as "substantial KNOW-HOW".

AND WHEREAS the KNOW-HOW is described in a sufficiently comprehensive manner so as to make it possible to verify that it will fulfil the criteria of secrecy and substantiality are termed as "identified".

AND WHEREAS the FRANCHISOR has developed a System by virtue of having acquired the knowledge, experience in the field of electrical and manual operations of the washing machines, replacement or repair of its parts, oiling and cleaning of the related parts and to keep the machines in working condition.

AND WHEREAS the FRANCHISOR now intends to open sales and Service Centres in Chennai and in the neighbouring States.

AND WHEREAS the FRANCHISOR owns the Registered Trade Marks used in relation to the said Washing Machines and after-sales-service. In addition, the FRANCHISOR owns the valuable good-will in slogans of distinctive Marks which Markings are other identifying characteristics.

AND WHEREAS stocks of washing machines of the FRANCHISOR in Kobe (JAPAN) or surrounding areas depends among other things, upon the provisions by the FRANCHISOR of a prompt, efficient satisfactory and courteous service to the consumers using the washing machines being the subject-matter of the Franchise including the accessories and spare parts and upon the vigorous cultivation and extension of the market for the washing machines.

AND WHEREAS the FRANCHISEE has assured that it will develop the business of sales and service of washing machines in Chennai and neighbouring areas.

AND WHEREAS the FRANCHISOR has made enquiries about the financial soundness of the FRANCHISEE, the technical knowledge of the Managing Director of the FRANCHISEE, its sales personnel, accommodation and title to the said sales office and its total accommodation for storing and exhibiting the FRANCHISOR'S washing machines as also washing machines that might require repairing and servicing at the premises of the FRANCHISEE.

AND WHEREAS the FRANCHISEE has made enquiries into the title of premises from which the FRANCHISOR is carrying on manufacturing and selling business, the capital outlay, the personnel employed for running the business and its past dealings with other Franchisees and has satisfied itself about the adequacy of the same and ability of the FRANCHISOR to discharge its obligations under the present agreement.

AND WHEREAS the FRANCHISEE has made enquiries about the FRANCHISOR'S patent and other rights, the steps taken for building good-will and reputation and test reports and the correspondence with consumers in relation to the purchase by the Users of the machines and the FRANCHISEE has satisfied itself about the financial stability, good-will, reputation, technical competence and adequacy of trained personnel to carry on the said business of manufacturing and selling the washing machines in an expansive market and to render satisfactory services to the consumers.

The FRANCHISOR and the FRANCHISEE have made themselves acquainted with the rules, regulations and laws relating to the manufacture of washing machines, its operation, sales and servicing and have satisfied themselves that it is satisfactory and in accordance with the provisions of law to manufacture, assemble and/or deal with the said washing machines throughout India and also for exports to foreign countries.

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

1. In consideration of the FRANCHISEE making payment as hereinafter provided the Franchisor hereby grants licence to the Franchisee to assemble and sell the FRANCHISOR'S washing machines under its Trade Mark in accordance with the provisions of this Agreement.

2. The FRANCHISOR shall arrange for training for four weeks the FRANCHISEE'S two senior staff in the factory of the FRANCHISEE in the technicalities of manufacture and operation and repairs of the washing machines, its sales and after-sales-service. The travel and accommodation expenses of the two staff shall be paid and borne by the parties equally. The FRANCHISOR agrees that the FRANCHISEE may at its own expenses arrange for any of its employees at any time to visit the FRANCHISOR'S factory, office premises and other outlets to study the methods and to make notes and schedules relating thereto provided that in any year there should be only one visit by the employees of the FRANCHISEE and the duration of their stay with the FRANCHISOR shall not exceed two weeks and all their expenses would be borne equally by the parties.

3. The FRANCHISOR shall from time to time make available to the FRANCHISEE all technical, administrative, operational, after-sales-service know-how. The FRANCHISOR shall also provide the Franchisee with the training manual, display manual, operation manual, after-sales-service manual and all updating and replacement materials and manuals prepared by the FRANCHISOR, the copyrights whereof shall remain vested in the FRANCHISOR and the FRANCHISEE shall not make use of those matters other than for the purpose of this agreement and for sales and service of the FRANCHISOR'S "EL" Brand Washing machines.

4. The FRANCHISOR shall be under no obligation to continue to supply the EL washing machines if it discontinued selling in its own outlets in Kobe (JAPAN) and it shall have the right for good cause not to supply a particular type of EL washing machine which it considers to be unsuitable for sale in India.

5. The FRANCHISOR shall be entitled to require the FRANCHISEE to stop selling any EL washing machines which the FRANCHISOR had withdrawn from the market as being defective and such stock would be bought back by the FRANCHISOR at the price at which they were sold.

6. The FRANCHISOR undertakes to make every endeavour to assist the FRANCHISEE to obtain licences for the sole and exclusive use in India the said EL washing machine TradeMarks.

7. In the event of any infringement or threat of any infringement of the EL Trade Mark by a third party in India or any claim being made against the FRANCHISEE alleging the FRANCHISOR'S use of the Trade Mark EL infringes any Trade Mark or other industrial property belonging to third parties the FRANCHISEE shall forthwith notify to the FRANCHISOR and take such steps as

the FRANCHISOR may reasonably request to prevent any such infringement or to defend and protect against any such claim in accordance with the FRANCHISOR'S reasonable instructions without prejudice to the FRANCHISOR'S right to take action or conduct any court proceedings whether in its own name or in the name of the FRANCHISEE and any costs incurred shall be shared equally by the parties herein.

8. The FRANCHISEE undertakes not to use any name or mark other than the "EL" in connection with the sale of the washing machines. The FRANCHISEE shall not use any name or mark liable to be confused with "EL". The FRANCHISEE shall use the Trade Mark "EL" only in relation to the sale of the FRANCHISOR'S washing machines and any such forms, types, designs and colours as may from time to time be authorised by the FRANCHISOR in writing.

9. During the continuance of this agreement or after termination of this agreement, the FRANCHISEE shall not use the "EL" Trade Mark as part of the FRANCHISEE'S corporate name and on termination of this agreement shall perform such acts and execute such documents as shall be required in order to ensure that the sole and exclusive right to use "EL" Trade Mark in India shall remain vested in the FRANCHISOR.

10. The FRANCHISEE shall use its outlets for the sale of "EL" washing machines along with the type of machines that it sells at present from its outlets and of no other brand or type of washing machines.

11. The FRANCHISEE shall ensure that the retail business is conducted at the stores and outlets conform with the high standards associated with the FRANCHISOR and shall comply with all reasonable arrangements and requests of the FRANCHISOR regarding operation of the said business including after-sales-service.

12. The FRANCHISEE shall use in the stores and outlets, the display signs, packaging materials, display items and other presentational items as are consistent with the FRANCHISOR'S standards and image and for this purpose the FRANCHISEE may order from the FRANCHISOR supplies of such items.

13. The FRANCHISEE shall in all its letters, stationery and other conspicuous spaces indicate in a manner approved by the FRANCHISOR that it is carrying on its business as FRANCHISEE of the FRANCHISOR of EL washing machines.

14. The FRANCHISEE shall carry on the business at each store or outlet on its own account and risk in an efficient and courteous manner giving complete satisfaction to its customers and shall not do anything to bring the name and reputation of the FRANCHISOR into disrepute.

15. The FRANCHISEE shall always promptly attend to any complaint in the functioning of the washing machine and rectify the same, replace any spare parts, if necessary, and to make it workable as quickly as possible

and perform all its contractual and legal obligations to its customers so that they need not go for legal action and shall indemnify the FRANCHISOR against all liabilities arising from any failure to do so.

16. The FRANCHISEE shall keep its stores open and appropriately staffed during normal shopping hours in the vicinity of its stores or shop outlets and make available its technical staff for receiving complaints and attending to the same and whenever required to repair the "EL" washing machines at the premises of the customers during the evening hours and on Saturdays and Sundays and Holidays by special arrangement. The Franchisor shall send its technical staff to conduct a formal pre-arranged inspection of received stores and meet some of the disgruntled workers and customers of the Franchisee and to meet their demands.

17. The FRANCHISEE shall sell "EL" washing machines at a competitive price but keeping a margin of at least 15% on the purchase price paid by the Franchisee for these washing machines.

18. The parties hereby agree that each one will assist the other in obtaining the necessary permission or compliance with the laws of Japan and India for the purpose of giving effect to the present agreement and complying with all the rules and regulations in relation to the business, the FRANCHISOR paying for and meeting all rates, taxes, fees and cesses payable in relation to this agreement in Japan and the FRANCHISEE shall pay and bear all Indian rates, taxes, cesses, levies fees and other expenses in relation to the present agreement in India.

19. This Agreement is made subject to compliance with the provisions of law in Japan and in India and wherever required by law the agreement will be suitably modified.

20. The FRANCHISOR shall deliver the EL washing machines and spare parts on receipt of the Order from the FRANCHISEE at the ruling price and supplies to be effected within six weeks plus the time required for transportation. All the expenses, costs, duties, etc. for delivery of the machines at the stores of the FRANCHISEE shall be borne by the FRANCHISOR and be added to the sale price of the machines. However, the FRANCHISOR shall not be liable for any delay in supplying the washing machines and spares ordered from the FRANCHISOR. In view of the apprehended delay in reaching supplies to the FRANCHISEE in time, sufficient supplies of spare parts for repairs to be stored by the FRANCHISEE at its every stores outlets.

21. The price payable by the FRANCHISEE for "EL" washing machines supplied by the FRANCHISOR shall be the current retail price at the FRANCHISOR'S shop plus the cost of delivery including the transport, insurance and other expenses. The FRANCHISEE shall make payment on delivery of its machines inclusive of all expenses of carriage, insurance and delivery charges.

22. All payments by the FRANCHISEE shall be in Indian Currency and the FRANCHISEE shall render all assistance in getting the same repatriated if the Reserve Bank of India and other authorities permit. The FRANCHISEE shall furnish a Bank Guarantee for the due payment of the price of the washing machines that might be delivered to the FRANCHISEE.

23. The FRANCHISOR shall not actively market or sell any "EL" washing machines in India nor permit any other FRANCHISEE or distributor to do so but such other FRANCHISEE or distributor may accept orders from the members of the public and pass on the same to the FRANCHISEE for delivery of machines ordered. The FRANCHISEE agrees to indemnify and keep the FRANCHISOR indemnified against all liabilities, claims, damages, actions or injury of every description which may occur or affect the FRANCHISOR for any failure of the FRANCHISEE to perform its obligations under this agreement or from any act or omission whatsoever on part of the FRANCHISEE and its staff.

24. The FRANCHISOR may withdraw from the market any of its "EL" brand washing machines which has been found defective and the FRANCHISEE shall ensure that if such machine has been sold to be replaced with a new one and if the defective machine has not already been delivered, the same shall be kept back by the FRANCHISEE and be kept in the custody of the FRANCHISEE to be replaced by the FRANCHISOR at no extra cost to the FRANCHISEE.

25. The parties herein may terminate the agreement by giving six months notice in writing to the other setting out the reasons for such termination and upon such termination the FRANCHISEE shall not sell "EL" brand washing machines except those already in stock. The FRANCHISOR shall continue to be liable to supply the spare parts if required for the repair and service of EL washing machines already sold by the FRANCHISOR to the FRANCHISEE and suitable pre-estimate should be made for the possible requirements of spare parts and the FRANCHISOR shall supply these spare parts in terms of the agreement even though the agreement stands terminated.

26. The termination of this agreement shall not prejudice any right or claim of either party prior to the termination or obligation of either party under this agreement.

27. Upon termination of the agreement howsoever occurring the FRANCHISEE shall not order further washing machines from the FRANCHISOR but shall be entitled to continue to sell "EL" brand washing machines which are already in stock with the FRANCHISEE and to render the after-sales-service and for this purpose if required, the FRANCHISOR shall render all possible assistance to the FRANCHISEE.

28. The obligations contained under this agreement which expressly or by implication apply after termination of this agreement shall after such termination constitute a separate agreement and be enforceable notwithstanding termination of this agreement.

29. If any part or term or provision of this agreement herein is declared by any Court of Law to be invalid or be accepted by the parties as being in conflict with the law or unenforceable, then the validity and enforceability of the remaining portion of this agreement shall not be affected. In such a case the offending part or term or provision shall be deemed not to be part of this agreement.

30. This agreement does not constitute the FRANCHISEE an agent or legal representative or partner of the FRANCHISOR for any purpose whatsoever or *vice versa* save and except when it is expressly provided confirmed or otherwise agreed in writing. Neither party is in any way authorised to make any contract or agreement, or give any warranty or make any representation on behalf of the other nor to create any obligation expressed or implicit on behalf of the other.

31. No forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this agreement shall prejudice or affect the rights and remedies hereunder nor shall any waiver of any breach thereof operate as a waiver of any subsequent breach and no waiver or variation of any of the terms or conditions of this agreement shall be valid or have any effect unless the same be made in writing and signed by an authorised officer of the party concerned.

32. The parties hereby agree that they shall not disclose to a third party excepting to the Auditors, Professional Advisors and bankers and they shall not make any unauthorised use of any information as to the methods of operation, technicality, financial affairs, present or future plan or policies of the other party information which do not come under the public domain.

33. Each party shall be responsible for obtaining all necessary work-permits and permission in respect of all representatives of the parties for visiting the other for the purposes of this agreement and all costs and expenses to be borne and shared equally by the parties.

34. Neither party shall be liable for any breach of this agreement to the extent that it is caused by Force Majeure circumstances for which it is not responsible.

35. The benefit of this agreement may not be assigned by the FRANCHISEE without prior written consent of the FRANCHISOR and on such terms and conditions as the FRANCHISOR may impose.

36. All communications, notices, orders, or other matters between the parties under this agreement may be by fax, or telex or by the usual notices sent by Speed Post or Courier service. Such notices, reports and other matters shall be given at the address mentioned hereinabove of the parties.

37. This Agreement shall be governed by the laws of India and any proceedings arising out of this Agreement shall be in the appropriate Indian Court and all orders and decrees would be expressed in Indian Currency.

IN WITNESS WHEREOF the parties herein executed THESE PRESENTS on the
day, month and year first above-written.

Signed, sealed and delivered by
Mr. Director
of AB Ltd. pursuant to Board
Resolution dated in
Calcutta in presence of:

Signature

Signed, sealed and delivered by
Mr. Director
of Sales Ltd. pursuant to Board
Resolution dated
in the presence of:

Signature

25

Gift

Introductory observations. A gift is, as defined under s. 122 of the Transfer of Property Act, a voluntary transfer of a property in consideration of natural love and affection to a living person. An endowment though stamped as a gift is not a transfer to a living person it being transfer to God a living spirit but juristic person capable of holding property. A gift requires acceptance. All transfers for inadequate consideration, a release, discharge or even a surrender are also treated as gifts. It must be free, voluntary absolute and unconditional except in cases where any property is given for any particular purpose, e.g. gift of land or building to be used for educational purpose such as for a school, college or institute or for any religious object, viz. for building a mosque or temple or establishment of any hospital. In those cases, the property reverts to the donor when the object fails with all improvements made thereon¹ the condition of revocation being some event not depending on the will and pleasure of the donor. A gift with a condition that the donee shall not alienate the property is not revocable.² So also in cases where the donee does not fulfil the condition as to maintenance of the donor.³ A gift of a property intended for the residence or maintenance of the donee is valid under ss. 28 and 31 of the Transfer of Property Act which correspond with s. 131 of the Indian Succession Act 1925, inasmuch as those gifts are of the nature of settlement and the property will revert to the donor after the death of the donee. A gift of the property to the wife on condition that, in case she dies without issue the property will vest in some other person alive at the date of the gift is valid.⁴ The above decision is now questionable in view of an important decision by the Calcutta High Court in

- 1 Section 126 of the Transfer of Property Act.
- 2 *M.T. Brijlal Devi v Shivanand* AIR 1939 All 221.
- 3 *Tila Bewa v Muna Bewa* AIR 1962 Ori 130.
- 4 *Gobindraja v Mangadam* AIR 1933 Mad 80.

Lalit Mohon Mondal v Prafulla Kumar Mondal,⁵ where the testator intended to confer an absolute estate without any restriction as regards the power of alienation of the legatee so the subsequent clauses as to succession to the property after her death were held as inoperative.

Gifts to women under the Hindu law is subject to special rules of construction—whether the gift passes an absolute estate or a limited estate depends upon the terms of the grant. It was held by the Privy Council that it depended upon the expressions used in the terms of the grant.⁶ This concept of law has now been changed. It was held by the Supreme Court⁷ where the property is acquired without any pre-existing right, e.g. under a will, gift, decree etc., or award her estate depends upon the terms of the instrument, but in cases, e.g. partition or in lieu of maintenance, etc., she acquires an absolute estate.⁸ Where, however, a limited interest is conferred on a widow by a will in lieu of maintenance and in recognition of her pre-existing right the said right transformed into an absolute right and she is competent to make a gift of that property to her daughter⁹ and the gift deed is valid. A Hindu, whether belonging to the Mitakshara or Dayabhaga School, can make a gift of his separate as also self-acquired estate subject, however, to the claims of those entitled under the Hindu Adoptions and Maintenance Act¹⁰ (*vide ss. 18 to 22*, e.g. wife, widowed daughter-in-law, minor legitimate or illegitimate children, aged parents and others). A gift is completed as soon as the donor relinquishes his rights in the property followed by delivery of possession and acceptance by the donee.¹¹ The right of a wife or widow for maintenance attaches to her status so she can pursue the property even in the hands of a stranger acquiring the same with notice of her claim.¹² Before the abolition of the zamindari system, there were several types of grants in West Bengal, e.g., brahmattar, devattur, lakhraj, mahatran Aymas. They were not gifts but grants of which the kharij or revenue was reduced to a nominal figure or exempted by special contracts; so they were liable for road cess and public work cess.

A gift is made by one party and accepted by the other. So without acceptance the gift is not valid.¹³ So the best and safest course is to make

5 86 CWN 398.

6 *Shaliq Ram v Charanjit* (1930)57 IA 282; 128 IC 265.

7 *Vaddeboyina v Vaddeboyina* AIR 1977 SC 1944.

8 Section 14(1) and (2) of the Hindu Succession Act 1956.

9 *Beni Bai v Raghuraj* AIR 1999 SC 1147.

10 Act 78 of 1956, which came into effect from 21st December 1956.

11 *Vide* judgment of Sir Ashutosh Mukherjee in *Bhupatinath v Ramlal* 10 CLJ 355 at p. 375; ILR 37 Cal 128.

12 *Radhabai v Gopal* AIR 1944 Bom 50; 45 BLR 950.

13 Section 122 of the Transfer of Property Act.

the acceptor a party to the deed of gift. A gift to two or more donees, of whom one does not accept, is void to the extent of the proposed interest of the non-acceptor.¹⁴ The acceptance must be made during the life-time of the donor and while he is still capable of giving. In case the donee dies before the acceptance the gift is void.¹⁵ Acceptance may be implied where a deed of gift executed and attested is handed over to the donee who accepts the same; it constitutes a sufficient acceptance of the gift.¹⁶ A gift may be burdened by an obligation when it is called an onerous gift. The donee gets nothing by the gift unless he accepts it fully.¹⁷ An universal donee, i.e. donee in respect of the entire estate of the donor, is liable for all debts due and liabilities of the donor as on the date of the gift to the extent of the property comprised therein;¹⁸ such a gift is also liable to be challenged as a fraudulent transfer under s. 53 of the said Act.

Dedication to Churches and God. Section 123 of the Transfer of Property Act contemplates gifts between living persons. It is an endowment rather than a gift made through the equitable machinery of trust and not a transfer within the meaning of s. 5 of the Transfer of Property Act. It may be made orally. No acceptance is necessary. The tests are (i) *intention* (sole test); (ii) *sankalpa*; and (iii) *utsarga*.¹⁹ No writing registered or unregistered is absolutely necessary.²⁰ It was also held by the Supreme Court in *Dasaratha v Subha Rao*,¹ that dedication to charity must not necessarily be by an instrument or grant.

A gift of any immovable property must be made by a registered deed irrespective of its value.² Further, the same requires attestation by two persons. The doctrine of part performance as contemplated under-s. 53A of the Transfer of Property Act has no application in the case of gift. That section does not apply to the Mahomedans as such gifts can be made orally.³ A gift of movable property may be made either by a registered document or by delivery of possession. A fixed deposit in a bank is an actionable claim and so requires a writing for the purpose of gift and not simply delivery of possession.⁴ The essential features of all gifts are: (i) it must be free and

14 Section 125 of the Transfer of Property Act.

15 Section 122 of the Transfer of Property Act.

16 *Kalyana Sundaram v Karuppa* AIR 1927 PC 42.

17 Section 127 of the Transfer of Property Act.

18 Section 128 of the Transfer of Property Act.

19 Hon'ble Mr. Justice B.K. Mukherjea: *Hindu Law of Religious and Charitable Trust*, 4th Ed., p. 106.

20 *Ramtunga Chetty v Shiva Chidam* ILR 42 Mad 440.

1 AIR 1951 SC 1122.

2 Section 123 of the Transfer of Property Act.

3 Section 129 of the Transfer of Property Act 1882.

4 *Maiyandas v Sri Mohan* AIR 1945 All 409.

voluntary; (ii) absolute and unconditional except where made for a specific purpose; and (iii) irrevocable except where the condition not dependent upon the will and pleasure of the donor is broken in cases of a gift for any specific purpose or in cases where there is a specific contract to the effect.⁵ A gift or assignment of an Insurance Policy subject to the condition that in the event of the assignee predeceasing the assignor before the maturity of the policy the assignor shall be entitled to the proceeds of the policy is valid under this section.

Where there is no proof of attestation by two witnesses in respect of a deed of gift such deed is invalid. Again the document would be vitiated by undue influence if person having no right of over the suit property getting right of residence therein and facts showed that the person concerned had obtained undue advantage the document would be vitiated by undue influence.⁶

A gift in contemplation of death is called *donatio mortis causa*—such a gift stands revoked on recovery of the donor.⁷ Only movable properties, such as G.P. Notes, Cash Certificates, Insurance Policy, Savings Bank Pass Book, Bank Notes, etc., may form the subject of such a gift. A cheque payable to the donor or order and given by the donor is a valid *donatio mortis causa*.⁸ There must be actual delivery of the thing to the donee.

Section 122 of the Transfer of Property Act corresponds to s. 191 of the Indian Succession Act.

Suspension or revocation of gift. The donor and the donee may agree that on the happening of any specified event, which does not depend on the will of the donor, a gift shall be suspended or revoked. A gift which is made revocable wholly or in part at the will of the donor is void wholly or in part as the case may be. A gift may be revoked on the grounds on which a contract may be rescinded except for want or failure of consideration.⁹

Gifts under Hindu and Mahomedan laws. The rule of Mahomedan law about gifts is not affected by the Transfer of Property Act.¹⁰ No writing is necessary in respect of any gift of either movable or immovable property, (i) declaration, (ii) acceptance and (iii) delivery of possession are the three essential conditions of gift, registration of a deed does not cure the defect of want of delivery of possession. Section 129 of the Transfer of Property Act is

5 Section 126 of the Transfer of Property Act.

6 *Marci Celine D'Souza v Renie Fernandez* AIR 1998 Ker 280.

7 Section 191 of the Indian Succession Act 1925.

8 Williams on *Executors*, 12th Ed., p. 484.

9 Section 126 of the Transfer of Property Act.

10 Section 129 of the Transfer of Property Act.

not hit by Art. 14 of the Constitution of India.¹¹ This point was discussed by Sri Rameshwar B. Pandit, Advocate in his article under constitutional validity of oral gift under the Mahomedan law.¹² He even discussed the combined effect of Arts. 13, 14 and 15 of the Constitution of India and came to the conclusion that in view of the express provisions of s. 129 of the Transfer of Property Act, those principles cannot be ignored. It will not be out of place to say a few words about *hiba* in respect of an undivided share in a property. It was observed by R.K. Wilson in his *Digest of Anglo-Mahomedan Law* (page 329, s. 208) that the gift of an undivided share in a property capable of division is invalid except when made among the co-sharers, or for religious purposes. But Mulla's *Principles of Mahomedan Law*¹³ says that such a gift may at the utmost be irregular but not void and so may be perfected by subsequent act.¹⁴ It is, however, doubtful when any particular statute, viz. s. 12 of the Bihar Tenancy Act 1885 and s. 5(1) of the West Bengal Land Reforms Act (West Bengal Act X of 1956) requires the transfer of the holding to be done in writing whether any oral transfer shall be valid in law or not. The Hindu law, where delivery of possession was enough to complete a gift, is abrogated by s. 123 of the Transfer of Property Act, but the restrictions on powers to make gifts under the personal law still remain. A gift is different from a surrender by a Hindu widow having a limited interest in the property where she does not in fact or in law purport to transfer any interest in the property surrendered. The widow simply withdraws herself from the estate and the reversioner steps into the inheritance as a matter of law.¹⁵ But in a case of transfer of the whole estate, the reversioner takes the same subject to the liability for her maintenance.¹⁶ So in the case of relinquishment, the reversioner remains responsible for her debts.¹⁷

FORMS

Deed of Gift of Property in Consideration of Natural Love

THIS DEED OF GIFT made this day of 1999 BETWEEN AB of, etc. (hereinafter called the DONOR), of the one part, and CD of etc. (hereinafter

11 *Bebi Maniran v Mohd. Ishaque* AIR 1963 AP 229.

12 AIR 1981 Journal, pp. 161-163.

13 19th Ed., p. 121.

14 *Hayatuddin v Abdul Gani* AIR 1976 Bom 23; *Sk. Aftab v Smt. Yayabba* AIR 1973 All 54.

15 *Karunamoyee v Maya Moyi* AIR 1948 Cal 84.

16 *Narbadabai v Mahadeo* (1880)5 Bom 99.

17 *Sudhamoyee v Bhujendra Nath* (1937) AC 226.

called the DONEE), of the other part, WITNESSES, that in consideration of the natural love and affection which the DONOR had and still has for the donee, the latter being his daughter, the DONOR doeth hereby grant, convey, transfer, give and assure unto and to the use of the DONEE, freely and voluntarily, the property mentioned and described in the schedule hereto and hereinafter referred to as the said property and delivered possession of the same unto and in favour of the DONEE TO HAVE AND TO HOLD the same for her sole use and benefit absolutely and unconditionally forever. *Usual covenants as in a sale-deed* AND THAT the DONEE accepts the gift of the said property hereunder made as testified by her being a party hereto and executing these presents. The estimated value of the property is Rs.

The Schedule above referred to

IN WITNESS WHEREOF the DONOR has executed these presents and the DONEE has accepted the gift on the day, month and year first above-written.

Signed, sealed and delivered by AB
the DONOR in the presence of:

Signed, sealed and delivered by CD
the DONEE accepting the said gift.

Deed of Gift of Property for Particular Purpose

THIS DEED OF GIFT is made this the day of 2000 BETWEEN AB of, etc. (hereinafter called the DONOR), of the one part, and CD of, etc. (hereinafter called the DONEE), of the other part.

WHEREAS the DONEE intends to start a school in his village for the education of girls AND whereas the DONOR is desirous of donating the land fully mentioned and described in the schedule hereto to be used as a site for the said school.

Now This Deed witnesseth that in pursuance of the said pious wish and desire and as a patron of the proposed school to be started by the DONEE, the DONOR doeth hereby and hereunder freely and voluntarily grant, convey, transfer, give, assign and assure unto and to the use of the DONEE and his successor ALL THAT, etc., etc., to be used solely and exclusively for the purpose of a site for construction and accommodation of the proposed girls' school TO HAVE AND TO HOLD the same so long as the same shall be used and occupied as a site and/or building of the school AND THAT the DONEE accepts the gift of the said property hereunder made solely and exclusively for the purpose hereinbefore indicated subject to the condition hereunder provided.

This deed further witnesseth that it is expressly agreed and understood by and between the parties that this gift of land will stand *ipso facto* revoked

in the event the land hereunder given is not used for the purpose of the intended school for which the same is given within a period of one year from the date of these presents or in the alternative the said school is abolished or shifted elsewhere or amalgamated with some other institution when and in all or any such event or events the land with all buildings and structures, if any erected thereon, shall revert to and revest in the DONOR or his heirs, executors, administrators and representatives and shall form part of his former estate as if this deed of gift was never executed nor intended. And it is further agreed by and between the parties that in case the land is acquired by the Government, the DONEE or his successors, including any person or persons managing the school, shall invest the compensation money to be awarded in purchase of another land or building to be used solely and exclusively for the school unless otherwise directed by any court of competent jurisdiction. The estimated value of the property is Rs.

The Schedule

IN WITNESS WHEREOF the DONOR has executed this Deed of Gift and delivered the same to the DONEE who has also executed the same in token of acceptance thereof the day, month and year first above-written.

Signed, sealed and delivered by AB
the DONOR in the presence of:

Signed, sealed and delivered by CD
the DONEE in token of acceptance
of the Gift.

Deed of Gift of Land in Trust to Charity

THIS DEED OF GIFT is made this day of 2000 BETWEEN AB son of residing at (hereinafter called the DONOR) of the one part and CD son of residing at and EF son of residing at (hereinafter called the TRUSTEES) of the other part.

WHEREAS it is proposed to erect a *serai* for the use of travellers, and a committee has been constituted to raise subscriptions for construction of the building and creation of the endowment AND WHEREAS the trustees are members of such committee: have approached the DONEE for help AND WHEREAS the DONOR has agreed to contribute the piece of land hereinafter described in the schedule below as a site for such *serai*: NOW THIS DEED WITNESSES that in pursuance of such pious wish and desire and as a patron for the proposed *serai*, the said AB does hereby freely, voluntarily and absolutely and subject to the condition hereunder imposed grant, convey, transfer and give unto and to the use of the said CD and EF and their

successors in office as trustees as aforesaid ALL THAT, etc., (*describe the property*) and valued at Rs. TO HAVE AND TO HOLD the same as trustees upon trust hereinafter mentioned. And it is hereby AGREED AND DECLARED by and between the parties hereto that the trustees and their successors in office shall from time to time and at all times hereafter stand possessed of the land hereby conveyed and the building or buildings to be erected thereon IN TRUST to be used solely and exclusively as a *serai* for food and shelter of the travellers all through the year free of any charge or other contribution. AND it is hereby further agreed and declared that in case the object of the gift fails; or in the event *serai* is closed or shifted anywhere or used for any purpose contrary to law or against religion or if the object of the gift is frustrated otherwise for any reason whatsoever—this gift will stand *ipso facto* revoked and the property shall in that event revert to and revest in the DONOR or his descendants as may remain alive with all improvements thereon free from any claim on that account as if the gift was never made nor intended unless otherwise directed in an appropriate action by a court of competent jurisdiction.

The Schedule above referred to

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

Signed, sealed and delivered by AB
the DONOR

Signed and sealed by CD and EF
as Trustees in token of acceptance
of gifts and the Office of TRUSTEES

Memorandum of Gift of Movables

BE IT KNOWN TO ALL CONCERNED that the undersigned son of by caste by occupation residing at (the DONOR) do hereby declare and confirm that the donor on the day of 20..... in consideration of the natural love and affection which the DONOR had and bears for son of residing at by caste by occupation (the DONEE) intended for and actually gave by words of mouth and also expressed himself to give unto and to the use of the DONEE freely and voluntarily, absolutely and forever the several properties mentioned in the Schedule below with all beneficial interest therein and delivered possession thereof simultaneously with a view to divest himself of all ownership therein and pass title thereof unto and in favour of and/or otherwise vest them in the DONEE to all intents and purposes AND THAT the

DONEE doth hereby declare that the DONEE did at the same time accept the gift as aforesaid and took into possession and control of the same.

The Schedule above referred to

Serial No.	Description	Valuation	Remarks, if any

IN WITNESS WHEREOF the parties to these presents have hereunto set and subscribed their respective hands and seals this day of 2000

Signed, sealed and delivered by the within-named DONOR at in the presence of:

Executed by the DONEE at in the presence of:

Gift of Business Goodwill

THIS DEED OF GIFT OF BUSINESS GOODWILL is made this day of 1999 BETWEEN AB son of residing at (hereinafter called the DONOR) of the one part and CD and EF sons of residing at (hereinafter called the DONEES) of the other part.

WHEREAS:

1. The DONOR has for many years past carried on the trade or business of at (hereinafter called the DONOR'S business) and in connection therewith is the registered proprietor of the trade marks relevant particulars of which are set out in the first schedule hereto.

2. The DONOR is the inventor and patentee of the invention described in the second schedule hereto (hereinafter called the invention) the patent in respect of which was granted and trade mark registered under number of

3. By articles of partnership bearing even date with and executed immediately before this deed and made between the donees respectively the DONEES agreed to carry on in co-partnership the trade or business of (hereinafter referred to as the PARTNERSHIP BUSINESS) subject to the stipulations therein contained for a term of years from the date thereof.

4. With a view to setting up the DONEES in the partnership business the DONOR is desirous of assigning the goodwill of his business and the said trade marks to the DONEES and granting to them the licence hereinafter contained.

NOW THIS DEED WITNESSETH as follows:

1. In consideration of his natural love and affection for the DONEES the DONOR hereby assigns unto the DONEES all that the goodwill of the DONOR in his business and also all those the trade marks specified in the first schedule hereto and all the rights and privileges incidental thereto to hold the same unto the DONEES absolutely as joint tenants as the property of the partnership business subject to the provisions and stipulations contained in the said articles of partnership.

2. For the consideration aforesaid the DONOR hereby grants unto the DONEES and the survivor of them personally rights so that this licence shall not be assignable but to have the sole and exclusive licence to make use, exercise and send the invention in all parts of India during the residue of the term of the said letters patent and any renewal or extension of such term if the DONEES or such survivor shall so long continue to carry on the partnership business subject to the DONEES or the survivor of them at their or his own cost keeping up the said letters patent and with power to the DONEES or the survivor of them to take in the name of the DONOR all necessary legal proceedings for effectively protecting or defending the same against infringement.

The First Schedule

The Second Schedule

IN WITNESS WHEREOF the DONOR, AB, has executed this deed of Gift which has been accepted on behalf of DONEES, CD and EF on the day, month and year first above-written.

Signed, sealed and delivered by AB
the DONOR in the presence of:

Signed and sealed by CD and EF
the DONEES as token of acceptance
of the gift

Guarantees and Indemnities

Introductory observations. A bond is defined under s. 2(5) of the Indian Stamp Act 1899, and also under s. 2(d) of the Limitation Act of 1963 (Act 36 of 1963). One is to look into the real intention of the parties to ascertain whether the writing in question is a bond or not.¹

It is a deed poll whereby one or more persons bind himself or themselves under a seal to another to pay him certain sum of money from which he is to be relieved only on the happening of certain event or fulfilment of some specific condition. The distinction between a bond and a covenant is that in a bond the obligor *prima facie* binds himself to the obligee for payment of a certain sum of money or to compensate him against certain loss, injury or damages. The real object is that the obligation shall be void if the act or acts or performance or prevention is done or left undone as provided therein. A covenant is a stipulation in a deed *inter-parties* which expresses the real obligation intended to be created whether it be for payment of money or doing or not doing some act and further in the event of breach it stipulates payment of a sum as penalty or liquidated damages.

A special type of agreement with a penal clause is distinguished from a bond. Penalty is the primary part in a bond, the performance of the condition which grants relief against penalty is subsidiary. It is just the reverse in the case of agreement with a penal clause. Here the agreement is the primary part to which the penalty on default is subsidiary of a contingency which may never arise. The distinction is well explained in the leading case of *Gisborne & Co. v Subal Bowri*.²

Guarantees. (a) "Contract of guarantee", "surety", "principal debtor", "creditor", "continuing guarantee". A contract of guarantee is a contract to

¹ *Radhaswamy v Raj Narain* AIR 1943 All 218.

² (1881)8 Cal 284; 10 CLJ 219.

perform the promise, or discharge the liability, of a third person in case of his default.³

The person who gives the guarantee is called the *surety*; the person in respect of whose default the guarantee is given is called the *principal debtor*; and the person to whom the guarantee is given is called the *creditor*.

A guarantee which extends to a series of transactions is called a *continuing guarantee*.⁴

A contract of guarantee is a special promise to answer for a debt, default or miscarriage of another person.

(b) *Revocation of continuing guarantee.* A continuing guarantee can at any time be revoked by the surety as to future transactions by notice to the creditor.⁵ The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee so far as regards future transactions.⁶

It stands also revoked by material variations of the terms of the contract,⁷ also by changes in the constitution of the firm⁸ and also by showing accommodation to the debtor.⁹

The discharge of the surety in all the cases referred to above is operative only with regard to future transactions. This is the principle laid down in *Lloyds v Harpar*.¹⁰ It was held that the guarantor may terminate guarantee but remains answerable for past liabilities.

(c) *Rights, liabilities and discharge of surety.* Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all rights which the creditor had against the principal debtor.¹¹ Section 145 of the Indian Contract Act protects the surety against the original debtor.¹²

3 Section 126 of the Indian Contract Act 1872.

4 Section 129 of the Indian Contract Act 1872.

5 Section 130 of the Indian Contract Act 1872.

6 Section 131 of the Indian Contract Act 1872.

7 Section 133 of the Indian Contract Act 1872.

8 Section 38 of the Indian Partnership Act 1932.

9 Section 135 of the Indian Contract Act 1872.

10 (1880)16 Ch D 290.

11 Section 140 of the Indian Contract Act 1872.

12 The surety by performance of the contract steps into the shoes of the creditor and so he is clothed with all the rights which the creditor had against the debtor. He is entitled to indemnity or contribution—a common law action of quasi-contractual nature. Anson's *English Law of Contract*, 22nd Ed., p. 571.

The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.¹³

Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor discharges the surety as to transactions subsequent to the variance. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released¹⁴ or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.¹⁵

Provided that—

Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.¹⁶

A mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provisions in the guarantee to the contrary, discharge the surety.¹⁷

Where there are co-sureties, a release by the creditor of one of them does not discharge the other; neither does it free the surety so released from his responsibility to the other sureties.¹⁸

(d) *Invalid guarantee.* Any guarantee which has been obtained by fraud or means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction, is invalid; and any guarantee which the creditor has obtained by means of keeping silent as to material circumstances is also invalid.¹⁹

(e) *Implied promise to indemnify surety.* In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

(f) *Liability of co-sureties for contribution.* When two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether

13 Section 128 of the Indian Contract Act 1872.

14 Section 134 of the Indian Contract Act 1872.

15 Section 135 of the Indian Contract Act 1872.

16 Section 136 of the Indian Contract Act 1872.

17 Section 137 of the Indian Contract Act 1872.

18 Section 138 of the Indian Contract Act 1872.

19 Section 142 of the Indian Contract Act 1872.

under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Bank guarantee. A bank guarantee is an autonomous contract and imposes an absolute obligation on the bank to fulfil the terms and the payment in the bank guarantee becomes due on the happening of a contingency on the occurrence of which the guarantee becomes enforceable.²⁰

Encashment of a bank guarantee can be restrained by an injunction (a) where the petitioner puts forward a case which shows that the bank guarantee was procured after practising fraud on the bank; (b) where the petitioner makes out a case and shows that in case an injunction is not granted then he is likely to suffer an irretrievable injustice; and (c) where the petitioner shows a case of special equity in his favour.¹ The right to recover the amount under the running bills has no relevance to the liability of the bank under the guarantee.² Where there is default in delivery of certain quantity out of the entire bulk the bank guarantee can be enforced only to the extent of the value of the undelivered portion and not for the entire sum.³ In a contract for construction work the contractor executed bank guarantee against mobilisation advance and the contractor received advance. In the absence of any fraud or irretrievable injustice the bank guarantee was invocable though the work had been stopped.⁴

Where the bank has unconditionally and irrevocably agreed and undertaken to pay the party concerned on demand the sums specified therein and that the amount should be paid without demur and without requiring the creditor to invoke legal remedy and it is further provided that the said party will be the sole judge as to and whether the other party to the contract has committed any breach and the extent of the loss and damages and that his decision as to the outstanding amount will be final and binding the court cannot restrain the beneficiary from enforcing the guarantee.⁵ Disputes relating to the liability to indemnify the owner in respect of the contribution can be adjudicated in a properly framed suit. If the contractor is ultimately found not to be liable for contribution then it could be recovered from the owner. Even if the contractor suffers any injury it could be compensated in appropriate proceeding and as such that cannot be any reason to restrain invocation of bank guarantee by injunction.⁶

20 *Syndicate Bank v Vijay Kumar* AIR 1992 SC 1066.

1 *GET v Punj Seris* AIR 1991 SC 1994.

2 *GET*, *ibid*; see also *National Textile v T.N. Co-op.* AIR 1998 SC 2658.

3 *G.M. v Dy. Registrar* AIR 1998 Kant 354.

4 *State of Bihar v Hindustan Construction* AIR 1998 Bom 331.

5 *H.S. Workers v G.S. Atwal* AIR 1996 SC 131.

6 *Geo Tech. Construction v Hindustan Steel* AIR 1999 Ker 72.

Indemnities. The statutory law on the subject is contained in ss. 124, 125 of the Indian Contract Act 1872. Although it is a well-settled principle of law that an obligor (person liable to indemnify) is entitled to avail himself of all legal ways and means by which the person indemnified might have protected or reimbursed himself against the loss, there is no statutory recognition of the right. The Law of Indemnity is thus based on natural equity. A contract of insurance is a contract of indemnity.

Sections 222, 223 and 224 of the Indian Contract Act deal with the liability of the principal to indemnify the agent.

(a) "*Contract of indemnity*": A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person is called a *contract of indemnity*. A conveyance for sale of any immovable property contains amongst others a covenant as to indemnity by the vendor.⁷ So when the vendor cannot produce title deeds he executes an indemnity bond in favour of the purchaser.

(b) *Rights of indemnity-holder*. The promisee, in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor:

- (i) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnity applies;
- (ii) all costs which he may be compelled to pay in any suit if, in bringing or defending it, he did not contravene the orders of a promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit; and
- (iii) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity or if the promisor authorised him to compromise the suit.

Agreement in restraint of legal proceedings or shortening limitation period void. In *National Insurance Company Limited v A.G. Nair & Co.*⁸ the Supreme Court upheld a term in Insurance Policy whereby it limited the time within which the assured could enforce his right as also the term that on expiry of a particular period the Insurance Company shall cease to have any liability on the Policy. In some guarantees such clauses are incorporated.

Indian Contract (Amendment) Act 1996 with effect from 8th January 1997 has amended s. 28 of the Indian Contract Act 1872 whereby any

⁷ Section 55 of the Transfer of Property Act (Act IV of 1882).

⁸ AIR 1997 SC 2049.

restraint in enforcing a person's right under a contract by usual legal proceedings in the Ordinary Tribunal or limiting the time for enforcement of his rights has been made illegal. Similarly, a clause in a contract which extinguishes the rights of any party or discharges any party from any liability on the expiry of a specified period shorter than limitation period is void. Section 28 as amended reads as follows:

28. *Agreement in restraint of legal proceedings void.* Every agreement—

- (a) by which any party is restricted absolutely from enforcing his rights under or in respect of any Contract, by the usual legal proceedings in the Ordinary Tribunal, or which limits the time within which he may thus enforce his rights; or
- (b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any Contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.

Explanation 1. This section shall not render illegal a Contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Explanation 2. Nor shall this section render illegal any Contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen or affect any provision of any law in force for the time being as to reference to arbitration.

If two Civil Courts at different places have jurisdictions over a dispute the parties may agree that the dispute between them shall be tried in one of such Courts. Such an agreement is valid.⁹

FORMS

Guarantee for Payment of Debt

To
CD of, etc. (CREDITOR)

In consideration of your having this day lent and advanced the sum of Rs. to EF, of (PRINCIPAL DEBTOR), at my request, I, the undersigned, do

⁹ See *Hakam Singh v Gammon (India) Ltd.* AIR 1971 SC 740; *Patel Roadways Limited v Tropical Agro Systems P. Ltd.* AIR 1992 SC 1514 (1519).

hereby agree to be and shall, at all times hereafter until repayment of loans remain responsible to you for and guarantee payment of the said sum of Rs. in case of his default together with interest thereon at the rate of per cent per annum, such interest to be calculated with effect from the date of service of the registered notice of demand on me. This guarantee shall not be affected by your granting any time or any other concession or indulgence to the said EF or by his death or insolvency. This guarantee is given without prejudice to all my rights of reimbursement as against the said EF or his estate as surety for him for all sums to be paid to you and costs, charges and expenses incurred in connection therewith.

(Date)

AB

Guarantee to Pay for Goods Supplied

To

CD and Co. of, etc. (CREDITORS)

In consideration of your having had recently agreed at my request and on my assurance to keep and maintain regular supply to EF, of, etc. (PRINCIPAL DEBTOR), with articles of trade such as, etc., up to the value of Rs. on credit, I, the undersigned AB of, etc. (SURETY) do hereby promise and agree to remain liable for and guarantee payment of the sum as may be due and payable as the balance of amount to you by the said EF on demand. This guarantee shall not be construed as a continuing guarantee and shall not extend as against me to supply of any goods in excess of the value aforesaid. It shall not be at all necessary for you to institute any suit or other proceedings against the said EF before demanding of me such payment. This guarantee shall not stand determined by any change in the constitution of your firm, or by any concession or other indulgence being given, shown or granted by you to the said EF at any time.

(Date)

AB

Continuing Guarantee to Pay for Goods Supplied

THIS AGREEMENT is made this day of BETWEEN AB of, etc. (SURETY), of the one part, and CD of, etc. (CREDITOR), of the other part.

WHEREAS the said CD has, at the request and assurance of the said AB, agreed to supply EF of, etc. (PRINCIPAL DEBTOR), from time to time in the course of his trade, with articles of trade such as..... on credit: NOW IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES as follows:

1. The said AB shall at all times hereafter so long as this guarantee shall continue remain responsible for payment and will pay or cause to be

paid to the said CD all such sum or sums of money as shall become due and payable to the said CD from the said EF for articles supplied or to be so supplied as aforesaid and not paid for by the said EF or otherwise adjusted not exceeding however Rs. at any time without confirmation from the said AB first had and obtained the same being the limit prescribed and subject thereto, this guarantee shall be a guarantee for the whole of such sum or sums.

2. The guarantee hereby given shall be a continuing guarantee and so cover all trade deals between CD and EF subject to the limit hereunder prescribed, but nevertheless the said CD shall, in case of any delay or default on the part of the said EF in making payment, give at least a fortnight's notice in writing to the said AB before taking any steps for enforcement of the guarantee hereunder given by the said AB.

3. PROVIDED ALWAYS THAT in the event of any adjudication order, whether voluntary or compulsory, being made against the said EF or his entering or attempting to enter into a scheme of composition with other creditors or any attachment effected or charging order made or Receiver being appointed over his business, even then the guarantee hereunder given shall not stand revoked, but the said CD shall nevertheless first proceed against the said EF or his estate to recover as much as possible before requiring any payment on that account to be made by the said AB under and by virtue of the guarantee hereunder given.

4. The said CD will, at any time during the continuance of this guarantee, give to the said AB, if and when requested in writing so to do, full and accurate information as to the amount of the indebtedness for the time being of the said EF to the said CD.

5. Any extension of time granted, concession or indulgence shown on the part of the said CD towards EF shall not prejudice the rights and obligations of the parties under these presents.

6. This guarantee may be determined at any time by the said AB by payment to the said CD of the amount for the time being owing by the said EF up to the limit specified in cl. 1 hereof, or as to subsequent transactions only, by calendar months' notice in writing given by the said AB to the said CD.

7. Notwithstanding anything hereinbefore stated, this guarantee shall stand determined on the death of the said AB absolutely.

IN WITNESS, etc.

AB

Signed, sealed and delivered

CD

Bank Guarantee

Reference No. of
 Suit No. of 2000

In the Court of

..... Plaintiff

versus

..... Defendant

Bank Guarantee of

KNOW ALL MEN BY THESE PRESENTS that I/we son of
 by occupation residing at No. Calcutta (hereinafter
 called the DEFENDANT and Bank of a body corporated and constituted
 incorporated under the Banking Companies (Acquisition and Transfer of
 Undertakings) Act of 1970 and carrying on banking business amongst other
 places at and having its registered office outside the
 jurisdiction of this court (hereinafter called the BANK) are jointly and severally
 held and firmly bounded unto Sri the District Judge/Registrar of
 the Court at his successor or successors-in-office and assigns
 in the sum of Rs. (Rupees) only of good and lawful
 money of the Union of India to be paid to the said Sri (hereinafter
 called the District Judge/Registrar) his successor or successors-in-office and
 assigns as the case may be for which payment well and truly to be made
 I/we the and we the Bank for ourselves and our respective successors
 and assigns do hereby jointly and severally bind and oblige ourselves and
 each and every one of us and them for the whole of the said amount unto
 the District Judge/Registrar, his successor or successors-in-office and assigns
 firmly by these presents. We the bank do hereby covenant with the District
 Judge/Registrar his successor or successors-in-office and assigns that under
 the Memorandum and Articles of Association we are authorised to stand as
 guarantor and to execute the necessary bond therefor, and I/we the
 and the BANK and our respective successors and assigns do hereby further
 covenant with the District Judge/Registrar, his successor or successors-in-
 office and assigns that we shall from time to time and at all times hereafter
 during the continuance of this security at our or their own costs and expenses
 execute in favour of the District Judge/Registrar his successor or successors-
 in-office and assigns such further and other assurance as may be required
 for the purpose of more fully and effectually securing the due payment of
 the said sum of Rs. (Rupees) only secured by this bond
 in accordance with the true intent and meaning thereof And I/we the
 and we the BANK do hereby submit ourselves to the jurisdiction of this court

and appoint premises No..... and C/o. Advocate as our respective addresses for service on us of all writs, proceedings and notices that may be issued, taken or given to us with reference to the condition of this bond or in respect of our liabilities hereunder.

Dated this day of 20[^].....

WHEREAS by an order dated 20 and made by the said High Court/District Judge in the above suit, it was *inter alia* directed that upon the DEFENDANTS furnishing security to the satisfaction of the District Judge/Registrar to the extent of Rs. (Rupees) only on or before the day of 20 the DEFENDANTS would be at liberty to withdraw the sum of Rs. lying in deposit in court And That the DEFENDANT would furnish such security by way of bank guarantee in favour of the District Judge/Registrar.

AND WHEREAS at a reference held before the District Judge/Registrar of the said court the DEFENDANTS proposed the Bank of Baroda as their guarantor for the said sum of Rs. (Rupees) only.

AND WHEREAS the bank expressed its willingness to stand as guarantor for the DEFENDANTS for the said sum of Rs. (Rupees.....) only.

AND WHEREAS the District Judge/Registrar has accepted the said BANK as the guarantor for the DEFENDANTS subject to the said bank along with the DEFENDANTS executing a bond in favour of the District Judge/Registrar of this court for the sum of Rs. (Rupees) only initially for a period of one year upon the undertaking of the said DEFENDANTS to have the bank guarantee renewed from year to year at least 14 days before the date of its expiry until final disposal of the said suit or until further order of this court.

NOW THE CONDITIONS of the above written Bond of Obligation are such that this bond shall remain in full force and virtue until final disposal of the above suit or until further order of this court PROVIDED FURTHER that in so far as the BANK is concerned its liability under this bond is restricted to the sum of Rs. (Rupees) only and the guarantee under this bond shall remain in full force and virtue for a period of one year from the date of this bond, i.e., till the day of 19 PROVIDED FURTHER that if the said..... fails and/or neglects to renew this bond 14 days before the date of its expiry or within such time before the date of expiry of any subsequent renewal thereof, then and in such an event the BANK shall forthwith and of its own accord deposit with the District Judge/Registrar the said sum of Rs. (Rupees) only being the amount secured under this bond together with a further sum of Rs. (Rupees) only being the amount of commission payable on the said sum of Rs. (Rupees) only to the Registrar under the rules of this court the total being Rs.

IN WITNESS WHEREOF I/We the said..... and we the said BANK
have signed the day, month and year above-written.

Signed, sealed and delivered
by Bank at
in the presence of:

Dated this..... day of 19.....

Renewal of Bank Guarantee

To
The Registrar High Court
District Judge

Dear Sir

Cause, title of the matter

Subject: Bank Guarantee dated 1999
for Rs. (Rupees.....) only

With reference to the above Bank Guarantee we hereby agree that our
guarantee for Rs. (Rupees) will further remain in force until
..... day of 2000 with effect from the..... day of 1999
unless a demand or claim is lodged on us in writing on or before..... day
of..... 2000 when we shall stand discharged from all liabilities under the
guarantee thereafter.

Save as aforesaid all other terms and conditions of the aforesaid
guarantee remain unchanged and in force and effect.

This endorsement shall be attached to the original of the aforesaid
guarantee and shall form an integral part of the guarantee dated
day of 1999

Notwithstanding what has been stated above our liability under the
guarantee is restricted to Rs..... only and we shall stand discharged from
the same earlier in the event as aforesaid.

Thanking you,

Yours faithfully
Signature of the Bank

**Deed of Guarantee by a Bank on behalf
of a Company for the Performance of a Contract**

THIS DEED OF GUARANTEE MADE THIS day of 1999 BETWEEN the
Bank of (hereinafter called the BANK) of the one part and the

Governor of (hereinafter called the PURCHASER) of the other part;

WHEREAS a company registered under the Companies Act 1956 (hereinafter called the CONTRACTOR) have by a Deed of Agreement made on the agreed with the purchaser to supply those plants, machinery and equipment in accordance with the terms, specifications and conditions therein contained;

AND WHEREAS in accordance with the terms and conditions of the aforesaid agreement the purchaser has to make to the contractor an advance payment of Rs. (Rupees..... only) being equivalent to% of the total F.O.B. Value of the contract price, and such payment is to be secured by a Bank guarantee;

AND WHEREAS the BANK has at the request of the CONTRACTOR agreed to guarantee the refund of the said advance in case the plants, machinery and equipment of the value..... aforesaid are not delivered to the State Government in accordance with the terms and conditions of the said agreement, and the Governor has agreed to make the said advance on such security:

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the PURCHASER having agreed to advance a sum of..... to the CONTRACTOR, through the BANK, the BANK doth hereby guarantee that if the contractor shall fail to supply to the PURCHASER the plants machinery and equipment of the value of in accordance with the specifications and conditions contained in the Deed of Agreement dated the and/or any amendments or modifications in the aforesaid agreement made between the PURCHASER and the CONTRACTOR, the BANK shall repay to the Governor such amount or amounts as the bank may be called upon to pay subject to the maximum aggregate of

PROVIDED FIRST that the liability of the BANK under this deed shall not at any time exceed the said advance of

AND PROVIDED SECONDLY that the guarantee hereunder furnished shall be released and stand discharged as soon as the CONTRACTOR has supplied to the PURCHASER the plants machinery and equipment of the value of..... in accordance with the aforesaid Deed of Agreement.

2. This guarantee of the bank will come into force immediately upon payment of the sum of..... being received by the BANK for and on behalf of the CONTRACTOR from the State Government and shall continue in force till the supply of plants, machinery and equipment of the value of..... aforesaid is effected as testified by documents and invoices.

3. The guarantee hereinbefore contained shall not be affected by any change in the constitution of the BANK or of the CONTRACTOR.

4. Any account settled between the State Government and the contractor shall be the conclusive evidence against the BANK of the amount due and shall not be questioned by the BANK.

5. The neglect or forbearance of the Governor in enforcement of payment of any moneys the payment whereof is intended to be hereby secured or the giving of time by the State Government for the repayment thereof shall in no way relieve the BANK of their liability under this deed.

6. The expressions the BANK and the PURCHASER hereinbefore used shall include their respective successors and assigns.

IN WITNESS WHEREOF etc. FOR AND ON BEHALF OF THE BANK AND SECRETARY, DEPARTMENT for and on behalf of the Governor have signed this deed on the day and year first above written.

For and on behalf of the BANK

For and on behalf of the Governor

WITNESS: 1

WITNESS: 2

Counter Guarantee in favour of a Bank

..... BANK

IN CONSIDERATION of Bank having at our request stood as surety for and guaranteed payment of a sum of Rs. to the Registrar of Court in terms of guarantee dated this day of 1999 executed by the bank in his favour in Suit No. of (Cause title) in the circumstances mentioned in the said bond we GB and AB of do hereby covenant and agree by way of counter guarantee that we shall always remain jointly and severally liable to pay and reimburse the Bank or its successor in business to the extent of Rs. and or any other sum or sums as may be due and owing to the bank or its successor in business on that account inclusive of interest and costs, charges and expenses incurred and to indemnify and keep the bank indemnified against all such payments and all costs, charges and expenses which the bank shall incur or otherwise suffer by reason thereof.

We further declare that this guarantee unless we are otherwise relieved from its performance or non-performance by Statute or adjudication of any court of competent jurisdiction shall be a continuing guarantee and shall not be deemed to have been satisfied until payment or realisation of the amount as hereunder contemplated; Further we declare that the character of this guarantee shall not be affected by death or insolvency of any one or

more of us and furthermore that we shall execute and register all further or other deeds and writings as may be required for securing or enforcing the counter guarantee and have all questions or disputes as to the extent of our liability to the bank adjudicated by reference to two arbitrators one to be appointed by the bank and we shall not be discharged by any compromise between the parties in the said suit unless the bank is discharged from its liability by adjudication of the said court.

IN WITNESS WHEREOF etc.

Dated this day of

GB
AB

Agreement of Guarantee

THIS AGREEMENT OF GUARANTEE is made at Calcutta this day of 2000 BETWEEN AB, son of....., residing at..... and CD, son of, residing at..... (hereinafter called the GUARANTORS which term shall unless the context otherwise requires include their heirs, successors, legal representatives and assigns) of the first part and EF BANK constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1980 carrying on business, *inter alia*, at..... (hereinafter called the BANK which term shall unless the context otherwise requires include its successors and assigns) of the second part.

In consideration of the BANK having agreed to grant, granting and/or continuing to grant credit facilities with limits which could be varied from time to time to the Borrower, X Company Limited, a company registered under the Companies Act 1956 and carrying on business at at our request in, *inter alia*,

- Overdraft in Current Account
- Clean Cash Credit Account
- Cash Credit Hypothecation Account
- Cash Credit Pledge Account
- Letter of Credit Account
- Letter of Guarantee Account
- Deferred Payment Guarantee Account, or
- In any other Account

from the BANK'S one or more branches on terms and conditions agreed upon or that might be agreed upon from time to time between the BANK and the borrower the GUARANTORS hereby agree and covenant with the BANK as follows:

1. The GUARANTORS hereby guarantee jointly and severally to the BANK the due performance of all present and future obligations by the borrower towards the BANK and payment of all moneys due or that might become due from the borrower to the BANK in the said or other Accounts with interest at the rate chargeable by the BANK from time to time in the said Accounts with all costs, charges and expenses in default of the borrower remedying the breach or making payment after being demanded by the bank.

2. The GUARANTORS declare and agree that this guarantee shall be a continuing guarantee and shall not be considered as cancelled or in any way affected by the fact that at any time the borrower may not have any liability on any of the said Accounts or the borrower may have even a credit balance in the Account but shall continue to be a guarantee and remain in operation in respect of all subsequent transactions.

3. The GUARANTORS hereby agree that the BANK shall be at liberty to vary the terms and conditions of granting credit facilities to the borrower as also vary the securities, take new securities or release existing securities without any consent of the GUARANTORS.

4. The GUARANTORS agree that as between the BANK and the GUARANTORS, the GUARANTORS are debtors and the BANK will be at liberty to proceed against the GUARANTORS without any obligation to exhaust its remedies against the borrower company. The GUARANTORS hereby declare and agree with the BANK that they shall not be entitled to and shall not claim any rights conferred on GUARANTORS by sections 133, 134, 135, 139 and 141 of the Indian Contract Act 1872.

5. The GUARANTORS agree that the BANK shall be entitled to obtain from the borrower company renewal documents or fresh documents and to open new Accounts and take new securities or consolidate or combine Accounts and/or securities and notwithstanding this the GUARANTORS shall continue to remain liable to the BANK for payment of all indebtedness and liabilities of the borrower both present and future including interest, cost and charges.

6. The GUARANTORS declare and agree that without first paying the claims of the BANK against the borrower they shall not claim or enforce any right against any assets of the borrower company or any Dividend or monies payable to or in relation to the borrower.

7. The GUARANTORS hereby agree that any Account settled between the BANK and the borrower or any acknowledgment made by the borrower or any Balance Confirmation or Acknowledgment of Debts and Securities executed by the borrower shall be binding on the GUARANTORS and for this purpose the borrower shall be deemed to be the agent duly authorised by the GUARANTORS herein.

8. The GUARANTORS hereby agree that their liability shall be joint and several and their respective heirs, successors, administrators and legal

representatives shall be liable to pay the claims of the BANK in relation to the said credit facilities to the borrower.

9. In the event the BANK in breach of its undertaking fails to grant credit facilities and as a consequence whereof the borrower ceases to carry on business or suffers substantial loss or is wound up then and in that event the GUARANTORS shall stand discharged from these presents and from all indebtedness and liabilities and obligations whatsoever towards the Bank.

10. The GUARANTORS agree that the BANK may enforce its rights as a pledgee or right of a lien on all goods, assets, properties and all moneys standing to the credit of the GUARANTORS for payment of BANK'S debts against the borrower and/or GUARANTORS.

11. The death, insanity or insolvency of the GUARANTORS shall not affect the transactions or loans given by the BANK to the borrower till the happening of such event. Any notice to determine the guarantee or death, insanity or insolvency of the GUARANTORS will terminate the guarantee only in respect of future transactions. In any such event the Clayton's Rule shall apply in respect of future transactions.

12. No infirmity or irregularity in the power of the borrower to borrow from the BANK or in the exercise of the borrowing power shall affect the validity of these presents or the obligations and liability of the guarantors to the BANK.

13. The GUARANTORS agree to accept as binding on them and as conclusive evidence of the moneys payable by the GUARANTORS to the BANK statements of Accounts duly certified under the Banker's Books Evidence Act furnished to the GUARANTORS.

14. Any notice to be served by any of the parties herein shall be deemed to have been duly served if sent by registered post at the address given herein unless some other address is specially communicated by a party herein.

15. The BANK agrees to act with due dispatch and in businessmanlike in all transactions with the borrower without any undue delay or arbitrariness and in the interest of trade and business without, however, jeopardising the public money and the prospect of recycling its funds.

IN WITNESS WHEREOF the GUARANTORS and the Bank have signed these presents on the day, month and year first above-written.

Signed and delivered by AB and CD,
the GUARANTORS in the presence of:

Signed on behalf of EF BANK by
Mr. the Manager,
authorised signatory and Power of
Attorney holder in the presence of:

Government Guarantee

THIS AGREEMENT IS MADE this 5th day of June 2000 BETWEEN the Governor of Arunachal Pradesh hereinafter called the GOVERNMENT (which expression shall unless excluded by or repugnant to the subject or context include his successors in Office) of the first part, Arbind Paper Mills Limited, a company incorporated under the Companies Act 1956 and having its registered office at Park Plaza, Calcutta 700 016 hereinafter called the COMPANY (which expression shall unless excluded by or repugnant to the subject or context include its successors and assigns) of the second part and ELH Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 and having its Head Office at 3 Old Court House Street, Calcutta 700 069 hereinafter called the BANK (which expression shall unless excluded by or repugnant to the subject or context include its successors and assigns) of the third part.

WHEREAS the COMPANY is a borrower of the BANK and is indebted to the BANK for more than Rs. 2 crores.

AND WHEREAS for expansion of the business the company needs further advances of about Rs. 3 crores but is not in a position to give adequate security to the BANK.

AND WHEREAS the BANK has agreed to grant such advances if the GOVERNMENT guarantees repayment of said advances with applicable interest.

AND WHEREAS in the interest of the development of the State the Government has agreed to guarantee to the BANK payment of the company's present and future indebtedness to the BANK and has requested the BANK to grant such advances to the COMPANY.

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

1. In consideration of the BANK agreeing at the request of the GOVERNMENT to grant advances to the COMPANY upto Rs. 3 crores the GOVERNMENT hereby guarantees to the BANK the payment of all present and future indebtedness and liabilities of the company to the BANK. The Government shall hereafter indemnify and keep the BANK fully indemnified from and against all losses of principal and/or interest, charges and expenses which the BANK may incur or be put to on account of default of the COMPANY and in demanding, enforcing or obtaining payment of all or any such moneys either from the Company or the Government or howsoever otherwise.

2. The BANK shall have the fullest liberty without affecting this guarantee to postpone for any time or from time to time the exercise of any of the rights powers or remedies available to the BANK against the COMPANY or any other person or persons and/or any other security and the GOVERNMENT shall not be released from the liability under this guarantee by any exercise by the BANK of its liberty with reference to the matters aforesaid or any of them or by reason of time being given to the COMPANY or any other person as

aforesaid or any forbearance, act or omission on the part of the BANK or any other indulgence given to or composition by the BANK with the COMPANY or any other person or by any other matters or things whatsoever which under the law relating to the sureties would but for this provision have the effect of releasing the Government from such liability.

3. The guarantee herein shall be in addition to and without prejudice to all other securities if any that the BANK may now or hereafter at any time have from the COMPANY or any other person for all or any moneys covered by this guarantee and this guarantee shall be enforceable against the GOVERNMENT notwithstanding that all or any such securities held by the BANK shall at any time when demand is made from or proceedings taken against the GOVERNMENT hereunder be outstanding or unreleased.

4. This guarantee shall be a continuing guarantee for all principals and interests from time to time and at any time remaining due or unpaid by the COMPANY to the BANK in respect of the sum of Rs. 3 crores and interest thereon payable by it to the BANK and that all compositions and payments received by the BANK from the COMPANY or from any other person or persons for or on its account should be regarded for all purposes as payment in gross and the BANK shall be entitled to prove against the COMPANY before the Liquidator should it go into liquidation in respect of the whole of its indebtedness to the BANK without any right on the part of the GOVERNMENT to stand in BANK'S place in respect of or to claim the benefit until the BANK has received the full amount of the BANK'S claim against the COMPANY and that this guarantee shall apply to and secure all moneys now or at any time hereafter or ultimately remaining due from or unpaid by the COMPANY.

5. This guarantee shall not be affected by the BANK'S taking or varying or giving up any securities or rights if any held by or available to it from or against the COMPANY or any other person in respect of all or any moneys covered by this guarantee and this guarantee shall not be determined or in any way affected by the winding up of the Company or the amalgamation thereof with any other COMPANY or HOWSOEVER OTHERWISE.

6. All entries in the BANK'S Books kept by it and made in the ordinary course of its banking business as may be adduced by it shall be conclusive against the GOVERNMENT of the amounts from time to time thereby appearing due from the COMPANY to the BANK and the same shall not be disputed or questioned by the GOVERNMENT.

7. Any money or moneys covered by this Guarantee shall be due and payable to the BANK on demand after requiring payment of the same shall have been delivered or sent through the post by registered letters addressed to the Secretary, Ministry of Industries, Arunachal Government.

8. This guarantee shall be a continuing guarantee irrespective of any sum or sums which may be paid into any of the account or accounts of the COMPANY with the BANK at any time during the continuance of the guarantee

and this guarantee shall remain in force until all principal and interest payable by the COMPANY to the BANK are fully paid and satisfied.

9. The GOVERNMENT hereby expressly declare that this guarantee and the powers and provisions herein contained are in addition to and not by way of limitation of or substitution of any former or other guarantee or guarantees if any heretofore given to the BANK by the GOVERNMENT and now existing uncanceled and this guarantee is not intended to and shall not revoke or limit such other guarantee or guarantees and that this guarantee shall be in addition and without prejudice to any other securities, if any, negotiable or otherwise which the BANK may now or hereafter possess from the COMPANY or any other person or persons in respect of all or any moneys secured or intended so to be and the BANK shall be under no obligation whatsoever to marshal in favour of the GOVERNMENT any such securities or any of the funds or assets that the BANK may be entitled to receive or have a claim upon and the BANK may at its own absolute discretion vary exchange renew release modify or discharge or assign all or any of such securities or instruments negotiable or otherwise and whether satisfied by payment in full or in part or not.

10. This guarantee shall bind the GOVERNMENT and its successors and shall be available to and enforceable by the BANK and its successors and assigns including any other body corporate or Company or concern by or with which the BANK may become amalgamated or absorbed and that nothing done or omitted by the BANK in pursuance of any of the powers provisions authorities or permissions contained in this guarantee shall in any way affect or discharge the GOVERNMENT'S liability under it.

11. Notwithstanding anything hereinbefore contained the GOVERNMENT'S liability under this guarantee shall not at any time exceed the sum of Rs. 3 crores and interest thereon payable by the COMPANY to the BANK and all costs and other moneys, for which the GOVERNMENT shall or may become liable to the BANK and this Guarantee shall be irrevocable and the GOVERNMENT undertakes not to revoke the same or purport to do so at any time before the BANK has received payment of all moneys hereby guaranteed as aforesaid.

IN WITNESS WHEREOF THIS guarantee has been executed for and on behalf of the Governor of Arunachal Pradesh State by Mr. V. Venkateswaran, Secretary, Industries Department this 5th day of September 2000.

For and on behalf of and under Order of
Governor of Arunachal Pradesh

Sd/- 5.9.2000

Secretary, Department of Industries,
Arunachal Pradesh

Bank Guarantee in favour of Government

THIS AGREEMENT IS MADE on this..... day of 2000 BETWEEN the Governor of Tamil Nadu (hereinafter called the GOVERNMENT) of the one part and TN Bank Ltd. a banking company registered under the Companies Act 1956 and carrying on business, *inter alia*, at Tamil Nadu hereinafter called the BANK (which expression shall unless the context otherwise requires include its successors) of the second part and Builders Ltd. a company registered under the Companies Act 1956 and carrying on business at P.T. Road, Chennai hereinafter called the CONTRACTOR (which term shall include unless repugnant to the context its successors).

WHEREAS Builders Ltd. has been awarded a contract for construction of a housing complex at Green Avenue, Chennai for Rs. 350 lakhs and is required to deposit security money for Rs. 35 lakhs.

AND WHEREAS in consideration of the Government having agreed to exempt the CONTRACTOR from depositing the security deposit of Rs. 35 lakhs under the terms and conditions of the Contract entered into between the GOVERNMENT and the CONTRACTOR on the contractor furnishing a Bank Guarantee for security deposit amount in favour of the GOVERNMENT for the due fulfilment by the CONTRACTOR of the terms and conditions of the agreement with the Government.

AND WHEREAS the CONTRACTOR has approached the BANK for issue of such a guarantee in favour of the GOVERNMENT on behalf of the CONTRACTOR for the performance and discharge of the obligations of the CONTRACTOR under the said contract entered into by and between the GOVERNMENT and the CONTRACTOR.

AND WHEREAS the CONTRACTOR has approached the BANK for issue of such a Bank Guarantee in favour of the GOVERNMENT and is agreeable to deposit the requisite margin money as also to execute a Counter Guarantee in favour of the BANK.

AND WHEREAS the GOVERNMENT has forwarded a draft copy of the Bank Guarantee which the CONTRACTOR has scrutinised and approved and directed the BANK to issue a Bank Guarantee in favour of the GOVERNMENT in accordance with the terms contained in the draft Bank Guarantee forwarded by the GOVERNMENT.

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

1. The BANK hereby undertakes to pay to the GOVERNMENT upto Rs. 35 lakhs as may be due and payable under this Guarantee on the first demand, being made without any demur irrespective of any dispute between the CONTRACTOR and the GOVERNMENT in respect of any amount of claim against the CONTRACTOR as being due by way of loss or damage caused to and suffered by the GOVERNMENT without any question as to the factum or quantum thereof provided that the liability of the BANK shall be restricted to an amount not exceeding Rs. 35 lakhs covered by the guarantee.

2. The Bank Guarantee contained herein shall remain in full force and effect for a period of 12 months from the execution hereof and that it shall continue to be enforceable by the GOVERNMENT till all the dues thereunder or by virtue of the said agreement have been duly paid and the claim will be satisfied or discharged or that the said agreement is fully carried out by the said CONTRACTOR.

3. The BANK agrees and declares that the GOVERNMENT shall have the fullest liberty without the written consent or prior approval and without affecting anything in any manner any obligation hereunder to vary any of the terms and conditions of the said agreement or to extend the time of performance by the CONTRACTOR from time to time or to postpone at any time or from time to time any of the powers exercisable by the GOVERNMENT against the CONTRACTOR and to forbear to enforce any of the terms and conditions relating to the said agreement and it is declared that notwithstanding any such variation or extension or forbearance, act, omission or indulgence on the part of the GOVERNMENT in favour of the contractor, the guarantor shall not be released of its liability by reason of any such variation, extension or acts of forbearance.

4. The BANK hereby undertakes not to revoke the guarantee during its currency except with the previous consent in writing of the GOVERNMENT.

5. Any claim for breach of the contract by the contractor or for any loss or damages suffered by the GOVERNMENT should be made by invocation of the Bank Guarantee within the validity period of the said guarantee. No claim under the guarantee shall be entertained after the expiry of the Bank Guarantee period.

6. The BANK further undertakes not to revoke the guarantee during the currency of the guarantee except with the previous consent in writing of the GOVERNMENT in case of any dispute between the CONTRACTOR and the GOVERNMENT in relation to their contract. On invocation of the Bank Guarantee the BANK would pay to the GOVERNMENT without any question as to any breach of the agreement or loss sustained or otherwise and the invocation in terms of the guarantee will be taken as final and conclusive.

IN WITNESS WHEREOF the parties herein executed these presents on the 10th day of June 2000 at Calcutta.

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

Signature

Government Guarantee

Guarantee by the Governor of Welfare State to Industrial Bank Ltd. for payment of the value of the debentures of X Co. Ltd.

... ..

WHEREAS the Rehabilitation Scheme for X Co. Ltd. (hereinafter called the COMPANY) submitted *inter alia* by the Government of Welfare State was accepted by the Hon'ble High Court.

AND WHEREAS in pursuance of the Rehabilitation Scheme dues of Rs. 2 crores are to be paid by the company to the Industrial Bank Ltd. (hereinafter called the BANK) by issue of debentures to the BANK for the amount carrying 12% interest per annum.

AND WHEREAS these debentures will be convertible into equity capital as soon as the first dividend is declared by the COMPANY.

AND WHEREAS the BANK expressed difficulty in accepting the terms of issue of debentures by the COMPANY unless guaranteed by the Governor of Welfare State (hereinafter called the GOVERNMENT) and the GOVERNMENT agreed to give such guarantee.

NOW THEREFORE the GOVERNMENT hereby guarantee to the BANK the payment of the debentures issued to the BANK by the COMPANY for the sum of Rs. 2 crores carrying interest at 12% per annum on the conditions as follows:

1. At any time after the COMPANY shall have made default for more than 30 days in the payment of the said principal sum or any interest GOVERNMENT shall on demand pay the same to the BANK the holder of the debentures.

2. The debenture-holder, without exonerating the GOVERNMENT may grant time or any other indulgence to the COMPANY and may assent to modification of its rights and may accept or make any composition or arrangement with the COMPANY.

3. In order to give full effect to this guarantee the debenture-holder shall be entitled to act and treat as if the GOVERNMENT was the principal debtor to the debenture holder in respect of the moneys hereby guaranteed and the GOVERNMENT hereby waives all its suretyship or other rights, if any, which are inconsistent with any of the provisions of this guarantee.

4. Under no circumstances it shall be necessary for the debenture-holder to take any steps or proceedings for enforcing its rights against the COMPANY before enforcing this guarantee against the GOVERNMENT.

5. The principal sum or any interest covered by this guarantee shall be due and payable by the GOVERNMENT to the debenture-holder on demand after notice/s requiring payment of the same shall have been delivered or sent through the post by registered letter addressed to the Secretary to the Government, Ministry of Industries.

IN WITNESS WHEREOF this guarantee has been executed for and on behalf of the Governor of Welfare State by Mr., Secretary Industries Department this 5th day of July 2000.

For and on behalf of the Governor of Welfare State

Sd/-

Secretary, Ministry of Industries
Government of Welfare State

Guardianship

Introductory observation. This branch of Hindu Law was not much developed in ancient India. The Hindu sages differed in opinion as to the age of minority. The foundation of the Rule is the text of Narada.¹ In Bengal, it was held that the age of majority is the end of 15 years,² but the Madras High Court held that a boy or a girl is *sui juris* when he or she completes the age of 16 years.³ This difference is now academic as under the Indian Majority Act 1875, which applies to all persons domiciled in India and to all matters except marriage, dower, divorce and adoption, a person becomes major on completion of 18 years except a ward of court and in case of appointment of statutory guardian when he or she attains the age of 21 years.⁴ In England, an infant attains majority on completion of 21 years and there is some distinction between a minor and an infant for the purpose of proceedings such as divorce, probate and admiralty.⁵

The law as prevailing in ancient India vested the guardianship of minor in the sovereign as *parens patriae*.⁶ This was delegated to his parents as a sacred trust. This corresponds with the law of England where the King was the protector of all infants and he used to exercise his jurisdiction through the Lord Chancellor now vested in the Chancery division of the High Court.⁷ The function of the King in England as to protection of the minor's estate is exercised in India by the District Judge under the provisions of the Guardians and Wards Act 1890, as representing the State, the universal guardian of all

1 *Manu* VIII 27.

2 *Cally Churn v Bhuggabutty* (1873)10 BLR 231 (FB).

3 *Reade v Krishna* 9 Mad 391 (397).

4 The Indian Majority Act 1875, s. 3.

5 *Simpson's Law of Infants*, 4th Ed., p. 1.

6 *Manu* VIII 27, IX 146, 190, 191.

7 *Halsbury's Laws of England*, Ed. 1935, vol. 7, p. 585.

minors.⁸ The said Act also provides for appointment of the Collector of the district or other local area as guardian (*vide* s. 8 of the Act). Under the principles of ancient Hindu Law, a natural guardian had very wide powers in relation to the management of estate of the minor. No relations except the parents were as a matter of right entitled to guardianship. The Bengal Minor's Act 1858, and the Bombay Minor's Act 1864 which required a certificate of administration before instituting or defending any suit by or against the minor did not intend to alter the principles but conferred certain jurisdiction on persons who chose to avail themselves. As held by the Privy Council in *Hanuman Persad Pandey v Massamat Babooee*⁸ the power of natural and even *de facto* guardians under the Hindu Law is limited and qualified. It can be rightly exercised in the case of legal necessity and for the benefit of a minor taking into account the pressure on the estate, the danger to be averted and the benefit to be conferred upon it and the transferee should, after reasonable enquiry be satisfied as to the existence of the legal necessity in relation to the transaction. This was followed in *Jiban Krishna Dutt v Sailendra Nath*.⁹ The proposition of law laid down by the Federal Court in *Kundamudi v Meyani*¹⁰ is as follows: A natural or *de facto* guardian has no authority to impose a personal obligation on the minor or his estate but he can borrow money for the protection or for the benefit of the estate of the minor.¹¹ The Privy Council held in *Subramanyam v Subba Rao*¹¹ as follows: A natural guardian could, however, sell any movable in danger of deterioration, compromise any debt or claim on behalf of the minor, enter into a valid contract for sale of the minor's property but not for purchase. If possession of the property is delivered to the purchaser and no sale deed is executed, he is protected under s. 53A of the Transfer of Property Act. A natural guardian could acknowledge a debt or pay interest so as to keep the same alive for the protection or benefit of a minor's property.¹² The Guardians and Wards Act 1890, which is the first statute applicable throughout India, did not and still does not interfere with the personal laws of the parties. The legislation did not intend to sweep away all ancient laws and customs. Although the Act does not purport to preserve all the rights of the natural guardian under the Hindu Law in their original form, nevertheless it did not and till now does not make it obligatory to obtain certificate of guardianship or any order of the court to deal with the property of a minor. It saves the right of a Hindu father to appoint a testamentary guardian and the right of the husband and the father to be appointed or declared statutory guardian if otherwise fit. No other rights of the father and none of the mother are saved in the sense that the court shall give effect to it as appointment under the Act has the effect

8 (1856)6 MIA 395.

9 50 CWN 129; AIR 1946 Cal 272.

10 (1949)11 FCR 65.

11 75 IA 115.

12 Section 21(1) of the Limitation Act 1908 or s. 20 of the Limitation Act 1963.

of supersession of all powers of the natural and *de facto* guardian and they are not revived by reason of the death or removal of the statutory guardian.

A natural guardian could, therefore, deal with the property of a minor until 25th August 1956, when the Hindu Minority and Guardianship Act 1956, received the assent of the President and was put on the Statute Book. This Act is an overriding statute¹³ on all texts, rule, interpretation, customs, usages and laws in so far as they are inconsistent with its provisions but supplemental to Act VIII of 1890 except in the case of repugnancy between the two when the former shall prevail. The Guardians and Wards Act applies in respect of all applications under s. 8(5) of the other Act. The principal changes effected under this statute are of three kinds: It has crystallised in statutory form as to who are only the persons authorised to act as the natural guardians¹⁴ and testamentary guardians.¹⁵ The mother, under certain circumstances, is competent to act as natural guardian of a son even though the father is alive.¹⁶ It imposes restrictions on the power of the natural guardian to sell, mortgage, exchange, give lease exceeding five years or beyond one year after attainment of majority.¹⁷ Nevertheless, even under that section a natural guardian has still power to do all acts which are necessary or reasonable for realisation, protection or benefit of the minor's estate, but never to bind the minor by a personal covenant. Further, a natural guardian can purchase any property, carry on trade, contract loans to execute necessary repairs to the property of the minor without charging the estate and also refer any dispute to arbitration.¹⁸

De facto guardian. A *de facto* guardian is now almost a forgotten chapter in Hindu Law as regards the property of a minor. Although his office is not abolished but his power as against the estate of the minor is almost nil. He has no right to recover debts due to a minor nor to grant any receipt or keep alive any debt by acknowledgement. Section 11 of the Hindu Minority and Guardianship Act has completely done away with all his powers to dispose of or deal with the property of a minor even for necessities or for the benefit of the minor or his estate which he could exercise under the original texts of Hindu Law. Even prior to this Act eminent jurists expressed doubt about his authority as regards sale of the minor's property. It was held by the Privy Council in *Mata Din v Ahmad Ali*¹⁹ that such a guardian cannot clothe himself

13 Section 5 of Hindu Minority and Guardianship Act 1956.

14 Section 5 of Hindu Minority and Guardianship Act 1956; only parents and husbands.

15 Section 9 of Hindu Minority and Guardianship Act 1956; only those appointed by parents.

16 *Gita Hariharan v Reserve Bank of India* AIR 1999 SC 1149.

17 Section 8 of the Hindu Minority and Guardianship Act 1956.

18 Chaudhuri's *Hindu Minority and Guardianship Act*, Notes under s. 8, pp. 100-4.

19 (1912)39 IA 49, 55; 14 Bom LR 192.

with legal power to sell the property of a minor. Nevertheless, if he incurs debts for necessities, the estate of the minor is liable to repay the same on principles embodied under s. 68 of the Indian Contract Act.

Testamentary guardian. Under s. 9 of the Hindu Minority and Guardianship Act 1956, the testamentary guardian is empowered with all the rights of a natural guardian and subject to all restrictions on his powers as are specified in the said Act or the will.

Guardianship for marriage. Only persons referred to in s. 6 of the Hindu Marriage Act are competent to act as such guardians.

Mahomedan law. According to Islamic law, the minority terminates on attainment of puberty which is presumed on completion of 15 years. After the passing of the Indian Majority Act, the minority continues until completion of 18 years in all matters except marriage, dower and divorce.²⁰ A mother has preferential right and she, under the Sunni law, is entitled to the custody of a female child until she attains puberty and of the male child until he completes the age of seven years. She is therefore the guardian of the persons of her children in that sense until they complete the required age and thereafter the father is entitled to their custody, except however in the case of her remarriage, with a stranger, immoral life, neglect of the child and other good causes²¹ which disqualifies her for the sacred office. In Shia law, the period of guardianship is only two years in the case of a male child and for a female child until she attains majority. A father is also entitled to the custody of children on failure of other female relations, e.g., mother's mother, full sister, full sister's daughter and others when they are under-aged, as above; he is nevertheless the legal guardian of the property of the minor although he has no power to sell except—

- (a) when the sale fetches double the value, or
- (b) necessary for the maintenance of the minor, or
- (c) required to pay the debts and legacies of the deceased, or
- (d) property falling in decay, or
- (e) expenses exceed the income and for other good causes.¹

A mother has no right to sell any property belonging to a minor. A *de facto* guardian has no such right and, therefore, any transfer effected by him is not only voidable but also void.²

Residence of the proposed guardian. Although there is no prohibition in the Act as against the appointment of a non-resident applicant except by implication, as under s. 39(b) nevertheless the court may not approve of his appointment.²

20 Mulla's *Mahomedan Law*, 19th Ed., p. 285.

21 *Imambadi v Mutsuddi* (1918)45 IA 73; 45 Cal 878.

1 Baille 687, 688; Macnaghten p. 64, s. 14, pp. 305-6.

2 *Asghar Ali v Anima Begum* 36 All 280; 12 ALJ 392.

Guardianship of minors. In jurisprudence minors are described as abnormal persons. They as a rule are capable of holding and receiving property and liable for wrongful acts but incapable of entering into valid contract but not incapacitated from entering into any contract of marriage unless under the age of consent which differs in different countries.³ The exception to rule is contract for necessities. There is no remedy in law against an infant in the case of fraudulent misrepresentation about his age, but equity requires him to restore all his ill-gotten gains.⁴ The case of mortgage stands on a different footing because of his incapacity to create a mortgage.⁵

(a) *Guardian, Minor and Ward.* *Guardian* means a person having the care of the person of a minor or of his property, or both his person and property. *Minor* means a person who, under the provision of the Indian Majority Act, is to be deemed not to have attained his majority. *Ward* means a minor for whose person or property, or both, there is a guardian. In England, the term generally used is 'infant', but there is some difference between the terms *minor* and *infant* in certain proceedings, viz. probate, divorce and admiralty, the former being under 21 years and the latter under seven years.⁶

(b) *Power of testamentary guardian.*⁷ Formerly where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward, is subject to any restriction which may be imposed by the instrument, unless he has been declared guardian by the court, and the court permits him, by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order. The Hindu Minority and Guardianship Act empowers him with all the authorities of a natural guardian, subject however to all restrictions on his powers.⁸ So his powers are very much restricted.

(c) *Restriction of powers of, and obligations on guardian appointed by court.* Where a person, other than a Collector or a guardian appointed by will or other instrument, has been appointed or declared by the court to be the guardian of the property of a ward, he cannot, without the previous permission of the court—

- (i) mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of his immovable property of his ward, or

3 Holland's *Elements of Jurisprudence (Contracts of Minors)*, p. 341.

4 *R. Leslie Ltd. v Shiell* (1914)3 KB 607, p. 618; also see s. 65 of the Indian Contract Act.

5 *Mohori Bibi v Dharmadas* (1903)30 Cal 539 (PC).

6 Halsbury's *Laws of England*, Ed. 1935, vol. 17, p. 582.

7 Section 28 of the Guardians and Wards Act.

8 Section 8 of the Hindu Minority and Guardianship Act.

- (ii) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Permission to the guardian to do any of the above acts will not be granted by the court except in case of necessity, or for an evident advantage of the ward.⁹

Where a guardian of the property of a ward has been appointed or declared by the court, and such guardian is not the Collector, he must under s. 34 of the said Act—

- (i) if so required by the court, give a bond, as nearly as can be, in the prescribed form to the Judge of the court to ensure for the benefit of the Judge for the time being, with or without sureties, engaging duly to account for what he may receive in respect of the property of the ward;
- (ii) if required by the court, deliver to the court, within six months from the date of his appointment or declaration, or within such other time as the court directs, a statement of the immovable property belonging to the ward, of the money and other movable property which he has received on behalf of the ward up to the date of delivery of the statement, and of the debts due on that date to or from the ward;
- (iii) if so required by the court, exhibit his accounts in the court at such time and in such form as the court from time to time directs;
- (iv) if so required by the court, pay to the court, at such time as the court directs, the balance due from him on those accounts, or so much thereof as the court directs; and
- (v) apply for maintenance, education and advancement of the ward, and of such persons as are dependent on him, and for other necessities of the ward and of such persons as are dependent on him, such portion of the income of the property of the ward as the court from time to time directs, and if the court so directs, the whole or any part of the property.¹⁰

(d) *Removal of guardian.*¹¹ The court can, on the application of any person interested, or on its own motion, remove a guardian appointed or declared by the court, or a guardian appointed by will or other instrument, for any of the following causes:

- (i) For abuse of his trust;
- (ii) for continued failure to perform the duties of his trust;

9 Section 29 of the Guardians and Wards Act.

10 Section 34 of the Guardians and Wards Act.

11 Section 39 of the Guardians and Wards Act.

- (iii) for incapacity to perform the duties of his trust;
- (iv) for ill-treatment, or neglect to take proper care, of his ward;
- (v) for contumacious disregard of any provision of the Guardians and Wards Act, or of any order of the court;
- (vi) for conviction of an offence implying, in the opinion of the court, a defect of character which unfits him to be the guardian of his ward;
- (vii) for having an interest adverse to the faithful performance of his duties;
- (viii) for ceasing to reside within the local limits of the jurisdiction of the court;
- (ix) in the case of a guardian of the property, for bankruptcy or insolvency;
- (x) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject:

Provided that the guardian, appointed by will or other instrument, will not be removed—

(1) for the cause mentioned in cl. (vii), unless the adverse interest accrued after the death of the person who appointed him or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(2) for the cause mentioned in cl. (viii), unless such guardian has taken up such a residence as, in the opinion of the court, renders it impracticable for him to discharge the functions of a guardian.

(e) *Cessation of guardian's authority.*¹² The powers of a guardian of a minor cease:

- (i) by his death, removal, or discharge;
- (ii) by the Court of Wards assuming superintendence of the person and property of the minor;
- (iii) by the ward ceasing to be a minor;
- (iv) in the case of a female ward, by her marriage to a husband who is not unfit to be her guardian;
- (v) in the case of a ward whose father was unfit to be the guardian of the minor, by the father ceasing to be so.

(f) *Penalties.*¹³ The following are the penalties to which the guardians are liable:

- (i) if, for the purpose or with the effect of preventing the court from exercising its jurisdiction with respect of a ward, a guardian

12 Section 41 of the Guardians and Wards Act.

13 Sections 44 and 45 of the Guardians and Wards Act.

appointed or declared by the court removes the ward from the limits of the jurisdiction of the court, he will be liable to fine not exceeding Rs. 1,000 or to imprisonment in the civil jail for a term not exceeding six months;

- (ii) if a person having the custody of a minor fails to produce him or cause him to be produced when required by the court to do so, or
- (iii) if a guardian appointed or declared by the court fails to deliver to the court when required to do so by the court a statement of the immovable property money and other movable property of, and the debts due to or owing from, the ward, or to exhibit accounts, or to pay into the court the balance due from him on those accounts, or
- (iv) if a person who has ceased to be a guardian fails to deliver any property or accounts of the court,

the person or guardian will be liable to fine not exceeding Rs. 100, and in case of recurrency, to a further fine not exceeding Rs. 10 for each day of default, and not exceeding Rs. 500 in all, and to detention in civil jail until he undertakes to obey the order of the court.

(g) *When minor attains majority.* In order to specify the age of majority, the Indian Majority Act 1875 has since been amended by the Indian Majority (Amendment) Act 1999¹⁴ which received the assent of the President on 16th December 1999. By the amendment ss. 3 and 4 of the 1875 Act have been substituted by the following section:

“3. *Age of majority of persons domiciled in India.* (1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day”.

A minor is incompetent to act as guardian of any minor except his own wife or child, or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

Where a minor girl child after death of her mother lived with her maternal grandfather and its father as well as the maternal grandfather married for the second time, for the purpose of custody of the child step mother is to be preferred to step grandmother. As regards ill-treatment by step mother and the father having better means to support the family and give education to the child and to look after the interest and welfare of the child, custody cannot be denied to the father.¹⁵ Where a child's mother committed suicide

14 Act 33 of 1999.

15 *N. Palaniswami v A. Palaniswamy* AIR 1998 Mad 264.

as its father developed illicit connexion with the maidservant and left a letter about it suggested giving custody of the child to a colleague of her instead of the father, the court respected the last wish of the mother and custody was denied to the father.¹⁶

A mother had two children both being minor. She left the house of her husband taking with her the younger son. Later she left that son in the custody of another person when she went outstation. The husband throughout looked after the elder son properly—and he was gainfully employed. The wife had no independent income and considering her conduct, custody of the younger son was given to the husband.¹⁷ When a couple obtains divorce by mutual consent and under a mutual agreement the mother takes custody of the child with a periodic stay with father it is not proper to disturb that mutual arrangement on the mere allegation by the wife that the father had ill-treated the child and seek interim custody of the child.¹⁸ The paramount consideration being the welfare of the minor, the fixed deposit money in the name of the minor should be allowed to continue till he attains majority.¹⁹ Unless it is proved that the father is guilty of cruelty or of immorality he cannot be removed from the guardianship of his minor child more so because he is the natural guardian of the minor.²⁰ When divorce proceeding is pending between the parties arrangement of the child remaining with the mother and the father visiting the child once in a week is reasonable and should not be disturbed by giving over the custody of the child to the father.²¹

(h) *Right of guardian to custody of wards.* If a ward leaves or is removed from the custody of a guardian of his person, the court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, can make an order for his return, and, for the purpose of enforcing the order, can cause the ward to be arrested and to be delivered into the custody of the guardian. For the purpose of arresting the ward, the court can now exercise the power conferred on any District Magistrate, Sub-Divisional Magistrate or a first class Magistrate under s. 100 of the Code of Criminal Procedure (Act 2 of 1974) which came into force from 1st April 1974. The residence of a ward against the will of his guardian with a person who is not his guardian does not, of itself, terminate the guardianship. In case of the guardian appointed or declared by the court, it has very wide power under s. 25 of the Guardians and Wards Act (Act VII of 1890) to recover the custody of the ward.

16 *S. Thirumavalavan v Natarajan* AIR 1998 Mad 281.

17 *Narbada v Sita Ram* AIR 1998 Raj 113.

18 *Shyam Sunder v Sunita* AIR 1998 Del 153.

19 *Prahallad v Anadi* AIR 1997 Ori 201.

20 *Pravat v Dilip* AIR 1997 Cal 326.

21 *Tara Devi v Mahaveer Singh* AIR 1997 Raj 87.

Where the father, though in sound financial position, never attempted to meet the child and befriend him since the wife left him with the child the father is not entitled to the custody of the child even though the wife was living as a concubine of another person.²²

FORMS

Petition for Guardianship of a Minor

(Section 10 of the Guardians and Wards Act)

Act VIII of 1890 Case No. of

In the matter of the Guardians and Wards Act 1890

And

In the matter of appointment of the guardian of GH minor residing at Application under s. 10 of the Guardians and Wards Act

The humble petition of (state full name and address)

MOST RESPECTFULLY SHEWETH:

The above-named applicant respectfully begs to state as follows:

- (a) The name, sex, religion, date of birth and ordinary residence of the minor;
- (b) where the minor is a female, whether she is married and if so, the name and age of her husband;
- (c) the nature, situation and approximate value of the property, if any, of the minor;
- (d) the name and residence of the person having the custody or possession of the person or property of the minor;
- (e) what near relations the minor has, and where they reside;
- (f) whether a guardian of the person or property or both of the minor has been appointed by any person entitled, or claiming to be entitled, by the law, to which the minor is subject, to make such appointment;
- (g) whether an application has at any time been made to the court, or to any other court with respect to the guardianship of the person or property or both of the minor and, if so, when, to what court, and with what result;

- (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;
- (i) where the application is to appoint a guardian, the qualifications of the proposed guardian;
- (j) where the application is to declare a person to be a guardian, the ground on which that person claims;
- (k) the causes which led to the making of the application; and
- (l) such other particulars, if any, as may be prescribed, or as the nature of the application renders it necessary to state.

Verification as in Plaintiff

DECLARATION

I, AB, the above-named applicant, declare that I am ready willing to act as the guardian of the person and property of the minor.

ATTESTING WITNESSES: 1.
2.

AB
CD

N.B. As to Rule of Verification see Code of Civil Procedure, Or. VI, r. 15. The application must be supported by an independent affidavit. *Sarala Sundari v Hazari* (1915)42 Cal 953. The law giving right to apply must be quoted in the heading of the application (in the matter of *Govind Prasad* 50 All 709).

**Petition for Permission to Sell Minor's
Property under the Guardians and Wards Act**

Act VIII of 1890 Case No.

In the Court of the District Judge
..... at

In the matter of the Guardians and Wards
Act VIII of 1890

And

In the matter of s. 29 of the said Act

And

In the matter of AB, a minor resident
at

And

In the matter of permission to sell the said
minor's property.

The humble petition of CD, the
certificated guardian of the said minor

The applicant above-named states as follows:

1. That by an order made the day of your petitioner was appointed guardian of the person and properties of the minor CD. The said order is still in force and virtue and your petitioner is administering the estate of the said minor as his statutory guardian. Your petitioner has kept proper account of the said estate up to date and filed the same in court from which it will appear that the funds in the hands of your petitioner is Rs. only.

2. That at the date of appointment the estate of the minor which consists of *inter alia* one-fourth share in premises No. was indebted to one XY of No. to the extent of Rs. being, his proportionate share of liability under a mortgage dated executed by the father of the minor which now comes to Rs. inclusive of interest calculated up till

3. That the said XY who instituted a suit being Title Suit No. of in the court of for enforcement of the said mortgage and obtained the preliminary decree for Rs. on the day of is now threatening to apply for final decree for sale of the property.

4. That in the circumstances aforesaid and in the best interest and for the benefit of the said minor, your petitioner and other co-sharers of the said minor who are liable to pay three-fourths share of the said debt, have agreed to sell the property for the sum of Rs. privately which would leave a margin of Rs. in their hands after satisfaction of the mortgage debt out of which a sum of Rs. will come in the hands of your petitioner being the proportionate share of the said minor in the surplus sale proceeds. An affidavit by the intending purchaser of the property for Rs. is filed herewith.

5. That the residential house of the said minor, *viz.*, premises No. is in urgent need of repairs without which the same will be unfit for habitation and unless certain urgent repairs are immediately executed a portion thereof may also collapse very shortly. The estimated costs of such repairs are Rs. as will appear from the certificate of the engineer hereunto annexed and marked A. The minor has no resources to execute the said repairs at present as appearing from the account filed as aforesaid.

6. That the market value of the property intended to be sold would be Rs. as will appear from the certificate of the valuer hereunto annexed and marked B, and the same at present fetches no income.

7. That this application is made *bona fide* and in the interest of and for the benefit of the minor.

Your petitioner therefore prays:

- (i) Leave be granted to your petitioner to sell the undivided one-fourth share of the minor in the property described in Schedule A to or any other person or persons at a price not less than Rs. and to execute and register the necessary conveyance.

- (ii) Your petitioner be at liberty to redeem the proportionate mortgage debt of the minor in respect of the said premises out of the proceeds of such sale and apply the balance towards the costs of repairs to the residential house of the said minor.
- (iii) Further order or orders be made and directions given, as may appear just and proper and your petitioner as in duty bound shall ever pray.

THE SCHEDULE

Verification

I, AB, son of aged about years residing at by occupation service do hereby solemnly affirm and say as follows:

I am the petitioner above-named. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto.

The statements in paragraphs 1 to 7 and the Schedule hereinabove of the petition are true to my knowledge based on information derived from records in my possession, proceedings before this Learned Court. Orders and Valuation Report and believed by me to be true and that I have not suppressed any material fact.

The statements hereinabove are true to my knowledge.

I sign this verification on this day of 1999.

Before me
Notary

Signature of AB
Signature of Advocate

N.B. There shall be two affidavits from two independent persons as to what is the estimated value of the property and the benefit and advantage of the intended sale.

**Application for Permission under
the Hindu Minority and Guardianship Act**

IN THE COURT of the District Judge of

Misc. Application No. of

Re: AB minor, aged, residing at by his natural/
testamentary guardian

XY Age Profession residing at Applicant

In the matter of an application for permission for sale/mortgage/lease of the immovable property of the said minor under s. 8 of the Hindu Minority Act (32 of 1956).

The humble petition of XY residing at
No.

MOST RESPECTFULLY SHEWETH:

1. AB (State the name, sex, religion, date of birth and ordinary residence of the minor).

2. That the minor being a Hindu governed by the School of Hindu Law is governed by the Hindu Minority and Guardianship Act (XXXII of 1956).

3. That your petitioner is the natural guardian of the minor, according to s. 6 of the said Act, being related to the minor as his/her (state relationship, *i.e.*, legitimate or illegitimate son or daughter or husband, or adopted son).

Or

That your petitioner is the testamentary guardian of the minor, appointed under the will of the minor's father or mother named dated and produced herewith (state whether the probate has been granted or not).

A copy of the said will is herewith annexed and marked A.

4. That your petitioner is still fully competent to act as the natural (or testamentary) guardian of the minor, under the said Act or any other provisions of law.

5. No court has appointed or declared any other person as the guardian of the minor's person or property under the Guardians and Wards Act.

6. That the following are the near relations of the said minor:
(State names, addresses and relationship).

7. The applicant seeks permission for the disposal of the minor's immovable property by way of (state sale, mortgage, lease, etc.) described below:

(Give description of the property).

8. (State the necessity for the transaction).

(a) Where the sale or mortgage or lease is intended for the discharge of the debts (the particulars of each debt and the nature of the supporting documents should be separately specified).

(b) If the amount is needed to meet the present and future expenses, *e.g.*, education costs, maintenance, marriage expenses, payment of income-tax, Corporation rates and taxes, repair of any building, full particulars shall be given.

9. (State how the transaction is for the benefit and advantage of the minor or his or her estate).

10. (Where the natural guardian entered into an agreement of the sale of the property, mention that fact and state that the copy of the agreement is attached herewith).

11. (State the estimated market value of the property for the disposal of which the permission is sought. Report of the valuer to be annexed).

12. That in the circumstances aforesaid and in the ends of justice your petitioner submits that the court might be pleased to grant permission for the disposal (state the nature of disposal required) of the above immovable property of the minor which is situated within the jurisdiction of the court.

13. That the application is made *bona fide* and in the interest and for the benefit of the minor.

Your petitioner prays for (i) an order for sale/mortgage/lease of the said property stating the necessity or advantage of the transaction, (ii) such further order/s be made and direction/s given as may appear just and proper.

And your petitioner as in duty bound shall ever pray.

Verification

I, XY guardian of the minor AB, the applicant herein, do hereby declare and state that the statements contained in paragraphs I to II of the above petition are true to my knowledge and those contained in paragraphs 12 and 13 are my submissions before this court.

Signed at on the day of 1999

Attested by us

Sd. XY

N.B. It is always better that the petition shall be accompanied by two affidavits from independent persons stating what in his opinion is the value of the property proposed to be dealt with and the best manner of disposal thereof in the interest of minor and also the circumstances of the minor and the necessity and advantage of the disposition—Ghosh: *Rules of the Calcutta High Court*, 5th Ed., Ch. XXX, p. 199. An affidavit from a valuer approved by the court with his report annexed is most helpful.

Petition for Appointment of Guardian

In the Court of Civil Judge (Senior Division)

At Alipore

Guardianship Case No. of 1999

In the matter of:

MB, a minor under the age of 18 years
residing at 1 Construction Road, Calcutta

And

In the matter of:

PN residing at
 *Petitioner*

Versus

1. RS, residing at

2. RT, residing at
 *Respondents*

Application under s. 10 of the Guardians and Wards Act 1890 for appointment of a Guardian of the Minor

The humble petition of the petitioner above-named most respectfully

SHEWETH:

1. MB above-named is the son of PQ. The said PQ was a businessman and was residing at The said PQ died on 15th June 1999 at his residence at The mother of MB predeceased PQ. Your petitioner was a close friend of the deceased.

2. The said MB is a minor born on 1st May 1989. He is now approximately 10 years of age.

3. The said minor is residing with his distant relative at

4. The said minor is entitled to, in his own right, several assets and properties, namely, moneys covered by two Life Insurance Policies No. 1 and 2 for Rs. 10,000 and Rs. 20,000 respectively in the name of his deceased father and in respect of which the minor is the nominee. There are two Fixed Deposits with X Bank Ltd. for Rs. 50,000 and Rs. 80,000 and the said Receipts are in the joint names of the said deceased and the minor and the moneys thereunder are payable to "either or survivor". The premises No. also belongs to the minor by inheritance.

5. The said minor is governed by the Hindu Law.

6. The other relatives of the said minor are the following:

(a) RS brother of the said deceased, residing at

(b) QT, the brother's son of the deceased residing at

7. The guardian of the person or property of the said minor has not been appointed either by Will of the said PQ or by court. In fact, the said PQ has died intestate.

8. GP the proposed Guardian is a serviceholder and is the maternal uncle of the minor. He is married and is at present residing at The said GP is financially well-off having a monthly income of

Rs. 5,000. He is of a good character and habits. He is a fit and proper person to be appointed the guardian of the person and property of the said minor.

9. There is no person quite fit or in a position to look after the welfare of the minor or to protect and preserve the assets and properties of the minor.

10. The moneys receivable under the deceased's Life Insurance Policies and the Fixed Deposit Receipts are to be collected and properly invested. The minor in his own right is entitled to a property being premises No. which is tenanted. This property has to be repaired and the rents have to be collected. There is some urgency in the matter.

11. The minor has to be properly educated and for that purpose admitted to a good school. At present there is nobody suitable to look after his education and welfare, assets and properties. The maternal uncle is a teacher and can devote time and energy for the welfare of the minor.

12. In view of the aforesaid the present application is being made for the benefit of and in the interest of the minor.

13. Unless Orders are made as prayed for herein, the minor will be seriously prejudiced.

14. This application is being made *bona fide* and in the interest of Justice.

Your petitioner therefore humbly prays Your Honour for the following Orders:

- (a) Mr. GP or some other fit and proper person be appointed as the Guardian of the person and properties of the said minor MB;
- (b) Security to be furnished by said GP or the guardian may be fixed at Rs. 1 lakh and Mr. X and Mr. Y be accepted as Sureties for the said GP;
- (c) A sum of Rs. 3,000 a month be fixed for the maintenance and education expenses of the minor;
- (d) Rs. 500 per month be allowed to the said GP as the remuneration in respect of collection of rents, moneys and assets of the minor and investments thereof and for looking after the minor;
- (e) The said guardian to be appointed herein be given liberty to invest the moneys of the minor in an appropriate safe manner;
- (f) The said GP be given liberty to carry out the repairs of the tenanted premises and to take proper steps for realisation of arrear and current rents;
- (g) The costs of this application be directed to be paid out of the income of the minor;

(h) Further Orders be made and directions be given as to this Learned Court may deem fit and proper to afford complete relief to the petitioner.

And your petitioner as in duty bound, shall ever pray.

Verification

I, PN, son of NP aged about 30 years and the petitioner above-named know the facts and circumstances of this case and I am able to depose thereto. The statements contained in paragraphs No. 1 to 14 hereinabove are true to my knowledge based on information derived from the documents shown to me and also the information derived from the mother of the minor and from my personal association with the deceased and I believe them to be true.

Place: Calcutta

Date

Signature of the Petitioner
Identified by Advocate for the petitioner

DECLARATION OF GP

I, the undersigned GP, the Maternal Uncle of the minor residing at do hereby agree to accept the office of the Guardian of the person and property of the minor MB son of PQ of, in case this Learned Court shall think fit to appoint me as the Guardian of the minor.

Signature of the GP
Identified by Advocate

Hire-Purchase

A contract of hire falls within bailment governed by s. 148 of the Contract Act and subsequent sections in Chapter IX of the said Act. Hire-purchase contract is a form of hire contract where the hire is payable by instalments and the hirer has the option to purchase the goods or become the owner of the goods on making certain payments. As the very name indicates, it is a process of purchasing or acquiring title to the goods through a hiring contract. Exchange in the form of barter was the most primitive type of deal in commodities which afterwards became sale and purchase with the introduction of money as the medium of exchange. This single transaction in course of time broke itself up piecemeal and took the form of hire-purchase. In England, Parliament passed the Hire-Purchase Act 1938 (Statutes 1 and 2 Geo 6c 53). This was followed by the Hire-Purchase Act 1965. There was no such Act in India upto 1972. A Bill modelled with necessary modifications on the Hire-Purchase Act 1965 in England was introduced in the Parliament. The Hire-Purchase Act XXVI of 1972 passed by the Parliament received the assent of the President on June 1972 and was to have come in force on 1st September 1973.

A hire-purchase agreement has two elements (i) element of bailment, and (ii) element of sale in the sense that it contemplates an eventual sale when the intending purchaser fulfils the terms of sale. So it is different from a sale in which the price is to be paid later by instalments. In case of such a sale, the property passes as soon as the sale is made. In case of hire-purchase agreement, the property in the goods does not pass when the agreement is made but only when the option is finally exercised.¹

Although under the common law contractual rights are not assignable, the hirer under a hire-purchase agreement can lawfully assign his interest in

1 *K.L. Johar & Co. v Deputy Commercial Tax Officer* AIR 1965 SC 1082.

Equity, the vendee taking the interest subject to the terms and stipulation of the agreement.²

A hire-purchase agreement is drafted in the form settled in *Helby v Mathews*³ like a hire contract with a special clause about the option to purchase. It is the leading case on the subject. About the special condition it should be noted that it is an agreement to hire, but it gives the hirer an option to purchase. It should be clearly stipulated that the property shall not pass till all the instalments are paid. The "hire" is therefore a fiction only and the purchase is the test. As observed by Lord Denning in *Bredge v Compell Discount Co. Ltd.*,⁴ it is in effect, though not in law, a mortgage of the goods. Maitland in his *Lectures on Equity*⁵ observed it as the worst type of mortgage deed.

It is usual to insert a minimum clause providing that in the event of determination of the agreement, the hirer shall be liable to pay 50 per cent of the price after deduction of the instalments already paid.

FORMS

Hire-Purchase Agreement

AN AGREEMENT made this day of BETWEEN AB etc. (hereinafter called the OWNER), of the one part and CD etc. (hereinafter called the HIRER), of the other part, WHEREAS IT IS AGREED as follows:

1. The OWNER will let and the HIRER will take on hire the goods and effects mentioned and comprised in schedule hereto annexed, for the term of months (or years) from the date hereof, at a rent of Rs. to be paid by instalments in the manner hereunder stated subject nevertheless the termination clause hereunder contained.

2. The HIRER has already paid to the OWNER the sum of Rs. being the first month's rent (the receipt of which sum the OWNER hereby acknowledges), and the HIRER shall continue to pay to the OWNER a further sum of Rs. per month, as instalment of such rent on the day of each succeeding month during the said term, the next payment to be made on the day of

2 *Standard Credit Corporation v Subramanian* (1966)1 MLJ 457.

3 (1895) AC 771.

4 (1962)1 All ER 385.

5 2nd Edition 1949 at p. 182.

3. The HIRER shall, until and unless all instalments of rent are paid keep and maintain all the said goods and effects in good order and condition and preserve them against loss or injury by theft etc. (reasonable wear and tear only excepted), and make good all damages whether accidental or otherwise, and at all times allow the OWNER, his agents or servants to inspect the same whenever demanded. In the event of the goods being damaged or destroyed beyond repairs or replacement or lost by fire, theft or any other cause, the hirer shall nevertheless remain liable for and pay the OWNER all remaining instalments due on the goods.

4. The HIRER shall not, without the owner's previous written consent, remove or permit removal of the said goods and effects from the above address of the HIRER; such consent shall not be unreasonably withheld.

5. The HIRER shall not—until and unless he becomes the full owner—sell, assign nor encumber or subject the goods or suffer any decree or order of any court whereby the goods or any portion thereof may be attached or charged, encumbered or otherwise seized or taken in execution nor commit any act of insolvency nor enter into any scheme or composition with his creditors.

6. The HIRER shall punctually and regularly pay or cause to be paid the rates and taxes payable by him in respect of the premises, where the said goods and effects may for the time being be kept, and if any such rates and taxes shall not be paid on the exact day whereon the same shall become due, this agreement shall thereupon and thereby stand terminated even without notice or demand.

7. If the HIRER fails and/or neglects to carry out any of the terms of this agreement, the OWNER may (without prejudice to his right to recover any arrears of rent and damages for breach of this agreement) terminate the hiring and retake possession of the said goods and effects, whether the same shall be in the possession of the HIRER or of any other person, and for that purpose the hirer hereby gives the OWNER, his agents or servants all facilities to enter in or upon any premises occupied by the HIRER, to search for, seize and retake possession of all the said goods and effects without being liable in any way for any action for trespass or otherwise or at all.

8. Notwithstanding anything hereinbefore contained, the HIRER may terminate this agreement at any time by surrender and return of the said goods and effects to the owner but nevertheless he shall remain liable for the balance of instalments still to be paid.

9. The HIRER may, at any time during the term of hiring, become the absolute OWNER of the goods and effects hereby hired by paying to the OWNER all arrears of rent (if any) and all rents which would become due on this agreement during the said term without any discount or deduction or, subject to a discount of per cent, on all payments stipulated.

10. The HIRER shall keep the goods insured against fire, theft, injury, accident and also third party risks in the name of the OWNER or in their joint

names and regularly and punctually pay each premium as and when the same shall become due.

11. Any time concession or indulgence granted or shown on the part of the OWNER will not prejudice his rights under this agreement.

12. (*To be added in case of guarantee to the performance of the hire*). In consideration of the delivery of the goods to the hirer I, EF, son of etc., stand surety for the hirer for due performance of the terms and conditions of this agreement and shall remain liable to the OWNER for payment of all sums as and when shall be due and payable by the HIRER as rent, damages, costs, charges and expenses or on any other account under and by virtue of this agreement.

AND I FURTHER DECLARE THAT any time indulgence, forbearance, waiver or variation of the terms of this agreement shall not operate as a discharge of my liability as surety under these presents.

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

Signed, sealed and delivered by AB

Signed, sealed and delivered by CD

Signed, sealed and delivered by EF

WITNESS:

Hire-Purchase of Printing Machinery

THIS AGREEMENT of Hire-Purchase is made this day of BETWEEN X Co. Ltd. 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 CD son of residing at carries on business under the name and style of CD & Co. (hereinafter called the HIRER) of the other part.

WITNESSETH:

1. That the COMPANY hereby agrees to let to the HIRER and the HIRER hereby agrees to take on hire from the COMPANY the (*description of the printing machinery*) (referred to as the MACHINERY) for the purpose of carrying on the HIRER'S business of printers at (*place*) for months from the date of delivery of the same upon the terms and conditions herein contained.

2. That the HIRER shall pay to the company as hire charges of the MACHINERY the sum of Rs. as follows: *viz.*, the sum of Rs. to be paid on the execution of this agreement and the balance of Rs. to be paid in equal monthly instalments of Rs. each, the first of

such instalments to be paid on the day of 1999 and the remaining instalments on the 10th day of every succeeding calendar month thereafter.

3. That if the HIRER shall fail to pay any of the said stipulated instalments on the respective dates on which the same should be paid as hereinbefore mentioned then the HIRER shall pay, interest on the amount in arrears until payment thereof at the rate of per cent per annum.

4. That the HIRER shall, on the execution of this agreement, execute and deliver to the COMPANY promissory notes or bills of exchange for the respective amounts of the said instalments payable hereunder and such notes or bills shall respectively be made payable on the dates on which such instalments are respectively payable under this agreement and shall bear interest at the said rate of per cent per annum after the due dates. The said bills shall be deemed to be collateral security for the payment of the said instalments and shall not suspend or affect any other remedy or remedies of the company hereunder.

5. That the HIRER shall not, during the continuance of this agreement, in any way sell, assign, sublet or otherwise part with the possession of the MACHINERY or any part or parts thereof or remove the same from one building to another or attempt so to do or part with possession of their interest in the premises where the MACHINERY is kept, without first informing the company of such intended removal and receiving its consent in writing to do so. The machinery shall at all times be at the risk of the HIRER who shall bear any loss arising from destruction, loss thereof or damage thereto howsoever caused and who shall take all reasonable care thereof so long as the agreement for hiring remains in force and shall permit the COMPANY or its agents at all reasonable times to inspect the same; and if at any such inspection any part or parts of the MACHINERY shall be found broken, damaged or destroyed, the HIRER shall forthwith at his own expenses, and to the satisfaction of the COMPANY, replace and repair the parts so broken, damaged or destroyed. The HIRER shall not at any time during the said period purchase any parts as may be required to be used with or in connection with the MACHINERY except from the COMPANY, who shall from time to time supply the same at their ordinary prices current in (*name of place*) at the respective dates when such parts are required.

6. That the HIRER shall punctually pay all rents, rates and taxes payable in respect of the premises wherein the MACHINERY or any part thereof is kept and shall, upon demand, produce to the COMPANY or its agents the receipts for the said rents, rates and taxes and in the event of the same being in arrears, the company is hereby empowered to pay the same together with any expenses necessary for the purpose and the HIRER shall on demand repay the COMPANY any sums so paid.

7. That the HIRER shall at all times during the continuance of the hiring keep in a conspicuous position on the MACHINERY such plate or plates as the COMPANY may approve of for denoting that the machinery is the property of

the COMPANY and the HIRER shall not remove or obliterate any such plates or allow the same to be removed or obliterated.

8. That the COMPANY/HIRER shall insure the MACHINERY against fire in a recognised fire insurance office in the sum of Rs. and shall if required produce to the for his or its inspection the policy of insurance and the receipts of the premiums paid (and the HIRER shall on demand repay to the COMPANY the premiums paid by it).

9. That if any of the instalments of hire or any part thereof shall be in arrear and unpaid for one calendar month after the same shall have become due, or if the HIRER shall at any time fail or neglect to perform or observe any of the stipulations or provisions herein contained and on his part to be performed and observed, or if a warrant of attachment or seizure shall be issued or executed against any of the property of the HIRER, or if a receiver shall be appointed of any of the assets of the HIRER, then and in any such case the COMPANY may even without notice to the HIRER terminate the agreement of hiring hereby made and may by its servants or agents, without any previous notice to the HIRER, enter upon and into any premises or building where the MACHINERY or any part or parts thereof may be and seize and take possession of and remove the same to such place as the COMPANY may think fit notwithstanding any payments previously made by the HIRER; and for that purpose leave and licence are hereby given to the COMPANY, its agents and servants or any other person employed by it, to break open and enter any building, premises or place where the said MACHINERY may be or be supposed to be and take possession of the same without being liable to any suit, action or other proceeding by the HIRER or any other person claiming under him.

10. That if the agreement of hiring shall be determined under the preceding clause hereof, the COMPANY shall not be liable to any claim or demand at the instance of any person whosoever in respect of any payments previously made by the HIRER, all of which shall in every such case as aforesaid be absolutely forfeited to the COMPANY and the COMPANY shall further be entitled to recover from the HIRER or his estate all such instalments (*if any*) or hire aforesaid as may then be in arrears with interest thereon as aforesaid and also the instalment payable during the month in which the determination shall take place and in addition thereto such sum (*if any*) as shall be required with the money so to be paid for hire (exclusive of interest) and the sum previously paid for hire (exclusive of interest) to make up a sum equal to 60 per cent of the said amount of Rs. payable as hire under clause 2 hereof and the COMPANY shall also be entitled to recover from the HIRER or his estate all costs and expenses incurred in or about the entry, seizure and removal as hereinbefore provided under this agreement and the HIRER shall not nor any person claiming through him, commence or maintain any action or proceeding against the COMPANY, its servants or agents by reason of the COMPANY taking possession of the MACHINERY or the temporary possession of the premises where the MACHINERY or any part thereof may then be for such time as may be reasonably required in the removal of the same.

11. That the HIRER may determine the agreement of hiring hereby made upon giving to the COMPANY one calendar month's previous notice in writing of his intention so to do specifying the date on which the hiring is to terminate and upon delivering up at his own cost the MACHINERY to the COMPANY on or before that date in good repair at the godown of the COMPANY at (place); provided that the HIRER shall at the same time pay to the COMPANY all moneys payable hereunder up to that date and in addition such sum (if any) as with the sums then and previously paid for hire (exclusive of interest) shall be required to make up a sum equal to 60 per cent of the total amount of Rs. payable as hire under clause 9 hereof.

12. That if the hiring hereby constituted shall be determined under clause 2 or clause 11 hereof, the COMPANY shall, upon payment by the HIRER of all sums payable under clause 10 or 11 hereof, as the case may be, return to the HIRER duly cancelled such of the notes and bills mentioned in clause 4 hereof as shall not at the time of such payment have fallen due.

13. That upon payment by the HIRER to the COMPANY of the full sum of Rs. and interest (if any) payable hereunder on the days and in manner aforesaid, the hiring shall cease and determine and the MACHINERY shall thenceforth be and become the sole and absolute property of the HIRER; but until such payment the MACHINERY shall remain the sole and absolute property of the COMPANY but let on hire to the HIRER.

Signed by the said (COMPANY) by and through duly authorised in that behalf under a power-of-attorney/resolution (date and description of the power-of-attorney or the resolution) in the presence of:

1.
2.

Signed by the said
(HIRER) in the presence of:

1.
2.

Hire-Purchase Agreement for Machinery for the Garden

THIS INDENTURE IS MADE this 30th day of September 2000 BETWEEN AB Ltd., a company registered under the Companies Act 1956 and having its office at in the town of hereinafter called the OWNER (which term shall unless excluded by or repugnant to the subject or context be deemed to include its successors) of the one part, Darjeeling Tea Ltd., a company registered under the Companies Act 1956 having its Registered Office at in the town of being the OWNER of a Tea Garden/Tea Factory in the District of Darjeeling hereinafter called the HIRER (which term shall unless excluded by or repugnant to the subject or context be deemed to include its successors) of the other part.

WHEREAS the OWNER carries on business of Hire-Purchase and lets out plants and machinery required by particular business organisation.

AND WHEREAS the HIRER is the owner of a Tea Garden/Tea Factory known as Darjeeling Tea Estate.

AND WHEREAS the HIRER with a view to improving the production of tea in its garden is desirous of installing machinery and equipment in its garden/factory but does not have the necessary funds with which to purchase the same.

AND WHEREAS the HIRER has applied to the OWNER for obtaining the plants and machinery on Hire-Purchase basis.

AND WHEREAS the OWNER has agreed to supply the HIRER the requisite plant and machinery on Hire-Purchase on terms and conditions mentioned herein.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed and declared by and between the parties as follows:

1. The OWNER shall purchase the specified plant, machinery and equipment described in the Schedule hereunder written (hereinafter called the MACHINERY) at such time in such manner and on such terms and conditions as the OWNER thinks fit. The HIRER has agreed to the description and specifications of the MACHINERY. The estimated total cost of the said machinery is Rs. 5,20,000. To the said amount shall be added estimated amount of all charges, expenses, freight, insurance charges, customs duty, sales tax including central sales tax, if payable, bank charges, charges for technical supervision of installation of the MACHINERY by the Suppliers/Manufacturers or Engineers nominated by them and cost and expenses of installation in the case of driers, withering equipment, C.T.C. machine, roller equipment, dust extraction plant, oil burning equipment and steam engines and all other usual charges and expenses and interest on all moneys spent by the owner as hereinafter mentioned.

2. The OWNER shall let to the HIRER and the HIRER shall take on hire from the OWNER the said machinery or such of them as may be available after the purchase aforesaid.

3. The HIRER has paid as earnest money to the OWNER on the 20th day of September 2000 a sum of Rs. 60,000 (Rupees sixty thousand only) being approximately 10% of the estimated amounts of charges, expenses, etc. mentioned in clause 1 hereof.

4. The HIRER shall also pay to the OWNER the further sum of Rs. 60,000 (Rupees sixty thousand only) being 10% of the cost of MACHINERY and of charges, expenses, etc. mentioned in clause 1 hereof immediately on completion of installation of all the MACHINERY which are available in the opinion of the OWNER such opinion being final and binding on the parties provided however that payment of the said further sum of Rs. 60,000 (Rupees sixty thousand) shall in any event be made within 9 months from

the date of completion of delivery. In the case of loss or destruction of MACHINERY or any part thereof after delivery as mentioned in clause 6 hereof but prior to installation the time taken in obtaining MACHINERY or parts for replacing those lost or destroyed shall not be taken into account for the purpose of calculating time for completion of delivery of MACHINERY.

5. Immediately on receipt of advice from the suppliers the OWNER will send intimation to the HIRER that the machinery or equipment are ready for inspection and the HIRER shall send a representative to accompany the Owner's Engineer when the latter goes to inspect the machinery or equipment. The inspection should normally be carried out in Calcutta within three days from the date of advice that the equipment is ready. Should the representative of the HIRER fail to attend the inspection, such inspection will be held by the Engineer of the OWNER and his report will be final and binding on the HIRER. Immediately after such inspection a copy of the specification and inspection certificate will be sent to the HIRER.

6. Each MACHINERY or equipment or part thereof shall be deemed to be delivered to the HIRER as soon as each Railway Receipt, Bill of Lading or Air Consignment in respect thereof is delivered to it by or on behalf of the OWNER and delivery shall be completed or deemed to be completed as soon as the Railway Receipt, Bill of Lading or Air Consignment note in respect of the last machinery or equipment which in the opinion of the OWNER is available, is delivered to the HIRER.

7. The HIRER shall pay the OWNER without demand during each year the sum of Rs. 50,000 (Rupees fifty thousand only) (being approximately $\frac{1}{8}$ th of the balance of the amount, charges etc. mentioned in clause 1 hereof) by way of hire rent for the said MACHINERY, the first of such payment to be made after one year from the date the payment of 10% under clause 4 hereof becomes due and payable and every subsequent payment during the next 7 years to be made on the like day of each and every succeeding year provided further that in the event of one-eighth of the total cost of the MACHINERY together with all charges, expenses, freight, insurance charges, customs duty, sales tax, central sales tax, if any, bank charges, costs and expenses of installation and all other usual charges and expenses and interest being less than or exceeding the said sum of Rs. 50,000 (Rupees fifty thousand only) the amount of yearly payment shall be proportionately reduced or increased.

8. In arriving at the amount of balance payable, interest has been calculated on the amount spent by the OWNER (after deducting the amount received by the OWNER under clause 3 hereof) from the date the same has been incurred at the rate of 12% (twelve percent only) per annum and such interest has been added to each of the yearly amounts hereinbefore mentioned and calculated upto the date of each payment. In the event of non-payment of any yearly amount on the respective due date the HIRER shall be bound to pay the additional interest on the amount which is in default at the rate of 2% per month or part thereof but without prejudice to

the right of the OWNER to enforce all other rights and power under this agreement or under law.

9. The OWNER hereby agrees that so long as the HIRER shall perform its obligations under this agreement and this agreement shall be subsisting the HIRER shall on payment of the full amount paid by the OWNER for purchasing the MACHINERY and all charges, expenses, freight, insurance charges, customs duty, State sales tax, Central sales tax, bank charges and all other expenses incurred by the OWNER in respect of the said machinery plus a margin of 20% have the option of purchasing all the MACHINERY at any time before the entire amount due to the OWNER has been fully paid. If the HIRER shall exercise such option the OWNER will give the HIRER credit against such purchase price to the extent of all payments which have been made by the HIRER under the provisions of clauses 3, 4 and 7 hereof, but until such price and expenses and the charges herein mentioned shall have been paid in full, the MACHINERY shall remain absolutely the property of the OWNER. The HIRER shall in addition pay all sales tax that may be payable for such sale and all other amounts due under this clause.

10. The HIRER shall at its own expenses transport each machinery equipment or part thereof immediately on arrival thereof at the railway station, steamer ghat, or air port of destination from the said railway station, steamer ghat or air port to its tea garden where the MACHINERY are to be installed and shall within 3 days of each such arrival at railway station, steamer ghat or air port, send intimation in writing by registered post to the OWNER of such arrival and of the arrangement made by it for such transport. The HIRER shall after receipt of the Railway Receipt, Bill of Lading or Air Consignment note in respect of such machinery send written intimation at least once every week as to whether the MACHINERY has reached the railway station, steamer ghat or air port of the destination or not.

11. Within 20 days from the date of receipt of the MACHINERY or any part thereof in the tea garden of the HIRER where they are to be installed the HIRER shall deliver by registered post a report to the OWNER about the condition thereof and shall point out therein any defect in the condition thereof. If the HIRER fails to deliver such report within 20 days from the date of receipt of each machinery or any part thereof it shall be presumed that the MACHINERY and every part thereof is in good condition and no complaint about the condition of the MACHINERY or any part thereof shall be entertained after the said period of 20 days and the HIRER shall be deemed to have waived all objections regarding the MACHINERY and the condition thereof.

12. The manufacturers of all machinery and equipment normally guarantee their products against faulty materials and/or workmanship for a period of six months except in the case of scientific instruments which must be tested immediately on arrival at destination. The guarantee operates from the date of arrival of the MACHINERY or equipment at destination. Items

of proprietary manufacture such as electric motors, switch gear, control gear, etc. are guaranteed only by the makers of the equipments. The OWNER does not give any guarantee whatsoever in respect of the MACHINERY or equipment but the HIRER shall be entitled to the benefit of the guarantees given by the manufacturers or makers and to enforce the same.

13. All machinery or equipment shall be insured by the supplier in their own name against the following risks *viz.* theft, pilferage, non-delivery, rain or fresh water damage, breakages and denting, strikes, riot or civil commotion, the cover to begin from the time of despatch and to continue until delivered at final destination. The HIRER shall not have any claim against the OWNER for any loss of or damage to the MACHINERY or equipment.

14. Each machinery after arrival at the tea garden shall be installed therein with reasonable speed and the HIRER shall once in every fortnight from the date of such arrival send intimation to the OWNER about the progress of installation of each machinery until completion of such installation. Erection of driers, withering equipment C.T.C. machine, roller equipment, steam engines, etc. shall be carried out by the manufacturers or suppliers otherwise their guarantee will be voidable.

15. A brass plate showing that the said machinery belongs to the OWNER company shall be affixed on each machine, the cost, if any, of such plate being borne by the OWNER and the plate shall not be removed by the HIRER so long as the said machinery remain the property of the OWNER.

16. It shall be lawful for the OWNER and all persons authorised by it at all times to enter upon the said tea garden/tea factory or any other place where the said machinery may be or believed to be for the purpose of examining the same.

17. The HIRER hereby agrees with the OWNER that until payment of the entire amount due to the OWNER in the manner herein provided:

- (a) The MACHINERY shall be kept in good and serviceable order and condition and the HIRER shall maintain and protect the same from loss and damage by fire or accident, inundation, pilferage or any other cause whatsoever. The said machinery shall at all times remain at the risk of the HIRER and it shall be liable for all losses and damages thereto howsoever caused.
- (b) The said machinery and each and every one of them shall be kept in the possession of the HIRER at the said Tea Garden/Tea Factory or at such other address as the HIRER may by writing authorise free from distress, execution or other legal process whatsoever and the HIRER shall on no occasion sell, mortgage, pledge, assign, let or otherwise deal with nor shall the HIRER part with possession thereof or any portion thereof.
- (c) All rents, rates, taxes and other outgoings payable by the HIRER in respect of the said tea garden/tea factory shall be fully and

punctually paid and discharged by the HIRER and the current receipt therefor shall be produced before the OWNER by the HIRER on demand.

- (d) The MACHINERY shall be used for the purpose of production and manufacture of tea only and for no other purpose whatsoever save with the previous consent of the OWNER in writing.

18. The MACHINERY and equipment imported from outside India have been obtained by the OWNER under an Actual Users Licence and it is a condition of this agreement that the HIRER shall observe and perform all the terms and conditions of the Actual Users Licence not only so long as the OWNER remains the OWNER of the said imported MACHINERY and equipment but also after the HIRER becomes the owner on full payment of the purchase money and the HIRER shall even after becoming the OWNER use the MACHINERY and equipment solely for the purposes for which the same were purchased and no portion thereof shall be sold or used or permitted to be used by any other person or for any other purpose.

19. It is hereby declared that the OWNER has entered into this Agreement upon the express declaration by the HIRER and HIRER hereby expressly warrants that the said tea garden/tea factory in which the said MACHINERY are to be located are free from mortgage, encumbrances, *lis pendens* and other charges whatsoever except in favour of its Bankers for cash credit facilities.

20. The HIRER shall not so long as any money remains due and payable to the OWNER under the provisions hereof create or purport or agree to create any mortgage or charge on the said tea garden/tea factory or any of the lands and buildings thereof without previous consent in writing of the OWNER.

21. The HIRER shall keep the MACHINERY insured from the date of arrival at destination against damages or loss by fire, accident, pilferage, riot, civil commotion or such of them as the OWNER from time to time require, in the sum of Rs. 6,00,000 (Rupees six lakhs only) or such less sum as the OWNER may direct with some insurance office of repute to be approved by the OWNER in the joint names of the HIRER and the OWNER. The HIRER shall duly and punctually pay all premia for such policies of insurance at least 20 days before the same becomes due and shall produce to the OWNER or to its representatives all receipts for such premia paid on such policies of insurance at least 10 days before the same becomes due.

22. If any MACHINERY or any portion thereof be lost or damaged all moneys received or receivable in respect of the MACHINERY from the Insurance shall be received by the OWNER who may apply the same either in making good the damage done and/or in replacing the said MACHINERY by other articles of similar description and value and such substituted articles shall become subject to the provisions of these presents in the same manner as the MACHINERY for which they have been substituted. The OWNER may instead if

it so desires apply the money in whole or in part in payment of the amounts payable by the HIRER under the provisions of clause 7 hereof whether it has fallen due or not.

23. If the HIRER shall make default in punctual payment of any instalment payable under the provisions of clause 7 hereof or any interest due thereunder or goes into liquidation or be wound up or a petition for its winding up is filed or the HIRER amalgamates with any company or enters into any composition or a scheme or arrangement with its creditors or any distress or execution is levied or a Receiver is appointed on any of its properties or assets or if the HIRER fails to observe or perform any of the terms and conditions herein contained and on its part to be observed and performed then and in any of such cases it shall be lawful for the owner in addition to its other rights and powers hereunder forthwith to terminate this agreement and to forfeit all payments made by the HIRER to the OWNER if any and also to enter upon the said tea garden/tea factory or any other places where the said machinery might be located or believed by the OWNER or its officer to be located and if necessary to break open any door or locks and to take possession of the MACHINERY and to remove the same without being liable to any action for trespass or otherwise whatsoever. All costs of taking possession and of removal thereof shall be paid by the HIRER to the OWNER.

24. The OWNER may at its option extend the due date for the payment of any instalment under clause 7 hereof but such extension shall not in any event exceed six months from the date fixed under the said clause. Such extension shall be subject to such terms and conditions as the OWNER may in its absolute discretion determine, including payment of additional interest at the rate of 2% per month or part thereof for the period of the extension.

25. If the OWNER shall grant to the HIRER any time or indulgence the same shall not affect or prejudice any of the rights or powers of the OWNER hereunder.

26. In the event of the OWNER terminating this agreement and taking possession of the machinery for any cause whatsoever the OWNER shall be entitled to sell the MACHINERY by private treaty or public auction or by any other means at its discretion, and if the net resale proceeds of the MACHINERY fall short of the balance outstanding on the HIRER'S account the resultant loss shall be made good by the HIRER.

27. All rights and powers of the OWNER hereunder may be exercised by a Director or any other officer thereof authorised by the Managing Director from time to time.

The Schedule

One Kirloskar 50 KW, 72 KVA, 400/230 Volts, 3 phase, 50 cycles, 4 wire, 8 power factor, self-regulating diesel alternator set complete with Model JH 6, tank-cooled, six cylinder in line, vertical cold starting, etc. etc. complete in all respects.

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
of AB Ltd. in the presence of:

Signature

Signed, sealed and delivered by
Mr. pursuant to
Board Resolution of Darjeeling
Tea Ltd. in the presence of:

Signature

Hire-Purchase Agreement for Transport Vehicles

THIS INDENTURE MADE THIS 18th day of September 2000 BETWEEN ELH Ltd., a company registered under the Companies Act 1956 and having its registered office at hereinafter called the OWNER (which term shall unless excluded by or repugnant to the subject or context be deemed to include its successors) of the first part, AND Transport Co. Ltd., a company incorporated under the Companies Act 1956 and having its registered office at being the OWNER of a fleet of vehicles carrying on Transport business hereinafter called the HIRER (which term shall unless excluded by or repugnant to the subject or context be deemed to include its successors) of the second part; AND Mr. XY of hereinafter called the GUARANTOR (which expression shall unless repugnant to the context be deemed to include his heirs, executors, administrators and legal representatives) of the third part.

WHEREAS the HIRER is the owner of a fleet of Transport vehicles AND WHEREAS the HIRER with a view to facilitate its transportation business has applied for hire purchase of a Jeep described in the Schedule hereunder and the GUARANTOR has requested the OWNER to supply the same to the HIRER on a hire purchase agreement being these presents and on the terms and conditions herein contained.

AND WHEREAS the OWNER at the request of the HIRER and the GUARANTOR has agreed to supply on hire purchase the Jeep described in the Schedule hereunder written on the terms herein contained.

NOW THIS INDENTURE WITNESSETH and it is hereby agreed and declared by and between the parties to these presents as follows:

1. The OWNER of the Jeep with fittings, tools and accessories spare parts more particularly described in the Schedule hereto which are of the value of

Rs. 2,55,000 (Rupees two lakhs fifty five thousand only) and hereinafter collectively called the VEHICLE agree to let and the HIRER agrees to hire the vehicle from the date of taking delivery, subject to the terms and conditions herein contained.

2. The HIRER has paid as earnest money to the OWNER on the 5th day of September 1999 the sum of Rs. 51,000 (Rupees fiftyone thousand only) which sum shall on the signing of this agreement become the absolute property of the OWNER.

3. The balance of the value of the Jeep mentioned in clause 1 hereof after deducting the amount already paid as indicated in clause 2 above (hereinafter called the principal amount) shall be paid by the HIRER in five equal annual instalments, the first of such instalments to be paid on the first anniversary of the date of delivery of the vehicle and the subsequent instalments on the like day in each subsequent year. Provided however the OWNER may at its absolute discretion extend the due date for payment of any instalment but such extension shall not in any event exceed 3 months and such extension shall be subject to such terms and conditions as the OWNER may determine including payment of additional interest for the period of extension.

4. Besides the instalment mentioned in clause 3 above, the HIRER shall also pay commencing from the date of delivery of the vehicle interest at the rate of 15% per annum on the balance sum of Rs. 2,04,000 payable yearly, the first of such payment to be made on the First Anniversary of the date of taking delivery and the subsequent payments on the like day of each and every year. If the HIRER shall pay to the OWNER interest on the principal amount (after deducting the earnest money) or so much thereof that may remain outstanding from time to time regularly on or before the date on which interest is made payable under these presents and perform and observe all the covenants and conditions herein contained, and on the part of the HIRER to be observed and performed and the balance of the said amount shall not have been called in by the OWNER then in that case the OWNER shall at the time of receipt of interest on the principal amount for the time being due and owing at the rate of 15% per annum grant to the HIRER a rebate of 0.5 per cent per annum for the year in which interest is regularly and punctually paid as aforesaid on the said amount or the balance thereof. In the event of nonpayment of any yearly amount on any of the respective due dates the HIRER shall pay additional interest on the amount which is in default at the rate of 1% per month or part thereof but without prejudice to the right of the owner to enforce all other rights and powers under this agreement or under law.

5. If the HIRER shall duly perform and observe all the terms and condition contained in this Agreement and on his part to be performed and observed. and shall in the manner aforesaid pay the principal amount to the OWNER by yearly instalments as aforesaid and shall also pay to the OWNER interest as herein mentioned and all other sums of money which may become payable

to it by the HIRER under this Agreement the hiring shall come to an end and the vehicle shall at the option of the HIRER become his property and the OWNER will assign and make over all its right, title and interest in the vehicle to the HIRER, but until such payments as aforesaid have been made the vehicle shall remain the absolute property of the OWNER.

6. If the OWNER shall grant to the HIRER any time or indulgence the same shall not affect or prejudice any of the rights or powers of the OWNER hereunder.

7. The GUARANTOR in consideration of the OWNER agreeing to let the vehicle to the HIRER, hereby guarantees the due performance and observance by the HIRER of the terms and conditions of this Agreement and agrees to pay on demand any money due or which may become payable under this Agreement (and not paid by the HIRER) either by way of debt or damages, costs or expenses and further agrees that any time granted to the HIRER or any indulgence given in respect of the terms and conditions herein either in the shape of releasing or regiving the vehicle after seizure to the HIRER or in any other manner, shall not prejudice the OWNER'S rights nor relieve the GUARANTOR from his Guarantee and that it shall not be necessary upon the HIRER being granted any such concession or indulgence as aforesaid for the OWNER to give any notice to the GUARANTOR in respect thereof. The GUARANTOR further agrees that the OWNER'S rights on the vehicle or right to seize the same shall not be destroyed by reason of any judgment, decree or order obtained against the HIRER or himself or both.

8. The HIRER agrees with the OWNER as follows:

- (a) To keep the vehicle in thorough working order and good condition and to make no alteration thereon or addition thereto without the written consent of the owner first had and obtained. The cost of body-building or extended chasis made with such permission of the OWNER shall be done by the HIRER at his own cost after taking delivery of the same. And it is agreed that in the event of this Agreement being terminated by the OWNER such additions or alterations as aforesaid shall be deemed to be the absolute property of the OWNER provided always that the HIRER shall not have or be deemed to have any authority to pledge the credit of the OWNER for repairs, alterations and additions.
- (b) To indemnify the OWNER against loss by reason of damage to or destruction or loss of the vehicle from any causes whatsoever or by reason of claims by third parties in respect of the same.
- (c) To keep the OWNER notified with his address and the address of the premises where the vehicle is kept and any change of the same as soon as made.
- (d) To allow the OWNER'S representatives free access at all reasonable time to inspect the vehicle or to take possession of the same as hereinafter mentioned.

- (e) To have the vehicle registered in the joint names of the owner and the HIRER in the State of West Bengal and not to sell, mortgage, pledge hypothecate hire or otherwise deal with the vehicle, not to part with possession of vehicle, not to remove it out of the State of West Bengal without the express written permission of the OWNER previously obtained also not to use the vehicle for any purpose other than that declared in the original application. The HIRER shall not use or allow it to be used for carrying any prohibited goods or smuggled goods.
- (f) To pay all fees and taxes, payable in respect of the vehicle as and when the same becomes due.
- (g) To keep the vehicle properly insured covering all sorts of risks under a comprehensive Policy of Insurance with an Insurance Company as would be approved by the OWNER in writing in the joint names of the OWNER and HIRER and in case of any accident to the vehicle the HIRER shall make his own arrangements for getting the vehicle repaired and shall duly claim the charges from the Insurer. In any case, the OWNER should not be made liable for payment of any damage/compensation due to any accident committed by the vehicle to any third party.
- (h) To pay all expenses, premia for Insurance etc. in case the OWNER insures the vehicle in default of so doing by the HIRER.
- (i) To return to the OWNER the permit, the Registration Certificate and all other certificates granted by Registering or any Controlling Authority in respect of the vehicle in the event of termination of the hire.
- (j) To declare to the Registering Authority that the vehicle is subject to this Agreement and to have necessary endorsement to the effect made by the said Authority, but this in no way will affect or prejudice the OWNER'S rights under this Agreement.

9. The HIRER agrees to pay to the OWNER all sums due for taxes, fees, repairs and to suppliers which may be due from HIRER to the OWNER in respect of the vehicle but the provisions shall not in any way affect or prejudice the right of the OWNER as provided herein to recover possession of the vehicle and to determine this agreement on default of payment of any of the hire payments. It is further agreed that the payment of hire monies and other sums due under this Agreement is not subject to suspension or delay by reason of the vehicle requiring or undergoing repairs or being suspended by any traffic authority or by reason of delay in registration of the vehicle or its non-registration, or by reason of delay or non-receipt of the permit by the HIRER or of the pendency of an insurance claim or by any cause or reason whatsoever.

10. The HIRER acknowledges that he holds the vehicles as a bailee of the OWNER and shall not have any proprietary right or interest as purchaser

therein until he shall have paid the whole amount due under this agreement or under any term thereof and exercised his option of purchase as herein provided.

11. The OWNER may terminate, with or without notice, the contract of hiring and forthwith retake and recover the possession of the vehicle:

- (a) If any annual hire amount or part thereof or any interest thereon or part thereof is in arrear and left unpaid for a period of seven days after the date fixed for its payment for any reason whatsoever and particularly notwithstanding any claim which the HIRER may have in respect of insurance.
- (b) If the HIRER fails to keep the vehicle insured as herein provided.
- (c) If the HIRER commits or suffers any other breach to the conditions and obligations herein stipulated to be observed and performed by him or does anything or suffers any act to be done which in the opinion of the OWNER may prejudice its title to the vehicle.
- (d) If the HIRER omits to inform the owner within 48 hours of any accident which causes either damage to the vehicle, bodily injury to any third party or damage to any other vehicle or property.
- (e) If the HIRER goes into liquidation or is wound up, allows the vehicle to be seized in distress or execution or under any other process of law.

Any such termination shall be without prejudice to the claims the OWNER may have in respect of any terms or conditions of this Agreement and it is further agreed that if the hiring is terminated by the OWNER or by the hirer in the manner herein provided all hire (and damages for the breach of this Agreement) upto the date of such termination shall be paid by the HIRER to the OWNER and no payment, credit or allowance, in respect of payment previously made shall be made or allowed to the HIRER. All costs of taking possession of the vehicle shall be paid by the HIRER to the OWNER.

12. The OWNER shall have the right to dispose of the vehicle after re-possession in any manner it thinks fit by private sale or re-hire without any notice to the HIRER and at any price that the OWNER may think fit. If on such sale the net amount realised is less than the balance of principal amount and interest due from the HIRER, the HIRER shall pay the short fall.

13. This agreement shall be treated as revised in case the vehicle after re-possession by the OWNER for any breach committed in respect of this agreement by the HIRER, is returned to the HIRER at his request in writing.

14. If the vehicle supplied by the OWNER is insured by the OWNER then the HIRER will, if he is not in default with his payment be granted such benefits as the OWNER may derive from the insurance in respect of claims. Such insurance shall not absolve the HIRER from his liability under

condition 11(b) hereof provided always that in the event of the vehicle being destroyed or being so extensively damaged as to be in the opinion of the Insurance Company a total loss, then and in that case the amount recoverable under the Insurance Policy shall be applied in the first place in paying all monies due by way of arrears of hire and thereafter if the same received by the OWNER under such policy shall exceed the balance of the amount due after deducting all sums previously paid by the HIRER for the hire including the amount paid under clause 2 of the Agreement then such excess shall be paid by the OWNER to the HIRER.

15. The HIRER shall pay on demand all expenses incurred by the OWNER in collecting or attempting to take possession of the vehicle from the HIRER or any other person using or possessing the same.

16. The grant of any time, or indulgence to the HIRER as provided in this agreement or otherwise including the acceptance of any payments after the due dates thereof shall not operate to affect or prejudice the OWNER's rights against the HIRER or the GUARANTOR under this Agreement.

17. The HIRER has examined or caused to be examined the vehicle and satisfied himself thoroughly about the same. The delivery receipt passed by him regarding the vehicle has been accepted by him as duly fitted, equipped and according to contract. No claim on part of the HIRER shall be admissible and no warranty on the part of the OWNER as to quality or state of vehicle or the model of the vehicle or the accessories or spare parts supplied thereto or as to their fitness for any purpose shall be deemed to have been made or implied.

18. The HIRER and the GUARANTOR hereby declare that the statements made by them in the application with respect to their means, property and other assets are absolutely true and correct and that it is by these statements that they have induced the OWNER to enter into this Agreement.

Schedule

One Mahindra CJ 4A /4 WD Jeep

Universal fitted with petrol engine with six Ply tyres and standard equipments.

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. a director of
The Transport Co. Ltd. pursuant
to Board Resolution dated 5th
September 2000 in the presence of:

Signature

1.
2.

Signed and delivered by Mr. XY the
said GUARANTOR in the presence of:

Signature

1.
2.

Signed, sealed and delivered by
Mr. a
Director of ELH Ltd. pursuant to
the Board Resolution dated 6th
September 1999 in the presence of:

Signature

1.
2.