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## Insolvency

In India, the law of insolvency is contained in two enactments, *viz.*, the Presidency Towns Insolvency Act 1909, which applies to the Presidency Towns (Bombay, Calcutta and Madras) and the Provincial Insolvency Act 1920, which applies to the mofussil, *i.e.*, the whole of the rest of India except Part B States and the schedule districts. Over and above these two statutes certain rules made by various High Courts under the rule-making power granted them by s. 112 of the Presidency Towns Insolvency Act and s. 70 of the Provincial Insolvency Act supplement the law of insolvency in India. These rules contain important provisions with regard to practice and procedure in insolvency. Both the Presidency Towns Insolvency Act and the Provincial Insolvency Act are based on the English Bankruptcy Law inasmuch as many of the provisions of the latter are incorporated in each of former statutes. The decisions on the English Bankruptcy Acts are considered whenever necessary in constructing the provisions of the Indian statutes.

**Difference between Indian and English Bankruptcy Laws.** In India the insolvency law differs from the law in England in two respects. In England, bankruptcy procedure is divided in two stages.

The court in England generally issues a 'receiving order' on a bankruptcy petition being filed. In the result all the property and assets of the debtor vest in the official receiver. The object of a 'receiving order' is to give the creditors an opportunity to decide as to whether their debts should be liquidated in bankruptcy as against the property of the debtor or, in the alternative, whether a scheme or composition is feasible under the circumstances of the case. If the creditors choose to accept the second alternative, the receiving order stands vacated. If, however, the creditors decide the other way, then and in such an event the court would pass the usual adjudication order.

The other noteworthy distinction between the two systems of law is that in England, bankruptcy administration is entrusted to two officers, *viz.*, the official receiver and the trustee in bankruptcy. The duty of the former is to

collect, realise and distribute the property of the bankrupt, and the latter officer is to investigate the conduct of the debtor and report the same to the court. This bifurcation of functions is extremely useful. It helps the court to concentrate more attention on the conduct and dealings of the bankrupt with regard to his property prior to bankruptcy. This is a problem in India by reason of combining both the above functions in one officer only, viz. the Official Assignee.

**"Insolvent" debtor, when debtor can petition—contents of petition.** A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

A debtor is not entitled to present an insolvency petition unless he is unable to pay his debts and—

- (i) his debts amount to five hundred rupees; or
- (ii) he is under arrest or imprisonment in execution of the decree of any court for the payment of money; or
- (iii) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

A debtor in respect of whom an order of adjudication made under the Provincial Insolvency Act has been annulled, owing to his failure to apply, or to prosecute an application for the discharge, is not entitled to present an insolvency petition without the leave of the court by which the order of adjudication was annulled. Such court will not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

Every insolvency petition under ss. 10 and 13 of the Provincial Insolvency Act which corresponds to ss. 14 and 15 of the Presidency Towns Insolvency Act and the Insolvency Rules of the High Courts presented by the debtor must *inter alia* state—

- (i) that the debtor is unable to pay his debts;
- (ii) the place where he ordinarily resides or carries on business or personally works for gain, or if he has been arrested or imprisoned, the place where he is in custody;
- (iii) the court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property; together with particulars of the decree in respect of which any such order has been made;
- (iv) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as



- they are known to or can by the exercise of reasonable care and diligence be ascertained by him;
- (v) the amount and particulars of all his property, together with—
    - (1) a specification of the value of all such property consisting of money;
    - (2) the place or places at which any such property is to be found; and
    - (3) a declaration of his willingness to place at the disposal of the court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Civil Procedure Code, or by any other enactment from liability to attachment and sale in execution of a decree;
  - (vi) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent, and (where such a petition has been filed)—
    - (1) if petition has been dismissed, the reasons for such dismissal, or
    - (2) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled and, if so, the grounds therefor.

**Who can present insolvency petition—Acts of insolvency.** If a debtor commits an act of insolvency, an insolvency petition can be presented either by a creditor or by the debtor, and the court can make on such petition an order of adjudication adjudging him insolvent.

A debtor commits acts of insolvency in each of the following cases:

- (i) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
- (ii) if, in India or elsewhere, he makes a transfer of his property, or of any part thereof, with intent to defeat or delay his creditors;
- (iii) if, in India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under the insolvency law or any other law for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
- (iv) if, with intent to defeat or delay his creditors—
  - (1) he departs or remains out of India;
  - (2) he departs from his dwelling-house or usual place of business or otherwise absents himself;

- (3) he secludes himself so as to deprive his creditors of the means of communicating with him;
- (v) if any of his property has been sold in execution of the decree of any court for the payment of money;
- (vi) if he petitions to be adjudged an insolvent under the provisions of the insolvency law;
- (vii) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts; or
- (viii) if he is imprisoned in the execution of the decree of any court for the payment of money.

For the purpose of acts of insolvency, the act of an agent may be the act of the principal.

**When creditor can petition<sup>1</sup>—secured creditor's option.** A creditor will not be entitled to present an insolvency petition against a debtor unless—

- (i) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors amounts to five hundred rupees, and
- (ii) the debt is a liquidated sum payable either immediately or at some future time, and
- (iii) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

No insolvency petition can be presented against any corporation or against any association or company registered under any law for the time being in force. Every insolvency petition presented by a creditor or creditors must set forth the place where the debtor ordinarily resides, or carries on business or personally works for gain, and if he is arrested or imprisoned, the place where he is in custody,<sup>2</sup> and must also specify—

- (i) the act of insolvency committed by such debtor together with the date of its commission; and
- (ii) the amount and particulars of his or their pecuniary claim or claims against such debtor.

If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to relinquish security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an

1 See section 12 of the Presidency Towns Insolvency Act.

2 See section 3 of the Presidency Towns Insolvency Act which applies only to High Court and section 3 of the Provincial Insolvency Act which applies only to District Court and subordinate courts expressly invested with insolvency jurisdiction.



estimate of the value of the security. In the latter case, he can be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

**When insolvent's property vests in court.**<sup>3</sup> On the making of an order of adjudication, the whole of the property of the insolvent debtor vests in the court or in a receiver, and becomes divisible among the creditors, with the exception of some property allotted by the court for his maintenance and the maintenance of his family.

**Discharge, refusal of absolute discharge.**<sup>4</sup> A debtor can, at any time after the order of adjudication, and must, within the period specified by the court, apply to the court for an order of discharge, and the court will, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

- (i) grant or refuse an absolute order of discharge; or
- (ii) suspend the operation of the order for specified time; or
- (iii) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

The court will refuse to grant an absolute order of discharge on proof of any of the following facts:

- (i) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
- (ii) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;
- (iii) that the insolvent has continued to trade after knowing himself to be insolvent;
- (iv) that the insolvent has contracted any debt provable under the Provincial Insolvency Act without having at the time of contracting

3 See section 17 of the Presidency Towns Insolvency Act and section 28(2) of the Provincial Insolvency Act.

4 See section 41(2) of the Provincial Insolvency Act and section 38(2) of the Presidency Towns Insolvency Act.

- any reasonable or probable ground of expectation that he would be able to pay it;
- (v) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
  - (vi) that the insolvent has brought on, or contributed to, his insolvency by rash hazardous speculations, or by unjustifiable extravagance in living, or by gambling or by culpable neglect of his business affairs;
  - (vii) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors;
  - (viii) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;
  - (ix) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

**Effect of order of discharge.**<sup>5</sup> An order of discharge releases the insolvent from all debts provable under the Insolvency Act, except from the following:

- (i) any debt due to the Crown;
- (ii) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party;
- (iii) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or
- (iv) any liability under an order for maintenance made under the Code of Criminal Procedure.

An order of discharge will not release any person who, at the date of the presentation of the petition was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

**Avoidance of voluntary transfer.**<sup>6</sup> Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration is, if the transferor is adjudged insolvent on a petition presented within two

5 See section 45 of the Presidency Towns Insolvency Act and section 44 of the Provincial Insolvency Act.

6 See section 55 of the Presidency Towns Insolvency Act and section 53 of the Provincial Insolvency Act.



years after the date of the transfer, voidable as against the receiver and can be annulled by the court.

**Annulment of adjudication of insolvency.**<sup>7</sup> Where in the opinion of the court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the court that the debts of the insolvent have been paid in full, the court will, on the application of the debtor or of any other person interested, by an order in writing, annul the adjudication.

**Schedule of creditors.** When an order of adjudication has been made, all persons alleging themselves to be creditors of the insolvent in respect of debts provable under the Provincial Insolvency Act must tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the court will, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts and the amount of such debts, respectively, and will frame a schedule of such persons and debts. Provided that if, in the opinion of the court, the value of any debt is incapable of being fairly estimated, the court can make an order to that effect, and thereupon the debt will not be included in the schedule.

Any creditor of the insolvent can, at any time before the discharge of the insolvent, tender proof of his debt and apply to the court for an order directing his name to be entered in the schedule as a creditor.

**Penalties.** If a debtor, whether before or after the making of an order of adjudication—

- (i) wilfully fails to perform the duties imposed on him of producing all books of account, giving such inventories of his property, and such lists of his creditors and debtors and of the debts due to him from them respectively, submitting to such examination in respect of his property or his creditors attending at such times before the court or receiver, executing such instruments, and generally doing all such acts and things in relation to his property, as may be required by the court or receiver, or to deliver up possession of any property of his which is divisible among his creditors, and which is for the time being in his possession or under his control, to the court or to any person authorized by the court to take possession of it, or
- (ii) fraudulently with intent to conceal the state of his affairs or to defeat the object of the law of insolvency—
  - (1) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of

7 See sections 21, 22, 30(1), 41 of the Presidency Towns Insolvency Act and sections 35, 36, 39, 43(1) of the Provincial Insolvency Act.

his affairs as are subject to investigation under the Provincial Insolvency Act,

- (2) has kept or caused to be kept false books, or
  - (3) has made false entries in or withheld entries from or wilfully altered or falsified any documents relating to such of his affairs as are subject to investigation under the Provincial Insolvency Act, or
- (iii) fraudulently with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors,—
- (1) has discharged or concealed any debt due to or from him, or
  - (2) has made away with, mortgaged or concealed any part of his property

he is punishable on conviction by the court with imprisonment which may extend to one year.

An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent is liable, on conviction by a first class Magistrate, to be punished with six months' imprisonment, or with fine or with both.

**Disqualification of insolvent.**<sup>8</sup> Whether a debtor is adjudged or re-adjudged insolvent, he is disqualified from—

- (i) being appointed or acting as a Magistrate;
- (ii) being elected to any office of any local authority where the appointment to such office is by election, or holding or exercising any such office to which no salary is attached; and
- (iii) being elected or sitting or voting as member of any local authority:

Provided that the disqualifications, which an insolvent is subject to as above-mentioned, will be removed and will cease if—

- (1) the order of adjudication is annulled, or
- (2) he obtains from the court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

**Court-fee.** The court-fee on a petition for insolvency is the same as on a petition to the Civil Court.

<sup>8</sup> See sections 38-45 of the Presidency Towns Insolvency Act and sections 41-44 of the Provincial Insolvency Act.



## Forms

### Petition by Debtor to be Adjudged an Insolvent

In the Court of District Judge of .....

Insolvency Case No. .... of .....

*Ex parte*—The debtor

In the matter of debtor's petition for insolvency, under s. 13(1) of the Provincial Insolvency Act

The humble petition of AB residing at ..... and lately of .....  
(give address where debts were incurred)

MOST RESPECTFULLY SHEWETH:

1. That the applicant, who is ordinarily living and residing (*or* carrying on business, *or* personally working for gain, *or* in custody) at ..... having been unable to pay his debts exceeding Rs. 500 prays for an order of adjudication against him in the circumstances hereunder mentioned.

2. That on or about the ..... day of ..... the applicant was arrested and committed to prison at ..... in execution of a decree for Rs. .... dated ..... made in suit No. .... of ..... (*..... v .....*) under order dated ..... made by ..... or (as the case may be) the movable and immovable property of the applicant such as (give short particulars) have been attached and the said attachment is still subsisting.

3. The amount and particulars of all pecuniary claims against the applicant, together with the names and residences of his creditors, are as follows:

4. The following are the particulars of debts and claims outstanding against the applicant.

Names, addresses and occupation of the creditors, particulars of the amounts due and securities.

5. The following are the particulars of the property belonging to the applicant and their respective values.

(1) Household furniture, utensils, etc., all worth about .....

(2) One house at ..... worth about .....

The whole of the above property, which is situate at, etc., has been truly described, and the applicant is willing to surrender and put them entirely at the disposal of this court.

The applicant prays that the court may be pleased to adjudge him insolvent.

### 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 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 5 are true to my knowledge and belief.

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

Before me  
Notary

Signature of AB  
Signature of Advocate

### Petition by Creditor to Adjudge Debtor Insolvent

In the Court of the District Judge of ..... at ..... Insolvency Case No. .... *ex parte* AB the creditor

*In re:* CD Name and address of the debtor

In the matter of the adjudication for insolvency of the debtor under s. 13(2) of the Provincial Insolvency Act

MOST RESPECTFULLY SHEWETH:

1. That the above-named debtor CD who ordinarily resides at ..... (or carries on business or personally works for gain at .....) is truly and justly indebted to the applicant to the extent of Rs. .... for principal and Rs. .... for interest due on a pronote executed by CD in favour of the applicant on the ..... day of .....

2. That on the ..... day of ..... when the applicant called at the said premises and demanded payment of the amount due under the promissory note, the said CD gave notice to the applicant that the said CD has suspended payment of his debts.

3. That the said debtor has, within three months before the date of presentation of this petition, committed *inter alia* the following acts of insolvency (state briefly the acts of insolvency), e.g.



- (i) The said debtor has departed from his usual place of business/ residence at ..... and/or absented or kept himself secluded therefrom with intent to deprive his creditor of all means of communications.
- (ii) Set out other acts of insolvency, if any.

The applicant therefore prays that this court may be pleased to adjudge CD an insolvent and order the realisation of all his assets and distribution of the same amongst all his creditors.

### Verification

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

I am the petitioner above-named. I know the facts and circumstances of this case and I am able to depose thereto.

The statements in paragraphs 1, 2 and 3 hereinabove are true to my knowledge and believed by me to be true and that I have not suppressed any material fact.

I sign this Verification on this ..... day of ..... 1999 at the Court premises at Alipore.

Before me  
Notary

Signature of AB  
Signature of the Advocate

## Petition for Discharge

### CAUSE TITLE

In the matter of debtor's petition of absolute discharge under s. 41 of the Provincial Insolvency Act

The applicant above-named states as follows:

1. That on the ..... day of ..... by an order of this court the applicant was adjudged insolvent and he was to apply for discharge within the ..... day of .....
2. That the receiver appointed in the above case has realised all the assets of the applicant and has declared a dividend of ..... paise in the rupee and he has some more money in his hand (or the applicant having no realisable assets nothing has been paid to the creditors).
3. That on account of circumstances for which the applicant cannot justly be held responsible the applicant's assets are not of a value equal to fifty paise in the rupee on the amount of his unsecured liabilities.

4. That the applicant has kept all the usual or proper books of account of his business (or the applicant having had no business, no books of account have been kept by him).

5. That the applicant has not continued to trade after knowing himself to be insolvent and has not contracted any debt without having any reasonable or probable ground of expectation that he would be able to pay it nor has the applicant failed to account satisfactorily for any loss or deficiency of assets.

6. That the applicant has not brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living or by gambling or by culpable neglect of his business affairs.

7. That the applicant has not given any undue preference to any of his creditors.

8. That the applicant has not concealed or removed his property or any part thereof nor has he been guilty of any other fraud or fraudulent breach of trust.

The applicant therefore prays for an order of absolute discharge.

#### *Verification*

I, CD son of ..... aged ..... years by occupation business residing at ..... do hereby solemnly affirm and say as follows:

I am the applicant above-named. I know the facts and circumstances of this case and I am able to depose thereto.

The statements made in the paragraphs 1 to 8 in the above-mentioned application are true to my knowledge and belief and that I have not suppressed any material fact.

I sign this Verification on this ..... day of ..... 1999 at the Court Premises at Alipore.

Before me

Signature of CD

Notary

Signature of Advocate

#### **Agreement for Composition with Creditors with Surety**

THIS AGREEMENT is made this ..... day of ..... BETWEEN AB residing at ..... (hereinafter called the DEBTOR) of the first part, CD and EF sons of ..... residing at ..... (hereinafter called the SURETIES) of the second part and the several persons being Creditors of the DEBTOR whose names and addresses are entered in the Schedule

hereunder (hereinafter called the CREDITORS) of the third part; WHEREBY IT IS AGREED as follows:

1. In consideration of the DEBTOR having procured the guarantee of the above-mentioned SURETIES, the CREDITORS of the DEBTOR of the amounts and extents set out as against their respective names in the schedule below do hereby and hereunder jointly and severally agree with the DEBTOR to accept in full discharge of their respective original debts irrespective of the amounts particulars of which are set opposite to their respective names in the said schedule, a composition of ..... paise in the rupee to be paid as hereunder mentioned.

2. The said composition shall be paid by ..... instalments, the first of ..... paise in the rupee in ..... calendar months from the date hereof, the second of ..... paise in the rupee in ..... calendar months from the date hereof, and the third instalment of ..... paise in the rupee in ..... calendar months from the date hereof.

3. The said several instalments shall be secured by promissory notes to be executed by the SURETIES jointly with the DEBTOR for the respective amounts of the instalments or by bonds to the effect that the DEBTOR and the SURETIES will jointly and severally bind themselves unto the CREDITORS that they, the DEBTOR and the SURETIES, shall remain liable to and shall duly and punctually pay to the CREDITORS the said several instalments in the manner and at the times aforesaid.

4. Upon payment of the said respective amounts by the instalments and in manner aforesaid, the CREDITORS and each of them shall accept the same in full and final settlement and satisfaction of their respective claims and at the request and costs of the DEBTOR release and discharge the DEBTOR from the said debts and from all claims, demands and remedies in respect thereof.

5. This agreement shall operate as a bar to any action hereafter by any of the CREDITORS against the DEBTOR in respect of the said several debts or any of them so long he shall pay or cause to be paid the instalments hereunder provided in the manner hereinbefore indicated without any delay or default except, however, in case if the DEBTOR is adjudicated insolvent when and in such an event it will stand revoked.

6. If a default shall be made in the payment of the said instalments or any one of them, the CREDITORS shall then and in such a case be at liberty to enforce payment of the balance due to them under the composition, or to claim payment of their respective original dues after giving credit to the DEBTOR for all sums actually received by them hereunder respectively.



*The Schedule above referred to giving the names and addresses of the creditors, short particulars of the debts and instalments payable*

Serial No.	Name and address of the creditor	Particulars of the debts	Security if any	Remarks

IN WITNESS WHEREOF the parties 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 and EF

Signed, sealed and delivered by the CREDITORS named in the Schedule in the presence of:

## Labour Laws

The labour laws in the country enacted for the benefit and protection of labour have imposed certain obligations on employers and set up tribunals, labour courts and authorities which can be easily approached by aggrieved labour or on their behalf by Trade Unions or some authorised persons under the law for quick remedy without incurring heavy costs as required in litigations before ordinary civil courts. The special statutes have prescribed forms in which applications shall be made generally. As regards amendments, etc., the general principles about pleadings in court have been applied.

### FORMS

#### Application for Permission under s. 33 of the Industrial Disputes Act (XIV of 1947)

Before (mention here the Conciliation Officer, Board or Tribunal).

In re: ..... Ref. No. .... of ..... A ..... (Name and address) Applicant B. .... (Name and address) Opposite party/ies.

The above-mentioned applicant begs to state as follows:

(Set here all the relevant facts and circumstances of the case and in particular the grounds on which the permission is sought for).

The applicant, therefore, prays that the express permission may be granted to him to take *inter alia* the following action/s, namely:

[Mention here the action/s specified in cl. (a) or (b) of s. 33 of the Act.]

Dated this ..... day of .....

Signature of the applicant

Signature of the person verifying

Date of verification .....

Place of verification .....

NOTE: Section 33 of the Industrial Disputes Act 1947:

*Condition of service, etc. to remain unchanged during the pendency of the proceedings.* During the pendency of any conciliation proceeding/s before a tribunal in respect of any industrial dispute, no employer shall—

- (a) alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or
- (b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the conciliation officer, board or tribunal, as the case may be.

### Complaint under s. 33A of the Industrial Disputes Act 1947

- A ..... (full name, description and address) Complaint/s; and
- B ..... (full name, description and address) Opposite party/ies

The petitioner/s begs/beg to complain that the opposite party/ies has/have been guilty of wilful contravention of the provisions of s. 33 of the Industrial Disputes Act (XIV of 1947) as will appear from the particulars set out below:

(Here set out briefly the particulars showing the manner in which the alleged contravention has taken place and also the grounds on which the order or act of the management is challenged.)

(The complaint/s accordingly pray/s that the tribunal may be pleased to decide the complaint set out above and pass such orders thereon as it may deem fit and proper.)

The number of copies of the complaint and its annexures required by r. 59 of the Industrial Disputes (Central) Rules 1957, are submitted herewith.

Dated this ..... day of .....

Signature or thumb impression  
of complaint/s

#### Verification

I do solemnly declare that what is stated in paragraphs ..... above is true to my knowledge and that what is stated in paragraphs ..... above is stated upon information received and/believed by me to be true. Verification is signed by me at ..... on ..... day of .....

Signature or thumb impression  
of the person verifying



Form of Application by an Employee under section 20(2) of the Minimum Wages Act 1948

In the Court of the Authority appointed under the Minimum Wages Act 1948 for ..... Area.

Application No. .... of 19.....

- (1) .....
(2) .....
(3) .....

Applicant/s

through ..... a legal practitioner ..... Official of ..... Union which is a registered Trade Union.

Address .....

versus

- (1) .....
(2) .....
(3) .....

Opponents

The applicant/s above-named beg/s respectfully to submit as follows:

- 1. That .....
2. That .....

The applicant/s has/have been paid wages at less than the minimum rate of wages.

The applicant/s estimate/s the value of the relief sought by him/them at the sum of Rs. ....

The applicant/s pray/s that a direction may be issued under sub-sec. (3) of s. 28 for—

- (a) payment of the difference between the wages due according to the minimum rate of wages fixed by the Government and wages actually paid, and
(b) compensation amounting to Rs. ....

The applicant/s beg/s leave to amend or add to or make alterations in the application, if any, and when necessary.

Date .....

Signature or thumb impression of the employee/s or legal practitioner or official of a registered trade union duly authorised

**Application by an Inspector or Person  
Acting with the Permission of the Authority  
under section 20(2) of the Minimum Wages Act 1948**

In the Court of the Authority appointed  
under the Minimum Wages Act 1948, for  
..... area

Application No. .... of 19.....

(1) .....

Address ..... *Applicant*

*versus*

(2) .....

Address ..... *Opponent*

The applicant above-named begs respectfully to submit as follows:

1. That .....
2. That .....

The opponent is bound to pay wages at the minimum rate of wages fixed by the Government, but he has paid less wages to the following employees:

- (1) .....
- (2) .....
- (3) .....

The applicant estimates the value of the relief sought for the employees at the sum of Rs. ....

The applicant prays that a direction may be issued under sub-sec. (3) of s. 20 for—

- (a) payment of the difference between the wages due according to the minimum rate of wages fixed by the Government and wages actually paid and
- (b) compensation amounting to Rs. ....

The applicant begs leave to amend or add to or make alterations in the application if and when necessary.

Date .....

Signature .....

The applicant does solemnly declare that what is stated above is true to the best of his knowledge, belief and information. The verification is signed at ..... on ..... day of ..... 19....

## Individual Application

[See sub-sec. (2) of s. 15 of the Payment of Wages Act]

In the Court of the Authority appointed under the Payment of Wages Act (IV of 1936) for ..... area.

Application No. .... of ..... 19.....

Between ABC .....

(through a legal practitioner)

*Applicant*

an official of ..... which is a  
registered trade union And XYZ .....

*Opposite Party*

1. ABC is a person employed in/or the .....

Factory

Railway

entitled ..... and

industrial establishment

resides at .....

The address of the applicant for the service of all notices and processes is:

2. XYZ, the opposite party, is the person responsible for the payment of his wages under s. 3 of the Act and his address for the service of all notices and processes is:

3. (1) The applicant's wages have not been paid for the following wage period(s) (give date). Or

A sum of Rs. .... has been unlawfully deducted from his wages of (amount) for the wage period(s) which ended on [give date(s)].

(2) Here give any further claim or explanation.

4. The applicant estimates the value of the relief sought by him at the sum of Rupees .....

5. The applicant prays that a direction may be issued under sub-sec. (3) of s. 15 for—

(a) Payment of his delayed wages as estimated or such greater or lesser amount as the authority may find to be due. Or

Refund of the amount illegally deducted.

(b) Compensation amounting to .....

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature or thumb impression of the  
employed person, or legal practitioner or  
official of a registered trade union duly  
authorised



### Group Application

[See sub-sec. (2) of ss. 15 and 16 of the Payment of Wages Act 1936]

In the Court of the Authority appointed under the Payment of Wages Act (IV of 1936) for ..... area.

Application No. .... of 19.....

Between ABC and state the number ..... others .....

*Applicants*

(Through a *Legal Practitioner*)

an official of ..... which is a  
registered trade union And XYZ .....

*Opposite party*

*The applicants state as follows:*

1. The applicants whose names appear in the attached schedule are persons employed in the *factory*.

on *Railway* ..... entitled .....  
Industrial establishment

The addresses of the applicants for service of all notices and processes are:

2. XYZ, the opposite party, is the person responsible for the payment of wages under s. 3 of the Act, and his address for the service of all notices and processes is:

3. The applicants' wages have not been paid for the following wage period(s).

4. The applicants estimate the value of the relief sought by them at the sum of Rupees .....

5. The applicants pray that a direction may be issued under sub-sec. (3) of s. 15 for—

(a) Payment of the applicants' delayed wages as estimated .....  
or such greater or lesser amount as the authority may find to  
be due.

(b) Compensation amounting to .....

The applicants certify that the statement of facts contained in this application is to the best of their knowledge and belief accurate.

Signature or thumb impression of two of  
the applicants or legal practitioner/an  
official of a registered trade union duly  
authorised

*Schedule*

Name of applicants

- (1) .....
- (2) .....
- (3) .....
- (4) .....

**Application by an Inspector or Person  
Permitted by the Authority or Authorised to Act**

[See sub-sec. (2) of ss. 15 and 16 of the Payment of Wages Act]

In the Court of the Authority appointed under the Payment of Wages Act, for ..... area.

Application No. .... of 19.....

Between ABC (designation ..... an Inspector under the Payment of Wages Act).

(or a person permitted by the authority  
authorised to act under sub-sec. (2) of s. 15) .....

*Applicant*

And XYZ, the opposite party, is the person responsible under the Act for payment of wages to the following person(s):

- (1) .....
- (2) .....
- (3) .....
- \*
- \*
- \*

2. His address for the service of all notice and processes is:

3. The wage of the said person(s) due in respect of the following wage period(s) have not been paid  
have been subjected to the following illegal deductions

4. The applicant estimates the value of the relief sought for the person(s) employed at the sum of Rs. ....

5. The applicant prays that a direction may be issued under sub-sec. (3) of s. 15 for—

- (a) Payment of the delayed wages as estimated or such greater or lesser amount as the Authority may find to be due:

Or

Refund of the amount illegally deducted.

(b) Compensation amounting to .....

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature

**Application under Workmen's  
Compensation Act for Compensation by Workmen**

To the Commissioner for Workmen's Compensation .....  
residing at ..... *Applicant*

*versus*

residing at ..... *Opposite party*

It is hereby submitted that—

1. The applicant, a workman employed by (a contractor with) the opposite party on the ..... day of ..... 19....., received personal injury by accident arising out of and in the course of his employment.

The cause of the injury was (here insert briefly in ordinary language the cause of injury) .....

---

2. The applicant sustained the following injuries, namely:

---

3. The monthly wages of the applicant amount to Rs. ....

The applicant  $\frac{\text{is over}}{\text{under}}$  the age of 15 years.

4. (a) Notice of the accident was not served on the ..... day of .....

(b) Notice was served as soon as practicable.

(c) Notice of the accident was not served (in due time) by reason of .....

The applicant is accordingly entitled to receive—

(a) half-monthly payment of Rs. .... from the ..... day of ..... 1999 to .....

(b) a lump sum payment of Rs. ....



5. The applicant has taken the following steps to secure a settlement by agreement, namely—

but it has proved impossible to settle the questions in dispute because .....

You are, therefore, requested to determine the following questions in dispute, namely—

- (a) whether the applicant is a workman within the meaning of the Act;
- (b) whether the accident arose out of or in the course of the applicant's employment;
- (c) whether the amount of compensation claimed is due, or any part of that amount;
- (d) whether the opposite party is liable to pay such compensation as is due;
- (e) etc. (as required).

Dated ..... 19 .....

*Applicant*

### Application under Workmen's Compensation Act for Order to Deposit Compensation

It is hereby submitted that—

1. .... a workman employed by (a contractor with) the opposite party on the ..... day of ..... 19..... received personal injury by accident arising out of and in the course of his employment resulting in his death on the ..... day of ..... 19..... The cause of the injury was (here insert briefly in ordinary language the cause of the injury) .....

2. The applicant(s)  $\frac{\text{is a}}{\text{are}}$  dependant(s) of the deceased workman being his .....

3. The monthly wages of the deceased amount to Rs. ....

4. The deceased was  $\frac{\text{over}}{\text{under}}$  the age of 15 years at the time of his death.

5. (a) Notice of the accident was served on the ..... day of .....

(b) Notice was served as soon as practicable.

(c) Notice of the accident was not served (in due time) by reason ..... of .....

6. The deceased before his death received as compensation the total sum of Rs. ....

The applicant(s)  $\frac{\text{is}}{\text{are}}$  accordingly entitled to receive a lump sum payment of Rs. ....

You are, therefore, requested to award to the applicant(s) the said compensation or any other compensation to which he may be entitled.

Dated .....

Applicant(s)

Dated the ..... day of ..... 19 .....

### Application for Registration of a Trade Union

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

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

3. The union came into existence on the ..... day of ..... 19..... and has on its roll on the date of this application ..... members.

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

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

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

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

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

9. Written declaration from the officers of the trade union that they had given their consent to their being elected as such officers is given in Schedule IV.

	<i>Signature</i>	<i>Occupation</i>	<i>Address</i>
Signed 1.			
2.			
3.			
4.			
5.			
6.			

To

The Registrar of Trade Unions, West Bengal

*Schedule I*  
List of Officers

Title	Name	Age	Address	Occupation

NOTE: Enter in this schedule the names of all members of the executive including all honorary or temporary members of the union shown in column 1, the names of any posts held by the (e.g., President, Secretary, Treasurer, etc.) in addition to their offices as members of the executive.

*Schedule II*  
Reference to Rules

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

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

*Schedule III*

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



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

*List of Securities*

<i>Particulars</i>	<i>Nominal value</i>	<i>Market value</i>	<i>In hands of</i>
Signed 1.			
2.			
3.			
4.			
5.			

Schedule IV

We hereby declare having consent to our being elected as officers of the  
 ..... (name of the trade union):

	Signature	Designation
Signed:		
1                    ...                    ...		
2                    ...                    ...		
3                    ...                    ...		
4                    ...                    ...		
5                    ...                    ...		
6                    ...                    ...		
7                    ...                    ...		
8                    ...                    ...		
9                    ...                    ...		
10                    ...                    ...		
11                    ...                    ...		
12                    ...                    ...		
13                    ...                    ...		
14                    ...                    ...		
15                    ...                    ...		

Sickness or Temporary Disablement Benefit Claim for Benefit

I ..... s/w/d of .....  
 Insurance No. .... hereby state that I was certified sick/  
 temporarily disabled from ..... a.m./p.m. on the ..... day of .....  
 19..... and I have not been at work since ..... a.m./p.m. on the day of  
 ..... 19.....

I no longer claim to be sick/temporarily disabled from ..... day of  
 ..... 19..... and I shall/did not take up any work for remuneration  
 before that day.\*

I claim benefit accordingly. I desire payment in cash at local office/by  
 money order present/last employer ..... Department .....  
 Occupation ..... shift (if any) ..... present address .....

Signature or thumb impression  
 Local Office .....

\* Strike out if not applicable, and then, before resuming work, a final certificate must be obtained.

### Accident Case Only

Date, time and place of accident ..... If a notice of the accident had not been given to the employer, state briefly on a separate paper how the accident happened.

Signature or thumb impression

### Sickness or Temporary Disablement Benefit Claim for Benefit

I, ....., s/w/d of ..... Insurance No. .... declare that because of sickness/temporary disablement, I have not been at work since the date of last/first certificate sent to you.

I claim benefit accordingly. I desire payment in cash at local office/by money order.

Signature or thumb impression  
Local office .....

Date .....

Present Address .....

### Claim for Permanent Disablement Benefit

I, ....., s/w/d of ..... Insurance No. .... having been declared as permanently disabled by the Medical Board/Appeal Tribunal claim permanent disablement benefit accordingly for the period from ..... to .....

The amount due may be paid to me by money order/in cash at local office.

Date .....

Signature or thumb impression

Present Address .....

### ANOTHER FORM

I, ....., s/w/d of ..... Insurance No. .... declare that, because of sickness/temporary disablement, I have not been at work since the date of last/first certificate sent to you.

I no longer claim to be sick/temporarily disabled ..... from ..... day of ..... 19..... and I shall/did not take up any work for remuneration before that day, I claim benefit accordingly. I desire payment in cash at local office/by money order.

Signature or thumb impression

Date .....

Local office .....

Present Address .....



**Dependants' Benefit**

CLAIM FORM

Claim arising from the death on ..... of (insured person) .....  
 s/w/d of ..... having Insurance No. .... and that employed  
 as ..... by .....

I/We, the following, being dependants of the deceased insured person,  
 whose particulars are given above, apply for dependants' benefit in respect  
 of his/her death.

<i>Nature of the dependants</i>	<i>Date of birth or age</i>	<i>Relationship with the deceased</i>	<i>Sex</i>	<i>Marital status</i>	<i>Name of the guardian in case of a minor</i>
1	2	3	4	5	6

So far as I/we know, the following are the only other dependants who  
 may be entitled to dependants' benefit in respect of the death of the above-  
 named insured person.

<i>Names and addresses of the dependants</i>	<i>Date of birth or age</i>	<i>Relationship with the deceased</i>	<i>Sex</i>	<i>Marital status</i>	<i>Name of the guardian in case of a minor</i>
1	2	3	4	5	6

I/We declare that the particulars given above are true to the best of my/our knowledge and belief.

Signatures

Present Addresses

- 1. ....
- 2. ....
- 3. ....
- 4. ....

†Certified that the declarations made above are true to the best of my knowledge and belief.

Rubber stamp or seal of the attesting authority

Signature .....

Designation .....

IMPORTANT: Any person who makes a false statement or representation for the purpose of obtaining benefit, whether for himself or for some other persons, renders himself liable to prosecution.

† This certificate is to be given by (i) an officer of the Revenue, Judicial or Magisterial Departments of Government; or (ii) a Municipal Commissioner; or (iii) a Workmen's Compensation Commissioner; or (iv) the Head of the Gram Panchayat under the official seal of the Panchayat; or (v) any other authority approved by the appropriate Regional Office.

**Maternity Benefit**

**CLAIM FORM**

I ..... Insurance No. ....wife of/daughter of ..... here claim maternity benefit with effect from the ..... day of ..... 19..... I hereby declare that I have ceased/shall cease to work for remuneration with effect from that date.

Present/last employer .....

Department, shift and occupation .....

Present address .....

Date .....

Signature or thumb impression

---

## Leases

**Introductory observations.** "Lease", "Lessor", "Lessee", "Premium" and "Rent"—As defined in Bacon's *Abridgement*<sup>1</sup> a lease is a contract between the lessor and the lessee for possession and enjoyment of the profits of the land on one side and recompense by rent or other consideration on the other. The lessor must be a person competent to contract and also having title or authority to create the grant. Similarly the lessee must be a person also competent to accept contract on the date of the lease and shall further accept the demise of the estate. So neither an infant nor his guardian is competent to enter into a lease agreement, as a lessee.<sup>2</sup> Such an agreement vests the lessee with certain rights. It is an exception to the common law rule that contracts are personal. A lease is a transfer of an estate of inheritance and does not *ipso facto* terminate on the death of any one of the parties but passes on to their respective heirs and legal representatives. A lease of immovable property is, therefore, not mere contract, but it operates as a conveyance or transfer of the right to enjoy such property, made for a certain time, express or implied, or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the transferee who accepts such transfer on terms.<sup>3</sup> The essential elements of a lease are (1) Parties; (2) Property; (3) Demise; (4) Terms and Conditions; and (5) Consideration.

Such transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other things to be so rendered is called the rent. A lease creates a right *in rem*. Agreement to lease is an executory contract binding the parties. An agreement

1 Mulla's *Transfer of Property Act*, 8th Ed., p. 767.

2 Woodfall's *Landlord and Tenant*, 28th Ed., vol. 1, para 1-0138, p. 60.

3 Section 105 of the *Transfer of Property Act*.



to lease not creating a present demise is not a lease and does not require writing or registration.<sup>4</sup> It is drafted as an ordinary agreement but the property to be leased, period of lease, the date of commencement of the lease, rent and other terms and conditions agreed upon are mentioned. It was held by the Privy Council in *Giribala v Kalidas*<sup>5</sup> that a suit for specific performance cannot be decreed in the absence of a definite date as to commencement of the lease. Whether a document operates as a lease or agreement is a matter of construction and intention of the contracting parties. Words of present demise are generally conclusive of a lease. An intending lessee taking possession under an agreement for lease is not an actual lessee under an executed and registered deed of lease. The equity in *Walsh v Lonsdale*<sup>6</sup> does not apply in India as held by the Privy Council in *Arif v Jadunath*.<sup>7</sup> His possession can nevertheless be defended under s. 53A of the Transfer of Property Act. The powers of an executor or administrator to grant a lease are regulated by s. 307 of the Indian Succession Act (Act 39 of 1925). Under s. 29(b) of the Guardian and Wards Act, a statutory guardian can even without authority from the court grant lease for a period not exceeding five years; so also a natural guardian under s. 8 of the Hindu Minority and Guardianship Act (Act XXXII of 1956). The *de facto* guardian is not at all competent to grant any lease of the properties of a minor.

**Lease of a debutter property.** The *shebait*s of a deity who are in charge of the management and administration of the estate can grant a lease of the property of the deity for legal necessities in the interest of and for the benefit of the deity and its estate.<sup>8</sup> It is the settled law that the power of a *shebait* in charge of a *Math* to alienate the debutter property is analogous to that of the manager of an infant as observed by Judicial Committee in *Hanuman Persaud v Massamat Babooee*.<sup>9</sup> Following this principle the Judicial Committee held in the case of *Prosonnya Kumar Debya v Golap Chand*<sup>10</sup> that such a power is limited to case of legal necessities unavoidable.

In the case of *Konwar Doorganath v Ramchandra*<sup>11</sup> a makarari patta was supported on the ground that the same was granted in consideration of a lump sum money urgently required for repairs and construction of the temple inasmuch as the estate had no other resources. There shall be special circumstances to justify a grant beyond the lifetime of the grantor.

4 46 IA 240.

5 AIR 1921 PC 71.

6 (1882)21 Ch D 9.

7 58 IA 91.

8 Mulla's *Hindu Law*, 17th Ed., para 415, pp. 624-627.

9 (1856)6 MIA 393.

10 (1875)2 IA 145.

11 (1874)2 Cal 141; 4 IA 52.

Construction of a pucca building for the shelter of the devotees was held to be a legal necessity.<sup>12</sup>

**Duration of lease.** In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of the year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month terminable, on the part of either lessor or lessee, by 15 days' notice expiring with the end of the month of the tenancy.<sup>13</sup>

Generally, leases are made to commence from the first day of a month or year according to the nature of the tenancy, but sometimes a lease is made to begin on any other date in which case, the special month or year of the tenancy, at the expiry of which the lease is to be terminated, is to be reckoned from that date; and sometimes it also happens that the date of the commencement of a lease is not known; in which case, the time of the expiry of the notice to be given either by the landlord or the tenant may be expressed in the following form:

“At the end of the month (or year) of your (or my) tenancy which will expire next after the end of half a month (or half a year) from the date of the service of this notice”.<sup>14</sup>

**Requisites of notice.** Every such notice as above must be in writing signed by or on behalf of the person giving it, and either be sent by registered post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of the adult members of his family at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property. It shall be specific as regards the grounds of eviction and the property. It shall contain a demand for possession and also a threat to file a suit in default of compliance as required by such laws as the West Bengal Premises Tenancy Act 1997.

**Creation of a lease.**<sup>15</sup> Although the section provides that a lease of an immovable property can be created by two methods, (i) registered instrument in cases where the lease is from year to year or exceeding one year or reserving yearly rent, (ii) oral agreement followed by delivery of possession in other cases; nevertheless, it was held by the Privy Council in the case of *Ariff v Jodunath*,<sup>16</sup> that the theory in *Walsh v Lonsdale*<sup>17</sup> has no application

12 *Neladri Sahu v Mohini Chaturbunj* 53 IA 253 (267); 98 IC 576.

13 Section 106 of the Transfer of Property Act.

14 Section 106 of the Transfer of Property Act.

15 Section 107 of the Transfer of Property Act.

16 (1931)58 IA 91; 58 Cal 1235.

17 (1882)21 Ch D 9.



to India, there being no distinction between "legal estate" and "equitable estate" in India. Section 53A of the Transfer of Property Act, however, protects the lessee in defending his right of possession. This section was enacted in 1929 by the Transfer of Property (Amendment) Act 1929, and imports in India a theory about equity of part performance as developed in England in *Middleton v Alderson*,<sup>18</sup> The amending Act reinforced the position by amending the Indian Registration Act and the Specific Relief Act<sup>19</sup> The intending lessee can institute a suit for specific performance of the agreement for lease if not time-barred.

A lease can be created under a decree or order of the court, but the same must contain the terms 'clearly necessary particulars of the property' and shall be duly registered.<sup>20</sup>

Unregistered deed of lease executed by both landlord and tenant can be looked into and considered in order to determine whether lease was granted for residential or non-residential purpose or any other similar collateral purpose.<sup>1</sup> Where a registered deed of lease shows only the signature of one of the parties it is not enough to conclude that the non-signing party had not joined in the execution of the instrument.<sup>2</sup>

**Rights and liabilities of lessor.**<sup>3</sup> In the absence of a contract or local usage to the contrary, the lessor possesses the rights and is subject to liabilities as follows:

(i) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is, and the latter is not, aware, and which the latter could not with ordinary care discover. The obligation of the lessor as to the disclosure of the material defects in the property is limited to defects which are known to the lessor, i.e. patent defects but not to latent defects. The consequence of the breach is that before execution of the lease agreement, the lessee may refuse execution of the same; but if afterwards he may repudiate the same on grounds of fraud etc.<sup>4</sup> This is what is known as the law against letting out a tumble down house. There is no such law as in England under the Housing Act 1936, except implied covenant of fitness in the case of letting out a furnished house.<sup>5</sup>

18 (1883)8 App Cas 467.

19 Section 40 and section 27A.

20 Section 17(2)(vi) of the Indian Registration Act.

1 *Rai Chand v Chandra Kanta* AIR 1991 SC 744.

2 *Rajendra v Rameswar* AIR 1999 SC 37.

3 Section 108(A) of the Transfer of Property Act.

4 *Auqel v Joy* (1911)1 KB 666.

5 *Lakhmichand v Ratnabai* 51 Bom 274.



(ii) The lessor is bound, on the lessee's request, to put him in possession of the property; otherwise he is not entitled to any rent.<sup>6</sup> In England delivery of *seisin* is necessary to complete the title of the Lessee. This common law doctrine does not apply to India.<sup>7</sup> This Lessee can maintain an action against the Lessor for *mesne profits* though he has not received possession (see Notes under doctrine of suspension of rent).

(iii) The lessor will be deemed to contract with the lessee that if the latter pays the rent reserved by the lease and performs the contract binding on him the lessee may hold the property during the time limited by lease without interruption. If the lessee loses possession of any portion of the property owing to any act or default on the part of the lessor, the lessee can suspend payment of rent till restoration of possession. This is based on the rule of English law—"Eviction of the lessee from part of the demised premises justifies suspension of the entire rent."<sup>8</sup> This privilege is not available to the lessee in other cases where the lessor fails to perform his part of the contract.

The benefit of such contract will be annexed to and pass with the lessee's interest as such and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

**Lessee's rights and liabilities.**<sup>9</sup> In the absence of a contract or local usage to the contrary, the lessee possesses the rights and is subject to the liabilities as follows:

(i) if, during the continuance of the lease, any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) will be deemed to be comprised in the lease;

(ii) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible forces, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let out, the lease will, at the option of the lessee, be void. This is the example of partial application of the doctrine of frustration in India:

Provided that, if the injury be occasioned by any wrongful act or default of the lessee, he will not be entitled to avail himself of the benefit of this provision;

(iii) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee can make

6 *Uday Chand v Narain* (1920)58 IC 186.

7 *Regia Begum v Mahomed Daud* AIR 1926 Pat 508.

8 *Nilkantha Pati v Khitish Chandra* AIR 1951 Cal 338.

9 Section 108(B) of the Transfer of Property Act.

the same himself and deduct the expense incurred for such repairs with interest from the rent, or otherwise recover it from the lessor;

(iv) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessor or against the property, the lessee can make such payment himself, and deduct it with interest from the rent or otherwise recover it from the lessor;

(v) the lessee may, even after the determination of the lease, remove, at any time whilst he is in possession of the property leased but not afterwards, all things which he has attached to the earth, provided he leaves the property in the state in which he received it;

(vi) when a lease of uncertain duration determines by any means except for the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(vii) the lessee may, in the absence of any restriction in the lease itself, transfer absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part thereof can again transfer it. The lessee cannot, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

Nothing in this clause will be deemed to authorize a tenant having non-transferable right of occupancy, or the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(viii) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which lessee is, and the lessor is not, aware, and which materially increases the value of such interest;

(ix) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(x) the lessee is bound to keep, and on the termination of the lease, to restore the property in as good a condition as it was at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible forces, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property, and inspect the condition thereof and give or leave notice of any defect found in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(xi) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;



(xii) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(xiii) the lessee must not, without the lessor's consent in writing, erect on the property any permanent structure except for agricultural purposes;

(xiv) on the determination of the lease, the lessee is bound to put the lessor in possession of the property.

**Determination of leases.**<sup>10</sup> A lease of immovable property determines:

(i) by efflux of the time limited thereby (Term lease);

(ii) where such time is limited conditionally on the happening of some event, by the happening of such event, e.g., lease for the duration of a war, lease for the term of the life of the lessee.

(iii) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event. A lease by the mortgagee in possession stands determined on redemption of the mortgage where the mortgagor exercises his right in that behalf, e.g., lease by a Hindu widow of her widow's estate unless justified by legal necessity, except in cases where she acquired an absolute estate by the operation of s. 14 of the Hindu Succession Act (Act XXX of 1956);

(iv) in case the interest of the lessee and the lessor in the whole of the property becomes vested at the same time in one person in the same right, e.g., merger of both the interests. The lease in such a case sinks into the reversion. This is a rule of intention not applicable in case there are encumbrances on the property,<sup>11</sup> i.e. intervening estate or estates;

(v) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor by mutual consent and agreement between them; surrender being a voluntary act of the lessee operates as the disclaimer of the trustee in bankruptcy subject to the rights of the sub-lessee except as regards the amount of rent.<sup>12</sup>

(vi) by implied surrender;

(vii) by forfeiture, that is to say (1) in case the lessee breaks any condition of the lease which gives the lessor the right of re-entry in the property;

10 Section 111 of the Transfer of Property Act.

11 Section 101 of the Transfer of Property Act.

12 Section 115 of the Transfer of Property Act.



(2) in case the lessee renounces his character as such by setting up a title in favour of a third person, or by claiming title in himself; or (3) in the event the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on happening of such event; provided that in any of these cases the lessor or his transferee gives notice in writing to the lessee of his clear intention to determine the lease; the date on which the lease shall stand determined such notice shall also contain a threat of legal action for eviction in default of compliance;

(viii) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property duly given by one party to the other in the absence of any contrary provisions in the lease itself.

**Sub-lease.** In England, it was held in *Bryant v Wilson*,<sup>13</sup> that a sub-lease for the whole residue of the lessee's term operates as an absolute assignment of the lease. The Privy Council pointed out the *Hunsrati v Bejoylal Seal*,<sup>14</sup> that in India a sub-lease is not an absolute assignment and it was further held in *Akshoy Kumar v Akman Molla*<sup>15</sup> that there is no privity of estate as between the lessors and the sub-lessee, who does not step into the shoes of the lessee. A sub-lessee is not prejudiced by the surrender of the head lease (s. 115 of Transfer of Property Act)<sup>16</sup> but the position is different in the case of forfeiture which annuls all sub-leases except in case of fraud as between the lessor and lessee. A sub-lessee is entitled to relief against forfeiture under s. 114 of the Transfer of Property Act 1882, which is applicable only in the case of non-payment of rent—No relief is open to the sub-lessee in case of transfer in breach of covenant in restraint of transfer.

**Implied surrender.** Under illustration to cl. (f) of s. 111 of the Transfer of Property Act there would be an implied surrender in favour of lessor if a lessee accepts from his lessor a new lease of the property leased to take effect during the continuance of the existing lease. The said illustration is, however, not exhaustive of the cases in which there may be an implied surrender. Just as under the English law, there can be an implied surrender under the law of transfer of property in India, if the lessor grants a new lease to a third person with the assent of the lessee under the existing lease who delivers the possession to such person or where the lessee directs his sub-tenant to pay the rent directly to a lessor. Clause in assignment deed that the lessee-assignor would not object to payment of rent by assignee amounts to implied surrender of leasehold rights by lessee in favour of the assignee.<sup>17</sup>

13 (1868)1 QB 716.

14 (1930)57 Cal 1176; 57 IA 110.

15 (1915)19 CWN 1197; 27 IC 307

16 *Bhupatral v Chunilal* 70 CWN 62.

17 *P.M.C. Kunhiraman v C.R. Naganatha* AIR 1993 SC 307.

Surrender of a part of the lease does not amount to implied surrender of the entire tenancy and the part of the tenancy remains untouched. Acceptance of a new lease of part only of the demised premises operates as a surrender of the part and no more.<sup>18</sup> Again, a mere increase or reduction of rent will not necessarily import a surrender of an existing lease and the grant of a new tenancy.<sup>19</sup>

**Saving of agricultural leases.** The provisions of the Transfer of Property Act on leases are not applicable to leases for agricultural purposes, but the State Government can declare all of such provisions to be so applicable in the case of all or any of such leases, together with, or subject to, those of the local law for the time being in force.<sup>20</sup> As regards restrictions on letting out the whole or any part of rayati holding see s. 4 of the West Bengal Land Reforms Act 1955.

**Leases how made.** A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property can be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument must be executed by both the lessor and the lessee.<sup>21</sup> If a kabulyat is followed by acceptance of rent, a tenancy is created.<sup>1</sup>

**Surrender of leases.** Surrender of lease is not a transfer but mere yielding up by the lessee of his interest under the lease to the lessor by mutual agreement. It is in effect merger of the estate of the lessee into the reversion. It is not a transfer or an assignment of any right or estate within the meaning of s. 5 of the Transfer of Property Act.<sup>2</sup> The person who surrenders is called the surrenderer and the person to whom surrender is made is called the surrenderee. A surrender must be made with clear intention to yield up as mere non-payment of rent for years together or abandonment of the site does not amount to surrender.<sup>3</sup> A Requisition Order by the Government does not amount to any surrender.<sup>4</sup> It may be express, or implied. Except in

18 *Bhagyashree Combines v Dist. Magistrate* AIR 1998 Kant 328; see also *Uttamchand v S.M. Lalwani* AIR 1965 SC 716; *Dwarka v Dwarka* AIR 1975 SC 1758.

19 *Krishna Kumar v Grindlays Bank* AIR 1991 SC 899; *N.M. Ponniah v Kamalakshmi* AIR 1989 SC 467.

20 Section 117 of the Transfer of Property Act.

21 Section 107 of the Transfer of Property Act.

1 *Asram v Ramkali* AIR 1958 SC 183.

2 *Makhanlal v Nagendranath* (1933)60 Cal 379; 37 CWN 119.

3 *Misri Lal v Durga Narain* AIR 1940 All 317; 189 IC 623.

4 *Torabai v Padan Chand* 62 CWN 176.



a case of some special kinds of leases as required by special Act, no writing or registration is necessary. A surrender may be oral, if accompanied by delivery of possession.

But in case where any writing is executed, it comes under s. 17 of the Indian Registration Act.

**Holding over.** The lessee remaining in possession after expiry of the term of the lease is said to hold over the lease.<sup>5</sup>

This section operates in the absence of an agreement to the contrary which determines the duration and the term of the renewed lease. The rights and liabilities of the lessees holding over on the strength of special statute like West Bengal Premises Tenancy Act are governed by such statute.

**Renewal of lease.** Renewal of a lease is creation of a fresh lease and it must be by a registered document. But where no such fresh lease is created in term of the renewal clause no question of registering it arises. If in such a case the lessee continues in possession in exercise of his option as per renewal clause over the leased property after the initial period is over, his continuance in possession would be deemed to be under the original lease deed. The further period is to be treated as part of the original deed of lease. The right to enjoy for further period gets conveyed to the lessee under the original registered deed. This continuance in possession would not be holding over under s. 116 of the T.P. Act and his tenancy would not be governed by the Premises Tenancy Act. Extension of a lease is not creation of a fresh lease but prolongation or extension of the old lease. Extension ordinarily implies the continued existence or something to be extended. In case of extension the same lease continues in force during the additional period by the performance of the stipulated act.<sup>6</sup>

**Indian and English laws.** In England, a transfer of property by lease is termed a demise. In England, a lease for more than three years can be created by a deed for the tenant to acquire legal estate in the property.<sup>7</sup> When the lease is in writing and not by a deed, it creates an equitable estate according to the doctrine of *Walsh v Lonsdale*.<sup>8</sup> But if there are acts of performance, it can be enforced in equity. This is based on the two equitable doctrine: (a) "Equity looks at the intention of the parties and not the form"; and (b) "Equity considers as done what ought to have been done." The equity of *Walsh v Lonsdale* has no application in India;<sup>9</sup> the statutory law here, e.g. Transfer of Property Act or the Registration Act makes no distinction between the legal estate and equitable estate. The right of a person under an agreement

5 Section 116 of the Transfer of Property Act.

6 *Ranjit Kumar v Tapan Kumar* AIR 1997 Cal 278.

7 Law of Property Act, sections 149 and 205.

8 (1882)21 Ch D 9.

9 *Ariff v Jadunath* (1931)58 IA 91; 58 Cal 1235.



for lease is a personal right and not an equitable estate.<sup>9</sup> Nevertheless, when the intending lessee is in possession of the property, he can resist an action for eviction against him under s. 53A of the Transfer of Property Act which gives him the right to retain possession. So the right conferred by this section is available only as a defence. Section 53A of the Transfer of Property Act does not however create any title nor dispense with the necessity of a registered document which the law requires to effect transfer of property. As observed by Lord Atkin, that that section does not operate to create any legal right. It operates as estoppel as between the proposed transferor and transferee and so is of no protection against third parties not claiming under or through them.<sup>10</sup> The Supreme Court approved of this principle.<sup>11</sup> A perpetual lease is treated in England as a grant of the fee simple subject to a rent charge.<sup>12</sup> The Common Law now recognises two types of estate—(a) freehold; and (b) leasehold for a term of years. In India, such a lease is recognised under s. 105 of the Transfer of Property Act. The three types of leases recognised under that section are (a) term lease; (b) periodic lease; and (c) permanent lease. In England, there is no law against the letting of a tumbled-down house except implied covenant of fitness in case of furnished house imposed under the Housing Act 1936 (26 Geo 5 and Edw 8 C5J), now re-enacted as Housing Act 1957 (5 and 6 Eliz 2, C56). Here the lessor warrants them to be fit for habitation at the commencement of the tenancy. In other cases, the tenant must take the property as it is and where it is. There is no such enactment in India except what are provided under s. 108(a) of the Transfer of Property Act as to disclosure of material defects in the property.

If the defect is patent, there is no duty nor any occasion for disclosure. Section 34 of the West Bengal Premises Tenancy Act 1956,<sup>12a</sup> makes it obligatory on the part of the landlord to execute repairs required for maintenance and essential supplies, e.g., water, gases, electricity, sanitation, etc.

Under the English law, the lessee takes the premises subject to events which may in future depreciate its value. So in the absence of any express covenant, the tenant is not exonerated from payment of rent even if the premises is destroyed by fire or taken by enemy.<sup>13</sup> It is, therefore, doubtful whether the doctrine of frustration applies to put an end to a lease in England. This doctrine has been somewhat shaken of late by the observation of

10 *S.N. Banerjee v Kutchwar Lime and Stone Co. Ltd.* (1941)21 Pat 24; 40 CWN 374.

11 *Ram Gopal v Custodian* (1966)3 SCR 214; (1966)2 SCJ 782.

12 *Seven Oaks Maid Stone Tunbridge Railway Co. v London Chatham & Dover Ry Co.* (1879)11 Ch 625.

12a Section 35 of the W.B.P.T. Act 1997.

13 *Stöcker v Planet Building Society* (1879)27 WR 877 (CA).

Viscount Simon L.C. and Lord Wright in *Cricklewood Property and Investment Trust Ltd. v Leighton's Investment Trust Ltd.*<sup>14</sup> It was however held by the Supreme Court in *Raja Dhruv Deb v Raja Harmohinder Singh*,<sup>15</sup> that inasmuch as the doctrine of frustration applies to all executory contract, but not to a completed conveyance the lessee cannot avoid the lease on the ground of the property having been rendered unfit for use. The doctrine, however, applies in cases where property is rendered substantially and permanently unfit and not merely damaged which can be repaired.

In English livery *seisin* is necessary to complete the title of the lessee and he is not recognised as a tenant before actual entry. The doctrine of English Common Law does not apply in India, nevertheless non-delivery of possession is a good defence to a suit for rent.<sup>16</sup> If the lessee has obtained possession of a portion he is bound to pay rent in proportion.<sup>17</sup>

In India if by fire or tempest or other causes as provided under s. 108(e) of the Transfer of Property Act the property is destroyed the lease shall, at the option of the lessee, become void. This clause therefore partially accepts the doctrine of frustration in its application to India.

**Lease and licence.** A licence is quite different from a lease. As defined in s. 52 of the Indian Easements Act, it is a right to do or continue to do something in relation to some immovable property. A licensee does not acquire any interest in the property. The test that is applied to ascertain whether any particular document creates any licence or a lease is (a) intention of the parties;<sup>18</sup> (b) whether any interest in the property is created; (c) who has the control of the property, exclusive possession generally implies a lease; and (d) to rely on the substance of the document, in preference to the forms.<sup>19</sup> Section 53A of the Transfer of Property Act does not apply to licences.<sup>20</sup>

**Use of lease property.** Premises taken on lease for doing business of a specific nature cannot be put to use for a different kind of business in violation of the conditions of the lease and hence tenant is liable to be evicted on that ground.<sup>1</sup>

**Composite lease.** Sections 105 to 117 of Transfer of Property Act deal with the lease of immovable properties. The hiring of equipments is governed by the terms of the agreement. There is no law prohibiting a composite lease of building along with the equipments or lease of a Mill which includes building and machinery or lease of a factory similarly which includes lease

14 (1945) AC 221.

15 AIR 1968 SC 1024.

16 *Meenakshi v Chidam Baram* 15 IC 711.

17 *Surendra v Bhudhar* AIR 1938 Cal 690.

18 *Associated Hotels v R.K. Kapoor* AIR 1956 SC 1262.

19 *O.C. Ganguly v Kamalapat Singh* 51 CWN 208.

20 *Traders and Miners Ltd. v Dhirendra* ILR 23 Pat 115; AIR 1944 Pat 261.

1 *Dashrath v Kashinath* AIR 1993 SC 2646.



of a building along with machinery and other equipments. A composite lease of a cinema business along with its equipments is equally valid.<sup>2</sup>

**Doctrine of suspension of rent.** This is an English rule based on the theory that the entire rent is due for the entire land to be demised.<sup>3</sup> This is the nature of penalty and so not enforced unless the eviction or loss of possession is a deliberate act, default or negligence on the part of the landlord or in a case where the lessor knew right from the very beginning that a portion of the property was in the possession of a third party and the lessor will not be able to give him possession.<sup>4</sup> The liability for rent is not finally determined and is revived as soon as the lessee is restored to possession. It is, therefore, not remission of rent but mere suspension unless full possession is restored the reason being that the landlord is not entitled to apportion his own wrong. If the premises are let out for one rent and the tenant is evicted from a portion he can nevertheless suspend payment. This is based upon the theory that the landlords being the defenders and protectors of tenants should not be encouraged to disturb them. But if the rent is divisible the doctrine has no application and the entire rent should not be suspended as observed by Rankin, C.J. in *Sajjad v Trailakshya*.<sup>5</sup> Further the doctrine has no application when the dispossession is not due to any deliberate and intentional act on the part of the landlord or by any title paramount. It was however held by the Privy Council in *Ramlal v Dhirendra*<sup>6</sup> on appeal from *Dhirendra v Ramlal*,<sup>7</sup> that in Bengal the doctrine of suspension of rent should not be applied to cases where the lessor fails to give possession to the lessee of part of the tenure for relief by specific performance, by damages by abatement of rent etc. is obtainable in the courts but non-delivery of possession is a good defence in a suit for rent.<sup>8</sup> It was held by Supreme Court in *Surendra v Stephen Court Ltd*,<sup>9</sup> that the doctrine of suspension of rent will not be applicable to all cases as an inflexible rule. It will be inequitable for a tenant not to pay any rent when he enjoys a substantial portion of the property without much inconvenience.<sup>10</sup>

**Apportionment of rent.** Sections 36 and 37 of the Transfer of Property Act deal with apportionment of rent. It means proportionate payment according to the period of liability or accrual of title on transfer or otherwise.

2 *Bhagyashree Combines v Dist. Magistrate* AIR 1998 Kant 328. See also *Uttam Chand v S.M. Lalwani* AIR 1965 SC 716; *Dwarka v Dwarka* AIR 1975 SC 1758.

3 *Sajjad Ahmad v Trailakshya* (1927-28)32 CWN 472; 55 Cal 464.

4 *Rameswharlal v Butta Kristo* (1934)13 Pat 396; AIR 1934 Pat 653.

5 (1928)55 Cal 464.

6 AIR 1943 PC 24.

7 42 CWN 1030.

8 Section 108 of the Transfer of Property Act.

9 AIR 1966 SC 1361.

10 See also *Pranab Ganguli v Shanbaza Land and Estate Ltd*. 86 CWN 40 at p. 43.



The Essentials of a lease are—

- (i) Parties must be of full age.
- (ii) Date of commencement.
- (iii) Rent, salami etc.
- (iv) Purpose of the demise.
- (v) Duration—Proviso for earlier determination.
- (vi) Covenant for renewal as may be agreed.

**Drafting of a lease.** A lease is usually drafted by the lessor's Advocate. The following special points may be noted:

(a) *Generally recitals* are not necessary and material facts are mentioned in the operative part.

(b) *Consideration.* Reserved rent is mentioned in the beginning of the Testatum. The entire consideration, including premium, etc. should be mentioned.

(c) *Operative part.* It should show clearly the lessor divesting himself of possession and the lessee coming into possession, e.g. by the use of such words as "The lessor hereby lets, or demises or grants a lease of, etc., etc with effect from the ..... day of ....."

(d) *Habendum.* The nature of the lease, commencement and duration of the term are specified here.

(e) *Reddendum.* This is peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment. It begins with the word rendering or paying with reference to the reserved rent. Rent is payable during the term of the lease. Place where payable and instalments are mentioned. If there is apportionment of rent that is also mentioned.

(f) *Covenants.* Terms and conditions are mentioned in several paragraphs. The usual covenants are to be found in s. 108 of the Transfer of Property Act; other important covenants generally refer to payment of taxes, repairs, insurance, subletting, purpose of the lease, e.g., residential purpose, renewal, forfeiture.

**Covenant running with the land.** This is an expression borrowed from English law relating to real property and is an exception to the general rule that all covenants are personal. A covenant may run with the land in law or in equity. A covenant is said to run with the land where not only its benefits pass on to the assignee of the covenantee but also the burden passes on to the assignee of the covenantor and independently of notice in all cases. Instances of such covenants are (i) covenant to pay rent; (ii) covenant to repair; (iii) covenant not to build but to keep open portion of the property; (iv) covenant not to assign without the consent of the lessor; (v) covenant to pay rates and taxes; and (vi) covenant for renewal; (vii) covenant given to the lessee, i.e. option to purchase the property.

## Doctrine of Frustration of a Lease

(Limited Application to India)

This is a departure from the English law on the subject.

**English law.** Under English law the lessee takes the premises subject to all events which may depreciate the value. This is more so because the law is reluctant to imply covenants.<sup>11</sup>

Nevertheless under the English law the doctrine of frustration based upon the old theory of impossibility of performance, discharges a contract where the subject-matter is destroyed. The object of the doctrine was to give effect to the demands of justice, to achieve a just and reasonable result to do what is reasonable and fair, as an expedient to escape from injustice where such would result from enforcement of a contract in its literal terms after a significant change in circumstances.<sup>12</sup>

**Indian law.** In India the application of the doctrine of frustration is very limited and the provisions of s. 56 of the Contract Act codify the law on the subject, which become impossible of performance, because of change of circumstances when the obligations of the respective parties stand discharged. This was observed by the Supreme Court in *Ganga Saran v Ram Charan Ram Gopal*.<sup>13</sup> Secondly the doctrine could at best apply to executory contracts and not executed contracts, e.g. contract for the sale of lands as such contracts do not in India create any interest in land and also to an agreement to grant a lease.<sup>14</sup>

Nevertheless under s. 108E of the Transfer of Property Act this doctrine applied in the limited sense when the property which is the subject-matter of the lease becomes destroyed by fire, violence of army or mob etc. then and in such an event the lessee by notice in writing may repudiate the lease.

Thus it was held that where part or even the whole of the demised premises have been requisitioned there is no frustration of the lease as the same is of a temporary character.<sup>15</sup> It was however held in *Magneeram v Satyabrata*<sup>16</sup> that such an order has the effect of frustration of an agreement for sale but the same was reversed on appeal.<sup>17</sup>

11 Mulla's *Transfer of Property Act*, 8th Ed., p. 857.

12 Anson: *Law of Contract*, 27th Ed., p. 503.

13 1952 SCR 86; AIR 1952 SC 9.

14 *Dhirendra Dev Chand v Raja Har Mohindar Singh* AIR 1968 SC 1024; *Sushila Devi v Hari Singh* AIR 1971 SC 1756.

15 *Tarabar v Late Padam Chand* AIR 1950 Bom 89.

16 AIR 1951 Cal 352; 51 CWN 226.

17 1954 SCA 187; 1954 SCR 310.



## FORMS

### Contract for Leases

THIS AGREEMENT FOR LEASE made this ..... day of ..... 2000 BETWEEN AB residing at ..... (hereinafter referred to as the INTENDED LESSOR) of the one part and CD residing at ..... (hereinafter referred to as the INTENDED LESSEE) of the other part.

WHEREAS the INTENDED LESSOR is seized and possessed of premises No. .... described in the schedule hereunder and intends to lease out the same.

AND WHEREAS the INTENDED LESSEE has approached the said INTENDED LESSOR for taking the said premises on lease.

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

(1) The said AB will demise to CD and CD will accept a lease of the house, fully mentioned and described in the Schedule for a term of ..... years with effect from 1999 subject to a rent of Rs. .... per month, year and other conditions hereunder stated.

(2) The said rent shall be paid on the 15th day of every following month without any delay or default.

(3) The lease shall contain *inter alia* the following covenants and conditions to be observed and performed on the part of the lessee, namely: (a) to pay the rent on the day and in the manner aforesaid; (b) further to pay all existing and future taxes (except the house tax), rates, assessments and outgoings of every description for the time being payable in respect of the said premises; and (c) to keep the premises in wind and watertight condition and good and substantial repairs during the term of the lease and furthermore in such condition and repair to deliver up the same on the expiration or sooner determination of the lease.

(4) The said lease also shall contain further covenants on the part of the lessee, e.g. (a) not to carry on any offensive trade or prohibited business; (b) not to store any combustible or explosive substance except kerosene or petrol in small quantity required for domestic consumption in the premises; and (c) not to assign, or underlet, or part with the possession of the premises or any portion thereof without the consent in writing of the lessor AND furthermore a proviso for forfeiture of the lease and re-entry on the part of the lessor if and when any part of the rent shall remain at any time in arrear for 21 days or more whether demanded or not or there shall be a breach of any of the lessee's conditions AND the usual qualified agreement by the lessor for quiet enjoyment by the lessee upon regular payment of rent and performance of the covenants and conditions of the lease.



*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 INTENDED LESSOR, in the  
presence of:

Signed, sealed and delivered by  
GD, the INTENDED LESSEE, in the  
presence of:

**Deed of Lease of Dwelling-House**

THIS DEED OF LEASE made the ..... day of ....., BETWEEN AB of, etc. (hereinafter called the LESSOR) of the one part and CD of, etc., (hereinafter called the LESSEE), of the other part, WITNESSES, that in consideration of the rent reserved and of the lessee's covenants and the conditions to be observed and performed by him as hereinafter contained, the LESSOR doeth hereby grant, convey and transfer by way of lease to the LESSEE ALL THOSE premises, with compound, out-houses, appurtenance whatsoever, etc., bearing No. .... and situate at, etc.: TO HAVE AND TO HOLD the same to the LESSEE for the term of ..... year (or years), with effect from the ..... day of ....., at a monthly rent of Rupees ....., SUBJECT to the following terms and conditions:

1. THE LESSEE hereby agrees with the LESSOR as follows:

- (a) To pay the said rent, free and clear of all deductions, on the ..... day of every current month in advance during the term of the lease; such payment shall be made at the address of the lessor as aforesaid.
- (b) To pay for and discharge and satisfy all rates, taxes, assessments and impositions (except the owner's share of the house tax) which are now or during the said term be hereafter imposed or assessed on the said premises, or the LESSOR or the LESSEE in respect thereof, by the authority of Government or otherwise.
- (c) At all times during the term of the lease to keep and maintain the premises clean, tidy, healthy, wind and watertight in all seasons and further in good and substantial repair, reasonable wear and tear and damage by fire or storm excepted.
- (d) To replace all broken fittings and fixtures by equally good or better substitutes and not to make any structural additions or alterations to the demised premises without the consent of the LESSOR first had and obtained in writing.

- (e) To permit the LESSOR, his servants and agents at all reasonable hours to enter into the property to inspect the condition or to leave notice of all defects to be repaired.
- (f) At all times during the said term to use and occupy the demised property as a private dwelling house for himself and the members of the family and not to keep any paying guests or share accommodation with outsiders nor to carry on or permit to be carried on any offensive or prohibited trade or business in the said premises.
- (g) Without the consent in writing of the LESSOR, not to assign or part with his leasehold estate or interest in the said premises created under these presents nor sublet the same or any part thereof to any person or persons whomsoever, or make any structural addition or alteration therein.
- (h) On the expiration or earlier determination of the lease to yield and deliver peaceful vacant possession of the premises in its entirety together with all improvements, if any, done thereto without any claim for compensation on that account.

2. THE LESSOR hereby agrees with the LESSEE as follows:

- (a) At all times during the said term, to pay the owner's share of house tax of the premises whenever the same falls due and his income-tax and other personal taxes as and when assessed.
- (b) That the LESSEE, paying the rent hereby reserved and observing and performing the conditions and covenants herein contained, shall quietly and peaceably hold, possess and enjoy the said premises during the said term without any interruption and disturbance by the LESSOR or any person claiming under or in trust for him: PROVIDED, however, and it is expressly agreed and declared by and between the parties hereto that, in case of non-payment of rent for any month beyond 2 days or in the event of breach of any of the conditions and covenants to be observed and performed by the lessee, the lease may at the option of the LESSOR stand determined when and in such an event the LESSOR shall be entitled to re-enter into the property and re-possess the same as his former estate without prejudice to his right to recover all arrears of rent and any damages for breach of such conditions and covenants.

*The Schedule of property*

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 LESSOR, in the presence of:

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



**Tenancy Agreement for Letting Furnished House**

THIS TENANCY AGREEMENT IS MADE this ..... day of ..... 2000 BETWEEN AB residing at ..... (hereinafter called the LANDLORD which term shall include, unless the context otherwise requires, his heirs, successors, legal representatives and assigns) of the one part and CD residing at ..... (hereinafter called the TENANT) of the other part.

WHEREAS the LANDLORD is seized and possessed of a furnished house being premises No. .... described in the Schedule hereunder.

AND WHEREAS the TENANT has approached to take on rent the said furnished house to which the LANDLORD has agreed.

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

The LANDLORD agrees to let and the TENANT agrees to take all that furnished house with fittings, fixtures and appurtenances together with the furniture and effects more fully described in the schedule hereto for the term of 5 years to be computed from the ..... day of ..... 1999 at the rent of Rs. 3,000 for the premises and Rs. 2,000 for the furniture per month respectively such rents to be payable by the 10th day of every following month.

(1) The TENANT agrees to pay the rents regularly and punctually without the least delay or single default.

(2) The TENANT shall at all times during the continuance of the tenancy keep and maintain the house with all fittings, fixtures and furniture clean, tidy and healthy, free from moth and dust and insured against whiteants, paint all wood works once in every three years and whitewash and colour wash the walls once in every two years.

(3) The TENANT shall keep all the furniture duly insured against fire, theft and other risks and replace all damaged, broken and worn-out parts of the furniture and fittings including sanitary fittings by equally good or better substitutes.

(4) The TENANT shall pay all rates, taxes and impositions which are now or during the said term be hereafter imposed or assessed on the said premises by the Government, Municipal Corporation or any other authority.

(5) To permit the LANDLORD his servants and Agents at all reasonable hours to enter into the property, inspect the condition or to leave notice of all defects to be repaired.

(6) The TENANT shall during the said term use and occupy the said premises as a private dwelling house for himself and the members of the family and not to keep any paying guest or share accommodation with outsiders and licensee or otherwise, not to carry on, or permit to be carried on any business or to store any inflammable or explosive articles or thing in the said premises.



(7) Without the consent in writing of the LANDLORD the TENANT shall not sublet or assign or part with possession of the said premises.

(8) The TENANT shall on the expiry or earlier determination of the lease yield and deliver to the LANDLORD peaceful and vacant possession of the premises in its entirety.

(9) Without the consent in writing of the LANDLORD the TENANT shall not assign or part with the tenanted premises or sub-let the same or give any licence to anybody to occupy the tenanted premises or any part thereof or make any structural additions or alterations therein.

(10) On the determination of the tenancy the TENANT shall give to the LANDLORD peaceful vacant possession of the tenanted premises.

*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 and delivered by the said AB  
the LANDLORD in the presence of:

Signed and delivered by the said CD  
the TENANT in the presence of:

**Deed of Sub-Lease**

THIS DEED OF SUB-LEASE is made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... (hereinafter called the SUB-LESSOR which term shall include his heirs, successors and assigns) of the one part and CD son of ..... residing at ..... (hereinafter referred to as the SUB-LESSEE which term shall unless inconsistent with the context include his heirs, successors and assigns) of the other part.

WHEREAS by a lease (hereinafter referred to as "the ORIGINAL LEASE") dated ..... the day of ..... and made between XY as owner and AB as lessee and registered in Book I, Vol. .... pages ..... to ..... being No. .... for the year ..... in the Office of the Sub-Registrar of ..... etc., the premises (or, etc.) described in the ORIGINAL LEASE were demised to the said original lessee for a period of ..... years with effect from the ..... day of ..... on a yearly rent and subject to the covenants and conditions to be performed and observed as therein contained AND WHEREAS the original lessee has agreed to grant and the SUB-LESSEE has agreed to accept a sub-lease of the premises (or, etc.) hereinafter described upon the conditions hereinafter contained.

NOW THIS DEED WITNESSES that in consideration of the rent hereinafter reserved and the covenants by the sub-lessee hereinafter contained, the

ORIGINAL LESSEE doeth hereby grant to the SUB-LESSEE a lease of ALL THAT premises (or, etc.) known by the name of, etc., and situate at, etc., together with the appurtenances: TO HOLD the same unto and to use of the SUB-LESSEE for the period of ..... years, commencing with effect from the ..... day of ....., at the monthly rent of Rupees ....., SUBJECT to the following conditions:

1. The SUB-LESSEE hereby agrees with and covenants with its lessor, *viz.* the lessee as follows:

- (a) To pay the said rent, clear of all deductions, on the ..... day of ..... every current month in advance during the term of the lease.
- (b) To pay all taxes and outgoings now payable or hereafter to become payable in respect of the leased premises (or, etc.).
- (c) To keep the said premises (or, etc.) in good and tenantable repair, and not to make any alteration therein without the written consent of the landlord.
- (d) To perform all the covenants, conditions and stipulations contained in the ORIGINAL LEASE affecting the property hereby leased and to be observed and performed by the original lessee except payment of rent and not to do, execute or perform any act, deed or thing or suffer anything to the contrary whereby or by reason or means whereof the original lease may be avoided or forfeited and to allow the ORIGINAL LESSEE to enter upon the leased premises (or, etc.) for the purpose of inspection of the premises and performing any of such terms of agreement contained in the original lease, which may be necessary to prevent its forfeiture.
- (e) To keep the ORIGINAL LESSEE indemnified against all actions, claims, demands and expenses on account of performance or non-performance by the sub-lessee (of any of the terms, conditions and stipulations of this agreement).

2. The ORIGINAL LESSEE does agree and covenant with the SUB-LESSEE as follows:

- (a) That upon the SUB-LESSEE paying the rent hereby reserved and observing and performing the conditions and covenants herein contained, shall, quietly and peaceably, possess and enjoy the property, hereby leased during the said term without any interruption and disturbance by the original lessee or any person claiming under or in trust for him, provided that in case of any breach of any of the conditions and covenants to be observed and performed by the SUB-LESSEE the lease shall at the option of the ORIGINAL LESSEE stand determined who shall be entitled to repossess the property as his former estate without prejudice to his right to recover all arrears of rent and/or any damages for breach of such conditions or covenants.

- (b) The ORIGINAL LESSEE shall duly and punctually pay the rent reserved, observe and perform all the covenants and conditions contained in the ORIGINAL LEASE, and keep the same alive and in full force and virtue and further will at all times keep the SUB-LESSEE and his estate indemnified against all actions, claims, proceedings and demands on account of any breach of any of the conditions and covenants contained in the ORIGINAL LEASE.
- (c) The ORIGINAL LESSEE acknowledges the right of the SUB-LESSEE as to production of the ORIGINAL LEASE and to delivery of copies thereof and undertakes for the safe custody thereof.

3. It is further agreed that the terms the ORIGINAL LESSEE and SUB-LESSEE used herein shall, unless inconsistent with the context, include as well their respective successors and assigns.

*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 SUB-LESSOR in the presence of:

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

**Deed of Lease**

(LONG FORM)

THIS DEED OF LEASE is made this ..... day of ..... 2000 BETWEEN AB and MN residing at ..... (hereinafter called the LESSORS which term shall include their heirs, successors, executors, administrators and assign) of the one part and CD residing at ..... (hereinafter called the LESSEE which term shall include his successors, heirs, administrators and executors) of the second part.

WHEREAS the LESSORS are the exclusive owners of ..... an estate comprising land measuring ..... known as ..... and bounded as follows:

- East .....
- West .....
- North .....
- South .....

AND WHEREAS the LESSEE has agreed to take a lease of the said land from the LESSORS for a period of ..... years upon terms and conditions hereinafter mentioned and has further undertaken to build a cinema hall



to be named as ..... according to the plan annexed hereto and to the specifications attached therewith.

Now this lease witnesseth as follows:

1. In consideration of a monthly rent of Rs. .... and the LESSEE'S covenants hereinafter mentioned and contained the LESSORS hereby demise and lease unto the LESSEE and the LESSEE hereby takes on rent the plot of land measuring ..... or thereabout and comprised in ..... for a period of ..... years from the date hereof.

2. Immediately on the execution of these presents or as soon thereafter as possible, the LESSEE shall commence and complete with all possible expedition a suitable building or buildings and other structures on the land hereby demised according to and in conformity with the map or plans hereto annexed which have already been sanctioned by the Municipal Committee of ..... so that such buildings and structures are completed and are ready for use for the purposes hereinafter mentioned within a period of one year from the date hereof. It is hereby declared that such buildings and structures shall at all times remain the property of the lessee during the term of the tenancy hereby created but immediately on the expiry of such term or on sooner determination thereof and in any event on the expiry of ..... years from the date hereof the same shall vest in and become the absolute property of the LESSORS who shall then be entitled to enter upon and to take possession of the same and shall in the meantime have and possess a vested interest therein, it being agreed that during the continuance of the tenancy hereby created the LESSEE shall not sell or mortgage or otherwise alienate the buildings and/or the structures or the materials thereof.

3. All taxes which are now payable by the LESSORS, such as land revenue, property tax as well as all insurance premia on the buildings to be constructed on the land hereby demised, shall be paid by the LESSORS but all other taxes which may hereafter be levied by any authority whatsoever as payable in respect of the said land or buildings thereon by the LESSORS or by the lessee or the occupier thereof shall be paid by the lessee.

4. The rent payable hereunder shall be paid in advance every month by the LESSEE to the LESSORS on or before the 10th day of each calendar month and the receipt of any one of the lessors shall be a complete discharge in respect of the same on behalf of all the LESSORS.

5. If default is made in the payment of the rent for any three months, then on each such default it shall be lawful for the LESSORS, in addition to or in the alternative to any other remedy that may be available to them at their discretion, to eject the lessee from the land hereby demised and from the buildings and structures that may have been erected thereon and to take possession thereof as full and absolute owner thereof provided that a notice in writing shall be given by the LESSORS to the LESSEE of their intention to take possession of the same but if the arrears of the rent are paid within

seven days from the service of such notice then the LESSORS shall not be entitled to take possession of the said land and buildings.

PROVIDED FURTHER THAT if the LESSORS nevertheless exercise their right to take possession of the said land and buildings as provided herein then the LESSEE shall not be liable to pay to the LESSORS the full rent hereby agreed to be paid for the whole of the remaining term of the tenancy hereby granted, subject, however, to the right of the LESSEE to claim refund of the rent, if any, that the LESSOR may recover during such remaining term from the LESSEE.

6. The LESSORS shall whitewash the buildings erected on the said land once every year and shall renew the oil-painting thereof every three years and in the event of their failure to do so the LESSEE shall be entitled to do the same after a week's notice in writing to the LESSORS of his intention to do so and to deduct the expenses incurred by him in that behalf from the rent hereunder payable by him to the LESSORS.

7. The LESSORS (*the LESSEE*) shall insure and shall at all times during the continuance of this lease keep insured all the buildings that may be erected on the said demised land against loss or damages by fire with an insurance company approved in writing by the LESSEE (*the LESSORS*) for an amount which shall not be less than Rs. .... unless otherwise agreed to in writing between the parties.

8. In the event of loss by fire of the aforesaid buildings or part thereof, the insurance money received from the insurance company shall be applied in rebuilding or restoring the buildings as in their previous condition unless otherwise agreed to in writing between the LESSORS and the LESSEE and till the completion of such rebuilding or restoration, the rent hereby agreed or a proportionate part thereof shall remain suspended unless the fire was intentionally or wilfully caused by the LESSEE or his servants or agent and the period of the lease hereby granted shall be extended by the time occupied in such rebuilding or restoration. In the event of the insurance company refusing to pay the claim arising out of the loss aforesaid on the ground that the fire was intentionally or wilfully caused by the LESSEE or his servants or agent, the LESSEE shall be liable for and compensate the LESSORS on account of the loss or damage caused to the said buildings.

9. The LESSEE will be liable to keep the building or buildings and the structures erected on the said demised land in a good state of repair and wind and watertight condition and shall repair any damage or injury caused thereto except such damage as may be caused by ordinary and reasonable wear and tear.

10. The LESSEE shall permit the LESSORS or their duly authorised agent or agents to enter the premises at all convenient times for periodical inspection of the same except when any show or function is being held therein.

11. The LESSEE shall not, except with the permission of the lessors in writing first had and obtained, use the premises for any purpose other than



the following, namely, the exhibition of motion pictures, theatrical performances, concerts, public lectures, skating-rinks, refreshment rooms and other purposes subsidiary or connected therewith. In case of a breach of this condition the tenancy shall be deemed to have been terminated with all the consequences hereinbefore mentioned.

12. Subject to fulfilment of the terms and conditions of these presents, the LESSEE will have the option to extend the lease of the said land and buildings and structures erected thereon for a further period of 10 years on the expiry of the lease hereby granted provided he gives a notice to the effect in writing by registered post to the LESSORS of his intention to do so at least three calendar months before the termination of the present lease.

PROVIDED ALSO THAT with such notice the lessee shall deposit with the LESSORS the sum of Rs. .... as security for the regular payment by him of the rent during such extended term as hereinafter mentioned and for the due performance of the terms of the tenancy.

PROVIDED FURTHER THAT the rent payable by the LESSEE to the LESSORS during the extended term of the lease shall be Rs. .... per month which will include the rent of the land hereby demised as well as of the buildings constructed thereon which, on the expiry of the tenancy created hereby, shall vest in and be the absolute property of the LESSORS as hereinbefore mentioned. After the expiry of the said fresh term of 10 years the LESSEE shall not be entitled to exercise a further option of renewal of the tenancy and shall hand over and deliver the land and the buildings and structures to the LESSORS in a good condition as hereinbefore provided.

13. The LESSEE shall be entitled to proceed with the construction of the buildings and/or structures on the land hereby demised immediately after the registration hereof and the LESSORS shall allow the LESSEE all facilities in that behalf and on their failure to do so pay to the LESSEE compensation at the rate of Rs. 25 (Rupees twenty-five only) per day for such period as the LESSEE is unable to commence the construction owing to the fault of the LESSOR.

14. The LESSEE has deposited a sum of Rs. .... with the LESSORS as security for the due performance of the conditions hereof; this amount the LESSORS shall return without interest to the LESSEE on the termination of the tenancy created hereby subject, however, to any lawful deductions that they may be entitled to make hereunder.

IN WITNESS WHEREOF the said LESSORS and the said LESSEE have put their respective signatures hereunder the day, month and year first above-written.

#### *Schedule of the property*

1. WITNESSES:	Signature of LESSORS
	1.
2. WITNESSES:	2.
	Signature of LESSEE



### Lease of a Calcutta Property

*(Proper changes may be made in the provisions in view of special Tenancy Laws in the State)*

THIS DEED OF LEASE is made this ..... day of ..... 2000 BETWEEN AB residing at ..... (hereinafter referred to as the LANDLORD which term shall unless excluded by or repugnant to the context include his heirs, successors, representatives, executors, administrators, and assigns) of the one part and CD residing at ..... (hereinafter referred to as the TENANT which expression shall unless excluded by or repugnant to the context include his heirs, successors, representatives, executors, administrators and assigns) of the other part.

WITNESSETH that the LANDLORD doeth hereby demise unto the TENANT ALL THAT premises together with the yards, compounds, buildings and ground held therewith and appurtenance TO HOLD the said premises unto the TENANT for the term of ..... years from the ..... day of ..... 1999 yielding therefor during the said term a monthly rent of Rupees ..... clear of all deductions, by equal monthly payments on the ..... date of each and every current month the first of such payments to be made on the ..... day of ..... next and the last of such payment to be made in advance on the ..... day of ..... 2015 AND the TENANT doth hereby covenant with the LANDLORD that he the TENANT during the said term will pay the monthly rent hereinbefore reserved on the day and in the manner aforesaid and will pay all rates, taxes and outgoings now payable or hereafter to become payable, by the TENANT or occupiers in respect of the said premises and will, during the said term, keep the interior of the said premises in good and tenantable condition and will comply with all the requisitions of the municipality and will do, execute and perform at his own expense and cost all petty repairs that from time to time may be required or necessary to be done to the said premises and will make no alteration in the said premises except such as the LANDLORD shall previously approve of in writing and not at any time during the said term carry on or permit to be carried on or committed on the said premises any offensive business or occupation or nuisance and will use the same as a private dwelling-house or as an office and business premises only and at the expiration or sooner determination of the said term will peaceably and quietly yield up possession of the said premises to the said LANDLORD in as good a condition as the same now are and will not assign or underlet the said premises or any part thereof without the previous written consent of the LANDLORD nor keep any heavy articles on the roofs or the upper floors of the said premises, nor keep in or upon any part of the said premises any combustible or injurious articles such as gunpowder, dynamite, saltpetre, jute, cotton, spirit, sulphur, acid, hides or the other articles likely to injure the said premises or any part thereof nor remove any fixture now existing or that may hereafter be put up in the

said premises nor do or commit or cause to be done or committed any act, matter or thing to the prejudice or injury of the premises, and will repair and restore at the TENANTS' own cost and expense any damage or injury the said premises may thereby sustain during the said term and also it shall be lawful for the LANDLORD his heirs, executors, administrators and assigns or his agents from time to time and upon reasonable notice with or without workmen and others to enter the said premises to view the state of repair and condition of the same and of all defects and want of repair then and there found and which the TENANT shall be liable to make good under the covenants hereinbefore contained to give or leave notice in writing to the TENANT and that the TENANT will within the period of one month after such notice or sooner carry out the requisite repair and make good the same according to such notice and the covenant in that behalf hereinbefore contained.

PROVIDED ALWAYS THAT if at any time any one or more of the said monthly rents or any part thereof shall remain unpaid for 21 days after the dates whereon they respectively are made payable as aforesaid whether the same shall have been legally demanded or not or in case the TENANT shall apply for or be adjudged an insolvent or bankrupt or enter into a composition with his creditors or in case of breach of the covenants or conditions by the TENANT herein contained and on his part to be observed and performed, it shall or may be lawful for the LANDLORD to re-enter, possess and enjoy the said premises and immediately thereupon the said term shall absolutely determine, provided always that if the TENANT during the said term without the previous consent in writing of the LANDLORD shall vacate the said premises it shall be lawful for the LANDLORD to take possession of the said premises for their protection without in any manner prejudicing this demise or the rights of the LANDLORD thereunder and without subjecting him to any action for trespass or otherwise howsoever and it shall be lawful for the LANDLORD to relet the said premises at any rent that he may reasonably obtain for the same and if such rent should fall short of the rent hereby reserved, the TENANT shall pay the difference without any objection whatsoever and the LANDLORD hereby covenants with the said TENANT and the TENANT performing and observing all the covenants and conditions by the tenant herein contained may quietly hold and enjoy the said premises during the said term without any interruption by the landlord or any person claiming through him and that he the LANDLORD will pay or cause to be paid all rates, taxes and outgoings now payable, or hereafter to become payable by the owner of the said premises and will keep the said premises wind and watertight and remove and change all beams and burgahs that may, during the said term, become decayed and require to be changed. And in case the property be taken up under the Land Acquisition Act or be destroyed by earthquake or other natural cause, the lease shall determine.



*The Schedule*

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

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

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

**Deed of Lease of Land with  
Forfeiture Clause and Covenant for Renewal**

THIS DEED OF LEASE is made on this ..... day of ..... 2000 BETWEEN AB son of ..... residing at .....) hereinafter referred to as the LESSOR which term shall unless the context otherwise requires include his heirs, successors, executors, administrators and assigns) of the one part and CD son of ..... residing at ..... (hereinafter called the LESSEE which term shall unless excluded by or repugnant to the context include his heirs, representatives, executors, administrators and assigns) of the other part.

WHEREAS the LESSOR is seized and possessed of premises described in the Schedule hereunder and has good rightful power and absolute authority to grant a lease of the scheduled premises in the manner hereunder mentioned.

NOW THIS DEED WITNESSETH and the parties hereto agree as follows:

1. In consideration of the rent hereinafter reserved and the covenants and conditions hereinafter contained to be observed and performed on the part of the LESSEE the LESSOR does hereby grant, transfer, demise by way of lease to the LESSEE all that piece or parcel or parcels of land described in the schedule below TO HAVE AND TO HOLD the same unto and to the use of the LESSEE for the term of ..... years commencing from the ..... day of ..... 1999 at the annual rent of Rupees .....

2. The LESSOR hereby covenants with the LESSEE as follows:

- (a) The LESSOR shall put the LESSEE in possession of the said land on the said ..... day of ..... 2000.
- (b) Upon the LESSEE paying the rent hereby and hereunder reserved and observing and performing the covenants and conditions, herein contained the LESSEE shall quietly and peaceably hold, possess and enjoy the said land during the said term without any claim, interruption or disturbance by the LESSOR or any person claiming under or in trust for him.



3. The LESSEE hereby covenants with the lessor as follows:

- (a) The LESSEE shall pay the said rent without abatement or deductions on or before the ..... day of ....., every year and the first of such payments shall be made on the ..... day of ..... 2000.
- (b) The LESSEE shall bear and pay all rates, taxes and other assessments and outgoings which are now or may hereafter be imposed or assessed on the said land except those which are payable in law by the LESSOR.
- (c) The LESSEE shall not use and occupy the said land for any purpose other than private residence for himself and the members of his family by construction of temporary structures according to the plan approved by the Municipal Authority.
- (d) The LESSEE shall not, except with the consent in writing of the LESSOR first had and obtained assign, underlet or part with the possession of the said land or any portion thereof or of the structures to be constructed thereon or any portion thereof which consent the LESSOR may at his absolute discretion withhold.
- (e) That if the LESSEE shall pay the rent punctually and regularly and duly observe and perform the conditions and covenants herein contained and apply in writing to the landlord not less than ..... months prior to the expiration of the term herein reserved for renewal of the lease, the LESSOR shall then and in such an event grant to the lessee a new lease of the said land for a further period of ..... years on the same terms and conditions as are herein contained except the covenant for renewal and subject to such variations as may be mutually agreed.
- (f) On the determination of the lease, the lessee shall deliver peaceful vacant possession of the land hereby demised as also the structures to be erected by the LESSEE without claiming any compensation or value thereof.

*The Schedule above referred to*

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

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

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

### Deed of Surrender of Lease

THIS DEED OF SURRENDER of LEASE is made this ..... day of ..... 2000 BETWEEN AB son of ..... residing at ..... (hereinafter called the LESSEE) of the one part and CD son of ..... residing at ..... (hereinafter called the LESSOR) of the other part.

WHEREAS by an indenture dated ..... made between the parties hereto and registered in ..... it was witnessed that the said CD, did in consideration of the rent thereby and thereunder reserved and of the covenants and conditions to be observed and performed on the part of the said AB as therein contained granted and demised by way of lease the property fully mentioned and described in the schedule hereto for a term of ..... years AND WHEREAS such lease is in full force and virtue and all rents and conditions reserved by and contained thereunder on the part of the LESSEE to be paid, observed and performed, have been duly paid, observed and performed by the said AB up to the date of these presents AND WHEREAS the LESSEE was at all material times and is presently in possession of the property since the execution of the lease. AND WHEREAS for personal reasons and consideration the said AB having desired to be relieved from any further payment of such rent and performance of the covenants and conditions approached the said CD for a surrender of the said lease and delivery of the possession of the property AND WHEREAS the said CD has agreed to accept from the said AB a surrender of the aforesaid lease of the said premises: NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of a sum of Rs. .... being the token consideration paid by the said CD to AB, the said AB as beneficial user of the said property do hereby give up and relinquish all his leasehold estate and interest in and surrender and deliver possession to the said CD of the premises (or, etc.) comprised in and by the said deed of lease TO HOLD the same as before execution of the lease by the said CD TO THE INTENT and object that the same shall stand determined to all intents and purposes and that the residue of the said term of ..... years created by the said deed of lease, and all other rights and interests of the said AB in the said premises (or, etc.) under or by virtue of the said deed shall stand extinguished and merged in the reversion freehold and inheritance of the premises with immediate effect as if the said lease was never granted nor intended.

AND THIS INDENTURE further witnesses that in consideration of the surrender of the lease which is accepted by the LESSOR he the said CD doeth hereby release and discharge the LESSEE AB, his successor and estate from all claims, demands and liabilities on account of future rent and/or arising out of performance or non-performance of the covenants, conditions provided under the hereinbefore recited Indenture of lease.



*The Schedule*

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 the LESSEE in the presence of:

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

**Deed Altering Conditions in a Lease**

THIS DEED OF MODIFICATION of lease is made this ..... day of ..... 2001 BETWEEN AB son of ..... residing at ..... (hereinafter called the LESSOR) of the one part and CD son of ..... residing at ..... (hereinafter called the LESSEE) of the other part.

WHEREAS by a lease (hereinafter called the PRINCIPAL DEED) dated the ..... day of ..... and made between the parties hereto and registered at ..... Registration office in Book No. .... Volume No. .... pages ..... to ..... Being No. .... for the year ..... the said AB granted and demised to CD the house (or, etc.) situate at, etc. AND WHEREAS the parties hereto have agreed to alter and modify the terms and conditions of the principal deed in the following manner: NOW THIS DEED WITNESSES as follows:

1. Sub-clause (e) of clause 2 (or, etc.) of the principal deed shall be omitted and shall cease to have any effect.

2. Sub-clause (e) of clause 3 of the PRINCIPAL DEED shall be substituted by the following clause:

That if the LESSEE shall pay the rent punctually and regularly and duly complied with and performed the conditions and covenants herein contained for renewal of the lease agreeing to pay 20% enhanced rent, the LESSOR shall then and in such an event grant to the LESSEE a new LEASE of the said premises for a further period of 5 years on the same terms and conditions as are contained in the Principal Agreement except the covenant for renewal and subject to variation as may be mutually agreed.

3. That as altered and modified as aforesaid the PRINCIPAL DEED shall remain in full force and effect.

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 LESSOR in the presence of:

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



### Tenancy Agreement of a Flat for a Fixed Period

From .....

To .....

Re: Tenancy of .....  
in the .....

This is to place on record that at my request you have allowed me the use and occupation of the above flat on the 7th floor of the above premises No. .... consisting of one bed room, bath, kitchen, balcony, dining space etc. with right of ingress thereto and case and the facilities of the lift services with effect from ..... with all care, maintenance and services thereof until ..... day of ..... on *inter alia* the following terms:

(1) I shall pay you a sum of Rs. .... as rent or occupation charges inclusive of proportionate taxes payable to CORPORATION OF CALCUTTA on that account and such payment shall always be made in advance on or before the 7th of every current month without any delay or default under any circumstances. I shall keep with you a sum of Rs. .... as security to be adjusted and/or paid at the end of my tenancy under you.

(2) I shall keep and maintain the flat with all its fittings and fixtures clean and tidy free from dust, moth, white ants and rust and paint the wooden works and inside walls whenever necessary, if so desired, during the period of my stay there at my costs for which I shall have no claim nor any right of re-imbursment or set-off against rent against you under any circumstances. I shall replace all broken parts, if any, by equally good or better substitutes whenever necessary.

(3) I shall not make any construction or constructions nor addition or additions or alterations thereto except inside removable wooden partitions by way of adjustments without your prior consent in writing which are all to be removed by me at the termination or earlier determination of my tenancy at my own cost and expenses without causing any mischief or damage to the buildings, such consent may be refused at your absolute discretion.

(4) I shall use and occupy the flat exclusively as my residence with the members of my family and shall never sublet the same or any portion thereof without your prior consent in writing nor share accommodation with any other person or persons nor keep any paying guests or use the same as a boarding or lodging house or for the purpose of any business nor store any combustible or inflammable goods except kerosene oil in small quantity for domestic consumption nor carry any illegal or prohibited trade.

(5) I shall leave and vacate the flat on expiry of my contractual period of tenancy as aforesaid or earlier determination thereof as hereunder provided and deliver peaceful and vacant possession thereof to you in good condition and order and in case of any delay or default on my part I shall be liable to

pay you damages for wrongful use and occupation thereof at the rate of Rs. 100 per day. I shall also leave and vacate the flat whenever required by you for your own use and occupation.

(6) In the event I fail and/or neglect to pay the rent for any two months whether demanded or not, or violate any of the terms hereunder provided or in law, commit any nuisance or annoyance to you or other occupiers of the property, you will be entitled to terminate my tenancy earlier upon a fortnight's notice notwithstanding the fact that the contractual period has not then expired when I shall leave and vacate the said flat and deliver the peaceful vacant possession to you with all improvements or constructions if any made therein with your approval and without any claim on that account.

(7) I shall pay all bills for electricity consumed by me and also telephone charges, if any, subscribed by me in the said flat, I agree and accept.

Dated .....

Yours faithfully

### Lease of Debuttar Property

THIS DEED OF LEASE is made this ..... day of ..... 2000 BETWEEN SHREE SHREE ISHWARJI, consecrated and established at premises No. .... Calcutta (hereinafter referred to as the DEITY) of the first part and AB son of ..... by religion Hindu, by occupation priest, residing at ..... (hereinafter referred to as the SHEBAIT the LESSOR which expression shall where the subject or context allows or admits of be deemed to include his successors in office) of the second part and CD, son of ....., residing at ....., by religion Hindu, by occupation priest, residing at ..... (hereinafter referred to as the LESSEE which term shall where the subject or context allows or admits of include his heirs, executors, administrators, representatives and assigns) of the third part.

WHEREAS the party of the second part is at present shebait of the deity and so is fully in charge of management and administration of the estate of the deity which consist of *inter alia* property mentioned and described in SCHEDULE "A". AND WHEREAS the temple that is place of the said deity which is now lying in a most dilapidated condition for want of necessary repairs and maintenance for a long time AND WHEREAS the income of the estate of the deity that is the rent which is collected from other properties belonging to deity is hardly a sum of Rs. .... per month is Rs. .... per year out of which the following disbursements are to be made, viz.

- (a) Amount paid to the priest for performance for daily *seva* and *puja* of the deity at the rate of Rs. .... per month  
Rs. .... per year.
- (b) Amount paid to the milkman for supply of milk to the deity at the rate of Rs. .... per month that is Rs. .... for the year.



- (c) Amount paid to the maid-servant for the cleaning of the temple of the deity and utensils Rs. .... per month that is Rs. .... per year.
- (d) Amount paid as costs of fruit and sweets of the deity every day Rs. .... per month that is Rs. .... per year.
- (e) Amount spent for kerosene oil for one Hurricane lamp kept burning at night at the temple of the deity Rs. .... per month, *i.e.* Rs. .... per year.
- (f) Miscellaneous and contingent expenses Rs. .... per year.
- (g) Taxes payable to the Municipality per quarter Rs. .... per year.

Total: \_\_\_\_\_

AND WHEREAS in the circumstances there is no such surplus fund for the maintenance and repair of the temple and for essential services to the deity AND WHEREAS the said temple which is out of repair for a long time is liable to collapse before the ensuing monsoon unless urgent repairs are immediately executed the costs whereof are estimated at sum of Rs. ....

AND WHEREAS THE ESTATE of the DEITY have no funds or other resources or income to carry out the repairs to the estate of the DEITY the party of the second part contracted to grant a lease or demise the scheduled properties which is not yielding income on terms hereunder contained.

AND WHEREAS the party of the third part has offered to pay Rs. .... per month for leasing out the scheduled property and which offer is the highest among others received after advertisement in newspapers on two occasions AND WHEREAS the said LESSEE is also satisfied about the *bona fides* of such demise and has agreed to accept the same NOW THIS INDENTURE WITNESSES THAT in consideration of the sum of Rs. .... to be paid to the party of the first part as premium immediately on execution of these presents and a further sum of Rs. .... to be paid per month on account of rent and the covenants and conditions to be observed and performed on the part of the LESSEE and in the circumstances aforesaid and for legal necessities and justifying causes the party of the second part as shebait for and representing the DEITY and as such as LESSOR and in exercises of all powers authorities and liberties vested in him as such shebait doeth hereby and hereunder grant transfer demise and assure as and by way of lease unto and to the use of the party of the third part the property fully mentioned and described in SCHEDULE "A" TO HAVE AND TO HOLD the same on lease for a term of ..... years as hereunder contained, *i.e.* until ..... day of ..... 2010 AND THAT the LESSEE doeth covenant and agree with the LESSOR as follows:

- (a) To pay the said rent and all enhancements thereof from time to time free and clear of all deductions, on the ..... day of every current month in advance during the term of the lease;



such payment shall be made at the address of the LESSOR as aforesaid.

Such rent shall be increased progressively every year at the rate of ..... per cent of the last year's rent.

- (b) To pay for and discharge and satisfy all Municipal rates, taxes, assessments and imposition (except the owner's share of the house tax) which are now or during the said term and other liabilities and outgoings as may be hereafter imposed or assessed on the said premises, or on the lessee in respect thereof, by any public or statutory body or authority and keep the LESSOR indemnified against all loss damages etc. suffered or costs charges and expenses incurred on that account.
- (c) At all times during the term of the lease to keep and maintain the premises clean, tidy, healthy, free from moth and white ants, wind and water-tight in all seasons and further in good and substantial repair, reasonable wear and tear and damage by fire or storm excepted.
- (d) To construct a building on the demised property at a cost not below Rs. .... according to the sanctioned plan of the authorities within a period of two years from date hereof which will vest in and be the property of the deity on termination or earlier determination of the lease hereunder created without any claim by LESSEE on that account.
- (e) To pay a sum equivalent to 20% of the amount of rent in case the building when constructed is let out to tenants or of the estimated rent if the building is used and occupied by the LESSEE as royalty every month. Such payment shall be made along with the rent every month.
- (f) To replace all broken fittings and fixtures by equally good or better substitutes and not to make any structural additions or alterations to the demised premises without the consent of the LESSOR first had and obtained in writing except interior alterations by way of adjustments.
- (g) To permit the LESSOR, his servants and agents at all reasonable hours to enter into the property to inspect the condition or to leave notice of all defects to be repaired which will be executed within a fortnight thereafter.
- (h) At all times during the said term to use and occupy the demised property as office premises or commercial or residential dwelling house for himself and the members of his family and the tenants and not to keep any paying guests or share accommodation with outsiders and not to carry on nor allow nor permit others to carry on any trade or business or publicity thereof in the said premises

nor use nor permit others to use the same or any part thereof for any illegal purpose.

- (i) Without the consent in writing of the LESSOR, not to create any sublease nor assign or part with his leasehold estate or interest in the said premises created under these presents nor sublet the same or any part thereof to any person or persons whomsoever, or make any structural addition or alteration therein.
- (j) On the expiration or earlier determination of the lease to yield and deliver peaceful vacant possession of the premises in its entirety together with all improvements, if any, done thereto without any claim for compensation or otherwise on any account whatsoever.

And the LESSOR doeth hereby covenant and agree with the LESSEE as follows:

- (a) To use the premium solely and exclusively for the purpose of repairs to the temple as hereunder contemplated.
- (b) At all times during the said term, to pay the owner's share of house tax of the premises whenever the same falls due and his income-tax and other personal taxes as and when assessed.
- (c) Upon the LESSEE paying the rent hereby reserved and observing and performing the conditions and covenants herein contained, the LESSEE shall quietly and peaceably hold, possess and enjoy the said premises during the said term without any interruption and disturbance by the LESSOR or any person claiming under or in trust for him.

Provided, however, and it is expressly agreed and declared by and between the parties hereto that, in case of non-payment of rent for any month beyond 3 days or in the event of breach of any of the conditions and covenants to be observed and performed by the LESSEE, the lease shall at the option of the LESSOR stand determined notwithstanding any waiver or condonation of the breach or any intermediate negotiations to the contrary when and in such an event the LESSOR shall be entitled to re-enter into the property and repossess the same as his former estate with all improvements done thereto and without prejudice in any case to his right to recover all arrears of rent and any damages for breach of such conditions and covenants.

AND THAT the party of the 2nd part doeth hereby further covenant and agree with the party of the 3rd part that the said property is free from encumbrances except the charge for the maintenance and *seva* and *pūja* of the deity and that the same is not otherwise prejudiced in title or estate and that the party of the 2nd part has not done executed or performed anything whereby he is hindered or prevented from granting and/or transferring the same or lease in the manner hereinbefore indicated. AND THAT the LESSEE shall bear and pay all costs of and incidental to this lease, including stamp and registration charges.



## The Schedule above referred to

## SCHEDULE A

Description of property which is the subject-matter of the lease hereunder created:

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

For self and shebait for and  
representing the deity

Sd/-

Signature of the LESSOR

Sd/-

Signature of the LESSEE

Sd/-

## MEMO OF CONSIDERATION

Received of and from the within-mentioned LESSEE the sum of Rs. .... being the premium payable under the within-mentioned Deed by a Bank Draft No. 11 dated ..... issued by X Bank Ltd. payable in Calcutta.

Received

Signature of the SHEBAIT for  
self and the DEITY

WITNESSES:

Signature of the LESSOR

## Deed Modifying Terms of Lease

THIS DEED IS MADE this ..... day of ..... BETWEEN AB of, etc. (hereinafter called "the LESSOR") of the one part and CD of, etc., (hereafter called "the LESSEE") of the other part being supplemental to the deed of lease (hereinafter called "the PRINCIPAL DEED") dated the ..... day of ..... and made between the same parties being a lease of a house (or, etc.) situate at etc. WITNESSES as follows:

1. The LESSOR shall forthwith erect and construct and will complete on or before the ..... day of ..... to the reasonable satisfaction of the LESSEE, a room (or, etc.) and other additions to the premises leased under the PRINCIPAL DEED, in accordance with the plans and specifications, copies whereof have for the purpose of identification been signed by the LESSOR and the LESSEE.

2. In consideration of the premises, the LESSEE hereby agrees with the LESSOR that as from the ..... day of ..... he, the LESSEE will pay to the LESSOR during the residue of the term granted by the lease under the PRINCIPAL DEED, the additional yearly rent of Rs. .... such additional rent to be paid by equal monthly payments on the same days and in the

same manner as are provided by the PRINCIPAL DEED for the payment of rent thereby reserved, the first of such payment to be made on the ..... day of ..... and that all the rights and remedies of the LESSOR shall be applicable to the said additional rent.

3. From and after the completion of the said additions and works to be erected and constructed by the LESSOR as aforesaid the agreements and conditions contained in the PRINCIPAL DEED shall apply thereto in the same manner as if the said additions and works had been completed prior to the grant of the lease by the Principal Deed.

IN WITNESS etc.

Signed, sealed and delivered

CD

AB

*The Plans, etc., above referred to*

### Licence for use of a House Property to a Company for Office Accommodation

AN AGREEMENT IS MADE this ..... day of ..... 1999 BETWEEN AB son of ..... by faith ..... by occupation ..... (hereinafter referred to as the OWNER) of the one part and X & Co. Ltd. represented ..... by its secretary being signatory to this agreement having its principal office at present at No. .... (hereinafter referred to as OCCUPIERS) of the other part.

WHEREAS the OCCUPIERS approached the OWNER for permission for using a portion of his property, *viz.* premises No. .... fully mentioned and described in the Schedule hereto for temporary accommodation and/or location of their offices for a period not exceeding eleven months only from the date of signing of this agreement which the owner has agreed to grant reserving for himself the care, maintenance and services to property and on the basis of leave and licence only (which will stand *ipso facto* revoked on the expiry of the said term). Now, it is hereby expressly agreed and declared by and between the parties as follows:

1. This writing shall never be construed as any tenancy agreement or lease nor otherwise creating any other right or interest in the property in favour of the OCCUPIERS which is not at all the intention of the parties but on the contrary merely a temporary agreement or arrangement simply to allow the occupiers to use and occupy portion of the premises for their office accommodation under the control and supervision of the owner for which purpose the OWNER shall retain ..... rooms, *viz.* one in the ground floor and another in the first floor. The owner shall have his own staff in the said rooms for the care and supervision and maintenance of and services to the property.



2. The OCCUPIERS shall, in consideration of such accommodation as hereunder provided, pay to the OWNER a fixed sum of Rs. .... as charges for such temporary occupation for the period of ..... months which sum will be paid at the rate of ..... per month on the ..... of every current month without delay or default and a further sum of Rs. .... per month on account of maintenance to the property over and above of the payments. He shall further pay a sum of Rs. .... for service charges and also use of fittings and fixtures making thus a sum total of Rs. .... per month. The two last-mentioned amounts shall also be paid on the ..... of every current month.

3. The OCCUPIERS shall also pay to the OWNER on account of Corporation of Calcutta all existing and future occupier's share of rate and taxes of the property and also the enhancement in the owner's share, if any, during the period of their occupation and shall otherwise keep the OWNER and his estate indemnified as against any loss if any arising out of such non-payment or non-observance of any of the covenants herein contained.

4. The OCCUPIERS have as security deposit for such payments and observance of the covenants hereunder contained kept with the OWNER a sum of Rs. .... to be repaid without interest on revocation of licence and surrender and delivery of possession of the said portion of the property subject to such deductions as the OWNER shall be entitled as against the OCCUPIERS, *e.g.*, arrears of charges provided in clause 2, unpaid taxes, electric bills, etc., as hereunder provided or otherwise permitted in law.

5. The OCCUPIERS shall on expiry of the period of ..... and licence hereunder granted or earlier revocation thereof surrender the property and deliver the same to the OWNER when and in such an event he will be entitled to the refund of Rs. .... subject to deductions provided in clause 4 hereof.

6. Provided, however, and notwithstanding anything hereinbefore contained, it is hereby expressly agreed by and between the parties hereto that in default of any payment on the dates hereinbefore referred to above to the OWNER or the Corporation of Calcutta or other appropriate authorities the OWNER shall be entitled to and shall have always the power to revoke the licence hereunder granted at his absolute discretion and reoccupy the said portion of the property without subjecting himself to any liability on that account and notwithstanding any intermediate negotiations or waiver of breach thereof when and in such an event the OCCUPIERS shall surrender the occupied portion of the property as hereunder contemplated.

7. The OCCUPIERS shall have no right to make any addition or alteration to the property except removable of wooden partitions by way of adjustments but shall be entitled to make interior decorations only by temporary wooden partitions which they shall remove at their own costs at the time of surrender of the said portion of the property on expiry of the term of the licence hereby granted or earlier revocation thereof and repair all the damages if any caused to the property.

IN WITNESS WHEREOF the parties have executed this Agreement this ..... day of ..... 1999.

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

Signed, sealed and delivered  
by ..... on behalf  
of X & Co. Ltd. pursuant of Board  
Resolution of ..... in the  
presence of:

### Deed of Licence

THIS DEED OF LICENCE is made this ..... day of ..... 2000  
BETWEEN AB, son of ..... residing at ..... (hereinafter called the  
LICENSOR) of the one part and CD, son of ..... residing at .....  
(hereinafter called the LICENSEE) of the other part.

WHEREAS the said CD has applied to AB for the use of the eastern outside wall of his building being premises No. .... for the purposes of utilising the same for publicity and advertisement of his goods a specimen copy whereof with type and design shall be delivered to the LICENSOR for a period of two years: AND WHEREAS the said AB has agreed to grant the licence.

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

1. That the said CD shall be entitled to use the said outer wall of premises No. .... for the purpose of advertisement of his goods by coloured signs, marks, letters or other representations for two years from the date in dimensions measuring ..... and not contrary to any regulation of the Municipality or other public body or authority.

2. That the said CD shall pay Rs. .... as such advertisement charges per month in advance within the 5th day of every current month.

3. That in the event the said outer wall or the plaster thereof is damaged on account of any act, default or negligence or omission on the part of CD, he shall forthwith execute all the necessary repairs thereto or in the alternative pay adequate compensation to AB on that account.

4. That the said CD shall pay for all taxes and impositions on account of such advertisements.

5. That the said AB shall be entitled to revoke this licence within the said period of two years only on failure to pay regularly the fees or taxes or impositions as aforesaid.

6. That the said CD shall not be entitled to affix on the said wall any representation of other goods nor have any interest in the said wall and further shall indemnify the said AB against any damage suffered in case



such display or advertisement is found to be in breach of statutory rules or orders of any Authority.

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

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

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

### Agreement for Alternative Accommodation in the case of Demolition of the Premises

THIS AGREEMENT IS MADE ON ..... 1999 BETWEEN Shri AB son of ..... residing at premises No. .... Calcutta, (hereinafter called and referred to as the LANDLORD) of the one part and Shri CD son of ..... residing at ..... (hereinafter called and referred to as the TENANT) of the other part:

WHEREAS the LANDLORD has decided to demolish the entire Premises No. .... which includes the shop room at present occupied by the TENANT in the ground floor facing north measuring ..... sq. ft. more or less at a monthly rental of Rs. .... (Rupees ..... ) only payable to the said LANDLORD according to English calendar month and WHEREAS the LANDLORD intends to construct a new building in the place of the existing one, which is to be completely demolished and has agreed to provide the said TENANT with suitable alternative accommodation more or less approximately of the same area and similar in advantages and road frontage in the new building at the same rent immediately after its construction and as soon as possible.

NOW THIS AGREEMENT WITNESSETH as follows:

1. That the LANDLORD will immediately after execution of this agreement arrange for and provide the TENANT with temporary accommodation in a shop room in the said premises for the time being pending construction of the new building.
2. That the TENANT will thereupon leave and vacate the portion of the building now in his occupation and hand over vacant possession of the same to the LANDLORD by ..... and shift his business to the newly arranged temporary room.
3. That the LANDLORD will immediately after the construction work in respect of the portion of the building which was under the possession of the TENANT be completed, provide the TENANT with the shop room more clearly shown in red colour on the map or plan annexed with this agreement.

4. That the TENANT shall continue in the portion given to him for the time pending the construction work of the building and shall be liable to go back to his own originally occupied portion or any portion similar in advantageous area and road frontage given to him by the LANDLORD.

5. That the TENANT shall so long he shall continue in the room temporarily provided for him pay its rent to the LANDLORD @ Rs. 3 (Rupees three) only per sq. ft. per month.

6. That the TENANT shall deposit a sum equivalent to three months' rent with the LANDLORD initially and that the said three months' rent shall all along be treated as 'DEPOSIT'.

7. That the new room to be made over to the TENANT shall be fitted with doors, windows and electric lines and fittings, flooring and ceiling and plastered and whitewashed walls, with a rolling shutter gate together with all facilities enjoyed in respect of the old room.

8. That the LANDLORD shall make over the new shop room to the TENANT in the newly constructed building two months after the date when the TENANT shall vacate the old shop room in the existing building.

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

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

1. ....  
2. ....  
3. ....

AB  
CD

### Lease of Jute Mill

THIS LEASE IS MADE BETWEEN XY Jute Mill Co. Ltd., a company registered under the Companies Act 1956 having its registered office at ..... (hereinafter called the LANDLORD which expression shall where the context so admits include its successors and assigns) of the First Part and AB Co. Ltd., a company registered under the Companies Act 1956 having its registered office at ..... (hereinafter called the TENANT which expression shall where the context so admits include the Tenant's successors and permitted assigns) of the Second Part and EF Co. Ltd., a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter referred to as the SURETY which expression shall include its successors) of the Third Part.

WHEREAS the LANDLORD is carrying on business as manufacturer of and dealer and exporter in jute goods at ..... for the last 30 years.



AND WHEREAS the LANDLORD is seized and possessed of the said XY Jute Mill along with the land in which the Mill is situate and has a good Title thereto.

AND WHEREAS the main promoter of the said XY Jute Mill Co. Ltd. intends to concentrate on his business in England and desires to leave India as soon as circumstances permit.

AND WHEREAS there are no other competent person at the moment to look after and run the XY Jute Mill in the absence of the main promoter.

AND WHEREAS the TENANT is carrying on business as manufacturer of and dealer in and exporter of jute goods in its own Mill and can conveniently utilise the capacity of XY Jute Mill Co. Ltd.

AND WHEREAS there have been discussions and negotiations between the LANDLORD and TENANT whereby the LANDLORD has agreed to let out the Mill premises along with the Mill comprising of plant, machinery, fittings and fixtures on monthly rental basis and the TENANT has agreed to take on rent the said Mill as a going concern and to run the Mill and keep the plant and machinery in working condition.

AND WHEREAS the parties intend that if the TENANT can run the Mill successfully the LANDLORD will ultimately sell the same to the TENANT.

AND WHEREAS the LANDLORD has agreed to meet the liabilities of the said XY Jute Mill Co. Ltd. from the rent that might be paid by the TENANT and that the TENANT will have no responsibility to the creditors and bankers of the LANDLORD.

AND WHEREAS it has been agreed between the LANDLORD and its creditors including bankers that they will not proceed against the assets of the Jute Mill and will get their payments out of the rents receivable by the LANDLORD and that they will not disturb the running of the Mill by the TENANT so long as the TENANT goes on paying the rent regularly fixed herein.

AND WHEREAS the SURETY has guaranteed the timely payment of the rent by the TENANT which the SURETY under its Memorandum of Association and Resolution of the General Meeting is authorised to do.

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

1. The LANDLORD hereby demises unto the TENANT all those premises described in the First Schedule hereunder being premises No. .... being the Jute Mill with all structures, sheds, plant, machinery, fittings, fixtures, furniture, privileges appurtenant thereto (hereinafter called the "DEMISED PREMISES") with all permits, licences, consents and rights set out in the Schedule except those reserved and mentioned in the Schedule to hold unto the TENANT for a term of 15 years from January 1999 paying therefor in advance by monthly instalments on the first day of every month Rs. 1 lakh the first payment to be made on the execution hereof and thereafter by the first day of every month and also paying by way of additional rent a sum representing the interest @ 15% per annum or the

prevailing commercial bank rate whichever is higher on the due date for rent payment on the arrears of rent by more than 7 days from the date on which the payment fell due until payment is made in full. Such rent shall be enhanced by 10% every 3 years and such increased rent shall be payable by the Tenant as aforesaid.

2. The TENANT hereby agrees and covenants with the LANDLORD as follows:

- (a) To pay such rent at the time and in the manner aforesaid;
- (b) To pay all rates, taxes, assessments and outgoings of a periodically recurring and non-capital nature payable in respect of the DEMISED PREMISES during the term of the tenancy except, however, the outgoings as the owner is by law bound to pay notwithstanding any contract to the contrary.
- (c) To pay all charges for gas, electric current and telephone services including rent supplied to or used on the DEMISED PREMISES during the tenancy. The metre readings at the commencement of the tenancy are electric current 1001 and gas 501.
- (d) To keep the whole and every part of the DEMISED PREMISES the Jute Mill with all plant, machinery fittings and fixtures in good substantial repair and condition and properly operative and productive throughout the said term.
- (e) To obtain and keep renewed in force all Licences, permits, entitlements, as are in force and that might be required by any law and observe all formalities and statutory requirements so that the Mill may run smoothly.
- (f) To permit the LANDLORD and its agents at all reasonable hours in the day time to enter upon and inspect the condition of the DEMISED PREMISES and to give notice in writing to the TENANT of all defects found which the TENANT is liable to make good under the covenants hereinbefore contained and if the TENANT does not proceed diligently within 60 days of such notice to repair and to make good all defects, then to permit the LANDLORD to enter the demised premises with labourers to execute such repairs, the cost of so doing to be payable by the tenant on demand and if not so paid the amount to be recoverable as if the same were rent in arrears.
- (g) To permit the LANDLORD and its agents with all necessary workmen and equipment at all reasonable times to enter the demised premises for the purposes of carrying out the repairs to the adjoining property of the LANDLORD provided that except in case of emergency the LANDLORD shall give not less than 48 hours notice of his intention to exercise such right and shall make good all damage caused by such entry.
- (h) To pay on demand a proportionate part of cost of repairing, maintaining, cleansing and replacing all roadways, sewers, drains,



gutters, pipes, wires, and cables and electrical, water and other services and things which serve the DEMISED PREMISES jointly with other property of the LANDLORD.

- (i) To keep such parts of the DEMISED PREMISES as are not built upon in a proper and neat order and condition and not to store anything on them.
- (j) To insure and keep insured the DEMISED PREMISES to their full reinstatement value thereof with an Insurance Company approved in writing by the LANDLORD in the joint-names of the LANDLORD and the TENANT against loss or damage by fire, explosion, storm, flood and earthquake including the surveyor's fees and loss of two years' rent and such other risks as may from time to time be required in writing by the LANDLORD and upon the request of LANDLORD to produce the Policy and the receipt for the last premium and cause all sums received to be forthwith laid out and expended in rebuilding or repairing or otherwise reinstating the demised premises in accordance with the building plan or otherwise as may be approved in writing by the Landlord and to make up any deficiency in the Insurance money out of Tenant's own funds.
- (k) To deliver to the LANDLORD a copy of every notice relating to the demised premises served on the TENANT by any competent authority and comply with the requirements thereof.
- (l) To execute or cause to be executed or done all such works and things as under any law directed or necessary to be done or executed and not to do or permit or suffer to be done any such act, matter or thing as contravenes such law and at all times to keep the LANDLORD indemnified against all claims, proceedings, demands and liability in connection therewith.
- (m) To keep in force all licences, permits, sanctions, quotas, export rights and entitlements of the Mill and preserve unobstructed all rights of light and other easement appertaining to the DEMISED PREMISES in any way and at all times to afford to the LANDLORD such facilities and assistance as may enable the LANDLORD to prevent the acquisition by anyone of any right of light or other easement over the DEMISED PREMISES.
- (n) Without prior written permission of the LANDLORD not to assign, underlet or otherwise part with possession of the DEMISED PREMISES or any part thereof.
- (o) When Landlord's consent has been obtained the TENANT to give notice to the LANDLORD in writing setting forth the name, address and description of the assignee or person in whose favour the

devolution has taken place and to produce the Instrument of Assignment or Devolution.

- (p) Without the consent of the LANDLORD the TENANT shall not erect or permit to be erected on the DEMISED PREMISES any building or erection, boundary walls or fences and not to make or allow to be made any alterations or additions in the DEMISED PREMISES.
- (q) Except within the DEMISED PREMISES the TENANT shall not part or permit the parking of any cars, bicycles or vehicles by its servants, visitors or agents or customers not to deposit any materials on or otherwise obstruct any roadway adjoining to or forming a part of the Landlord's adjoining property nor permit any loading or unloading to be carried on therefrom.
- (r) Not to discharge any noxious matter or trade waste or effluent from any building or drain on the DEMISED PREMISES into the sewers of the LANDLORD which has or may have an injurious effect on the sewage therein or the said sewers or the local sewerage disposal works or the water flowing through the said sewers.
- (s) Not to store or bring upon the DEMISED PREMISES articles which are combustible inflammable or of dangerous nature and not to do or permit or suffer anything to be done by reason of which any insurance on the building or the adjoining property may be rendered void or voidable or whereby the rate of premium thereon may be increased.
- (t) To ensure that none of water, electricity, gas, telephone and other services serving all or any of the DEMISED PREMISES and the Landlord's other adjoining property are obstructed, terminated, diverted or interfered with in any manner.
- (u) Not to use or permit to be used the DEMISED PREMISES or any part thereof for any trade or business other than the existing business.
- (v) Not to do or suffer to be done on the DEMISED PREMISES anything which might be a nuisance or annoyance to the LANDLORD or to its TENANTS or other owners or occupiers of the adjoining lands thereof and not to use nor permit to be used the demised premises for any illegal, immoral or improper purposes.
- (w) Without prior written approval of the LANDLORD the TENANT shall not affix or display or permit on the DEMISED PREMISES fixing or displaying any advertising sign or notice.
- (x) To indemnify the LANDLORD against all proceedings, costs, claims and demands in respect of any injury or death of any person and any damage to any property or destruction of any right, easements or privileges that might arise directly or indirectly from the condition of the DEMISED PREMISES.



- (y) To bear and pay all costs and expenses incurred or that might be incurred by the LANDLORD in connection with or incidental to the preparation of the lease and the counterpart thereof and any application for any approval or consent to any authority concerned whether or not any right of re-entry or forfeiture has been waived by the LANDLORD.
- (z) On the expiry or sooner determination of the said term, the TENANT to yield to the LANDLORD the demised premises with all the buildings and additions made thereto in the meantime and all plant, machinery, fixtures in such good and substantial repairs and condition including any additions thereto.

3. The LANDLORD hereby covenants that the TENANT paying the said rent and observing and performing all obligations statutory and under this agreement may quietly enjoy and run the Mill, the demised premises, without any interruption by the LANDLORD.

4. The parties hereby agree and declare that:

- (a) Whenever the said rent or any part thereof is in arrear for two months, whether demanded or not, or if the TENANT becomes insolvent or makes any arrangement with its creditors or commits any breach of any of the provisions herein contained then the LANDLORD may re-enter upon the DEMISED PREMISES with benefit of all licences, permits, entitlements, quotas and rights relating to the Mill and thereupon the tenancy hereby created shall stand determined but without prejudice to any remedy for any antecedent breach by the TENANT of any of the provisions hereof.
- (b) In the event the DEMISED PREMISES or any part thereof are destroyed or damaged by any cause other than the act or default of the TENANT or his visitors or servants and are not re-built or restored within twelve months after the happening of such destruction or damage, then the rent hereinbefore reserved or a fair and just proportion thereof according to the nature and extent of damage shall be suspended during the period the demised premises or the destroyed or damaged part thereof remain unfit for use by reason of such damage or destruction.
- (c) The TENANT shall not become entitled to any easement or right which would restrict or interfere with the free use of any adjoining property of the LANDLORD by the LANDLORD or any person deriving title under the LANDLORD for building or for any other purposes.

5. The SURETY hereby covenants with the LANDLORD that the TENANT shall pay the rent hereby reserved on the days and in the manner aforesaid and shall perform and observe all the Tenant's covenants hereinbefore contained and that in the case of default in payment of such rent or the performance and observance of such covenants as aforesaid, the SURETY shall pay and

make good to the LANDLORD on demand all losses, damages, expenses and costs arising or incurred by the LANDLORD, provided always and it is hereby agreed that any neglect or forbearance of the LANDLORD in endeavouring to obtain the payment of rent when the said becomes payable or entitled to the performance of the several stipulations, herein on the tenant's part contained or any time which may be given to the tenant by the LANDLORD shall not release or exonerate or in any way affect the liability of the SURETY under this covenant.

6. It is further agreed as follows:

- (a) if the TENANT is desirous of purchasing remainder of the rights of the LANDLORD, the TENANT shall give six months' notice to the LANDLORD before expiry of the term of the lease hereby granted then the LANDLORD shall on the expiry of the notice and upon payment of a sum to be mutually agreed convey the demised premises to the TENANT or as it directs free from all encumbrances;
- (b) the TENANT has already investigated the title of the landlord to the demised premises and accepted by him;
- (c) the sale shall be made in all other respects as might be mutually agreed to.

IN WITNESS WHEREOF the parties hereof put their signatures and seals and execute these presents on this 5th day of November 1999.

*First Schedule*

*Second Schedule*

Signed, sealed and delivered by  
Mr. .... pursuant  
to a Board Resolution of XY Jute  
Mill Co. Ltd. dated 10th January  
1999 in the presence of:

Signature

Signed, sealed and delivered by  
Mr. .... pursuant  
to Board Resolution dated  
7th January 1999 of AB Co. Ltd.  
in the presence of:

Signature

Signed, sealed and delivered by  
Mr. .... pursuant  
to the Board Resolution dated  
10th January 1999 of EF Co. Ltd.  
in the presence of:

Signature



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## Lease Financing of Equipment

Lease financing of equipment is in fact a lease of "equipment" in which the LESSOR retains the ownership of the equipment and the LESSEE is entitled to possession and use of the equipment at specified rentals. The rentals are to be paid over a period of years which will cover depreciation and overhead expenses. The rentals will include interest on capital investment and some margin of profit for the LESSOR. The lease financing is a method of financing the acquisition or use of plant, equipment and other durable assets by the manufacturing unit without investing substantial amount but on payment of initial amount, service charges and rentals.

The advantages of taking the equipment or durables under the Lease Financing System are that the lessee does not have to make huge capital investment for the assets, it pays monthly rent from its current earnings. Such rental payments are business revenue expenses and is deductible in computing the profits of the lessee for Income-tax purposes. The rent payable on the plants and equipment or durable goods is generally lower than the interest payable on the capital required to be borrowed for purchasing such plants, equipment or durables. Moreover such borrowings may not be available if the lessee cannot furnish adequate security to the lending institution. When the plant and equipment become obsolete, the lessee need not have to invest huge sums for replacing the same. The lessee may again take on lease the required new plants and equipment on rentals.

The lease of equipment is governed by the Indian Contract Act and in case of lease of motor vehicles also by the Motor Vehicles Act. The rights and obligations of the leasing company and the lessee are governed by the agreement between them.

## FORMS

### Lease Finance Agreement (Equipment)

THIS LEASE AGREEMENT MADE the 5th day of November 2000 BETWEEN AB Limited, a company incorporated under the Companies Act 1956 and having its registered office at 5 T.N. Road, Chennai hereinafter called the LESSOR (which expression shall unless excluded by or repugnant to the context include its successors and assigns) of the First Part, CD Co. Ltd. and a company incorporated under the Companies Act 1956 having its registered office at 6 G.K. Street, Calcutta hereinafter called the LESSEE (which expression shall unless excluded by or repugnant to the context include its successors) of the Second Part and Mr. MN, son of PQ, residing at 3 L.K. Street, Calcutta hereinunder called the GUARANTOR (which expression shall unless excluded by or repugnant to the context include his heirs, executors, administrators and legal representatives) of the Third Part.

WHEREAS the LESSEE has approached the LESSOR and has requested the LESSOR to purchase and/or acquire plants and machinery and equipment and thereafter to lease the same to the LESSEE subject to the terms, conditions and covenants herein contained and subject to payment of charges and Lease Rentals contained in the Schedule hereunder.

AND WHEREAS the LESSEE has agreed to pay to the LESSOR a one time fee called *Lease Management Fee* amounting to Rs. 1 lakh only simultaneously with the execution of this agreement which fee will be non-refundable and non-adjustable and shall not in any way constitute an obligation on the part of the LESSOR to provide the lease-assistance to the LESSEE which assistance shall always be at the sole discretion of the LESSOR and the LESSEE agrees to be bound by any such decision of the LESSOR.

AND WHEREAS the GUARANTOR in consideration of the LESSOR entering into this Agreement with the LESSEE and granting the equipment on lease to the LESSEE has agreed to guarantee the due payment and the performance and observance of all the terms, covenants and conditions herein contained and on the part of the LESSEE to be paid, observed and performed.

AND WHEREAS the Parties hereto have agreed to enter into this Agreement and record the terms and conditions.

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

1. **Lease of equipment.** The LESSOR hereby leases out to the LESSEE and the LESSEE takes on lease from the LESSOR the equipments/plants and machinery and/or vehicles more particularly specified in Schedule I hereunder written and hereinafter called "the EQUIPMENTS" for the period and subject to the due and punctual payment of the lease-rentals as specified in Schedule I



hereunder written and upon and subject to the terms, covenants, conditions and stipulations herein contained and on the part of the LESSEE to be paid observed and performed. Subject to the payment of the said lease-rentals and observance and performance of the terms, covenants, conditions and stipulations herein contained the LESSOR hereby grants unto the LESSEE the right to use by way of lease the said equipments.

**2. Period.** (a) The lease hereby created under this Agreement is for a period of 10 years commencing from the date of the Agreement; and if the LESSEE exercises the option to renew and the LESSOR agrees to such renewal, the lease-period shall run for a further period of five years commencing from the date of expiry of the 10 years.

(b) The lease for the first period is non-cancellable but at the end of the first period, the LESSEE shall have an option to terminate this Agreement by giving a notice of not less than 15 days before the end of the first period and in that event, the LESSEE shall at its own cost deliver the equipment to the LESSOR at the place to be indicated in good repair, order and condition.

**3. Lease rent and payment.** (a) The LESSEE shall during the said terms punctually pay to the LESSOR free of any deduction or abatement whatsoever the sum of money specified in Schedule I hereunder as rent for the equipment. All rent shall be paid at the address of the LESSOR shown above or as otherwise directed by the LESSOR in writing. The LESSEE further agrees that the obligations to pay the rentals shall remain absolute in all circumstances and is without any reference to the state, description, use or performance of the equipment leased out.

(b) The LESSEE either at the inception of the lease shall give to the LESSOR cheques, promissory notes or any other acceptable instrument for all or any sums payable under this Agreement. Such cheques or notes or other instruments shall be deemed to have been given for adequate consideration already received by the LESSEE and shall not absolve the LESSEE from his liability to pay the said sums hereunder until the cheques, notes or other instruments are duly realised.

(c) The LESSOR shall be entitled to appropriate at its absolute discretion any money received from the LESSEE first towards the costs, charges and expenses incurred by the LESSOR for receipts or recovery of such sums, secondly towards overdue charges and other money demanded but unpaid, thirdly towards the lease rentals due and payable and lastly towards the dues owed by the LESSEE under any other Agreement.

(d) It is recorded that the LESSEE has paid the sum mentioned in Schedule 1 as and by way of Security Deposit for the due observance and performance by the LESSEE of the terms and conditions of this Agreement. The said deposit is to be held by the LESSOR without any liability to pay interest thereon and with the right to the LESSOR to adjust the said deposit

against all amounts due and payable by the LESSEE to the LESSOR. The LESSOR shall refund to the LESSEE the said deposit after necessary adjustments on the expiry of the lease of the equipment and on the return of the equipment to the LESSOR in accordance with the terms of the Agreement. From the amount to be so refunded, the LESSOR shall be entitled to deduct:

- (i) any sum, which has become due to be paid by the LESSEE to the LESSOR as per this Agreement;
- (ii) if any sum has become payable by the LESSEE to the LESSOR the exact quantum whereof is not ascertainable an estimated amount on account thereof, including overdue charges;
- (iii) if it is likely that any liability of the LESSEE shall arise in future, the LESSOR may retain such part of the deposit as it thinks necessary to take care of such liability, and continue paying interest, if any, on the sum so retained as per Schedule I hereunder. The part so retained shall be adjustable against the liability of the LESSEE to the extent the same remains unsatisfied and the balance, if any, shall be refundable to the LESSEE.

PROVIDED that the LESSOR shall not be entitled to retain any sum in pursuance of this Clause if the LESSEE shall furnish a guarantee from a bank acceptable to the LESSOR for reimbursement of the apprehended or contingent liability or otherwise secures such reimbursement in a manner acceptable to the LESSOR.

**4. Additional equipments and rents.** (a) If further equipment is required by the LESSEE and the LESSOR agrees to lease out such further equipment the said further equipment as may be specified in Schedule IA attached and/or to be attached hereto shall be granted on lease on the same terms and conditions as herein contained save and except as to the respective commencement dates and the lease rentals as specified in Schedule IA hereunder written.

(b) It is agreed that the LESSEE shall abide by the draw down period as mentioned in Schedule I hereunder written and in no event the acquisition costs of the equipment shall exceed the sanctioned amount as mentioned in the Schedule. In the event of any part of the sanctioned amount being not utilised by the LESSEE within the draw down period, the unutilised amount shall lapse and the LESSEE shall thereafter not be entitled to claim the said unutilised amount.

**5. Delivery, commencement and disbursement.** (a) The equipment shall be delivered to the LESSEE and/or installed by the Supplier/Manufacturer at the factory of the LESSEE and the entire risk cost or any outgoing pertaining to the said delivery and installation shall be to the account of the LESSEE. If any advance payment is made by the LESSOR to the Manufacturer/Supplier, pending the commencement of the Lease it shall be deemed to have been advanced on the LESSEE's behalf and at his request as an accommodation to



the LESSEE and the amount shall carry additional financial costs at the rate of Re. 1 per Rs. 1,000 per day with monthly rests on such advanced amount. The LESSEE must ensure that the equipment is delivered by the supplier within such time as may be stipulated by the LESSOR. For this purpose, time is essence of this Agreement. Any failure on the part of the LESSEE in ensuring such delivery shall entitle the LESSOR to treat the Agreement of the lease revoked and recover from the LESSEE the amount advanced to the supplier together with the financial costs and shall have a full and paramount lien over all unencumbered assets belonging to the LESSEE and/or lying at its place for the purpose of recovery of the amount advanced and the financial costs.

(b) It is explicitly agreed notwithstanding anything contained herein in case of any misstatement or any other material adverse change including any change in the Government policies taking place after execution of this Agreement but before commencement date or complete draw down of the Lease assistance as a result of which, in the opinion of the LESSOR, the LESSEE ceases to be an acceptable risk then any further draw down may be discontinued by the LESSOR and the LESSOR shall have the option to exercise his right to terminate the Lease in respect of equipment already delivered.

(c) If delivery on or before the date of commencement of the rentals is not effected by the manufacturer/supplier, the LESSOR shall not be liable for any loss suffered by the LESSEE thereby. Lease rentals shall be deemed to commence from the date of the commencement of the rentals as specified in Schedule II. In the event that the LESSEE causes cancellation of or instructs the LESSOR to cancel the purchase order/contract with the supplier of the equipment or the LESSEE shall refuse or be unable for any reason to accept delivery, the LESSOR shall be entitled to terminate the lease of the equipment and the LESSEE shall pay to the LESSOR on demand all costs, charges, expenses, damages incurred by the LESSOR as a consequence thereof.

(d) The purchase order for individual item of equipment under this Agreement shall be placed forthwith by the LESSOR at the instance of the LESSEE. In the event of undue delay on receiving such instructions for placement of orders beyond 60 days from the date of this Agreement the LESSOR shall reserve the right to review this Agreement.

(e) Taking delivery of and using the equipment shall be deemed to have been found the same complete, in proper order and condition and entirely fit for its purpose and the LESSEE does not and will not at any time have any claim against the LESSOR in respect of or arising out of such equipment.

(f) The LESSOR shall not be responsible for any direct, indirect or consequential loss to the LESSEE or third party arising from any delay in delivery and/or installation of or damage to the equipment either by the action of the manufacturer or otherwise.

(g) The sole responsibility for obtaining timely delivery of the equipment and the necessary clearances, statutory or otherwise, required for obtaining such delivery shall be of the LESSEE.

(h) The LESSEE has selected the equipment and notified itself that it is of the required size, capacity and manufacture, suitable for its purpose.

(i) The LESSOR agrees that the LESSEE shall be entitled to the benefits of the warranties provided by the manufacturer/supplier of the equipment. Any performance guarantee provided by the supplier shall be in the joint names of the LESSOR and the LESSEE and shall be enforceable by the LESSOR or the LESSEE or both of them. For this purpose, the LESSOR if so requested by the LESSEE, shall authorise the LESSEE for enforcing the performance by the supplier of the equipment for any warranties or performance guarantees relating to the equipment.

**6. Ownership.** (a) The sole and exclusive ownership of the equipment shall remain with the LESSOR and the LESSEE shall have no right, title or interest therein except as a LESSEE.

(b) No attempt shall be made by the LESSEE to capitalise the leased assets in the LESSEE'S Balance Sheet since the ownership of the asset undisputably rests with the LESSOR. The LESSEE shall not claim any relief by way of reduction, losses or grant available to the LESSOR as the owner of the equipment under the Income Tax Act 1961 or any other statute, rules, etc. that are issued by the Government of India or any statutory authority or not to do or be done any act, deed or thing whereby the LESSOR is deprived, either wholly or partly of any such relief by way of reduction, allowance or grants. The LESSEE shall at the end of each accounting year of the LESSOR provide to the LESSOR such information as it may require to claim relief by way of deduction, allowance or grant as the owner of the equipment under the Income Tax Act 1961 and comply with and observe all the terms and conditions to be complied with in the use and operation of the equipment so as to entitle the LESSOR to obtain such a relief.

**7. Location.** The LESSEE shall keep the equipment at all times in the LESSEE'S possession and control at the location as stated in Schedule I and shall not be removed therefrom without the LESSOR'S written consent PROVIDED THAT in the case of the equipment being a motor vehicle within the meaning of the Motor Vehicles Act, the operation of the equipment may be in such State or area as the LESSOR may from time to time approve in writing.

**8. Imported equipment.** In the event of any equipment being an Imported Equipment, the LESSEE warrants that without prejudice to the generality of the provisions contained in this Agreement, the following provisions shall apply:

(a) The LESSEE shall not contravene any provision of Import Control, Regulations, Foreign Exchange Regulations or any other Statute, rule and regulation to which the equipment and/or the LESSEE is subjected.



(b) The LESSEE shall obtain all consent, Import Licence or other licences, Reserve Bank approval or any other approvals and permission as are necessary for or in connection with the acquisition or Import of the Equipment, clearances from the relevant authorities, for execution, validity and enforceability of the Agreement and for the storage, installation use and operation of the equipment and undertakes to keep them effective and in force during the period of this Agreement and till the equipment is delivered back to the LESSOR in good order and condition.

(c) The LESSEE agrees and undertakes that in the event of the acquisition of the imported equipment being financed out of the foreign currency lines of credit or foreign currency loans (hereinafter referred to as FCLC) availed of by LESSOR for this purpose, it shall:

- (i) bear the entire exchange risk on the foreign currency funds utilised by the LESSOR out of the FCLCs;
- (ii) reimburse the LESSOR with all such expenses, charges as are required to be paid by the LESSOR in respect of FCLCs to the Foreign Bank/Institution concerned;
- (iii) observe and meticulously follow all the covenants in respect of such FCLCs as may be advised by the LESSOR;
- (iv) Execute all such documents, deeds, undertakings, etc. as may be required under the covenants of the FCLC.

(d) It will be the obligation of the LESSEE to comply with all the terms, conditions and obligations of the Import Licence, including submission of reports and other requirements in that behalf to such authorities as may be required and shall also provide to the LESSOR all such informations as may be required to be furnished by the LESSOR to such authorities and as may be required in terms of the licence for the equipment. In default thereof the LESSEE shall indemnify the LESSOR for all claims and demands made upon the LESSOR by reason of such default.

**9. Additional conditions in case of motor vehicles.** The Clauses mentioned in this Agreement shall apply to the lease of a vehicle *mutatis mutandis* and to the extent they are not repugnant to the clauses herein and the following further clauses shall apply to the vehicle.

(a) The vehicle shall be registered as required under the Motor Vehicles Act 1988 in the name of the LESSEE as owner of the vehicle and the LESSOR's name shall be registered therein as the financier making the LESSEE fully liable and responsible for all the obligations, liabilities and duties as provided under the said Act or under any other law or instrument pertaining to the ownership, use or maintenance of the vehicle.

(b) The LESSEE shall deliver as soon as may be after the registration of the vehicle certified copies of the registration papers, Insurance receipts, tax tokens and all other papers connected with the vehicle and continue to provide to the LESSOR certified copies thereof.

(c) In the event of the termination of the lease, or the LESSOR taking repossession of the vehicle, the LESSEE shall sign, execute, and deliver all such instruments, forms, applications and writings and shall do all such other acts, deeds and things as may be required by the LESSOR and for this purpose the LESSEE hereby irrevocably and unconditionally authorises the LESSOR that in the event of the LESSEE refusing or being unable to or failing to sign and deliver any of the aforesaid instruments, application forms or other writings as may be required by the LESSOR, the LESSOR shall be entitled without being obliged to do so to sign such instruments, forms, applications papers and writings for and on behalf of the LESSEE as a duly constituted attorney of the LESSEE.

(d) The LESSEE shall operate the vehicle only in the areas specified in the schedule or in such other place or places previously approved in writing by the LESSOR and only for lawful purposes and in a lawful manner.

(e) The LESSEE shall keep the vehicle in good repair and working condition and replace all such parts, accessories, tyres, tubes or other annexures as becomes obsolete, get damaged or unusable parts replaced.

(f) The LESSOR may make reasonable use of force to possess the vehicle in any of the events of defaults and the LESSOR may possess the vehicle wherever the vehicle may be or is believed to be whether with or without whatever is in or on the vehicle and the LESSOR hereby disclaims and the LESSEE hereby assumes the liability on account of loss or damage caused to any person or property because of such repossession.

**10. Operation and maintenance.** The LESSEE shall at all times keep and maintain at its cost the equipment in good operation condition and working order and repair the same whenever necessary and shall dutifully follow the equipment's manufacturer's recommendations as to use, service and maintenance thereof.

**11. Markings.** (a) On the equipment there should be maker's names, marks plates and identifications and identification to show that the equipment is under lease from the LESSOR which shall not be removed or defaced in any manner whatsoever.

(b) The LESSOR's Banker/Financial Institution or any other financier has rights to inspect the aforesaid equipment, to seize the equipment and to appoint receiver thereon. The LESSEE shall not do or cause to be done anything during the currency of the Agreement which will impede the exercise of such rights.

**12. Insurance.** (a) The equipment shall be kept fully insured by the LESSEE at its own cost for an amount equal to its full insurable value with an insurance company approved by the LESSOR and in the name of the LESSOR against all insurable risks and shall keep such insurance in full force and effect during the terms of this Lease Agreement. The name of the respective Bank/financial institution/any other financier/creditor as specified by the



LESSOR shall be mentioned in the Insurance Policy as the hypothecatee of the equipment.

(b) Further, the LESSEE shall purchase and pay for policy under Public Liability Insurance Act 1991 and insure and keep insured all substances which have been declared to be hazardous under the notification issued from time to time under the Act or any rule framed thereunder or under any notification, clarification, modification or addendum thereto and which substances are employed at or used in any of the LESSEE's undertakings whether or not connected with the operations of the equipments. The Insurance Policy should be taken out in the name and for the benefit of the LESSOR and the bankers of the LESSOR or such other names as the LESSOR may advise in this regard. The LESSEE shall indemnify and keep indemnified the LESSOR from any suits, proceedings, actions, claims, demands and/or prosecution and/or the costs, charges and expenses in relation to the liability and obligation suffered by the LESSOR on account of any such hazardous substance or on account of failure of the LESSEE to purchase the Insurance Policy as aforesaid as also pay any cost or expenses related to the LESSOR's defending any suit/proceeding action/claim/prosecution brought or launched against the LESSOR.

(c) If for any reason, the amount paid by the Insurance Company on a claim is less than the full insurance value of the equipment, then the LESSEE shall be liable to pay to the LESSOR the difference between the actual loss and the amount paid by the Insurance Company.

(d) (i) In case of a motor vehicle, the LESSEE shall have and keep at its own cost the same duly registered and have and keep the same insured against comprehensive risks including strike, riots and civil commotion, liability against passenger risks by a policy enuring to the benefit of both parties hereto;

(ii) The LESSOR agrees to permit the LESSEE to have the Registration under the Motor Vehicles Act 1988, any of the equipment in his own name provided that the LESSEE shall transfer the registration in the name of the LESSOR when the lease Agreement comes to an end or whenever required to do so by the LESSOR and especially when the LESSEE commits a breach of any of the conditions of this Agreement stated herein and the LESSOR is entitled to retake possession of the equipment.

(e) The LESSEE shall hand over to the LESSOR all Registration Certificates and policies of insurance or xerox copies thereof and pay promptly all premiums and stamp duty in respect thereof and promptly forward to the LESSOR all receipts evidencing payments thereof.

(f) In the event of any claim arising under the insurance hereunder the LESSEE shall give the LESSOR immediate written notice thereof and comply with all instructions of the LESSOR in connection therewith and the LESSOR

shall be entitled to receive and retain to the exclusion of the LESSEE and without thereby divesting itself of the equipment or in the salvage thereof all moneys payable with respect to such claims.

(g) In the event the equipment is damaged and in the opinion of the LESSOR it is economic that such damage be made good, all insurance moneys payable under the said insurance may, if the LESSOR agrees, be applied in making good the said damage. If the equipment be destroyed or damaged to such an extent as to be in the opinion of the LESSOR incapable of economic repair then at the LESSOR's sole discretion the insurance moneys payable under the said insurance shall be applied so far as possible in replacing the equipment with another equipment of similar type and quality. In such an event, the fresh equipment shall be deemed to have been leased out by the LESSOR under this Agreement and the LESSEE shall hold the same on lease subject to the terms and conditions as are contained in the Agreement. The lease of the equipment so sold, lost or destroyed will be deemed to have been terminated except in the case where the LESSOR elects to exercise its option as stated above. Without prejudice to the aforesaid right of the LESSOR in the event of such termination, the LESSOR shall also be entitled to recover from the LESSEE all sums as payable under this Agreement.

(h) The LESSEE shall insure the equipment against the usual risks during transportation of the equipment from the place of manufacture/delivery to the place of installation and any other transportation during the currency of the lease period.

(i) Any failure to recover the insurance money shall not relieve the LESSEE from its responsibility under this lease Agreement.

(j) On the LESSEE failing to furnish evidence of insurance within a period of seven days from the date of installation of the equipment the LESSOR may in its absolute discretion arrange an insurance cover as may be needed, and the cost of such insurance shall be forthwith reimbursed by the LESSEE.

**13. Loss or damage.** The entire risk of loss and damage to the equipment from any cause whatsoever shall be borne by the LESSEE. In the event of any such loss or damage the LESSEE shall at the option of the LESSOR replace at the LESSEE'S cost the equipment which is in the opinion of the LESSOR comparable. Such equipment shall, for all purposes thereafter, be the equipment hereunder and be the property of the LESSOR. Any moneys received in respect of insurance against loss and/or damage to the equipment shall, if the LESSOR so requires, be applied in or towards discharge of obligations of the LESSEE.

**14. Inspection.** The LESSOR and the Bank, Financial Institution or any other financier to whom the assets covered by this Agreement are hypothecated by the LESSOR shall have the right at all reasonable times to enter upon any premises where the equipment is believed to be and inspect and/or test the equipment and/or observe its use.



**15. Fees.** The LESSEE will comply with all relevant Acts, Rules, Regulations and Bye-Laws relating to the registration or licensing of the equipment relating to it or its use and will pay promptly all requisite fees and charges.

**16. Payments by lessor.** On failure by the LESSEE to pay any sum payable, the LESSOR may pay the same and recover such amount with compensation for overdue period at the same rate as failure to make any payment of rent hereunder.

**17. Covenants.** The parties agree and covenant that:

- (a) the equipment is of a size, design, capacity and manufacture selected by the LESSEE;
- (b) the LESSEE is satisfied that the equipment is suitable for its purpose;
- (c) after inspection of the equipment the LESSEE has signed this Agreement relying entirely on its own judgment and not on any statement made by the LESSOR or the agents or servants of the supplier and no warranty of fitness or that the equipment is merchantable shall apply to the contract;
- (d) the equipment is accepted by the LESSEE with all faults and defects;
- (e) the LESSOR has not made and does not hereby make any representation or give any warranty with respect to the merchantability, condition, quality, durability or suitability of the equipment in any respect;
- (f) the LESSEE has obtained all consents, licences, approvals as are necessary for or in connection with the execution, validity and enforcement of the Agreement and for the import, storage, installation, use and operation of the equipment and undertakes to keep them effective and in force during the period of this Agreement and carry out all such tests or inspection as may be required statutorily or otherwise till the equipment is delivered back to the LESSOR in good order and condition;
- (g) the LESSEE undertakes to abide by all the conditions of any licence, permit or other rule applicable to the LESSEE's business or the equipment;
- (h) the LESSEE has satisfied itself about the LESSOR's right to enter into the lease hereunder;
- (i) the LESSOR and the LESSEE hereby confirm that their intent is that the equipment shall at all times remain the property of the LESSOR. The LESSEE shall not sell, assign, sublet, pledge, hypothecate, or otherwise encumber or suffer a lien upon or against the equipment or remove the equipment from the Factory or office or site as originally put to use or located, without the prior consent of the LESSOR in writing which consent the LESSOR agrees will not be unreasonably withheld;

- (j) the LESSEE shall not sell, mortgage, charge, demise, sublet or otherwise dispose of any land or building on or in which the equipment is stored, used or operated or enter into any Agreement or arrangement to do any of the aforesaid acts without prior approval in writing of the LESSOR. The LESSEE shall in any event ensure by giving such notices that may be necessary and by obtaining confirmations in writing that such sale, mortgage, charge, demise, sub-letting or other dispositions, as the case may be, is subject to the rights of the LESSOR as the owner of the equipment to repossess the equipment at any time whether or not the same or any part thereof shall have become affixed to the said land or building and for that purpose to enter upon such land or building and reclaim and repossess the equipment lying thereat. The LESSEE shall obtain declaration and undertaking containing 'no lien charge' over the equipment and recognition of the right of access of the LESSOR to the equipment from such transferees;
- (k) the LESSOR shall not be liable to the LESSEE for any liability, claim, loss, damage or expenses of any kind or nature;
  - (i) caused directly or indirectly by the equipment or any inadequacy thereof for any purpose, or any defect therein or by the use thereof; or
  - (ii) arising out of or in relation to any repairs, servicing, maintenance or adjustments thereto or to any delay in providing or failure to provide the same, or in relation to any interruption or loss of use thereof or any loss of business or any damage whatsoever and however caused.
- (l) the LESSOR shall not be under any liability with respect to any statements regarding the LESSEE'S right or position in respect to any law relating to taxation or any other matter; and
- (m) the LESSEE shall pay lease rent as specified in Schedule I during the lease period irrespective of whether the equipment is under repair or otherwise not working.

**18. Indemnity.** The LESSEE shall indemnify and keep indemnified the LESSOR at all times against and in respect of the following:

(a) Any loss by seizure of the equipment under distress, execution or other legal process or loss or destruction or damage to the equipment by fire, accident or any other cause, any claim or demand arising out of the import, storage, installation, use or operation of the equipment or any risk or liability for death or loss of life or limb for any person whether employee of the LESSEE or of third party or not or injury or damage to any property of the LESSEE, or of any third party and hold the LESSOR harmless against all losses, damages, claims, penalties, expenses, suits or proceeding of whatsoever nature made, suffered or incurred consequent thereupon and



for this purpose take out such workmen's compensation/third party insurance cover as may be necessary, customary or in practice in the business carried out by the LESSEE or as may be directed by the LESSOR in that behalf. The LESSEE undertakes not to do or omit to do any such act which may result in seizure and/or confiscation of the equipment by the Central or State Government or local authority or any public officer or authority under any law for the time being in force and in the event of seizure or confiscation of other equipments belonging to the LESSEE and coming in the process of such seizure or confiscation to keep the leased equipment separate from the block or similar or other assets belonging to the LESSEE.

(b) Any claim arising out of the use, operation or keeping of the equipment and depletion in value as a result of excessive use; and

(c) Any liability or additional liabilities the LESSOR may incur under the Income-tax Act or under any other law by reason of use of the equipment by the LESSEE for any purpose other than that stated by the LESSEE to the LESSOR.

(d) Any liability arising out of any and all Sales Tax payable on lease rentals as and when applicable to the lease.

(e) The LESSEE will be liable for all violation of statutory requirements all risks and liability for the equipment, for the use, operation and storage thereof and for injuries to or death of persons and damage to property howsoever arising from or incidental to such use, operation or storage whether such injury or death of persons be of agents or employees of the LESSEE or LESSOR or of third parties and such damage in property be of the LESSEE or of others. The LESSEE will save and hold the LESSOR harmless against all losses, damages, claims, penalties, liabilities and expenses including legal costs howsoever arising or incurred because of or incidental to the equipment or the use, operation or storage or alleged use operation or storage thereof.

**19. Assignment.** During the lease period the LESSEE shall not agree, attempt, offer or purport to sell, assign, pledge, charge suffer attachment, mortgage, lend or let on hire or otherwise part with or attempt to part with the possession of the equipment or its interest therein.

**20. Automatic time related upward revision of amounts due.** (a) Where any sums payable by the LESSEE hereunder is payable on the specified date and is paid by the LESSEE after such date, the difference between the date of payment and the specified date shall be taken as *the overdue period*.

(b) Where any sum payable by the LESSEE hereunder is payable on demand by the LESSOR and is paid by the LESSEE after three days from the date of demand the difference between the date of payment and the date three days after the date of demand shall be taken as *the overdue period*.

(c) Where any sum payable by the LESSEE hereunder does not fall under cls. (a) and (b) above and is payable without demand by the LESSOR and is paid by the LESSEE after three days from the date on which the such liability

arises, the difference between the date of such payment and the date three days after the date on which the LESSEE first becomes aware of such a liability shall be taken as *the overdue period*.

(d) All sums paid by the LESSEE having an overdue period shall automatically stand increased by rupee one per thousand per day with monthly rests and the LESSEE shall pay such sums as increased hereunder and any sum payable hereunder but paid without overdue charge shall be deemed to be unpaid to the extent of the automatic increase provided hereunder.

(e) The LESSEE understands and affirms that the provisions for automatic increase of any sum paid with an overdue period:

- (i) is an essential part of the sums payable hereunder and its non-payment shall be taken as a breach of an essential condition of the lease;
- (ii) is a genuine pre-estimate of the commercial loss of opportunity and other damages suffered by the LESSOR on account of untimely payment of sums payable hereunder;
- (iii) is capable of variation by a written notification by the LESSOR in case of a continuing recurring or persistent default in payment of sums hereunder and the LESSEE agrees not to call in question LESSOR's discretion in treating the LESSEE's default as falling under this clause.

**21. Fixture to immovable property.** Plants and machineries have often to be fixed to the earth.

**22. Warranty.** The LESSEE warrants and represents that every statement made and every particulars given by it in relation to the transaction effected by the lease is true and correct.

**23. Events of default and termination.** On the occurrence of any of the events specified below, the LESSOR shall be entitled, without prejudice to any other right or remedy which the LESSOR may have under this agreement or otherwise in law and notwithstanding any subsequent acceptance of rental or indulgence shown to the LESSEE, to terminate this lease:

- (a) If the LESSEE fails to pay the rentals on the dates and in the manner stipulated in the respective schedule(s) or other monies payable hereunder within 14 days of their becoming due, whether demanded or not or if a cheque, bill, promissory note or other instrument issued, made, drawn or accepted by the LESSEE for discharge of the lease rentals is returned unpaid for any reason whatsoever when presented for payment.
- (b) If the LESSEE fails or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions or stipulations of this agreement on its part to be



- observed and performed (other than failure to pay any sum hereunder when due and payable) and if such breach is remediable, fails to remedy the same within 14 days of notice by the LESSOR specifying such default and requiring such default to be remedied.
- (c) If the LESSEE fails or neglects to observe or perform or commits or allows to be committed breach of any of the terms, conditions or regulations in respect of the use, operation or keeping of the equipment imposed by any authority or by the manufacturer.
  - (d) If the LESSEE passes any resolution for its winding up or a petition for winding up be presented against it by any of its members or creditors or otherwise or if a receiver is appointed for the whole or part of the assets, properties or undertakings of the LESSEE or enters into any composition with its creditors.
  - (e) The following changes shall be regarded as material changes with reference to the financial year immediately preceding the one in which this agreement commences which will entitle the LESSOR to terminate the agreement and take possession of the equipment:
    - (i) decrease in net worth, that is, the aggregate of paid up capital and the reserves (including credit balance in P and L Account and premium but excluding unrealised revaluation reserves) by 40% or more;
    - (ii) decrease in return on investment, that is profits before tax, interest and lease rentals, to long term funds including assets financed under finance lease to the extent not repaid consecutively for two financial years, by 40% or more;
    - (iii) decrease in turnover excluding stock adjustments and excluding extraordinary or non-recurring items consecutively for two financial years by 40% or more;
    - (iv) decrease in debt (including obligations under finance lease) service coverage ratio by or more than 20% consecutively for two financial years of the LESSEE.
  - (f) On failure of the LESSEE to provide to the LESSOR cheques, promissory notes or other instruments as required by the LESSOR, whether post dated or otherwise for discharge of the LESSEE's obligations hereunder, or having provided to the LESSOR any such instrument the LESSEE, by any act or omissions on its part impedes the possibility of such instrument being honoured when presented for payment.

**24. Remedies.** On the occurrence of any event of default and at any time thereafter, the LESSOR shall declare all sums due and to become due hereunder for the full term of the lease including any renewal thereof immediately due and payable and on failure of the LESSEE to make payment of the sum due within 14 days thereof the LESSOR may in its sole discretion do any one or more of the following:

- (a) upon notice to the LESSEE terminate the Agreement;
- (b) demand that the LESSEE return all equipment to the LESSOR at its own cost and upon failure of the LESSEE to do so within 14 days from the date of demand the LESSOR shall be entitled to remove or repossess the equipment by itself, its servants or agents, enter upon the land, building or premises where the equipment is situated or is reasonably believed by the LESSOR to be situated for the time being and for such entry, the LESSEE hereby gives to the LESSOR an irrevocable licence, and detach and dismantle and take away the same;
- (c) sell the equipment by public auction or private sale with or without notice to LESSEE or otherwise dispose of, hold, use, operate, lease to others such equipment;
- (d) without prejudice to and in addition to the LESSOR's right provided herein the LESSOR shall also be entitled to recover from the LESSEE:
  - (i) the entire amount of the rental already fallen due and in arrears together with any charges due;
  - (ii) the entire amount of lease rentals for the unexpired period of lease;
  - (iii) all other sums which may have become due along with overdue charges and other sums that may become due;
  - (iv) the cost of all repair and maintenance of the equipment and all expenses incurred by the LESSOR in repossessing the equipment and in enforcing its remedies;
  - (v) a default premium equal to 10% of the amount mentioned in cls. (i) and (ii) above.

PROVIDED that the estimated market value and in case the equipment is sold by the LESSOR then its net sale proceeds shall be allowed as a deduction from the aggregate amount calculated under this clause.

The parties hereto agree and record that amounts to be paid by the LESSEE to the LESSOR as aforesaid have been *bona fide* and satisfactorily estimated to be the proper and reasonable amount that may be suffered by the LESSOR as and by way of liquidated damages and are not as deterrent or *in terrorem*.

All rentals or other sums paid by the LESSEE herein shall be deemed to have been appropriated against the liabilities of the LESSEE hereunder immediately upon payment thereof.

In addition the LESSEE shall be liable to all legal fees costs and other expenses resulting from the foregoing defaults or the exercise of the LESSOR's remedies including repossession of any equipment. No remedy referred to herein above is intended to be exclusive but each shall be in addition to any other remedy available to the LESSOR at law.



**25. Inability to retake possession.** If the LESSOR upon the termination of the lease be unable to recover possession of the equipment then without prejudice to the other amounts payable by the LESSEE hereunder, the LESSEE shall be liable to pay and pay to the LESSOR by way of liquidated and ascertained damages a sum equal to 25% of the cost of the equipment and shall continue to pay every month to the LESSOR during the unexpired portion of the lease twice the monthly rent payable as per Schedule I till such time as the LESSOR is able to get possession of the equipment.

**26. Residual value.** Having regard to LESSEE'S use of equipment under these presents, the residual value hereof at the expiration of the terms of the lease hereby granted shall not be less than Rs. 55,000.

**27. Collateral security.** On execution of these presents the LESSEE shall place the documents/certificates mentioned in Schedule II hereunder as and by way of collateral security with the LESSOR to ensure due compliance with the terms and conditions of the lease including the return of the equipment at the end of the lease period and thereupon, the LESSOR shall be deemed to be holding beneficial interest in the properties represented by the documents/certificate lodged with the LESSOR which the LESSOR shall hold, until complete satisfaction of the lease terms.

**28. Prepayment.** The LESSEE may pay and the LESSOR shall accept any payment hereunder before they are due and allow in respect thereof such concession on account of advance payment as the LESSOR may think fit. The LESSEE may foreclose the lease before the expiry of the term of the lease by paying to the LESSOR all the sums referred to above, and delivering the equipment to the LESSOR in good working order and condition, reasonable wear and tear excepted.

**29. Imposts, taxes and other charges.** The LESSEE shall during the period of this agreement and till the equipment is delivered back to the LESSOR in good working order and condition, bear all impost, charges, taxes and penalties as may be levied from time to time by the Government or any other authority pertaining to or in respect of this equipment (including purchase tax or differential tax or other sums in case the LESSOR has concessional rate of tax), any incremental duty or other tax payable with reference to the purchase or acquisition of the equipment or this transaction. The LESSEE shall reimburse to the LESSOR all taxes (including sales tax), duties or other sums imposed now or hereafter may be imposed on the equipment or on this transaction or on the rentals hereunder.

**30. Time.** Time shall be of the essence of this contract in so far as it relates to performance of obligations.

**31. Lessor's right to assign the receivables, etc.** (a) The LESSOR may transfer, assign, hypothecate or create any lien upon or in any other manner deal with or encumber the equipment covered under this lease or any interest

therein in favour of the LESSEE's Bank(s)/Financial Institution(s) or any other financier or may assign, transfer to any person any right or any interest in the lease or any part thereof on notice to the LESSEE and the consent of the LESSEE to such assignment, hypothecation, encumbrance or transfer, if any, is hereby given and any notice to the LESSEE is hereby waived by the LESSEE.

(b) In case the LESSOR has obtained finance against the equipment from any bank(s) the LESSEE does hereby agree to:

- (i) assignment by LESSOR all or any part of the lease rental in favour of the bank(s) and to make payment of such lease rentals strictly to the bank(s) if so desired by the LESSOR;
- (ii) to allow the LESSOR's Banker to cause any inspection of the equipment to be made at any time and from time to time during reasonable hours on any day during the continuance of the Agreement on prior notice;

(e) The LESSOR may on notice to the LESSEE transfer, hypothecate or mortgage the equipment and the rights attached thereto under the Agreement whether in whole or in part and the LESSEE shall have no right to raise any objection thereto.

**32. Disruption of work to be notified.** The LESSEE will inform the LESSOR promptly in the event of disruption of work/go-slow in its organisation of a continuous period exceeding 15 days due to whatsoever reasons.

**33. Modification of rental payments.** In the event of the Bank lending rates chargeable to the LESSOR by its Banker(s) and/or Financial Institution and other financier is increased the lease rentals reserved hereunder are liable to upward variation. The lease rentals will stand increased by Rupee one per month for every Rs. 1,000 of lease rental for every percentage of increase in the said bank lending rate. A letter from any of the LESSOR's Banker/Financial Institution indicating the revised rate of interest consequent to any announcement of increase in interest rates shall be final and conclusive evidence of the extent and the date of such increase.

The lease rentals hereunder are based on the assumption that the LESSOR shall be entitled to claim depreciation based on the acquisition cost of the equipment at the rate specified in respective Schedule for the whole of the period of the lease. Should the LESSOR not be able to claim the said benefit on account of any change in law, or rules or for any act or omission of the LESSEE or for any other reason whatsoever either for the whole or any part of the lease period and at all those rates, the lease rental specified in the respective schedule shall stand altered so as to compensate the LESSOR for the loss in the tax benefits thereby and maintain the post-tax implicit rate of return to the LESSOR as would have been available to the LESSOR had the depreciation allowance been granted as stipulated in the respective schedules, all factors other than the depreciation allowance being kept constant for that purpose.



**34. Consequence of the breach of contract.** If the LESSEE commits a breach of any of the terms and conditions of this Agreement, the LESSOR shall be entitled to claim damages/repossession of the equipment and/or any other appropriate remedy.

**35. Warranties.** The LESSEE shall be entitled to the benefit of the warranties provided by the manufacturer/supplier of the equipment. Any performance guarantee provided by the supplier shall be in the joint names of the LESSOR and the LESSEE and shall be enforceable by the LESSOR or the LESSEE or both of them.

**36. Sale and lease back.** (a) The LESSOR has bought the equipment on specific requisition from the LESSEE and the actual cost of the equipment has been negotiated and ascertained by the LESSEE which the LESSOR has paid/shall pay at the LESSEE's instructions.

PROVIDED that where the LESSEE himself is the supplier/manufacturer, the cost of the equipment to the LESSOR shall be the fair market price of the equipment in an arms length transaction. If the cost transpires to be more than fair market value of the equipment the LESSOR may, at his sole discretion, have either of the following recourses against the LESSEE:

(b) If the fair value of the equipment or part thereof supplied by the LESSEE is substantially less than the cost of the equipment the LESSOR may treat this agreement as having been entered into with a basic mistake of fact and on misrepresentation by the LESSEE, and may treat the lease as terminated and forthwith demand upon the LESSEE to pay up all the sums as stated in the agreement hereof, along with any other or further damages that the LESSOR might have suffered as a result of such a misrepresentation, including any loss of the benefits and all the consequences arising therefrom; or

(c) The LESSOR may treat the lease to have been terminated to the extent the cost of the equipment or the part thereof supplied by the LESSEE exceeds the fair value of asset so established, and ask the LESSEE to immediately pay up the lease rentals proportionate to such excess along with any other or further damages that the LESSOR might have suffered as a result of such a misrepresentation, including any loss of tax benefits and all the consequences arising therefrom; or

(d) The LESSOR may claim appropriate damages, by revision of rentals or otherwise and/or security deposit to cover himself to the extent of such excess and continue the lease in the status *quo ante*.

**37. Waiver—must be express.** The rights and powers of the LESSOR under this Agreement shall remain in full force notwithstanding any indulgence given forbearance or neglect or delay in the enforcement thereof by the LESSOR. The LESSOR shall not be deemed to have waived any of the LESSOR's rights or any provisions of this Agreement or any notice given hereunder unless such waiver be in writing signed by the LESSOR and no waiver by the

LESSOR of any breach by the LESSEE of this Agreement shall be deemed a waiver of any continuing or recurring breach.

**38. Indulgence is not waiver.** The failure of the LESSOR to insist upon the punctual performance of any of the obligations of the LESSEE hereunder or to exercise of any right or remedy available to the LESSOR, under this Agreement or to require payment from or by the LESSEE, when due or any sum owing hereunder or any extension of credit or any forbearance on the part of the LESSOR shall not constitute a waiver by the LESSOR of any subsequent or continuing default by the LESSEE hereunder nor shall the same prejudice affect or restrict the rights and powers of the LESSOR hereunder.

**39. Renewal of lease.** Subject to the LESSEE punctually observing and performing the terms covenants and conditions of this Agreement and unless the LESSEE is in default the LESSEE shall at the discretion of the LESSOR have an option to renew the lease after expiry of the present agreement by efflux of time for such further period on such rental and such other terms as would be decided mutually by the LESSOR and the LESSEE.

**40. Affirmation as to statement made by parties.** The parties herein declare and represent that every statement and representation made and every particular given in relation to this transaction are true and correct and by execution hereof, the respective signatories hereby certify that they have read this agreement including the Schedules hereto and that they are duly authorised to execute the agreement on behalf of the respective parties.

**41. Service of notices.** Any notice by one party to the other shall be in writing and posted to the party's address first above-written. Any change in the address of any party shall be notified to the other by Registered Post.

**42. Financial Information.** The LESSEE shall furnish the LESSOR during the continuance of this Agreement its latest audited Balance Sheet and Profit and Loss Account together with all notes and reports attached to the same, as and when they are ready and such other statements of accounts and financial statements as may be requested by the LESSOR from time to time.

**43. Guarantee.** In consideration of LESSOR agreeing at the requests of the guarantor to lease out the equipment to the LESSEE, the guarantor guarantees to the LESSOR the due observance and performance of all obligations of the LESSEE and to pay on demand any money due under this Agreement and not paid by the LESSEE either by way of lease rent, residual charges, collection expenses, expenses on repossession, garage rentals, costs of repairs and replacement, compensation charges for the late payments, costs of legal proceedings, damages and any other charges. The guarantor agrees that any time granted to LESSEE or any indulgence shown to it in respect of this Agreement either in the shape of releasing to the LESSEE the equipment after detention, seizure, or in any other manner, shall not



prejudice the LESSOR's rights or release the guarantor from his guarantee which shall be continuing guarantee and his liability will be co-extensive with that of the LESSEE and that it shall not be necessary for the LESSOR to give notice to the guarantor for any defaults committed by the LESSEE or any concession or indulgence shown to the LESSEE by the LESSOR. The obligation of the guarantor under this guarantee shall be continuing and irrevocable.

The GUARANTOR declares that no charge has been created on the lease equipment by the LESSEE for giving of this guarantee and the GUARANTOR agrees that he will not so long any moneys remain outstanding take any such security in respect of the guarantor's liability hereunder.

**44. Variation.** This Agreement represents the entire agreement of lease between the parties hereto and shall be capable of variation only if agreed upon in writing by a note of amendment signed by and on behalf of the LESSOR and the LESSEE.

**45. Place for payment.** All monies due and payable by the LESSEE to the LESSOR under these presents shall be paid only at the corporate office of the LESSOR or such other place as the LESSOR may designate by cheque or bank draft drawn in favour of the LESSOR on a scheduled bank and shall be so paid as to enable the LESSOR to realise at par on or before the due date. Credit for all payments by cheque/bank draft will be given only on the realisation thereof.

**46. Arbitration.** Any dispute or difference arising out of or in connection with the agreement between the parties including any dispute or difference relating to the interpretation of the agreement or any clause thereof shall be referred to the sole arbitration of Mr. XY with summary powers and the provisions of the Arbitration and Conciliation Act 1996 and rules framed thereunder and any amendment thereto from time to time shall apply. No objection shall be taken on the ground that the arbitrator so appointed is an employee of the LESSOR or is in any way associated with the LESSOR. It is made clear that the venue of Arbitration Proceedings will be the sole discretion of the Arbitrator and no objection shall be entertained from any party in this regard. The award of the Arbitrator shall be final, conclusive and binding on all the parties. The Arbitrator shall be competent to decide whether any matter of dispute or difference referred to him falls within the purview of arbitration as provided for above and/or any matter relating to arbitration comes under the Arbitration and Conciliation Act 1996.

The award shall be made in writing within four months after entering upon the reference or within such extended time as agreed upon by the parties.

The Arbitrator shall be entitled to proceed summarily and in a summary manner.

The Arbitrator shall have power to order and direct either of the parties to abide by, observe and perform all such directions as the Arbitrator may

think fit having regard to the matter in dispute before him. The Arbitrator shall have all necessary powers and may take such evidence oral and/or documentary, as the arbitrator in his absolute discretion thinks fit and shall be entitled to exercise all powers under the Arbitration and Conciliation Act 1996 including admission of any affidavit as evidence concerning the matter in dispute before him.

The Arbitrator shall be at liberty to appoint, if necessary, any accountant or engineer or other technical person to assist him, and to act on the basis of the opinion, if any, taken.

The parties hereby agree that the Courts in Calcutta shall have jurisdiction to entertain any application or other proceedings in respect of anything arising under this Agreement and any award made by the sole Arbitrator hereunder shall be filed in the concerned court in the city of Calcutta only.

PROVIDED however that if the LESSOR apprehends that the LESSEE may allocate or charge or dispose of the equipment or may cause damage to the equipment, the LESSOR is at liberty to seek redress in a Court of Law under the said Act.

**47. Court of jurisdiction.** (a) This Agreement and the terms, covenants and conditions herein contained have been negotiated by and between the Parties hereto at the LESSEE'S Office at 6 G.K. Street, Calcutta and the Lease Agreement has been concluded at the lessee's said office and executed by the LESSOR, LESSEE and the GUARANTOR at 6 G.K. Street, Calcutta.

(b) Subject to the arbitration as aforesaid it is agreed between the Parties that Courts in Calcutta shall have jurisdiction in respect of any matter, claim or dispute arising out of or in any way relating to this Agreement.

Signed, sealed and delivered by the LESSOR at Calcutta in the presence of:

.....  
..... Calcutta

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

.....  
..... Calcutta

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

.....  
..... Calcutta



Schedule I

To Lease Agreement Dated .....

1. Fixed non-cancellable period : ..... months from the commencement date of the lease
2. Renewal : As may be opted by the LESSEE
3. Lease management fee : .....% of the asset cost/  
Rs. ....
4. Contingency deposit/Sales tax : At applicable rates (to be borne by LESSEE) ..... (included as part of rentals as on actuals)
5. Security deposit : .....
6. Interest on security deposit : .....% p.a. ....
7. Collateral security : .....
8. Depreciation allowance as per I.T. Act : .....
9. Assured residual value at the end of the primary lease period : .....
10. Sanctioned amount : Rs. ....
11. Drawdown periods : .....

Sd.

Sd.

Sd.

## Schedule I (contd.)

## 12. Particulars of Equipment

Type of Equipment	Manufacturer's Suppliers Name & Address	Quantity	Location of the Equipment	Date of delivery of the Equipment	Acquisition cost of the Equipment	Commencement date of the Lease	Any other special terms
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)

Sd.

Sd.

Sd.



Schedule I (contd.)

13. Lease Rental :  
 (a) Due Date :  
 (b) Payment Terms : All Lease Rental are payable ..... in advance/arrear at par.

	January	February	March	April	May	June	July	August	September	October	November	December
1999												
2000												
2001												
2002												
2003												
2004												
2005												
2006												
2007												
2008												

Schedule II

Sd.

Sd.

Sd.

### Leasing of Plants and Machinery

THIS AGREEMENT IS MADE this 6th day of June 2000 BETWEEN AB Financial Services Ltd., a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter referred to as the LESSOR which term shall include its successors and assigns) of the One Part and CD Ltd., a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter called the LESSEE which term shall include its successors and assigns) of the Other Part.

WHEREAS the LESSOR carries on business as Lease Financing and leasing-out equipment and the LESSEE carries on business as manufacturer of and dealer in Hosiery goods and intends to take on lease certain plant and machinery from the LESSOR.

AND WHEREAS the LESSOR has agreed to give on lease such plant and machinery that may be required by the LESSEE.

AND WHEREAS the LESSEE has selected the plant and machinery from the manufacturer and seller thereof.

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

1. The LESSEE hereby agrees to lease out to the LESSEE and the LESSEE agrees to take on lease from the LESSOR the plant and machinery described in Schedule I hereunder.

2. The LESSEE hereby admits that the LESSOR has paid for the plant and machinery mentioned in Schedule I hereunder to the supplier thereof and the said plant and machinery have been installed in the factory of the LESSEE and are working satisfactorily. The LESSEE admits that the LESSOR is the sole owner of said plant and machinery.

3. The lease of the said plant and machinery shall be for a period of three years which may be renewed for another three years by mutual agreement.

4. The LESSEE agrees to pay the lease rentals at the rates specified in Schedule II hereunder. The lease rentals would be paid by LESSEE within 10 days of the same becoming due and payable.

5. In default of payment on due date, interest at 3% per month on each instalment due would be charged on the outstanding amount. The time for payment of the instalment is understood by the parties to be of the essence of the Lease Agreement.

6. The LESSEE expressly declares that the LESSEE has made the selection of plant and machinery based upon its own judgment and has not relied upon any statement or representation of the LESSOR.

7. The LESSEE undertakes to be responsible for all repairs, service defects and smooth running of the plant and machinery. The LESSEE will, however,



be entitled to the benefits of the manufacturer's warranties in respect of the plant and machinery.

8. No right, title or interest in the plant and machinery shall pass to the LESSEE by virtue of these presents and the leased-out plant and machinery mentioned in Schedule I hereunder shall remain the property of the LESSOR and the LESSEE undertakes not to sell, assign, sub-let, sub-lease, pledge or hypothecate or otherwise encumber or suffer lien upon or against any interest in the leased-out plant and machinery or in this agreement. The LESSEE further undertakes not to remove except for purposes of repairs the leased-out plant and machinery from the factory where they have been installed except with the prior written consent of the LESSOR and further undertakes not to allow any third person to use as the licensee or otherwise the said plant and machinery without the written consent of the LESSOR.

9. The LESSEE agrees and undertakes to comply with all laws and regulations and orders relating to the possession of, operation and use of leased-out plant and machinery and assumes all risks, responsibilities and liabilities arising from or pertaining to the possession, operation or use of the leased-out plant and machinery. The LESSEE hereby agrees and undertakes to keep the LESSOR fully indemnified against and harmless from any claims, costs, expenses damages and liabilities, whether civil, criminal or of any other nature whatsoever arising from or pertaining to the use, possession, operation or transportation of the leased-out plant and machinery.

10. The LESSEE undertakes to pay all fees, taxes, levies or other lawful charges and in default if the LESSOR has to pay the same, the LESSEE undertakes to reimburse the LESSOR of such payment. The Indemnity hereby granted by the LESSEE to the LESSOR shall operate in respect of all risks, or liabilities arising from possession, use, operation or storage of the plant and machinery and for injuries or deaths of persons or damages to property arising from possession, use or anything to do with the leased-out plant and machinery. Such indemnity shall survive the termination of this agreement.

11. The LESSEE will cause the leased-out plant and machinery to be operated in accordance with manufacturer's Manuals and Instructions by competent and duly qualified personnel and in accordance with the applicable government regulations and for the LESSEE's business purposes only.

12. During the term of the lease, the LESSEE shall at its own cost and expense keep the plant and machinery in good repair and working condition.

13. The LESSEE shall keep the plant and machinery fully insured and in case of loss, theft or damages beyond repair, the LESSEE shall pay the balance lease rentals forthwith and the LESSOR shall transfer its right title or interest in plant and machinery to the LESSEE so that the LESSEE could recover the insurance money. The LESSEE undertakes to keep the plant and machinery

fully insured for the value thereof plus 10% and regularly pay the renewal premium.

14. During the term of this Agreement, the LESSEE shall furnish to the LESSOR Annual Audited Accounts duly reflecting the said plant and machinery taken on lease and the lease rentals payable for same.

15. The LESSEE agrees to bear and pay all extra or additional or new taxes or levies in relation to plant and machinery on leasing out the same to the LESSEE.

16. Upon expiry of the lease period or in case of default on termination of the lease by the LESSOR, the LESSEE undertakes to deliver up possession of plant and machinery to the LESSOR at specified storage space intimated by the LESSOR at the cost and expense of the LESSEE and in good and working condition.

17. In the event the LESSEE fails to pay the stipulated lease rent on the due dates in respect of two instalments or fails to perform or observe any covenant, condition or undertaking contained herein or becomes commercially insolvent or winding-up petition is filed against the LESSEE, the LESSOR shall be at liberty to terminate the agreement and declare the outstanding lease rentals, the late payment charges and quantum of interest at 30% per annum and future rentals payable by the LESSEE, and the LESSEE shall have option to pay the entire amounts due discounted at the rate of 12% per annum within 30 days of receipt of such declaration. If the LESSEE does not pay the outstanding amount due so discounted at 12% per annum within 30 days then the LESSOR will have the liberty to take action for recovery of the outstanding dues as liquidated damages for loss of bargain and not as penalty of the said total amount together with interest at 36% per annum.

18. On any default in payment of any lease rental or breach of any of the terms and conditions hereof the LESSOR would be entitled to take possession of plant and machinery mentioned in Schedule I hereunder and take such action as are permissible in law for recovery of the dues.

19. The waiver of any particular default or breach of the LESSEE by the LESSOR shall not be treated as waiver of any other default or breach of the terms and conditions of this agreement.

20. Any notice of demand required to be given shall be given by post or by hand-delivery to the addresses of the parties given hereinabove.

21. The LESSEE agrees and undertakes that its obligations to pay all lease-rentals and any other amount owing hereunder shall be absolute and unconditional. The LESSEE shall not be entitled to cancel or terminate this agreement without paying the entire lease-rentals.

22. All disputes and differences claims and questions whatsoever which could arise either during the subsistence of this agreement or afterwards between the parties and/or their respective representatives touching these



Presents or any clause or thing herein contained or otherwise in any way relating to or arising from these Presents shall be referred to Arbitration of Mr. PQ of ..... and shall be subject to the jurisdiction of the ..... High Court. Such Arbitration shall be in accordance with and subject to the provisions of the Arbitration and Conciliation Act 1996 or any statutory modification thereof for the time being in force.

*Schedule I*

20 Automatic Vests Knitting Machines, Colour Motif, colour-in-colour, floating pattern, mesh pattern, plating horizontal and vertical stripes, etc.

AND other particulars.

*Schedule II*

Total worth of rentals payable by the LESSEE ... Rs. 51,78,800

AND other particulars.

*Lease rentals and due date*

Rs. 5,56,980 payable quarterly beginning from 10th June 2000 and thereafter on 10th of every third month and the entire amount would be paid by 10th March 2003.

The Lease Rentals is in addition to the Lease Management fee of Rs. 51,788 payable at the time of signing of the agreement.

IN WITNESS WHEREOF the parties herein 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 1st June 2000 of CD Ltd. in  
in presence of:

Signature

- 1.
- 2.

Signed, sealed and delivered by  
Mr. ....  
pursuant to Board Resolution of  
2nd June 2000 of AB Financial  
Services Ltd. in the presence of:

Signature

- 1.
- 2.

### Tripartite Agreement for Leasing Finance

THIS AGREEMENT IS MADE this 10th day of June 2000 BETWEEN AB Financial Services Limited, a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter referred to as the LESSOR which term shall include its successors and assigns) of the First Part, CD Limited, a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter called the LESSEE which term shall include its successors and assigns) of the Second Part and Lease Financing Bank Limited, a Banking Company within the meaning of the Companies Act 1956 and carrying on business at ..... (hereinafter referred to as the BANK which term shall include its successors and assigns) of the Third Part.

WHEREAS under an Agreement of Hypothecation dated 6th June 2000 executed by the LESSOR in favour of the BANK, the BANK granted to the LESSOR advance of a sum of Rs. 40 lakhs in Cash Credit Account to enable the LESSOR to purchase 20 Automatic Knitting Machines for the purpose of leasing out the same to the LESSEE against hypothecation of the said plant and machinery and on terms and conditions contained in the said agreement.

AND WHEREAS the LESSOR has entered into an Agreement of Lease with the LESSEE on 6th June 2000 leasing out the said plant and machinery subject to payment of lease rent and on terms and conditions contained in the said Lease Agreement.

AND WHEREAS the terms of sanction of the said loan of Rs. 40 lakhs by the BANK to the LESSOR provided that the plant and machinery purchased by the LESSOR would be leased-out to the LESSEE subject to the bank's hypothecation and that the LESSEE should undertake that it would not assign or transfer in any manner its rights as a LESSEE in the said plant and machinery and that the LESSEE would undertake to pay the lease rentals directly to the BANK, if so required, and that the moneys realised under any Insurance Policy would belong and be paid to the BANK.

NOW THESE PRESENTS WITNESSETH and it is hereby agreed by the parties as follows:

1. The LESSEE hereby confirms that the plant and machinery taken on lease from the LESSOR remain hypothecated to the BANK.
2. The LESSEE undertakes not to deal with the said plant and machinery in a manner prejudicial to the interest of the BANK as a hypothecatee.
3. The Insurance moneys that may be recovered for loss or damage to the said plant and machinery would be paid to the BANK if demanded.
4. The LESSEE would pay the lease rentals to the BANK as hypothecatee if so demanded by the BANK.



5. In case of any dispute or differences between the LESSOR and the LESSEE the LESSEE undertakes to make direct payment to the BANK of all lease rentals according to the Agreement of Lease dated 6th June 2000.

6. If the LESSEE makes default in payment of any lease rentals or commits any breach of any of the terms contained herein or in the Lease Agreement dated 6th June 2000 the BANK will have the liberty to take appropriate action for enforcement of its hypothecation for recovery of its claim in respect of the said advance of Rs. 40 lakhs made to the LESSOR and will be at liberty to take possession of the said leased out plant and machinery.

7. The LESSEE undertakes to affix a board on the plant and machinery indicating that the same are remaining hypothecated to the BANK.

8. The LESSOR agrees that in default of repayment of the said loan of Rs. 40 lakhs with interest in terms of the Hypothecation Agreement the BANK would be at liberty to ask the LESSEE to pay the lease rentals in respect of the said plant and machinery directly to the BANK.

9. The LESSOR shall from time to time keep the BANK informed as to the lease rentals paid by the LESSEE or realised by the LESSOR under the said Lease Agreement.

10. The parties herein agree and declare that the terms and conditions contained herein will prevail over the provisions made in the said Lease Agreement and the said Hypothecation Agreement in case there is any conflict among them.

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

Signed, sealed and delivered by

Mr. .... pursuant to Board Resolution of AB Financial Service Limited dated 5th June 2000 in the presence of:

Signature

- 1.
2.

Signed, sealed and delivered by

Mr. .... pursuant to Board Resolution of 5th June 2000 of CD Limited in the presence of :

Signature

- 1.
2.

Signed, sealed and delivered by  
Mr. ....  
pursuant to Board Resolution of  
Lease Financing Bank Limited  
dated 5th June 2000 in the  
presence of:

Signature

1.

2.

### Lease Agreement (Equipments)

THIS AGREEMENT OF LEASE made this ..... day of ..... BETWEEN AB Co. Limited, a company incorporated under the Companies Act 1956 with its Registered Office at ....., hereinafter called the LESSOR (which expression shall, unless repugnant to the subject or context thereof include its successors and assigns) of the One Part, CD Co. Ltd., a company registered under the Companies Act 1956 and having its registered office at ..... hereinafter called the LESSEE (which expression shall unless repugnant to the subject or context include its successors and permitted nominees) of the Second Part, EF Co. Ltd., a company registered under the Companies Act 1956 and carrying on business at ..... hereinafter called a CO-LESSEE (which term shall include its successors, nominees and assigns) of the Third Part and (1) MN, working for gain at ..... and (2) PQ, working for gain at ..... both of them jointly and severally are referred to as the GUARANTORS (which expression shall, unless repugnant to the subject or context shall include their heirs and successors) of the Fourth Part.

WHEREAS the LESSEE is desirous of installing and utilising the equipments referred to in the Schedule I attached hereto has approached the LESSOR and has requested the LESSOR to acquire the said equipments and/or such other equipments which may from time to time be specified in Schedule I to be executed by and between the LESSOR and the LESSEE and thereafter to lease-out the same to the LESSEE.

AND WHEREAS in consideration of the LESSOR entering into this agreement with the LESSEE at the request of the guarantors, the guarantors have guaranteed the due performance of all the terms and conditions herein agreed to by the LESSEE and to pay the LESSOR all indebtedness and liabilities of the LESSEE to the LESSOR.

AND WHEREAS the LESSEE has agreed to pay to the LESSOR a one time non-adjustable and non-refundable fee to be called the "Lease-Management Fee" of Rs. .... (Rupees .....) immediately on execution of this Agreement.



AND WHEREAS the parties hereto have decided to enter into this agreement for the purpose of recording the terms and conditions of lease of the said equipments and also enable the parties by mutual consent to make and attach, from time to time, Schedule to this agreement, containing relevant particulars and specific terms and conditions, if any.

NOW THEREFORE THESE PRESENTS witnesseth and the parties herein agree as follows:

**1. Definitions.** In this agreement, unless the context requires otherwise the following expressions shall have the following meanings, *viz.*,

- (a) *Commencement date for lease.* The commencement date shall be such date as may be specified in the Schedule hereunder written. There may be different dates of commencement of lease in respect of different equipments described in the Schedule attached from time to time and made an integral part of these presents.
- (b) *Equipments.* The equipment described in Schedule to the Agreement acquired/purchased/imported by the LESSOR at the request of the LESSEE from the supplier named in the Schedule and leased to the LESSEE and includes all individual items comprised in the equipment or any item or part thereof during the period of this Agreement, and until the equipment is returned to the LESSOR in pursuance hereof.
- (c) *Fixed period.* The fixed period of the lease as stated in Schedule which is non-cancellable by the LESSEE and/or the LESSOR except as provided herein.
- (d) *Lease rentals.* Lease rentals shall mean the lease rent to be paid by the LESSEE to the LESSOR and shall include any increase in the rentals as provided herein.
- (e) *Person* includes any person (natural or juridical) and shall include any form of association of persons.
- (f) *Schedule.* The Schedule or Schedules which may now or from time to time be incorporated hereunder as an integral part of this Agreement.
- (g) *Acquisition cost.* Acquisition cost shall mean the aggregate of the sums paid/incurred/to be paid/incurred by the LESSOR on account of or in relation to the acquisition of the equipment, irrespective of when such sum is paid or incurred and where the amount referred to in Schedule is lesser than such aggregate, such aggregate shall be deemed to have substituted the amount mentioned in Schedule effective from the commencement date.

**2. Terms of lease.** (a) The LESSOR hereby gives on lease and the LESSEE hereby takes on lease the equipments for the fixed period from the respective commencement dates as specified in the Schedule subject to the terms,

conditions, covenants and stipulations contained herein and in schedules hereunder written. The LESSEE shall have an option to renew the lease as provided hereinafter at the time of its determination. The LESSOR hereby agrees to transfer unto the LESSEE the right to use by way of lease the equipments specified in the Schedule or such other Schedules attached hereto and/or to be attached from time to time to this agreement on and from the respective commencement dates specified in respect of the individual items in the said Schedules and the LESSEE hereby agrees to take on lease the equipments for the fixed period subject to the terms, conditions, covenants and stipulations contained herein and/or the individual Schedules signed by the parties pursuant to this agreement.

(b) *Lease rentals.* The LESSEE shall pay to the LESSOR during the continuance of this agreement lease rentals and other charges as are specified in the Schedule subject to the provisions for variation of the lease rentals as hereinafter provided. The said lease rentals shall be paid punctually on their due dates to the LESSOR by the LESSEE whether demanded or not and without any deduction or abatement. The LESSOR at his option may recover from the LESSEE in a lump sum at the beginning of the lease or at the time of their incurrence, as the case may be, the expenses incurred by the LESSOR to the extent the same are not included in the said acquisition cost.

(c) *Obligation to pay rentals is absolute.* The LESSEE shall pay the instalments of rentals regularly and punctually without any deduction or abatement and without any reference to the state, description, use or performance of the equipment.

(d) *Increase in lease rentals.* Without affecting the LESSEE's obligation to pay the rental for the fixed period on the respective due dates and without prejudice to the right of the LESSOR, any arrear of rentals payable hereunder shall be increased by the sum relatable to the overdue period.

(e) *Payment of rentals.* The LESSOR may require the LESSEE either at the inception of the lease or at any time thereafter to give to the LESSOR any cheques, promissory notes or any other acceptable instrument for all or any sums payable under this Agreement, immediately or in future, and such cheques or notes or other instruments shall be deemed to have been given for adequate consideration already received by the LESSEE and shall not absolve the LESSEE from his liability to pay the said sum hereunder until the cheque, note or other instrument is duly realised.

(f) *Dishonour of negotiable instruments.* In the event of any cheque, note or other instrument given by the LESSEE in payment of any of the sums payable hereunder being returned unpaid or dishonoured the cheques, notes or other instrument, the LESSOR shall be entitled to levy on the LESSEE a sum of Rs. 1,000 for each such return, without prejudice to its right to taking such other actions against the LESSEE as may be available under the law.

**3. Payment of security deposit.** The LESSEE shall pay to and keep deposited with the LESSOR, at the inception of the lease, the sum as mentioned in



Schedule as and by way of Security Deposit to ensure due compliance by the LESSEE of the terms and conditions of the lease including the redelivery of the equipment. The said deposit shall be refundable at the end of the latest lease tenure without interest as mentioned in Schedule provided the LESSEE is not in default under any of the terms and conditions of this lease. From the amount to be so refunded, the LESSOR shall be entitled to make the following deductions:

- (a) where any sum, which is ascertainable at the time of such refund and has become due to be paid by the LESSEE to the LESSOR as per this Agreement, including any sum deemed to be unpaid;
- (b) where any sum has become payable by the LESSEE to the LESSOR the exact quantum whereof is not ascertainable at the time of such refund, an estimated amount thereof, including interest, if any;
- (c) where, in view of the continuing indemnities provided by the LESSEE hereunder or for any other reason, it is likely that any liability on the lease hereunder shall arise in future, the LESSOR may retain such part of the deposit as it thinks is necessary to take care of such liability. The part so retained shall be adjustable against the liability of the LESSEE to the extent the same remains unsatisfied, and the balance, if any, shall be refundable to the LESSEE after all such apprehended liabilities have been fully settled;

PROVIDED that the LESSOR shall not be entitled to retain any sum in pursuance of this clause, if the LESSEE shall furnish a guarantee from a bank acceptable to the LESSOR, for reimbursement of the apprehended liability, or otherwise secures such reimbursement in a manner acceptable to the LESSOR.

#### 4. Redelivery of the equipment by the lessee on termination

- (a) Upon termination of this Agreement either by efflux of time or otherwise under this Agreement, the LESSEE shall, on its own volition and without any demand from the LESSOR deliver the equipment at such time and place as may be directed by the LESSOR in good repair, order and workable condition (subject to normal wear and tear).
- (b) In the event of the LESSEE not so returning the equipment within a period of 15 days from the date of termination, the LESSEE shall be deemed to be in unauthorised possession of the equipment, and if it continues to so retain the equipment even after a period of 15 days of a written demand raised by the LESSOR to peacefully return the equipments the LESSOR shall be entitled to take such criminal and/or civil action as it may be advised:

PROVIDED that nothing contained in the aforesaid clause shall be deemed to have been taken any effect and force in the event of the LESSEE opting to take the equipment on lease during the secondary lease period.

5. **Payment of consideration to be pre-requisite for use.** It is expressly understood by the LESSEE that the payment of the consideration hereunder to the LESSOR is a necessary pre-requisite under all circumstances for obtaining any right of possession or use of the equipment.

6. **Lessor's right to assign the receivables, etc.** The LESSOR may assign, hypothecate or create any lien upon or in any other manner deal with or encumber the equipment covered under this lease or any interest therein in favour of the LESSOR'S Bank(s)/financial institution(s) or any other financier or creditor, or may assign, transfer to any person, receivables or any interest in the lease or any part thereof, and the consent of the LESSEE to such assignment, hypothecation, encumbrance or transfer, if any, is hereby given and any notice to the LESSEE is hereby waived by the LESSEE. In case the LESSOR has obtained finance against the equipment from any Bank(s), the LESSEE does hereby agree to:

- (a) assign all or any part of the lease rentals in favour of the Bank(s), and to make payment of such lease rentals directly to the Bank(s), if so desired by the LESSOR;
- (b) comply with such other terms and conditions as the LESSOR may agree with the Bank, including the power of the bank to cause an inspection of the equipment to be made at any time and from time to time during reasonable hours on any day during the continuance of the Agreement.

7. **Rights of the lessor during the period before delivery of the equipment.**

(a) The equipment shall be delivered by the supplier/manufacturer to the LESSEE or to the LESSOR or to any agent or either of them, as the case may be, and as may be instructed by the LESSOR, and it is hereby agreed that the entire risk, cost or any outgoing pertaining to the said delivery shall be at the cost and risk of the defaulting party. The LESSOR makes no representation as to the time to be spent in delivery of the equipment, and the LESSEE must ensure that the equipment is delivered by the supplier within such time as may be stipulated by the LESSOR. Any failure on the part of the LESSEE in ensuring such delivery shall entitle the LESSOR to treat the agreement of the lease revoked and recover from the LESSEE the amount advanced to the supplier together with the financial costs referred to above. In case of revocation of the agreement of lease under this clause, the LESSOR shall have a full and paramount lien over all unencumbered assets belonging to the LESSEE and/or lying at its place for the purpose of recovery of the amount of advance and the financial costs referred to above.

(b) Notwithstanding anything to the contrary contained in any provisions of the agreement it is explicitly agreed by and between the parties that in the event of any misstatement, or any material adverse change in circumstances including any change in the Government policies taking place after execution of this agreement but before complete draw down of the



lease assistance as a result of which, in the opinion of the LESSOR, the LESSEE ceases to be an acceptable risk then any further draw down may be discontinued by the LESSOR and the LESSOR shall have the option to exercise its right to terminate the lease in respect of equipment already delivered and so far as possible the parties shall be restored to their original position.

**8. Revocation of agreement.** Notwithstanding anything contained hereinabove and without any prejudice to such further or other conditions in the letter sanctioning lease finance, the agreement of the LESSOR to lease the equipment to the lessee shall, at the option of the LESSOR exercised at any time before the commencement of the lease, be revocable, in the following circumstances:

- (a) if the LESSEE makes any material misstatement in furnishing or causing to furnish any information to the LESSOR that might have been used by the LESSOR for any purpose pertaining to this agreement to lease, whether such misstatement formed the basis of this agreement or not;
- (b) if the cost of the equipment to be acquired by the LESSOR for lease is higher than the comparable other equipment by the same or other supplier, delivered at the same place;
- (c) if the equipment to be acquired by the LESSOR for lease does not comply with generally acceptable quality standards;
- (d) if the LESSEE'S financial position as known at the time of the execution of this agreement undergoes adverse material change or any other material change takes place of the corporate character or financial position of the LESSEE, or any material change occurs in the assessment of the LESSEE'S credit quality, or the value and quality of the asset undergoes adverse change.

**9. No claim against the lessor.** It is agreed that no claim of any nature whatsoever shall lie against the LESSOR in the event of any *bona fide* revocation of the agreement on grounds mentioned herein.

**10. Lessor's rights and lessee's obligation.** In the event of such revocation, the LESSOR may, at his discretion, acquire the equipment and deal with it in such a manner as the LESSOR may choose, or the LESSOR may cancel the order for acquisition, and claim the refund of any advances made on the LESSEE'S behalf from the supplier, and in either event, claim from the LESSEE the whole of the loss and all costs suffered.

**11. Collateral security.** The LESSEE shall after inception of the lease place the documents/properties/certificates mentioned in Schedule hereunder as and by way of collateral security with the terms and conditions of the lease including the return of the equipment at the end of the lease period and thereupon the LESSOR shall be deemed to be holding beneficial interest in the properties represented by the documents/certificates with the LESSOR, which the LESSOR shall hold until complete satisfaction of the LESSOR'S claims

under the lease. During the terms of the lease, the LESSEE shall not transfer, encumber or in any way affect the LESSOR's beneficial interest in the properties referred to herein.

**12. Lessee's initial covenants purchase/acquisition for the purpose of the lease.** The LESSOR affirms and declares that the LESSOR has bought/acquired/ shall buy/acquire the equipment for the purpose of its lease hereunder only to the LESSEE and subject to the compliance by the LESSEE of the initial covenants contained herein and/or the Schedules and unless the LESSEE refuses or fails or omits to take the equipment on lease, the LESSOR shall not, after purchase or acquisition of the equipment, divert the equipment for any other purpose.

PROVIDED that nothing in this clause shall apply in case of termination of the lease under this Agreement.

**13. Consents given by the lessee.** (a) The LESSEE affirms and declares that he has requested the LESSOR to purchase/acquire the equipments for effective and *bona fide* use by the LESSEE itself and the LESSEE further covenants that;

(b) the execution of this Agreement and the use and the operation of the equipment by the LESSEE will not;

(c) contravene any provision of any statute, rule and regulations which the LESSEE is subject to and to the lessee's Memorandum and Articles of Association;

(d) result in any breach of any agreement or arrangement to which the LESSEE is a party;

(e) affect any right of LESSOR in any manner whatsoever in respect of the subject equipment;

(f) the LESSEE has obtained all consents, licences, approval, etc. as are necessary for or in connection with the execution, validity and enforceability of the agreement and for the import, storage, installation, use and operation of the equipment and undertakes to keep them effective and in force during the period of this Agreement and carry out all such tests or inspections as may be required statutorily or otherwise till the equipment is delivered back to the LESSOR in good order and condition;

(g) the LESSEE undertakes to abide by all the conditions of any licence, permit or other rule applicable to the LESSEE'S business or to the equipment;

(h) the LESSEE affirms that the LESSEE has satisfied itself about the LESSOR'S right to enter into the lease hereunder;

(i) the LESSEE affirms that, save as otherwise provided in this Agreement, no right, title or interest, in the equipment shall pass to the LESSEE by virtue of these presents. The LESSEE shall at no time contest or challenge the LESSOR'S sole and exclusive right, title and interest in the equipment. The LESSOR and the LESSEE hereby confirm that their intent is that the equipment



shall at all times remain as the property of the LESSOR. The LESSEE also agrees and undertakes not to sell, assign, sublet, pledge, hypothecate or otherwise encumber or suffer a lien upon or against the equipment or remove the equipment from the factory or office or site where originally put to use or located, without the prior consent of the LESSOR in writing, which consent the LESSOR agrees will not be unreasonably withheld.

(j) Though the LESSOR will request the manufacturer/supplier to effect delivery on or before the date of commencement of the rentals, yet, if for whatsoever reason the delivery is not effected by the manufacturer/supplier by that date, the LESSOR shall not be liable for any loss suffered by the LESSEE thereby. Lease rentals shall be deemed to commence from the date of commencement of the rentals as specified in Schedule. This will be accepted as a constructive delivery of the equipment to the LESSEE. In the event that the LESSEE causes cancellation of or instructs the LESSOR to cancel the purchase order/contract with the supplier of the equipment or the LESSEE shall refuse or be unable for any reason to accept delivery, the LESSEE shall be entitled to terminate the lease of the equipment and the LESSEE shall pay to the LESSOR on demand all costs, charges, expenses, damages incurred by the LESSOR arising out of such an action of the LESSEE.

(k) The LESSEE hereby expressly agrees that the purchase order for individual items of equipment under this agreement shall be placed forthwith by the LESSOR at the instance of the LESSEE. In the event of undue delay on receiving such instructions for placement of orders beyond 45 days from the date of this agreement the LESSOR shall reserve the right to review this agreement.

(l) The LESSEE agrees to provide annual certificates regarding the depreciation eligibility of the equipment and that the equipment is in good working order and condition and also that the equipment is in physical possession of the LESSEE.

(m) The LESSEE hereby covenants that subject to any hypothecation or any sort of security created and/or to be created by the LESSOR in favour of its bankers for any loan or other financial facilities granted or to be granted to the LESSOR by such bankers the equipment will remain the absolute property of the LESSOR and undertakes not to sell, transfer the same to any party or encumber the same in any manner without the prior written consent of the LESSOR.

(n) The LESSEE affirms that the LESSEE has satisfied itself about the LESSOR'S right to enter into the lease agreement.

**14. Rights and obligations of the co-lessee.** All references in this Agreement to the LESSEE shall be deemed to refer to the CO-LESSEE as well. The CO-LESSEE shall have all the rights of LESSEE and CO-LESSEE shall at all times be jointly and severally liable for the performance of the obligations and duties of the LESSEE under this Agreement.

**15. Lessee's continuing covenants.** During the tenure of this lease and till the equipment is delivered back to the LESSOR in good order and proper condition, subject to normal wear and tear, the LESSEE shall discharge the obligations mentioned hereunder.

**16. Lessee's obligations under Public Liability Insurance Act 1981.** (a) LESSEE will keep insured all substances which have been declared to be of hazardous substances under the notification issued from time to time under the Public Liability Insurance Act 1981 or any rule framed thereunder or under any notification or clarification issued by the appropriate authority, or under modification or addendum thereto in accordance with the said Act, and which are employed at or used in any of the LESSEE's undertakings, whether or not connected with the operations of the equipments.

(b) LESSEE will pay the premium to be paid under the insurance policy to be taken out by the LESSEE in respect of such "hazardous" substances in accordance with the said Act. The LESSEE shall produce for the inspection of the LESSOR or his authorised representative at the LESSOR'S office the original showing the payment of premium in respect of the said insurance immediately after the payment has been effected and furnish a xerox copy thereof to the LESSOR within seven days from the date of obtaining such a receipt.

(c) LESSEE will take out Insurance Policy in the name and for benefit of the LESSOR and the bankers of the LESSOR or such other names as the LESSOR may advise in this regard.

(d) LESSEE will reimburse to LESSOR the amount spent by LESSOR, in the event of the LESSEE failing and/or neglecting to purchase the Insurance Policy under the said Act and/or keeping the same renewed for the benefit of the LESSOR and/or his banker, without prejudice to the rights of the LESSOR to terminate the agreement in such an event.

(e) LESSEE will permit LESSOR to appropriate the amount paid by LESSOR as aforesaid from out of the security deposit lying with and further replenish the amount by which the security deposit falls short of the required quantum.

(f) LESSEE will keep indemnified the LESSOR from any suit, proceedings, actions, claims, demands and/or prosecutions and/or the costs, charges and expenses in relation to the liability and obligation, suffered by the LESSOR on account of any such hazardous substance or on account of failure of the LESSEE to purchase the Insurance Policy, as aforesaid, as also to pay any cost or expenses related to the LESSOR'S defending any suit/proceeding/action/claim/prosecution brought or launched against the LESSOR.

(g) *Lessee to affix name plate.* LESSEE will keep affixed nameplate or other mark on the equipment identifying the sole and exclusive ownership thereof of the LESSOR by putting the following in block letters *viz.* under lease from LESSOR, Leasing Company Ltd. and not allow or permit the same to be removed or defaced during the continuance of this agreement.



**17. Lessee not to part with possession.** LESSEE will keep the equipment in its possession and control of its plant or premises specified in the Schedule(s) and not to remove the same therefrom without the prior written permission of the LESSOR.

**18. Lessee not to convert the property.** LESSEE will not affix permanently the equipment to any immovable property nor in any way impair the identifiability, ascertainability, severability and redeliverability of the equipment, nor to adversely affect the value of the equipment when severed for redelivery to LESSOR.

**19. Lessee not to have any right in equipment except as bailee.** LESSEE will hold the equipment as bailee of LESSOR and not claim any right, title or interest in the equipment other than that of a LESSEE or contest the LESSOR'S sole and exclusive ownership thereof.

**20. Lessee to make proper use of the equipment.** LESSEE will use the equipment carefully in the same way as would have been the case with the LESSEE'S own equipment, and in accordance with the supplier's instructions/guidelines, if any, and maintain the same in good working condition and repair at its own cost and expenses and comply with all statutory and other requirements of law, rules, regulations and directions applicable to the storage or installation or governing use and operation of the equipment and not to do or allow to be done any act or thing by which the warranties and performance guarantees given by the manufacturer would be invalidated or become unenforceable, wholly or partly, and not to do any act nor omit to do anything whereby the value of the equipment be reduced or depleted. The LESSEE will also not sub-lease/hire out the equipment nor will deal with the equipment in any manner except as a LESSEE, on the terms and conditions herein contained without prior written consent of the LESSOR.

**21. Lessee to pay outgoings pertaining to the equipment.** LESSEE will duly pay or cause to be paid all rates, taxes, licence fees, surcharges, registration charges and other outgoings payable in respect of the equipment or the storage, installation, use or operation thereof or of the premises where the same is kept or used and on demand produce to the LESSOR all receipts and other evidences of such payment.

**22. Lessee to insure the equipment.** It is agreed by and between the parties hereto that the LESSEE shall, for and on behalf of the LESSOR:

- (a) take out insurance policy on the equipment against loss in transit, erection and installation risks, maritime risks, wherever necessary prior to the despatch of the equipment, or alternatively to ensure that the insurance on the equipment in respect of the said risks is effected by the manufacture/supplier before delivery of the equipment. Such insurance policy will be in the name of the LESSOR to be described therein as the owner and as the loss payee;
- (b) immediately after the delivery of the equipment, insure the equipment and keep the same insured throughout the term of this

Agreement against loss or damage by accident, lightning, fire, flood, storm, earthquake, tempest, falling aircraft, malicious damage, riot, strike, civil commotion, explosion, implosion, accidental, mechanical, electrical breakdown of the equipment etc. and where necessary against third party claims in respect of equipment used in hazardous industries and those requiring environmental protection as also for other risks usually covered by insurance in the type of business for which the equipment is for the time being used to the satisfaction of the LESSOR upto the full replacement value thereof under a Comprehensive Policy of Insurance in joint names of the LESSOR and the LESSEE with an endorsement showing the LESSOR as the owner and as the loss payee;

- (c) punctually pay all premia payable under such insurance and send the policy and the receipts (or photostat copies thereof) for such payments to the LESSOR and do everything necessary to maintain the said insurance in full effect and not to do any thing whereby the said insurance will or may be vitiated, failure of the LESSEE to handover such Insurance Policy and premium receipt (or photostat copy thereof) to the LESSOR within seven days from (a) the date of delivery of the equipment in the case of an original policy or (b) the due date for renewal of the policy in case of renewal of the policy, shall constitute failure to insure the equipments. In such an event, the LESSOR without prejudice to its rights under the Agreement and without any notice to the LESSEE, may effect the insurance, as aforesaid, and the LESSEE shall reimburse to the LESSOR the amount of premium paid and the cost incurred therefor;
- (d) where the equipment or any part thereof is lost, destroyed, stolen or damaged by the negligence or act of a third party, the LESSEE shall immediately notify the LESSOR the same and shall not compromise any claim without the consent of the LESSOR and shall, unless the LESSOR in its sole discretion directs otherwise, take over the conduct of all negotiations and shall also at its own expense and risk take such proceedings as the LESSOR shall direct. The LESSEE shall hold, all sums recovered inclusive of any claims under the Insurance taken, in trust for the LESSOR and hand over the same to the LESSOR immediately upon receipt thereof without claiming any part thereof on any account whatsoever and shall apply the same or such part thereof as the LESSOR directs. In no case shall such claim/sum of money be adjusted or set off against any sum payable by the LESSEE to the LESSOR hereunder;
- (e) if the equipment be damaged during the continuance of this Agreement and in the opinion of the LESSOR it is economic that such damage be made good, all insurance moneys payable under the said Insurance may, if the LESSEE agrees, be applied in making good the said damage;



- (f) if the equipment be destroyed or damaged to such an extent as to be, in the opinion of the LESSOR, incapable of economic repair then at the LESSOR'S sole discretion the Insurance moneys payable under the said Insurance shall, at the option of the LESSOR be applied so far as possible in replacing the equipment with another equipment of similar type and quality, in which event the fresh equipment shall be deemed to have been leased by the LESSOR under this Agreement and the LESSEE shall hold the same on lease subject to the terms and conditions as are contained in this Agreement;
- (g) the lease of the equipment so lost/destroyed will be deemed to have been terminated except in the case where the LESSOR elects to exercise its option under cl. (f) above;
- (h) without prejudice to the aforesaid right of the LESSOR in the event of such termination, the LESSOR shall also be entitled to recover from the LESSEE who shall be liable to pay to the LESSOR all sums payable hereunder.

**23. Lessee not to transfer or dispose of equipment or interest in the lease.** Unless otherwise agreed to by the LESSOR in writing the LESSEE will not transfer, assign or otherwise dispose of or purport to transfer, assign or dispose of the LESSEE'S right or obligations or interest hereunder by way of mortgage, charge, sub-lease, sale or other assignment, hypothecation, pledge, hire, encumbrance, conducting arrangement, licence or otherwise in any manner or part with the possession of the equipment or any part thereof or allow or purport to allow or create any lien, charge, attachment or other claim of whatever nature on the equipment or any part thereof. The LESSEE shall also not without the prior written consent of the LESSOR change the location of the equipment or in case of mobile equipment where it is normally parked when not in use.

**24. Lessee not to make alterations in the equipment—additions to belong to the lessor.** Not to make any alteration, addition or improvement to the equipment or change the condition thereof without the prior written consent of the LESSOR and all additions, improvements and attachment of any nature whatsoever, including any spares, accessories or other materials added by the LESSEE when made to the equipment by the LESSEE (whether at its own cost or not and whether with or without the approval of the LESSOR) shall belong to the LESSOR and be deemed to be part of the equipment and shall be subject to the terms and conditions of this Agreement.

**25. Lessee to indemnify lessor for loss or distress.** Indemnify and keep indemnified the LESSOR at all times, against any loss or seizure of the equipment under distress execution or other legal process or loss or destruction or damage to the equipment by fire, accident or any other cause, from any claim or demand arising out of the import, storage, installation, use or operation of the equipment or any risk or liability for death or loss of



life or limb of any person whether employee of the LESSEE or of third party or not or injury or damage to any property of the LESSEE or of any third party and hold the LESSOR harmless against all losses, damages, claims, penalties, expenses, suits or proceeding of whatsoever nature made, suffered or incurred consequent thereupon and for this purpose take out such workmen's compensation/third party insurance cover as may be necessary, customary or in practice in the business carried on by the LESSEE or as may be directed by the LESSOR in that behalf.

**26. Lessee not to alienate the premises where equipment is kept.** Not to sell, mortgage, charge, demise, sub-let or otherwise dispose of any land or building on or in which the equipment is stored, installed, used or operated or enter into any agreement or arrangement to do any of the aforesaid acts without prior approval in writing of the LESSOR. The LESSEE shall in any event ensure by giving such notices as may be necessary that such sale, mortgage, charge, demise, sub-letting or other disposition, as the case may be, is subject to the rights of the LESSOR as the owner of the equipment to repossess the equipment at any time (whether or not the same or any part thereof shall have become affixed to the said land or buildings) and for that purpose to enter upon such land or building and reclaim and repossess the equipment lying thereat. The LESSEE shall obtain declaration/undertaking containing *no lien/charge* over the equipment and recognising the right and access of the LESSOR to the equipment, from such transferees.

**27. Lessee to reimburse lessor's incremental costs.** On demand pay to the LESSOR all costs, charges and expenses incurred by the LESSOR in connection with the equipment or the preservation, protection or enforcement of the LESSOR's rights or of retaking or repossessing of the equipment or any other expense incurred by the LESSOR on the understanding that the parties have agreed to keep the LESSOR free from all costs except financial costs on the purchase of the equipment.

**28. Lessee to regularly furnish lessee's financial statements.** Furnish to the LESSOR its audited Balance Sheet and Profit and Loss Account simultaneously with the issuance thereof to the shareholders of the LESSEE and such other information as may be required by the LESSOR from time to time including certificates as to the state of the equipment or its manner of accounting, upkeep or use by the LESSEE.

**29. Variation of lease rentals based on bank lending rates.** The LESSEE irrevocably agrees and undertakes that in the event of the bank lending rates chargeable to the LESSOR by its banker(s)/financial institutions is increased/decreased the lease rentals reserved hereunder are liable to upward or downward variation, as the case may be, in the manner described hereinafter. In such an event, the lease rentals will stand increased/decreased, as the case may be, by Rs. 0.50 paise per month for every Rs. 1,000 of lease finance for every percentage of increase/decrease in the said bank lending rate. However, in case the bank lending rate falls below 16% p.a. no further



reduction in lease rentals will be made. The LESSEE agrees that such lease rentals corresponding to the bank lending rate of 16% p.a. will be the bare minimum rentals which the LESSEE has agreed and undertaken to pay to the LESSOR. The LESSEE further agrees that a letter from any of the LESSOR'S Bankers indicating revised rate of interest consequent to any announcement of increase/decrease in interest rates shall be the final and conclusive evidence of the extent and the date of such increase/decrease.

**30. Variation of lease rentals based on adverse variation in depreciation allowance and increased sales tax, customs and excise duties, etc.** (a) The LESSEE further agrees that the lease rentals hereunder are based on the assumption that the LESSOR shall be entitled to claim depreciation based on the acquisition cost of the equipment at the rate specified in respective Schedule for the whole of the period of the lease starting from the year of commencement of the lease. Should the LESSOR not be able to claim the said benefit on account of any change in law or rules or for any act or omission of the LESSEE or for any other reason whatsoever either for the whole or any part of the lease period and at those rates, the lease rentals specified in the respective Schedules shall stand altered so as to compensate the LESSOR for the loss in the tax benefits thereby and maintain the post tax implicit rate of return to the LESSOR as would have been available to the LESSOR had the depreciation allowance been granted as stipulated in the respective Schedules; all factors other than the depreciation allowance being kept constant for that purpose.

(b) The LESSEE guarantees that the equipment shall be maintained in such a position and its use shall be so monitored as to ensure to the LESSOR that the equipment has at the end of the lease period a minimum residual value as mentioned in the respective Schedules.

(c) *Seizure and/or confiscation of the equipment.* The LESSEE undertakes not to do or omit to do any such act which may result in seizure and/or confiscation of the equipment by the Central or State Government or local authority or any public officer or authority under any law for the time being in force and in the event of seizure or confiscation of other equipments belonging to the LESSEE and coming in the process of such a seizure or confiscation to keep the leased equipment separate from the block of similar or other assets belonging to the LESSEE.

(d) *Not to claim any relief, allowances, etc.* The LESSEE undertakes not to claim any relief by way of reduction, losses or grant available to the LESSOR as the owner of the equipment under the Income Tax Act 1961 or any other statute, rules, etc. that are issued or may be issued by the Government of India or any statutory authority or not to do or allow to be done any act, deed or thing whereby the LESSOR is deprived, either wholly or partly, of any such relief by way of reduction, allowances or grants. The LESSEE shall at the end of each accounting year of the LESSOR provide to the LESSOR such information as it may require to claim relief by way of any deduction,



allowance or grant as the owner of the equipment under the Income Tax Act 1961 and the LESSEE undertakes to comply with and observe at all times all the terms and conditions to be complied with in the use and operation of the equipment so as to entitle the LESSOR to obtain such a relief.

(e) The LESSEE hereby expressly covenants with the LESSOR that: As between the LESSOR and the LESSEE and their respective successors in title, the equipments hereby given on lease or agreed to be given on lease shall remain the exclusive property of the LESSOR and shall continue to remain in the ownership of the LESSOR notwithstanding that the same may have been affixed to any land or building and the LESSEE shall not have any right, title or interest thereon otherwise than as a bailee. The LESSEE shall be responsible for any damage caused to any such land or building by affixing the equipment thereto or the removal, if any, effected by the LESSOR or the LESSEE and shall indemnify the LESSOR against any claim made against it in respect of such a damage. To allow the LESSOR, notwithstanding any instructions issued to the contrary by the LESSEE, to appropriate at its absolute discretion any money received from the LESSEE as follows:

Firstly, towards the costs, charges and expenses incurred by the LESSOR for receipts or recovery of such sums;

Secondly, towards overdue charges and other money demanded but unpaid;

Thirdly, towards the lease rentals due and payable; and

Lastly, towards the dues owed by the LESSEE under any other agreement entered into with the LESSOR.

**31. Additional covenants in respect of imported equipments.** (a) The LESSEE warrants that without prejudice to the generality of provisions contained in other clauses hereof the execution of the Agreement and the use and operation of the equipment by the LESSEE will not contravene any provision of Import Control Regulations, Foreign Exchange Regulations, Customs Act or any other statute, rule and regulation to which the equipment and/or the LESSEE is subjected;

(b) The LESSEE further warrants that:

The LESSEE has obtained all consents, import licence or other licences, Reserve Bank approvals or any other approvals and permissions as are necessary for or in connection with the acquisition by import of the equipment, clearances from the relevant authorities, for execution, validity and enforceability of this Agreement and for the storage, installation, use and operation of the equipment and undertakes to keep them effective and in force during the period of this Agreement and till the equipment is delivered back to the LESSOR in good order and condition.

Under the applicable provisions of the Import Export Policy and the rules made thereunder and the other relevant rules prevailing for the time



being the LESSEE is entitled to import the equipment if the LESSEE had bought the equipment and was using and operating the same as the owner thereof;

(c) The LESSEE agrees and undertakes that, in the event of the acquisition of the imported equipment being financed out of the foreign currency lines of credit or foreign currency loans (hereinafter referred to as FCLC) availed by LESSOR for this purposes, it shall;

(d) bear the entire exchange risk on the foreign currency funds utilised by the LESSOR out of the FCLCs;

(e) reimburse LESSOR with all such expenses, charges as are required to be paid by the LESSOR in respect of FCLCs to the Foreign Bank/Institution concerned;

(f) observe and meticulously follow all the covenants in respect of such FCLCs as may be advised by the LESSOR;

(g) execute all such documents, deeds, undertakings, etc. as may be required under the covenants of the FCLC;

(h) The LESSEE agrees and undertakes that it shall comply with all the terms, conditions and obligations of the import licence, including submission of reports and other requirements in that behalf to such authorities as may be required and shall also provide to the LESSOR all such informations as may be required to be furnished by the LESSOR to such authorities and as may be required in terms of the import licence for the equipment, in default thereof the LESSEE agrees to indemnify the LESSOR for all claims and demands made upon the LESSOR by reason of such default by the LESSEE.

**32. Additional conditions in case of a motor vehicle.** In case the equipment be a motor vehicle within the meaning of the Motor Vehicles Act 1988, the LESSEE shall comply/ensure compliance with the further conditions mentioned in Schedule hereunder.

**33. Lessee's guaranteed residual value.** The LESSEE guarantees that the equipment shall be maintained in such a position and its use shall be so monitored so as to ensure to the LESSOR that the equipment has at the end of the lease periods a minimum residual value as mentioned in Schedule.

**34. Acceptance of the equipment—acceptance of delivery by the lessee and lessor's disclaimer on account of quality or fitness of the equipment.** (a) By accepting the delivery of the equipment (deemed or actual) the LESSEE shall be deemed to have examined the equipment and to have found it complete, in proper order and condition and entirely fit for its purpose and the LESSEE does not and will not, at any time, have any claim against the LESSOR in respect of or arising out of the equipment.

(b) The LESSOR shall not be responsible for any direct, indirect or consequential loss to the LESSEE or third party, arising from any delay in delivery and/or installation of the equipment either by the action of the manufacturer or otherwise howsoever. The LESSOR will not be liable or



responsible for any damage to the equipment either before or in the process of the delivery.

35. Lessee's confirmation of cost, quality, etc. The LESSEE acknowledges, represents, declares, agrees and confirms that:

(a) *Lessee to obtain timely delivery.* The LESSEE alone, as an agent of the LESSOR, shall be responsible for obtaining timely delivery of the equipment and also for obtaining all the necessary clearances, statutory or otherwise, required for obtaining such delivery.

(b) *Lessee's confirmation as to quality, etc.* The equipment is of the required size, design, capacity and manufacture, suitable for its purpose and is selected by the LESSEE relying entirely on its own judgment and not on any statement or representations made by the LESSOR or its agent or servants.

36. Antecedent negotiations made by the lessee, specific clauses in case of a sale and lease back. (a) The LESSOR has bought the equipment on a specific requisition from the LESSEE and for the purpose of lease to the LESSEE, and for no other purpose, and the actual cost of the equipment has been negotiated and ascertained by the LESSEE, which the LESSOR has paid/shall pay at the LESSEE'S instructions. It is expressly understood by and agreed between the parties that the equipments shall be ordered by the LESSOR or LESSEE as the agent of the LESSOR on the specifications given by the LESSEE and the choice of the supplier is exclusively of the LESSEE.

PROVIDED that where for the whole or any part of the equipment, the LESSEE himself is the supplier/manufacturer, the LESSEE affirms that the cost of the equipment to the LESSOR is the fair market price of the equipment in an arms length transactions and that in the event of it being established at any time in future that the cost to the LESSOR is more than such fair market value, the LESSOR may, at his sole discretion, have either of the following recourses against the LESSEE;

(b) If the fair value of the equipment or part thereof supplied by the LESSEE is substantially less than the cost of the equipment to the LESSOR, the LESSOR may treat this agreement as having been entered into with a basic mistake of fact and on misrepresentation by the LESSEE, and may proceed to treat the lease as terminated, and forthwith demand upon the LESSEE to pay up all the sums referred to herein, along with any other or further damages that the LESSOR might have suffered as a result of such a misrepresentation, including any loss of tax benefits and all the consequences arising therefrom; or

(c) the LESSOR may treat the lease to have been terminated to the extent the cost of the equipment or the part thereof supplied by the LESSEE exceeds the fair value of asset so established, and ask the LESSEE to immediately pay up the lease rentals proportionate to such excess discounted at the rate mentioned herein, along with any other or further charges that the LESSOR



might have suffered as a result of such a misrepresentation, including any loss to tax benefits and all the consequences arising therefrom; or

(d) the LESSOR may claim appropriate damages, by revision of rentals or otherwise and/or security deposit to cover himself to the extent of such excess, and continue the lease in its *status quo ante*.

**37. Selection of the equipment by the lessee.** It is clearly understood by the LESSEE that the LESSOR is not the manufacturer or dealer of the equipment. The equipment so purchased/acquired by the LESSOR has been selected and approved by the LESSEE.

The LESSOR has not at any time made nor does it hereby make any representation of warranty whatsoever with respect to the merchantability, quality, conditions, durability, suitability or fitness for the purpose of use, operation or performance of the equipment.

**38. Disclaimer of any liability by the lessor regarding quality, etc.** The LESSOR hereby disclaims any liability on any account pertaining to the quality, fitness or suitability of the equipment to the LESSEE and in order to give effect to the warranties, indemnities, guaranties or other facilities provided by the manufacturer, the LESSOR hereby appoints the LESSEE as its agent but the LESSEE shall not have any claim against the LESSOR in the event of the manufacturer not providing to the LESSEE the benefit of any such warranty, indemnity, guarantee or other facility.

**39. All Indemnities to survive the agreement.** All indemnities contained under this agreement shall survive the termination of the agreement or on expiry of the respective leases hereunder sought to be created as the case may be.

**40. Imposts, taxes and other charges.** The LESSEE shall during the period of this agreement and till the equipment is delivered back to the LESSOR in good working order and condition, bear all impost, charges and other duties, taxes and penalties as may be levied from time to time by the Government or any other authority pertaining to or in respect of this equipment and/or agreement, the acquisition of the equipment (including purchase tax or differential tax or other sums in case the LESSOR has concessional rate of tax), any incremental duty or other tax payable with reference to the purchase or acquisition of the equipment or this transaction. Further, the LESSEE shall reimburse to the LESSOR all taxes (including sales tax), duties or other sums imposed now or hereafter, on the equipment or on this transaction or on the rentals hereunder, and where the LESSOR has not paid the same under an honest belief formed under competent advice that the same is not payable, the LESSEE shall also reimburse to the LESSOR the interest or penalty payable in respect of the same. The LESSEE agrees to pay immediately on demand these sums whether the same are ascertained during or after the termination of this lease.



**41. Termination.** On the occurrence of any events specified in cls. 43 to 52 below, the LESSOR shall be entitled, without prejudice to any other right or remedy which the LESSOR may have under this agreement or otherwise in law and notwithstanding any subsequent acceptance of rentals or indulgence shown to the LESSEE, to terminate this lease, without any notice at any time after the occurrence of such events.

**42. Failure to pay rentals or dishonour of cheques, etc.** If the LESSEE fails to pay the rentals on the dates and in the manner stipulated in the respective schedule(s), or other monies payable hereunder within 15 days of their becoming due, whether demanded or not, or if a cheque, bill, promissory note or other instrument issued, made, drawn or accepted by the LESSEE for discharge of the lease rentals is returned unpaid, for any reason whatsoever, when presented for payment, the LESSOR shall be entitled to terminate this lease.

**43. Breach of any other terms of the lease.** If the LESSEE fails or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions or stipulations, of this agreement on its part to be observed and performed (other than failure to pay any sum hereunder when due and payable) and if such breach is remediable, fails to remedy the same within fourteen days of notice by the LESSOR specifying such default and requiring such default to be remedied the LESSOR may terminate the lease.

**44. Breach of mandatory conditions.** If the LESSEE fails or neglects to observe or perform or commits or allows to be committed breach of any of the terms, conditions, or regulations in respect of the use, storage, operation or keeping of the equipment imposed by any authority or by the manufacturer, the LESSOR may terminate the lease.

**45. Misrepresentation, etc. by the lessee.** If any representation or warranty whether precedent or subsequent made or deemed to be made by the LESSEE in or in relation to this agreement is or proves to have been incorrect in any material respect or the particulars supplied by the LESSEE about itself or about the supplier or the equipments are found to be incorrect, the LESSOR.

**46. Resolution of winding up, etc.** If the LESSEE passes any resolution for its winding up or a petition for winding up be presented against it by any of its members or creditors or otherwise or if a receiver is appointed for the whole or part of the assets, properties or undertakings of the LESSEE or enters into any composition with its creditors, the LESSOR may terminate the lease.

**47. Distress of the equipment, etc.** If the LESSEE does or suffers any act or thing or omits to do or suffers any act or thing whereby or in consequence of which the equipment may be or is likely to be distressed, endangered, attached or taken in execution under any legal process or by public authority, the LESSOR may terminate the lease.



**48. Apprehended default.** If the LESSEE by any act or omission gives to the LESSOR reasonable grounds to consider that its rights may be prejudiced or be in jeopardy, the LESSOR may terminate the lease.

**49. Default under other agreements.** If the LESSEE commits any default under any other agreement of lease or other financing arrangement between the LESSOR and the LESSEE, the LESSOR may terminate the lease.

**50. Adverse material changes.** If there takes place any material change in the financial or corporate position of the LESSEE as a result of which it becomes reasonably apprehensible that the lease rentals hereunder may not be paid as due or there may be any other default under this agreement or that the LESSOR's rights and entitlements hereunder may be endangered, or if the LESSEE's business or management is taken over, the LESSOR may terminate the lease.

PROVIDED that it is agreed, without affecting the generality of the foregoing, that the following changes shall be regarded as material changes, with reference to the financial year immediately preceding the one in which this agreement commences:

- (a) decrease in net worth, that is, the aggregate of paid up capital and free reserves (including credit balance in P&L account and premium, but excluding unrealised revaluation reserves) by 40% or more;
- (b) decrease in return on investment, that is, profits before tax, interest and lease rentals, to long term funds including assets financed under finance lease to the extent not repaid, consecutively for two financial years, by 40% or more;
- (c) decrease in turnover excluding stock adjustments and excluding extraordinary or non-recurring liens consecutively for two financial years by 40% or more;
- (d) decrease in debt (including obligations under finance leases), service coverage ratio by or more than 20% consecutively for the last two financial years of the LESSEE.

**51. Offence pertaining to negotiable instruments.** If the LESSEE fails to provide to the LESSOR cheques, promissory notes, or other instruments as required by the LESSOR, whether post-dated or otherwise, for discharge of the LESSEE's obligations hereunder, or having provided to the LESSOR any such instrument the LESSEE, by any act or omission on the part of the LESSEE impedes the possibility of such instrument being honoured when presented for payment, the LESSOR may terminate the lease.

**52. Lessor's rights and lessee's obligations on termination.** On the termination of this agreement pursuant to provisions contained in this agreement the LESSOR may terminate the lease and take steps mentioned hereunder.

53. Repossession of the equipment by the lessor and his rights for that purpose. The LESSOR, shall, without any notice or permission, be entitled to remove or repossess the equipment and for that purpose by itself, its servants or agents, enter upon any land, buildings or premises where the equipment is situated or is reasonably believed by the LESSOR to be situated for the time being and for such entry, the LESSEE hereby gives to the LESSOR an irrevocable license, and detach and dismantle the same and the LESSOR shall not be responsible for any damage which may be caused by any such detachment or removal of the equipment. It is hereby clarified that the LESSOR may make use of reasonable force for the purposes of repossession of the equipment and repossess the equipment with anything that is in or in it, or attached, fastened, bolted, or in any other manner affixed to it, and remove, if necessary by dismantling all obstructions in the way of repossession of the equipment, and generally do all such things as a reasonable man would do on being unlawfully deprived of his personal property to reinstate himself in possession of his property expediently and with least damage to his property.

54. Recovery of defaulted amounts and costs. Without prejudice to and in addition to the LESSOR's right provided hereinabove, the LESSOR shall also be entitled to recover from the LESSEE and the LESSEE shall be bound to pay to the LESSOR the following amounts, *viz.*

- (a) the entire amount of the rental already fallen due and in arrears together with interest as provided hereunder;
- (b) the entire amount of lease rentals for the unexpired period of lease discounted at the then prevailing prime lending rate of commercial banks;
- (c) all other sums payable hereunder which may have become due along with interest from the date on which due and all such other sums that may become due or may be estimated to become due in view of the events or defaults already having occurred;
- (d) the cost of all repair and maintenance of the equipment to render and maintain it in good working order and condition and all cost, charges and expenses incurred by the LESSOR pursuant to the agreement and in repossessing the equipment and in enforcing its remedies however occasioned.

PROVIDED that in case the equipment is sold by the LESSOR then its net sale proceeds, or otherwise its market value as may be estimated by the LESSOR shall be allowed as a deduction from the aggregate amount calculated under this clause.

The parties hereto agree and record that the amounts to be paid by the LESSEE to the LESSOR as aforesaid have been *bona fide* and satisfactorily estimated to be the proper and reasonable amount that may be suffered by the LESSOR as and by way of liquidated damages and are not deterrent or in terrorem.



**55. Appropriation of rentals.** All rentals or other sums paid by the LESSEE herein shall be deemed to have been appropriated against the liabilities of the LESSEE hereunder immediately upon payment thereof.

**56. Sale etc. of the equipment by the lessor, sale through the agency of the lessee and the lessee's rewards.** In the event of termination of the lease the LESSOR shall also be entitled to sell, realise or otherwise dispose of the equipment in such a manner as the LESSOR may think fit and the LESSOR shall not be bound to account to the LESSEE in any manner whatsoever, nor to give any preemptive right to the LESSEE.

PROVIDED that where in case of termination of lease by efflux of time or premature termination as provided herein the LESSOR may, in case he wants to dispose of the equipments, organise open market bids for the proposed sale of the equipment, and may appoint the LESSEE or any other person to organise such sale; and in case the sale proceeds exceed the minimum guaranteed value mentioned in Schedule hereunder, the LESSOR may pass on such excess to the LESSEE after deducting therefrom the expenses in organising such sale, and as a reward for good maintenance of the asset by the LESSEE.

PROVIDED that the LESSOR shall allow the LESSEE an opportunity of participating in such an open market sale.

**57. Premature termination, advance payment, etc.** The LESSOR may, but shall not be obliged to, accept any payments hereunder before they are due and allow in respect thereof such concessions on account of advance payment as the LESSOR may think fit, and such concession shall not vest in the LESSEE any right to similar concession in future.

**58. Premature termination.** (a) The LESSOR may, but shall not be obliged to, allow the LESSEE to foreclose the lease before the expiry of the terms of the lease, and in that case the LESSEE shall:

(b) Pay to the LESSOR all the sums referred to in clauses hereinabove after deducting the sum mentioned in the proviso to that clause.

(c) Deliver the equipment to the LESSOR in good working order and condition, reasonable wear and tear excepted.

**59. General conditions—time related upward revision of amounts due.** (a) Where any sum payable by the LESSEE hereunder is payable on the specified date, and is paid by the LESSEE after such date, the difference between the date of payment and the specified date shall be taken as *the overdue period*.

(b) Where any sum payable by the LESSEE hereunder is payable on demand by the LESSOR, and is paid by the LESSEE after three days, from the date of demand, the difference between the date of payment and the date three days after the date of demand shall be taken as *the overdue period*.

(c) Where any sum payable by the LESSEE hereunder does not fall under cls. (a) and (b) above and is payable without demand raised by the LESSOR, and is paid by the LESSEE after three days from the date on which the LESSEE



first becomes aware of such liability, the difference between the date of such payment and the date three days after the date on which the LESSEE first becomes aware of such a liability shall be taken as *the overdue period*.

(d) All sums paid by the LESSEE having an overdue period shall automatically stand increased by Rupee one per thousand per week and the LESSEE shall pay such sums as increased hereunder and any sum payable hereunder but paid without over due charge shall be deemed to be unpaid to the extent of the automatic increase provided hereunder.

(e) The LESSEE undertakes and affirms that the provision for automatic increase of any sum paid with an overdue period:

- (i) is an essential part of the sums payable hereunder and its non-payment shall be taken as a breach of an essential condition by the LESSEE;
- (ii) is a genuine estimate of the commercial loss of opportunity and other damages suffered by the LESSOR on account of untimely payment of sums payable hereunder;
- (iii) is capable of variation by a written notification by the LESSOR in case of a continuing, recurring or persistent default in payment of sums hereunder by the LESSEE, and the LESSEE agrees not to call in question LESSOR'S discretion in treating the LESSEE'S default as failing under this clause.

**60. Payments to be clear of deductions.** All payments to be made by the LESSEE to the LESSOR hereunder shall be made free from and clear of, any payment or deduction on any account.

**61. Place for payment.** All monies due and payable by the LESSEE to the LESSOR pursuant to the agreement shall be paid by telegraphic, telex or mail transfer to the account of the LESSOR at ..... or such other place as the LESSOR may designate or by cheque or bank draft drawn in favour of the LESSOR on a scheduled bank and shall be so paid as to enable the LESSOR to realise at par, the amount sought to be paid on or before the due date to which the payment relates. Credit for all payments by cheque/bank draft will be given only on the realisation thereof by the LESSOR or on the due date to which the payment relates, whichever is later.

**62. Service of notices.** Any notice to the LESSEE by the LESSOR shall be in writing and posted to the LESSEE'S address first above written and for proving service by the LESSOR it shall be sufficient to show that the communication was complete from the LESSOR. Any notice required to be given by the LESSEE to the LESSOR shall be in writing and be sent to the LESSOR'S address first above written. Any change in the address of the LESSEE shall be notified to the LESSOR by Registered Post in order to make the same cognizable for the purpose of this clause.

**63. Time to be of essence.** Time shall be of the essence in this agreement in so far as it relates to the observance or performance by the LESSEE of all or any of the obligations including payment of any sum hereunder.



**64. Warranties.** The LESSOR agrees that the LESSEE shall be entitled to the benefits of the warranties provided by the manufacturer/suppliers of the equipment. Any performance guarantee provided by the supplier shall be in the joint names of the LESSOR and the LESSEE and shall be enforceable by the LESSOR or the LESSEE or both of them. For this purpose, the LESSOR, if so requested by the LESSEE, shall authorise the LESSEE for enforcing the performance by the supplier of the equipment for any warranties or performance guarantees relating to the equipment.

**65. Waiver or remission not to have precedent value—demands or notices waived.** The failure of the LESSOR to insist upon the punctual performance of any of the obligations of the LESSEE hereunder, or the failure of the LESSOR to exercise any right or remedy available to the LESSOR under this agreement or any failure of the LESSOR to require payment from or by the LESSEE when due of any sum owing hereunder, or any extension of credit or any forbearance on the part of the LESSOR shall not constitute waiver by the LESSOR of any subsequent or continuing default by the LESSEE hereunder nor shall the same prejudice, affect or restrict the rights and powers of the LESSOR hereunder. All demands for payments and performance and all notices of non-payment or other default hereunder, are hereby waived by the LESSEE.

**66. Option to renew.** Unless the LESSEE is in default under this Agreement at the relevant time the LESSEE shall have an option to renew the lease after expiry of the present agreement by efflux of time for a further period on such rental and other terms as would be mutually agreed upon between the parties.

**67. Affirmation as to statements made by the lessee.** The LESSEE declares and represents that every statement and representation made and every particular given by it in relation to this transaction are true and correct. By execution hereof, the respective signatories hereby certifies that he/they has/have read this agreement including the Schedules hereto and that he/they is/are duly authorised to execute this agreement on behalf of the respective parties.

**68. Agreement to be sole and exclusive.** This agreement represents the entire agreement of lease between the parties hereto and shall be capable of variation in writing by a note of amendment signed by and on behalf of the LESSOR the LESSEE and guarantors.

**69. Interpretation of words.** Words importing the plural shall, except where the context otherwise requires, include the singular and *vice versa*. Clause heading shall not control clear meaning of the text, but may be used to clarify the intention in case the same is not clear.

**70. Arbitration.** Except where it has been provided otherwise, any dispute or difference arising out of or in connection with the agreement between the parties including any dispute or difference relating to the interpretation of the agreement or any clause thereof shall be referred to the sole arbitration of Mr. XY or of a person nominated by Mr. XY (with summery powers) and the provisions of the Arbitration and Conciliation Act 1996 and rules framed

thereunder and any amendment thereto, from time to time, shall apply. No objection shall be taken on the ground that the arbitrator so appointed is an employee of the LESSOR or is in any way associated with the LESSOR. It is made clear that the venue of Arbitration proceedings will be the sole discretion of the Arbitrator and no objection shall be entertained from any party in this regard. The award of the arbitrator shall be final, conclusive and binding on all the parties. The arbitrator shall be competent to decide whether any matter of dispute or difference referred to him falls within purview of arbitration as provided for above and/or any matter relates to arbitration under the Arbitration and Conciliation Act 1996.

**71. Jurisdiction.** For all disputes arising out of this contract the jurisdiction shall be with the High Court at Calcutta.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed in duplicate on the day, month and year first herein above-written.

(1) Signed and delivered by the  
within named LESSOR under  
the hand of its authorised  
signatory Mr. ....  
at .....

(2) Signed and delivered by the  
within named LESSEE under the  
hand of its authorised  
signatory Mr. .... and  
Mr. .... in pursuance of  
a resolution passed by its Board  
of Directors/Authorisation by  
the partners dated .....  
at .....

(3) Signed and delivered by the  
within named CO-LESSEE under  
the hand of its authorised  
signatory(ies) Mr. .... and  
Mr. .... in pursuance of a  
resolution passed by its Board  
of Directors dated .....  
at .....

(4) Guarantors

(5) Witness

In the presence of:

(a) .....

(b) .....



## Schedule I

To Lease Agreement Dated .....

1. Fixed non-cancellable period : ..... months from the date of commencement of the lease.
2. Renewal : As may be opted by the LESSEE.
3. Lease Management Fee : .....% of the asset cost.  
Rs. ....
4. Lease rentals : As per Schedule 1(1) below.
5. Contingency Deposit/Sales Tax : At applicable rates (to be borne by lessee) ..... (included as part of rentals as on actuals).
6. Security Deposit : .....
7. Interest of Security Deposit : .....
8. Collateral Security : .....
9. Assumption for Depreciation Allowance : .....
10. Depreciation as per I.T. Act : .....
11. Assured residual value at the end of the primary lease period : .....% of the acquisition cost/  
Rs. ....
12. Sanctioned Amount : .....
13. Draw down Period : .....

Lessor

Lessee

Guarantor/s

## 14. Particulars of Equipments

Type of Equipment	Manufacturer's/Suppliers Name & Address	Quantity	Location of the Equipment	Date of Delivery of the Equipment	Acquisition cost of the Equipment.	Commencements date of the Lease	Any other Special Terms
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)

(a) Due date : .....

(b) Payment Terms : All rentals are payable ..... in advance/arrear at par at Calcutta.

Schedule 1(1)

	April	May	June	July	August	September	October	November	December	January	February	March
1999												
2000												
2001												
2002												
2003												
2004												
2005												
2006												
2007												
2008												

Sd/-

LESSOR, LESSEE

CO-LESSEE, GUARANTORS



## Schedule II

Special Provision Applicable to the equipment being a Motor Vehicle.

1. If the equipment given in lease is a motor vehicle (in this clause referred to as the vehicle) within the meaning of the Motor Vehicles Act 1988 then, the clauses abovementioned shall apply to the lease of the vehicle *mutatis mutandis* and to the extent they are not repugnant to the clauses mentioned below or to the nature of the vehicle being leased and the following further clauses shall apply to the vehicle.
2. The vehicle shall be registered as required under the said Motor Vehicles Act in the name of the LESSEE as owner of the Motor Vehicle and the LESSOR'S name shall be registered therein as the financier under the Agreement but that shall not in any way affect the absolute ownership of the LESSOR of the vehicle or confer upon the LESSEE any right other than of the LESSEE as provided herein, while at the time making the lease fully liable and responsible for all the obligations, liabilities and duties as provided under the said Act or under any other law or instrument pertaining to the ownership, use or maintenance of the vehicle.
3. The LESSEE shall deliver as soon as may be after the registration of the vehicle certified copies of the registration papers, insurance receipts, tax tokens and all other papers connected with the vehicle and continue to provide to the LESSOR such papers in original or by way of certified copies as the LESSOR may require.
4. In the event of the termination of the lease, for any reason whatsoever or in the event of the LESSOR taking repossession of the vehicle, the LESSEE hereby unconditionally and irrevocably undertakes to and agrees with the LESSOR that the LESSEE shall sign, execute and deliver all such instruments, forms, applications and writings and shall do all such other acts, deeds and things as may be required by the LESSOR and for this purpose the LESSEE hereby irrevocably and unconditionally authorizes the LESSOR that in the event of the LESSEE refusing or being unable to or failing to sign and deliver any of the aforesaid instruments, application forms or other writings as may be required by the LESSOR, the LESSOR shall be entitled without being obliged to do so to sign such instruments, forms, applications papers and writing for and on behalf of the LESSEE as a duly constituted attorney of the LESSEE.
5. The LESSEE shall during the subsistence of this lease and till the vehicle is delivered back to the LESSOR in good order and condition, operate the vehicle only in the areas specified in the schedule or

- in such other place or places previously approved in writing by the LESSOR and only for lawful purposes and in a lawful manner.
6. The LESSEE shall keep the vehicle in good repair and working condition and replace all such parts, accessories, tyres, tubes or other annexures as becomes obsolete, get damaged or unusable or in other way uneconomical, and all such replaced parts, accessories, tyres or other annexures shall become the property of the LESSOR.
  7. The LESSOR may make reasonable use of force to retake the possession of the vehicle in any of the events of defaults and the LESSOR may retake the possession of the vehicle wherever the vehicle be or is believed to be, whether with or without whatever is in or on the vehicle and the LESSOR hereby disclaims and the LESSEE hereby assumes the liability on account of loss or damage caused to any person or property because of such repossession including the loss or damage due to the repossession of the vehicle with whatever might be contained in or on it.

*The Schedule*

Sd/-  
LESSOR  
LESSEE  
CO-LESSEE  
GUARANTORS



## Leave & Licence and Easement

**Licence.** Where one person grants to another or to a definite number of other persons, a right to do, or continue to do in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a licence.<sup>1</sup> Licence is a permission to do something on an immovable property such as occupation or enjoying benefit thereon or using it for some other purpose. The intention of a licence is that the licensee will have a personal privilege but no interest in the property. A licence is a personal right, the licensee cannot transfer the licence or exercise it through an agent. The exception is a place of public entertainment. As the licence is of personal nature when the licensor transfers the property, the licence comes to an end.<sup>2</sup>

**Revocation.** A licence is revocable unless the licensee has acted upon the licence and executed work of a permanent nature incurring expenses or the licence is coupled with transfer of property. Revocation may be expressed or implied.<sup>3</sup> A licence stands revoked when the licensor ceases to have any interest in the property or the licensee releases the licence or the period or specific act for which the licence was granted is over or the subject-matter of the licence is destroyed or altered or the purpose of the licence becomes impracticable or is abandoned or the employment, office or character for which the licence was given ceases to exist, or for more than 20 years the licensee ceased to use the property.<sup>4</sup>

**License or lease** A licence does not create an interest in the property but a lease creates an interest thereon. One of the tests of a lease is exclusive

1 Section 52 of the Indian Easements Act 1882.

2 Section 59 of the Indian Easements Act 1882.

3 Sections 60 and 61 of the Indian Easements Act 1882.

4 Section 62 of the Indian Easements Act 1882.

possession of property. Whether an agreement creates relationship of the landlord and tenant or the licensor and licensee, the intention of the parties is decisive.<sup>5</sup>

**License coupled with interest.** Section 60 of the Act provides that a license is revocable by the creator unless it is coupled with transfer of property and such transfer is in force and the licensee acting upon the license has executed a work of a *permanent nature* and incurred expenses. "Transfer of Property" in the present context means transfer of right to do something in or upon the property of a permanent nature and is equivalent to "grant" but not amounting to transfer of any right in the property. A bare license can be terminated at any time even if it was granted for a consideration or for a fixed period.<sup>6</sup>

A license which gives the licensee the right to "profits a prendre" or to excavate earth or to draw water is a license coupled with transfer of the property.<sup>7</sup> If a licensee constructs any permanent structure with the knowledge and consent of the licensor the license cannot be revoked.<sup>8</sup> The important thing is that the construction should be made by the licensor in pursuance of the license granted to him.<sup>9</sup>

The court will interpret the agreement of license taking into consideration all the facts and surrounding circumstances to come to a conclusion as to whether it is a license or lease. Therefore, the Leave and License Agreement may not be the exclusive of relationship between the parties to the agreement but the wordings of the Agreement are most important.

## FORMS

### Leave and License Agreement

THIS AGREEMENT IS MADE this 10th day of August 1999 BETWEEN Mr. AB residing at ..... (hereinafter referred to as the LICENSOR which term shall include his successors and assigns) of the one part and Mr. CD residing at ..... (hereinafter referred

- 5 *Associated Hotels of India Ltd. v R.N. Kapoor* AIR 1959 SC 1262; *M.N. Clubwalla v Eida Hussain Saheb* AIR 1965 SC 610; *Rajkumar Rajindra Singh v State of Himachal Pradesh* AIR 1990 SC 1833.
- 6 *Dominion of India v Sohanlal* AIR 1950 East Punjab 40.
- 7 *Ghissu v Hashim Ali* AIR 1954 All 683.
- 8 *Gopalan Nair v Thevi Amma* AIR 1969 Ker 23; *Fazal Haq v Data Ram* AIR 1975 All 373.
- 9 *Ayyappan v Dharmodayan* AIR 1966 SC 1017.



to as the LICENSEE which term shall include his heirs and successors) of the other part.

WHEREAS the LICENSOR is owner of land and building situate at.....  
..... consisting of 5 floors, partly occupied by the tenants and the LICENSOR and partly vacant.

WHEREAS the LICENSEE has requested the LICENSOR to allow the LICENSEE to occupy and use temporarily about 1000 sq. ft. floor area on the ground floor on the South Eastern corner of the building on leave and license basis for carrying on his business till the LICENSEE gets an alternative accommodation for his business.

AND WHEREAS the LICENSOR has agreed to allow on leave and license basis the LICENSEE to occupy and use the said ground floor portion of the said building on temporary basis.

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

1. The LICENSOR hereby allows the LICENSEE on leave and license basis to use the said 1000 sq. ft. area on the South-East corner of the ground floor of the said premises No. .... of ..... belonging to the LICENSOR and where the LICENSOR maintains an office for correspondence and will continue to maintain (hereinafter referred to as the said LICENSED PORTION) for a period of six months from the date of execution hereof in the first instance.

2. The LICENSOR and his stenographer shall have the right to use the office at any time and to enter upon the licensed portion at any time during working hours to inspect the premises.

3. The LICENSOR shall be responsible for all sorts of repairs and paintings to be carried out not more than once a year.

4. The LICENSEE agrees to vacate the said premises on the expiry of six months or earlier if the LICENSEE secureds an alternative accommodation.

5. The LICENSEE shall pay to the LICENSOR Rs. 50 per month per sq. ft. of the area given to the LICENSEE as license fee payable in advance by the 10th of each month.

6. The LICENSEE shall not be responsible for any repairs or payment of any rates, taxes, or levies in respect of the said licensed portion.

7. The LICENSEE shall pay 98% of the electric charges and water charges on the basis of actual consumption by the LICENSEE and for this purpose a separate Electric and Water Meter would be provided in the said licensed portion and the LICENSOR would pay the balance 2% of such charges apportionable to his office in the said licensed portion.

8. The LICENSEE shall not use the licensed portion except for carrying on its business.

9. The license is given on a personal basis and the LICENSEE will not be entitled to transfer the benefit of this agreement or give sub-license to anybody else.

10. The LICENSEE agrees that the LICENSOR would lock up the entrances to the entire building including the licensed portion at midnight and thereafter the ingress to or egress from the licensed premises would not be permissible or possible till 6 A.M. in the morning except in case of emergency when the LICENSOR's Durwan or Night Watchman will be available for opening the doors.

11. The LICENSEE undertakes not to cause any damage or defacement of the ceiling, walls or floors of the licensed portion.

12. The LICENSEE shall not carry out any structural repairs, additions or alterations and shall not cause any nuisance or annoyance to the neighbours or store any hazardous goods or do anything which would damage the premises or jeopardise others.

13. On any breach of any of the terms of the agreement the LICENSOR will be entitled to terminate the license on giving seven days' notice.

14. On termination of the LICENSE or on expiry of period of the license the LICENSEE shall make over vacant and peaceful possession of the licensed portion to the LICENSOR in good condition.

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

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

Signature

1.

2.

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

Signature

1.

2.

### Leave and License Agreement for Company's Officers

THIS AGREEMENT IS MADE this ..... 2000 BETWEEN Mr. AB having his office at ..... (hereinafter referred to as the LICENSOR which term shall include his successors and assigns) of the one part and CD Co. Limited, a company registered under the Companies Act 1956 and



carrying on business at..... (hereinafter referred to as the LICENSEE which term shall include its successors, and permitted assignees) of the other part.

WHEREAS the LICENSOR is the owner of the premises No. .... of ..... wherein he resides on the ground floor and has an office on the first floor.

AND WHEREAS the LICENSEE approached the LICENSOR for a temporary accommodation for its officers on the first floor of the said premises and is agreeable to take on leave and licence basis the first floor flat excluding office portion therein.

AND WHEREAS the LICENSOR has agreed to grant on leave and license basis use of the first floor flat having an area of 1000 sq. ft. floor area excluding the area occupied by the office of the LICENSOR.

AND WHEREAS the LICENSEE has inspected the said flat complete with all amenities and has satisfied itself as to its suitability for the occupation of its officers for a temporary accommodation.

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

1. The LICENSOR hereby allows on leave and license basis the use of the first floor flat by officers of the LICENSEE for a period of two years for residential purpose.
2. The LICENSEE agrees that at a time not more than one of its officers with family members may occupy or reside in the said flat.
3. The LICENSEE shall pay to the LICENSOR a sum of Rs. 5,000 per month as license fee or compensation for occupation of the said flat payable in advance by the 10th of each month.
4. The LICENSOR will continue to have his office on the first floor as usual and shall have a duplicate key of the main door of the first floor for free ingress to and egress from the said office on first floor.
5. All municipal taxes, rates and other levies in respect of the said flat would be paid by the LICENSOR.
6. All internal and external repairs shall be carried out by the LICENSOR once a year.
7. There will be separate electric meters and water meters for the first floor and the LICENSEE would pay electric charges and water charges consumed by the LICENSEE.
8. The LICENSOR would pay electric charges for the electricity consumed by him for his office on the first floor.
9. The LICENSEE shall not be entitled to transfer the license to any other person or allow any person to occupy the said flat except by an officer of the LICENSEE.

10. The LICENSOR shall have the right to enter into and inspect the portion of the first floor flat given to LICENSEE on leave and license basis.

11. The LICENSEE shall not cause any damage to the premises or cause any nuisance or annoyance to the neighbouring people or store any hazardous goods or do anything which would jeopardise safety of premises or people.

12. On breach of any of the terms of this agreement the LICENSOR will be entitled to terminate this license by giving 10 days' notice.

13. The LICENSEE undertakes to vacate the licensed premises on expiry of two years or earlier determination of the license.

14. The LICENSEE undertakes that if the services of the officer occupying the licensed premises is terminated then the LICENSEE should get the flat vacated by the officer immediately.

15. It is agreed that by these presents the LICENSEE does not acquire any right, title or interest in the said first floor flat in any manner whatsoever and would occupy the said flat during the currency of this agreement as a mere LICENSEE.

IN WITNESS WHEREOF the parties 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 CD Co. Limited  
in the presence of:

Signature

1.

2.

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

Signature

1.

2.

### Easements

Easement is a right which the owner or occupier of a land possesses over adjoining land for the beneficial enjoyment of the former. It is a privilege without profit which the owner of a land or building has over another land or building.<sup>1</sup>

1 Section 4 of the Indian Easements Act 1882



An easement may be a right of way over another's land or a right to air and light through particular apertures which the neighbours cannot obstruct and such right may be by grant or acquired by long user by prescription. Grants of easement may be a right to construct or right of support, the right to surface and underground water, right to flow of stream of water, the right to drainage and sewage and the right to use water of a stream running over somebody else's land for consumption or irrigation.

The land which claims a right either in law or under contract over another land is called the dominant land and the other land which suffers such right is called the servient land. The owners are called the dominant owner and the servient owner. Easement rights can be enjoyed only by the dominant owner for enjoyment of the dominant land or building. Such enjoyment should not be a burden on the servient land. The dominant owner shall not cause any inconvenience to the servient owner except as is essential.<sup>2</sup>

An easement cannot be transferred apart from the dominant land. When a property is transferred the easement right attached to the property is also transferred along with the property.<sup>3</sup> However, an easement can be created, modified or extinguished by agreement.

An agreement granting or modifying or extinguishing an easement touches the immovable property and it requires registration under s. 17 of the Registration Act. Stamp duty on such an agreement would be under Art. 5 of the Indian Stamp Act treating it as an agreement. However, the Registration Office may contend that the document is a grant of a right in relation to immovable property and is a conveyance and the Stamp Duty has to be paid on the consideration *ad valorem*.

Read also ss. 25 and 26 of the Limitation Act 1963.

## FORMS

### Agreement of Easement of Right of Way

THIS AGREEMENT IS MADE on this ..... day of ..... 1999 BETWEEN Mr. AB, ..... (hereinafter referred to as the DOMINANT OWNER which term shall include his successors and transferees) of the one part and Mr. CD of ..... (hereinafter referred to as the SERVIENT OWNER which term shall include his successors and transferees) of the other part.

2 Sections 20-31 of the Indian Easements Act 1882.

3 Sections 6 and 8 of the Transfer of Property Act.

WHEREAS the DOMINANT OWNER is the owner of 3 cottahs of land being premises No. .... of ..... surrounded on all sides by lands of other persons and has no opening to the main road.

AND WHEREAS the SERVIENT OWNER owns the land in front of the DOMINANT OWNER'S land being premises No. .... of ..... and is situate facing the road with wide front.

AND WHEREAS the DOMINANT OWNER proposes to construct a three-storied building on his land for residential purpose and requires a direct passage to the road through the land of the SERVIENT OWNER.

AND WHEREAS the DOMINANT OWNER has approached the SERVIENT OWNER for granting easement right for ingress to and egress from the DOMINANT OWNER'S premises through and over the land of the SERVIENT OWNER and on being approached the SERVIENT OWNER has agreed to grant such right of way over his land.

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

1. In consideration of the DOMINANT OWNER paying Rs. 5 lakhs to the SERVIENT OWNER, the receipt whereof is acknowledged hereby, the SERVIENT OWNER hereby grants to the DOMINANT OWNER the right of passage through the South-Eastern portion of premises No. .... of .....

2. The passage will be 10 ft. wide running from North to South connecting the DOMINANT OWNER'S land with the main road.

3. The said passage will be used by the occupiers of premises No. .... of ..... and also by the occupiers of premises No. .... of .....

4. The said common passage shall be maintained by the DOMINANT OWNER and the expenses thereof would be shared equally by the DOMINANT OWNER and the SERVIENT OWNER.

5. The right of way will attach to the dominant land over the servient land and such right will run with the land.

6. The common passage can be used for all purposes of entering into and coming out of the dominant land with men, material, animals, vehicles and all other things which may enter the passage without damaging the land or structure thereon or causing annoyance or jeopardising the occupiers of the servient land and buildings.

7. The said common passage is to be kept open to the sky and unobstructed in any manner whatsoever.

8. If the DOMINANT OWNER fails to make repairs or keep the passage repaired then the SERVIENT OWNER may for the time being cause the repair to be done and recover 50% of such costs from the DOMINANT OWNER or the occupiers of the dominant land.



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

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

Signature

- 1. ....
- 2. ....

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

Signature

- 1. ....
- 2. ....

Easement of Drainage and Sewage

THIS AGREEMENT IS MADE on this 10th day of August 1999 BETWEEN Mr. AB, residing at ..... (hereinafter referred to as the DOMINANT OWNER which term shall include his successors, heirs and transferees) of the one part and Mr. CD residing at ..... (hereinafter referred to as the SERVIENT OWNER which term shall include his successors, heirs and transferees) of the other part.

WHEREAS the DOMINANT OWNER owns the landed property being premises No. .... of .....

AND WHEREAS the SERVIENT OWNER owns the plot of land being premises No. .... of ..... which is situated on and facing the ..... Road and in front of .....

AND WHEREAS premises No. .... of ..... has no separate arrangement for the outlet of rain water or any used water or sewage.

AND WHEREAS the premises No. .... of ..... has the modern drainage system and sewage system directly connected with the Municipal Corporation drainage system and the sewage system running underground the main road.

AND WHEREAS the DOMINANT OWNER approached the SERVIENT OWNER for granting facilities for drainage of water and sewage under the land of the SERVIENT OWNER for connection with the main drainage and sewages systems of the Municipal Corporation and the SERVIENT OWNER has agreed to grant such right to the DOMINANT OWNER.

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

- 1. In consideration of the DOMINANT OWNER paying to the SERVIENT OWNER a sum of Rs. 2 lakhs the receipt of which the SERVIENT OWNER hereby acknowledges the SERVIENT OWNER hereby grants to DOMINANT OWNER the

right of easement of laying down sewage and drainage pipes underneath the said land of the SERVIENT OWNER so as to connect them from the land of DOMINANT OWNER through the land of SERVIENT OWNER to the Municipal Corporation's main sewage and drainage system on the main road known as ..... Road.

2. The said pipes would be laid by the DOMINANT OWNER under the land of SERVIENT OWNER in accordance with the plan to be sanctioned by the Municipal Corporation.

3. The DOMINANT OWNER while laying the drainage and sewage pipes shall not cause any damage to the existing structures of the SERVIENT OWNER and such pipes should be laid down on one side of the land generally used for passage for ingress to and egress from the premises of SERVIENT OWNER.

4. The said pipes should be laid in a manner which would permit periodical cleaning possible and it should be free from possibility of any leakage.

5. The DOMINANT OWNER should keep the said sewage and drainage pipes in good repairs.

6. In the event the DOMINANT OWNER fails to carry out any urgent repairs the SERVIENT OWNER will get it done and recover the costs and expenses of such repair works including replacement of the pipes and all expenses in relation thereto from the DOMINANT OWNER and such cost and expenses should be a first charge on the land of the DOMINANT OWNER.

7. The easement right created herein will run and remain attached to the land of DOMINANT OWNER over the servient land and shall be attached thereto and run with the same and shall be binding on the owners for the time being of the said two premises.

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

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

Signature

1.

2.

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

Signature

1.

2.



Easement of Support

THIS AGREEMENT IS MADE on this ..... day of ..... 2000 BETWEEN Mr. AB of ..... (hereinafter referred to as the DOMINANT OWNER which term shall include his successors and transferees) of the one part and Mr. CD of ..... (hereinafter referred to as the SERVIENT OWNER which term shall include his successors and transferees) of the other part.

WHEREAS the DOMINANT OWNER owns the land being premises No. .... of .....

AND WHEREAS the SERVIENT OWNER owns the land and construction thereon being premises No. .... of .....

AND WHEREAS the DOMINANT OWNER proposes to construct a multi-storeyed building on his land and requires the support of sub-soil and foundation under the surface of the soil of the land of the SERVIENT OWNER.

AND WHEREAS the DOMINANT OWNER has approached the SERVIENT OWNER for granting easements for support of said sub-soil and foundation of servient land and the SERVIENT OWNER has agreed to grant such easement right to the DOMINANT OWNER.

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

1. The SERVIENT OWNER grants to the DOMINANT OWNER the right to have all necessary support on the sub-soil and foundation underneath the surface of the servient land in accordance with the plan to be sanctioned by the Municipal Corporation for construction of a multi-storeyed building on the dominant land.

2. It is recorded that in consideration of the DOMINANT OWNER paying Rupees Two lakhs to the SERVIENT OWNER receipt whereof the SERVIENT OWNER hereby acknowledges the SERVIENT OWNER has and is granting to DOMINANT OWNER the said right of easement.

3. The DOMINANT OWNER will be at liberty to dig and excavate the land of SERVIENT OWNER as might be essential for the support for constructing the said multi-storeyed building but without causing any damage to the existing building of SERVIENT OWNER.

4. The DOMINANT OWNER hereby undertakes not to make any construction which would damage the existing building of the SERVIENT OWNER and undertakes to compensate the SERVIENT OWNER for any damage that might be discovered in future because of the said construction and/or the said support for the said construction of the said multi-storeyed building.

5. This agreement shall be treated as the easement right available to the DOMINANT LAND over the SERVIENT LAND for beneficial enjoyment of

**DOMINANT LAND** and shall be binding on the owners for the time being of the said **DOMINANT LAND** and **SERVIENT LAND**.

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

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

Signature

- 1. ....
- 2. ....

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

Signature

- 1. ....
- 2. ....



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## Mentally ill Persons

The Lunacy Act of 1912 has been repealed. It has been replaced by the Mental Health Act 1987, some of the broad features of the new Act are given below:

Under the new Act a mentally ill person has been defined as one who is in need of treatment by reason of any mental disorder other than mental retardation. He is to be treated in any psychiatric hospital or psychiatric nursing home established or maintained either by the Government or by any private person under licence issued under the Act.

For admission to such institution any person feeling that he is mentally ill may voluntarily get himself admitted there and in case of a minor person somebody on his behalf may get the minor admitted as a voluntary patient after approaching the medical officer-in-charge.

The husband, the wife, or any other relative of a mentally ill person may make an application to the Magistrate within whose jurisdiction the hospital or nursing home is situated for detention of the mentally ill person under a reception order. Such application should be supported by medical certificate as to the condition of the patient and the Magistrate will make enquiry and after he is satisfied that the person concerned is so mentally ill and that his detention in the hospital or nursing home is necessary the Magistrate will pass a reception order.

Similarly the officer-in-charge of the police station believing a person within his jurisdiction to be mentally ill or upon receipt of an information that there was a mentally ill person and is not under proper care and control or is neglected by any relative shall report to the Magistrate who on getting a report about such a person may cause him to be produced before him and after necessary investigation admit him in the hospital or nursing home.

Provisions have been made for holding inquisition by the District Court which means the Court of the District Judge in a District or the City Civil Court where such Courts have been established.

Provisions have also been made for appointment of a guardian or manager in respect of the properties of in-patient and for providing maintenance to him or collecting his pension, if he is a pensioner and for transfer of stock, security or shares belonging to such in-patient. Provisions have also been made for providing legal aid to mentally ill person at state expense in certain cases.

So far as discharge of an in-patient is concerned where a patient was admitted on application there must be an application for discharge. In other cases the patient may be discharged on the recommendation of two medical practitioners one of whom shall preferably be a psychiatric; there is a third category of cases where a patient detained in pursuance of an order under this Act may be discharged, if he feels that he has recovered from his mental illness but in that case he must make an application to the Magistrate for his discharge supported by a medical certificate and the Magistrate will pass an order of discharge after making due enquiry. But a person who is dangerous and unfit to be at large cannot be discharged.

A person of unsound mind or a mentally ill person is incompetent to enter into any contract. Matters relating to such persons are now governed by the Mental Health Act 1987 replacing the Indian Lunacy Act 1912. The provisions of s. 68 of the Indian Contract Act apply only in case of necessities supplied, but the statutory reliefs under s. 33 of the Specific Relief Act 1963, are available as against the lunatic<sup>1</sup> in the case of cancellation of any transfer.

Section 12 of the Indian Contract Act lays down the test as to what is sound mind for the purpose of contract, *i.e.* capacity of understanding and forming a rational judgment as to the effect thereof on his interest. A contract by a person of unsound mind is void but when it is for necessities supplied he will be compelled to fulfil his obligation.<sup>2</sup> Under s. 31 of the Indian Lunacy Act 1912, since repealed, the court may order performance by the manager in case of pre-lunacy contracts.

**Lunatic.** A lunatic means an idiot or person of unsound mind. *Lunacy or insanity* is a defect of reason, consisting either in its total or partial absence or in its perturbation.<sup>3</sup>

1 *Monosse v Shapurji* 10 Bom LR 1004 (1007).

2 *Amina Bibi v Saiyd Yusuf* (1922)44 All 748; 79 IC 955.

3 Section 3(5) of the Indian Lunacy Act 1912 defines a lunatic as an idiot or person of unsound mind.



**Application by whom to be presented.** The petition must be presented by the husband or wife of the person concerned or, if there is no husband or wife, or the husband or wife is prevented by some reason from making the presentation, by the nearest relative of the person.

**When reception order can be made.** No reception order can be made save in the case of a mentally ill person who is dangerous and unfit to be at large, unless—

- (i) the Magistrate who passes the order is satisfied that the person in charge of an asylum is willing to receive the lunatic, and
- (ii) the petitioner or some other person is engaged in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

**Order of discharge on relative's undertaking.** When any relative or friend of the mentally ill person detained under the Act applies for his discharge he shall be delivered over to his care and custody, the authority, if it thinks fit, in consultation with the person in charge of the Hospital or nursing home and the relative or friend entering into a bond (*Precedent*—Chapter on BONDS) with or without sureties for such sum of money as the said authority thinks fit, on condition that such person shall be properly taken care of and shall be prevented from doing injury to himself or to others, can make an order for the discharge and such mentally ill person will thereupon be discharged.

The inquiry will, as far as may be, be conducted in the same manner as is prescribed for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the court will order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the court may seem fit.

**Guardian of lunatic and manager of estate.** An application for inquisition as to the mental condition of a lunatic is to be made to the High Court within whose Original Jurisdiction he resides. If the lunatic resides beyond such jurisdiction, the application is to be made to the District Judge within whose jurisdiction he resides. The application may be made by any relative of the lunatic. After notices are served on the lunatic and his relations, the court makes an inquisition as to the mental condition of the alleged lunatic. If upon enquiry the court is satisfied as to the unsoundness of mind, it can appoint a manager of his estate and a guardian of his person. The legal heirs of a lunatic shall not be appointed guardian of the person of such lunatic unless the court for reasons to be recorded in writing considers that such appointment is for the benefit of the lunatic. The court may require the manager of a lunatic's estate to furnish such security as it thinks fit.

## FORMS

### Petition for Order of Reception of Mentally ill Person

To  
The Metropolitan Magistrate/  
Sub-divisional Magistrate/  
Magistrate empowered under  
Act 14 of 1987

In the matter of AB of ..... etc., a  
person alleged to be a mentally ill person  
under s. 2(m) of the Mental Health Act  
1987

The petition of CD (full name, address and relationship) as follows:

1. I, the applicant, an ..... years of age.
2. I desire to obtain an order for the reception of AB of, etc., as a mentally ill person in the Psychiatric Hospital/Nursing home at etc. etc.
3. I last saw AB at, etc., on the ..... day of .....
4. I am the ..... (relationship) of the said AB.

The circumstances under which this petition is presented by the applicant are as follows, etc.

*(Or, if the applicant is not a relative—That the applicant is not a relative of the said AB. The reasons why this petition is not presented by a relative are as follows, etc.)*

5. The persons signing the medical certificates which accompany the application are, etc.
6. A statement of particulars relating to the said AB accompanies this petition.

7. An application for an enquiry into the mental capacity of the said AB was made to the, etc., on the ..... day of ....., and a certified copy of the order made on the said application is annexed hereto.

*(Or—No application for an enquiry into the mental capacity of the said AB has been made previous to this application).*

I therefore pray that a reception order may be made in accordance with the foregoing statement.

(Date)

CD



The statement contained or referred to in paragraphs are true to my knowledge; the other statements are true to my information and belief.

(Date)

EF

*The statement of particulars above referred to*

The following is a statement of particulars relating to the said AB:

Name of patient in full.—

Sex and age.—

Married, single or widower.—

Previous occupation.—

Caste and religion.—

Residence at the time of the application.—

Names of any near relative to the patient who are alive.—

Whether this is first attack of mental illness.—

Age on first attack.—

Supposed cause.—

Whether the patient is subject to epilepsy.—

Whether suicidal.—

Whether the patient is known to be suffering from any form of tubercular disease.—

Whether dangerous to others and in what way.—

Whether any near relative (stating the relationship) has been afflicted with insanity.—

Whether the patient is addicted to alcohol or the use of opium, ganja, charas, bhang, cocaine or other intoxicant.—

*(If any of the particulars in the above statement be not known, the fact to be so stated).*

Petition for Appointment of Guardian of a  
Mentally ill Person and Manager of his Estate

In the Court of the District Judge of .....

Case No. .... of .....

Applicant—

AB (*add description and residence*)

In the matter of the Mental Health Act  
(Act 14 of 1987)

And

In the matter of inquisition as to CD, a  
lunatic and appointment of guardian of  
his person and manager of his estate.

MOST RESPECTFULLY SHEWETH:

1. That the aforesaid CD is a Hindu by faith and nationality and is at present aged..... years having been born on the day of .....
2. That the said CD lives and resides at ..... with the applicant who is his ..... (state the relationship) under his care and protection.
3. That the said CD has the following near relatives, *viz.*

<i>Name</i>	<i>Address</i>	<i>Relationship</i>
(a)		
(b)		

4. That for some time past and since the ..... day of ..... or thereabout, the said CD has developed signs of insanity and is at present completely of unsound mind and has become incapable of managing himself and his properties and of taking proper care of his person. Two medical certificates as to mental condition of the said CD are attached herewith.

5. That the said CD is seized and possessed of the following properties, the nature, description, value and approximate income are given in the Schedule below.

6. That the appointments hereunder prayed for are necessary for proper care and custody of the person of CD as also for management of his properties.

The applicant, therefore, prays that this court may be pleased to direct an inquisition as to the mental condition of CD and appoint the applicant guardian of the person and manager of the estate of CD.



Schedule above referred to

Verification

I, AB, son of ..... aged above ..... years by occupation business 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 and I am able to depose thereto.

The statements in paragraphs 1 to 6 hereinabove are true to my knowledge and belief and I have not suppressed any material fact.

I sign this Verification on this ..... day of ..... 1999 at the Court Premises at Alipore.

Signature of AB

Before me

Signature of Advocate

Notary

(In the absence of Prescribed Forms)

Application for Admission of Mentally ill Person under s, 19 of the Mental Health Act 1987

To The Medical Officer-in-Charge Psychiatric Hospital

Sir

I submit that Sree ....., aged ..... years, my nephew has been suffering from mental illness for the last two months and, I have been looking after him as both of his parents are dead. On his behalf, therefore, I request you to admit him as an in-patient in your hospital for his necessary treatment. Medical Certificates from two medical practitioners including one from a medical practitioners in Government service regarding the condition of the patient are enclosed.

Yours faithfully

## Application for Discharge of the In-patient

To  
The Medical Officer-in-Charge etc.,

Sir

I beg to state that my nephew ..... was admitted in your hospital as an in-patient on ..... He now appears to be cured of his illness. I request that he may now be discharged and made over to me.

Yours faithfully

Application for Reception Order  
under s. 20 of the Mental Health Act 1987

To  
The Sub-divisional Judicial Magistrate

Sir

I beg to submit that my wife Smt. .... aged ..... and mother of two children, has become a mentally ill person for the last several months. She has been treated by local physicians but there appears to be no improvement in her condition. It is necessary for the patient to be admitted in a psychiatric hospital or nursing home for observation and proper treatment. Medical certificates from two physicians one, of whom is a medical practitioner in the service of the Government, testifying to the mental condition of the said patient Smt. .... are enclosed.

It may be noted that no previous application had been made either for enquiry into the condition of the patient or for her admission to any hospital.

The statements made above are true to my knowledge.

Yours faithfully



## Maintenance

Section 125 of the Code of Criminal Procedure 1973 provides that a person having sufficient means if neglects or refuses to maintain his wife, minor child (legitimate or illegitimate) or a major child (other than married daughter) who is physically or mentally abnormal or injured or father or mother unable to maintain, he or she is entitled to claim maintenance. The application is to be made to the Magistrate of the First Class by the wife or the minor son or daughter of the father or mother unable to maintain himself or herself. On being satisfied about the genuineness of the complaint the Magistrate may order the accused to pay a monthly maintenance of not more than Rs. 500 for each complainant. The West Bengal Legislature has amended the section and has provided for payment of monthly allowance of Rs. 1,500 instead of Rs. 500 per month. Section 125 applies to all persons of all communities. A divorced Muslim woman is governed by the Muslim Women (Protection of Rights on Divorce) Act 1986. However, a Muslim woman who is still a "legally married wife" can claim maintenance under section 125, Cr PC.

The right of the child for maintenance is independent of mother's right.<sup>1</sup> Even if the marriage has not been solemnised with the mother, the child, born outside wedlock is entitled to maintenance.<sup>2</sup> Even if the mother has separate income the father cannot deny maintenance to the child.<sup>3</sup> A Muslim divorced wife may not apply under s. 125, Cr PC for her maintenance but the child living with her after divorce can, through mother, apply for maintenance under s. 125, Cr PC and Muslim Women (Protection of Rights on Divorce) Act 1986 is no bar.<sup>4</sup>

- 1 *Mohd. Muneruddin v Rakshma* 1978 Cr LJ NOC 4 (AP).
- 2 *Punnakal v Vellai Padmini* 1992 Cr LJ 3562 (Ker).
- 3 *C.M. Mani v Esther* 1981 Cr LJ NOC 76 (Ker).
- 4 *G.M. Jeelani v Shanswar* 1994 Cr LJ 271 (AP).

An application under s. 125, Cr PC may be filed by a wife against her husband when he having sufficient means neglects or refuses to maintain her provided the wife is unable to maintain herself. A wife whose marriage is void on the ground that her husband has a spouse living cannot be treated as legally married wife and cannot claim maintenance under this section.<sup>5</sup> A divorced wife until she remarries is entitled to apply under s. 125 for maintenance. Since the passing of Muslim Women (Protection of Rights on Divorce) Act 1986 a Muslim divorced wife can apply for maintenance under this section. A parent can apply under this section for maintenance from his or her son or daughter. However, if a wife is living separately from her husband without a just cause she cannot claim maintenance. When the husband subjects the wife to cruelty she has a right to live separately and can claim maintenance.<sup>6</sup> When the husband remarries or keeps a mistress the wife can live separately and can claim maintenance.<sup>7</sup> Where the wife is living separately with mutual consent she cannot claim maintenance.<sup>8</sup> If she is living in adultery, she is not generally entitled to get maintenance.<sup>9</sup> Against a petition for maintenance the husband may take various pleas. He can dispute the marriage. When marriage is disputed, the petitioner has to prove valid marriage with the opposite party in order to claim maintenance. He can take the plea that the wife had no just cause to live separately. He can take the plea which disentitles wife to claim maintenance as laid down in s. 125(4), Cr PC.

The wife has to apply under s. 128, Cr PC for recovery of maintenance if the husband refused to pay the maintenance in terms of the order of the court. Arrears of maintenance for one year prior to filing of application can be recovered by attachment and sale of property of husband under s. 421, Cr PC. If the recovery proceeding fails the husband can be imprisoned.<sup>10</sup> When the warrant of attachment and sale of property could not be executed as the husband did not have any property an order sentencing the husband to imprisonment is justified.<sup>11</sup> The distress warrant may not be issued if the court is satisfied that this would be futile.<sup>12</sup> One month's imprisonment for default of one month should be ordered.<sup>13</sup>

5 *Vimala v Veeraswamy* (1991)2 SCC 375.

6 *Gitanjali v Fanindra* 1992 Cr LJ 4046 (Ori).

7 *Subanu v Abdul* AIR 1987 SC 1103; *Narayan v Sushama* 1992 Cr LJ 2912 (Ori).

8 *M. Rama Krishna v T. Jayamma* 1992 Cr LJ 1368; *Ramesh v Veen* AIR 1978 SC 1807.

9 *Bilawati v B. Phukan* 1988 Cr LJ NOC 30 (Gau).

10 *Iftekhhar v Hameeda* 1980 Cr LJ 1212 (All).

11 *Om Prakash v Vidya Devi* 1992 Cr LJ 658 (P&H).

12 *Rajendra v Pramila* 1993 Cr LJ 3813 (Ori).

13 *P. Brahmaniah v P. Padma* 1991 Cr LJ 607 (AP).



Read also the relevant provisions in the Hindu Adoptions & Maintenance Act 1956. There can be maintenance which has been fixed by the parties themselves to bring peace and harmony into the family. The consideration such type of settlement is love and affection, peace and harmony and satisfaction to flow therefrom. It is not hit by s. 25 of the Contract Act.<sup>14</sup>

## FORMS

### Maintenance Agreement between Husband and Wife not being a Separation Agreement

(A SHORT FORM)

THIS AGREEMENT IS MADE this ..... day of ..... BETWEEN AB son of ..... residing at ..... (hereinafter called the HUSBAND) of the one part and CD, daughter of ..... residing at ..... and wife of AB (hereinafter called the WIFE) of the other part.

HEREBY it is agreed between the parties hereto as follows:

1. The HUSBAND will pay to the WIFE for her support and maintenance (and for the support and maintenance of their children hereinafter mentioned) a monthly sum of Rs. .... during the joint lives of the parties hereto so long as the WIFE shall lead a chaste life the first payment hereunder to be made on .....

2. The WIFE will out of the said sum support and maintain herself (and the said children) and will indemnify the HUSBAND against all debts if incurred by her (and against all liability whatsoever in respect of the said children) and will not in any way at any time hereafter pledge the husband's credit.

3. The WIFE while living separate from the husband shall have the custody and control of the minor children of the marriage. The right of the wife to such custody and control shall cease upon the children respectively attaining the age of eighteen years.

4. Upon the failure of the HUSBAND to make the said payments as and when the same become due the WIFE shall be at full liberty to pursue all and every remedy in this regard either by enforcement of the provisions hereof or as if this agreement had not been made.

<sup>14</sup> Manali Singhal v Ravi Singhal AIR 1999 Del 156.

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

Signed and delivered by AB the HUSBAND in presence of:

Signed and delivered by CD the WIFE in the presence of:

### Separation Agreement between Husband and Wife

THIS AGREEMENT IS MADE the ..... day of ..... BETWEEN AB of etc. (hereinafter called the HUSBAND) of the one part and CD, of, etc. the wife of the said AB (hereinafter called the WIFE) of the other part.

WHEREAS unhappy differences and disputes having arisen between the parties hereto, as a result whereof the marriage between them has broken down and they are now living separate and apart from each other and intend to so live hereafter unless there is any reconciliation and for which purpose they have agreed to enter into such arrangement as is hereinafter contained: NOW IT IS HEREBY AGREED as follows:

1. The parties hereto shall further live and continue to live separate and apart from each other and neither of them shall have the right to the society of the other or shall molest, annoy or interfere with each other.

2. The HUSBAND shall, during the joint lives of himself and the WIFE pay to the WIFE, during her life for the maintenance of herself a monthly sum of Rs. .... commencing from.

3. The WIFE shall have the custody and control as also guardianship of the children of the marriage, EF and GS now aged ..... years and ..... years respectively, and shall, out of the said sum of Rs. .... maintain and educate the said children until they shall respectively attain the age of ..... years, and shall keep the husband and his estate indemnified from and against all claims and demands on that account.

4. The WIFE shall be at liberty to remove forthwith from ..... aforesaid all her wearing apparel, jewellery and other personal effects, and also such of the furniture and other household goods and effects at ..... aforesaid as belong to her as her separate property.

5. The WIFE shall pay for and discharge all debts incurred by her after the date hereof, whether for maintenance, support or otherwise and keep the HUSBAND and his estate indemnified therefrom and against all actions, claims and demands in connection therewith; otherwise the HUSBAND shall have the right to set off all sums so paid as against the WIFE out of the moneys payable by him to her as aforesaid.



6. The HUSBAND shall have access to the children under arrangements to be made between them from time to time.

7. The HUSBAND may see and have the sole society of the said EF and GH at ..... every Saturday, (or etc.), between the hours of ..... and ..... p.m.

PROVIDED ALWAYS AND IT IS HEREBY AGREED that in case the HUSBAND and the WIFE shall at any time hereafter with their mutual consent live together as man and WIFE, then and in such case the said sums shall be no longer payable, and all the agreements hereinbefore contained shall become void and ineffective.

PROVIDED ALSO, that this deed shall stand revoked by the death of either party.

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  
HUSBAND in the presence of:

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

Agreement for Maintenance of Wife and Daughter

THIS AGREEMENT IS MADE this ..... day of ..... BETWEEN AB son of ..... residing at ..... (hereinafter called the HUSBAND) of the one part and CD wife of AB and daughter of ..... residing at ..... (hereinafter called the WIFE) of the other part.

WHEREAS unhappy differences and disputes having arisen between the parties hereto, who are HUSBAND and WIFE and could not be adjusted by the intervention of friends and well-wishers, they by mutual consent and agreement are now living separate and apart from each other and for that purpose they have agreed to the arrangement as hereunder mentioned:

NOW IT IS HEREBY AGREED as follows:

1. The HUSBAND shall pay or cause to be paid regularly for the WIFE so long as she will live separate a maintenance allowance of Rs..... per month, and a further sum of Rs..... per month for the daughter EF, on that account as long as their daughter EF lives with and is maintained by the WIFE and is not married.

2. In consideration of such payment or payments as aforesaid, the WIFE shall not incur any debt or liabilities against the credits of the HUSBAND nor otherwise pledge nor institute any action or proceedings against the husband on account of her maintenance and support or that of the daughter but shall pay for and discharge all her debts and liabilities and keep the HUSBAND and his estate indemnified against all actions and proceedings in relation thereto.

3. Provided, however, and it is hereby agreed that notwithstanding anything hereinbefore contained no monthly allowances as hereunder agreed shall be payable for the period during which the WIFE shall live and reside with the HUSBAND and be maintained by him.

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 husband in the presence of:

AB

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

CD

NOTE: The authority of the wife to pledge the credits of her husband is a delegated and not an inherent authority. If she binds him she can do only as agent. This is a well established doctrine.<sup>15</sup> It is applicable to things which are really necessary for person in the position of life of the couple in cases where she is turned away without justification or the husband refuses to supply necessities or the means of obtaining the same. The Hindu Adoptions and Maintenance Act 1956 (Act 78 of 1956) is the codified law on the subject of maintenance of Hindu wives. It protects the right of maintenance against the properties of the husband in the hands of alienees (s. 39 of the Act) with notice.

### Separation Agreement between Husband and Wife

(A SHORT FORM)

AN AGREEMENT IS MADE the..... day of.....1999 BETWEEN AB of etc. (hereinafter called the HUSBAND) of the one part and CD of etc. his wife (hereinafter called the WIFE) of the other part.

WHEREAS unhappy disputes and differences have arisen between the HUSBAND and WIFE and they are now living separate and apart from each other.

NOW IT IS HEREBY AGREED as follows:

1. The HUSBAND and the WIFE shall continue to live separate and apart from each other and neither of them shall molest, annoy or interfere with the other.

2. The HUSBAND shall pay to the WIFE during her life for the maintenance of herself and her children hereinafter named the monthly sum of Rs. .... first of such payments to be made on the ..... day of .....

<sup>15</sup> 2 Sm IC 417 *vide* Dutt on *Contract*, 5th Ed., p. 665.



3. The WIFE shall have the custody of the children namely, DB, EB and FB, now aged seven, five and four years respectively and shall out of the said sum maintain herself and also maintain (and educate) the said children until they shall respectively attain the age of (eighteen) years and shall keep the HUSBAND indemnified from and against all claims and demands in respect of such children.

4. The WIFE shall be at liberty forthwith to remove from..... all her wearing apparel, jewellery and personal effects and also such of the furniture and other household goods and effects at ..... aforesaid as belong to her as her separate property upon which the husband shall have no claim hereafter.

5. The WIFE shall pay and discharge all debts and liabilities incurred by her after the date hereof and keep the HUSBAND indemnified therefrom and the HUSBAND may deduct from the said sum any amount paid by him for debts or liabilities incurred by the WIFE after the date hereof for which the HUSBAND may be held liable and any sums paid by him to any authority for the maintenance of the WIFE or for the maintenance (and education) of the said children until the said children shall respectively attain the age aforesaid.

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

Signed and delivered by AB in the presence of:

Signed and delivered by CD the wife of AB in the presence of:

**Petition seeking Order for Maintenance of a Minor**

Before the Learned Metropolitan Magistrate, Calcutta

Case No. .... of 1999

Application under section 125 of the Code of Criminal Procedure 1973

And

In the matter of:

Shri X, a minor under the age of 18 years, son of Shri Y, residing at ..... Police Station ..... District ..... through his next friend Shri Z, son of Shri M, residing at ..... being the maternal uncle of X, Police Station ..... , District .....

..... Applicant

versus

Shri Y, son of Shri B residing at .....  
 ....., Police Station .....,  
 District .....

..... Opposite Party

To

The Hon'ble Magistrate of the  
 Aforesaid Court

The humble application of the applicant  
 above-named most respectfully

SHEWETH:

1. The opposite party is the father of Shri X a minor on whose behalf the present application is being made.

2. That Smt. AB the mother of the applicant X was married to the opposite party in 1992 and out of the said marriage the applicant Sri. X was born on ..... day of 1994.

3. At present the applicant is 5 years old, a minor and therefore, the present application is being filed through the next friend of the minor applicant, he being his maternal uncle.

4. That on ..... the opposite party threw out Smt. AB and the applicant of his house and thereafter refused to maintain and support the applicant and his mother.

5. That ever since ..... the applicant was living along with his mother at the house of his aforesaid maternal uncle who was taking care of both the applicant and his mother.

6. On ....., Smt. AB the mother of the applicant suddenly died on account of heart attack.

7. Since the last several months the financial position of the maternal uncle of the said minor Sri X has considerably deteriorated and he is unable to maintain the applicant minor.

8. Several requests were made by the maternal uncle of the applicant to Shri Y the opposite party for some allowances for maintenance of his minor son but he has refused to do so.

9. The opposite party has an income of more than Rs. 8000 per month and is a man of good standing. Further he owns a two-storeyed house which is fully tenanted from which he receives monthly rent of Rs. 5000.



10. The opposite party is legally and morally bound to support and maintain his minor son the applicant herein who has no means of supporting himself.

11. In the premises the applicant states that suitable Order for maintenance be made against the opposite party and in favour of the minor applicant.

12. This application is made *bona fide* and in the interest of justice.

The applicant therefore humbly prays Your Honour that the Opposite Party be directed to pay a sum of Rs. 2500 per month to the applicant as his maintenance allowance. And the applicant as in duty bound shall ever pray.

Place ..... Court  
Calcutta

Date .....

Signature of applicant  
by the pen of maternal uncle

Identified by  
Applicant's Advocate

### Maintenance Charge Deed

THIS DEED OF CHARGE is made at Calcutta this ..... day of ..... 2000 BETWEEN Mr. Y of ....., hereinafter referred to as the first party and Smt. AB residing at ..... hereinafter referred to as the second party.

WHEREAS the first party is the husband of the SECOND PARTY and that both of them are living separate.

AND WHEREAS the first party as husband is liable to pay and has agreed to pay the second party by way of maintenance a sum of Rs. 1500 per month in advance on or before the 5th day of each month hereafter.

AND WHEREAS the parties have agreed that such payment of monthly maintenance would be a charge on the immovable property being a two-storeyed building at ....., Calcutta belonging to the first party.

NOW THIS DEED WITNESSTH and it is agreed by and between the parties as follows:

1. The first party would pay to the second party month by month and every month the sum of Rs. 1500 by the 5th of each month in advance for the upkeep and maintenance of the second party.

2. That such payment of the maintenance shall be a charge on the said property of the first party being premises No. .... of ..... and the first party hereby charges the said land and premises being No. .... of ..... with the payment of the said sum of Rs. 1500 per month by way of maintenance to the second party.

3. It is further agreed that in the event the first party fails to pay any two monthly instalments of the said maintenance to the second party then in that event the second party will be entitled to enforce the charge hereby created on the premises by bringing the said land and premises to sale through any competent Court of Law and to realise and receive the amount due out of the nett sale proceeds thereof.

4. Such charge is created without prejudice to other rights and remedies of the second party to realise and enforce payment of the said maintenance allowance in accordance with law.

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

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

Signature

Accepted by and signed by the within-mentioned second party Mrs. AB in the presence of:

Signature

### Petition Claiming Payment of Maintenance

Before the Learned Chief Metropolitan Magistrate, Calcutta

Case No. .... of 2000

In the matter of:

An application under section 126 of the Criminal Procedure Code 1973, claiming payment of Maintenance

And

In the matter of:

Smt. AB, daughter of Mr. X residing at  
....., Police Station: .....,  
..... District: .....

..... Applicant



*versus*

Sri. Z, son of ML residing at .....  
 ....., Police Station .....,  
 District: .....

..... *Opposite Party*

To

The Learned Chief Metropolitan  
 Magistrate, Calcutta

The humble petition of Smt. AB, the  
 applicant abovenamed most respectfully

SHEWETH:

1. The applicant and the opposite party are Hindus and are governed by Dayabhaga School of Hindu Law.

2. The applicant is a legally married wife of the opposite party. The applicant's marriage with the opposite party was solemnised on .....

3. Soon after the marriage of the applicant the opposite party and his parents and sisters started harassing the applicant for not bringing sufficient dowry. The applicant was constantly pressurised to bring further moneys from her parents.

4. The applicant's father is a small earner and working as a clerk in a Government Office having no other source of income. His total salary is Rs. 2000 nett. The applicant's father is unable to satisfy the unreasonable demands of further moneys by way of dowry made by the opposite party, his parents and sisters.

5. The applicant repeatedly expressed her father's inability to pay further sums as dowry as he had no other source of income or any assets out of which such further dowry could be paid.

6. With a view to put further pressure and to extort money from the applicant's father on ....., the opposite party, his mother and two sisters assaulted the applicant and threw her out of the matrimonial house on the threat of not to come again without sufficient dowry.

7. The applicant with great humiliation with a heavy heart and with difficulty could manage to reach her parental house.

8. Thereafter the applicant made several requests to the opposite party to take her back home and not to demand any further dowry. This the opposite party has refused to do.

9. The applicant thereafter requested the opposite party to pay her something for her maintenance and upkeep. The opposite party knew

that the applicant had no other source of income and yet the request was ignored.

10. The opposite party is an officer in the Excise Department and draws a salary of Rs. 10,000 per month. He has a house property from which he gets rent of Rs. 2000 per month. His father is also earning. The opposite party has no dependant member or any other known liability.

11. The applicant has no means to support her while as stated above the opposite party has sufficient means to maintain the applicant.

The applicant, therefore, humbly prays this Learned Court for a direction on the opposite party to pay Rs. 1500 per month to the applicant towards her maintenance.

Place: Calcutta

Signature of the applicant

Date:

Signature of Advocate  
for applicant

**Petition by a Guardian of Minor Child for  
Maintenance against Father under section 125, Cr PC**

In the Court of..... Magistrate  
Case No. .... of 2000

*Petitioner* (minor M through his  
next friend U) maternal uncle

*Opposite Party* F

Son of .....

*versus*

Son of .....

Village .....

Village .....

Thana .....

Thana .....

In the matter of maintenance of minor M,  
son of opposite party F under s. 125, Cr PC.

The humble petition of the minor M through  
his maternal uncle U

**MOST RESPECTFULLY SHEWETH:**

1. That the opposite party F lawfully married the petitioner's mother according to the Hindu rites in the year ..... Your petitioner is the son of the opposite party born of that marriage on .....

2. Your petitioner's mother died on ..... Since his mother's death the petitioner has been living under the care and protection of his maternal uncle.



3. The opposite party, although a man of means, took no notice of the petitioner since his mother's death except by casual enquiries. Your petitioner's maternal uncle went out of job last year and it is somewhat difficult for him now to maintain his family. Your petitioner, the minor son of the opposite party, is now ..... years old and is already in school.

4. Your petitioner's maternal uncle requested the opposite party several times to come forward with some help every month for the education and upbringing of his son, the petitioner.

5. The opposite party has been avoiding his liability to pay for maintenance and education of his child and has not so far paid any sum in spite of repeated requests.

6. The opposite party has a monthly income of Rs. 5000 from salary and house rent and is capable of maintaining his child.

Your petitioner prays that the court may be pleased to issue notice on the opposite party and after taking necessary evidence be pleased to order the opposite party to pay a monthly allowance of Rs. 500 for the maintenance and education of the petitioner, his child.

And your petitioner, as in duty bound, shall ever pray.

*Verification*

I, U, son of MN, residing at ..... do hereby solemnly affirm and say as follows:

1. I am the uncle of the petitioner, M. The petitioner is living with me for the last several years since the death of his mother. I know my sister's husband F since his marriage to my sister, since deceased. I am able to depose to the facts of the case. I am affirming this affidavit for self as also as representative and on behalf of M.
2. The statements in paragraphs 1 to 6 of the foregoing petition are true to my knowledge.

Solemnly affirmed by the said U  
on this ..... of ..... 2000  
at the Court House in Calcutta

Signature

Before me  
Commissioner/Magistrate  
Notary

**Petition by Wife under section 125, Cr PC for Maintenance**

In the Court of ..... Judicial Magistrate 1st Class  
Case No. .... under s. 125, Cr PC

*Petitioner W (wife)*

Daughter of .....  
Village .....  
Thana .....  
Occupation .....

*versus*

*Opposite Party H (husband)*

Son of .....  
Village .....  
Thana .....  
Occupation .....

In the matter of petition for maintenance  
of petitioner W from the husband H under  
s. 125, Cr PC

The humble petition of W (wife), the  
petitioner above-named

MOST RESPECTFULLY SHEWETH:

1. Your petitioner W is the married wife of the opposite party. The marriage between them was solemnised according to the Hindu rites on .....

2. The opposite party H is a clerk on the staff of AB & Co. Ltd. holding a responsible position and drawing salary of Rs. 8000 per month.

3. The opposite party severely assaulted the petitioner on ..... and drove her away from the matrimonial house on ..... in presence of several gentlemen of the locality.

4. That the opposite party leads a life of drunkenness and debauchery. He is besides a man of uncertain temperament and would fly into rage in season and out of season without any reason whatsoever. He has lost all sense of decorum and would use extremely filthy language.

5. Your petitioner after being driven out of the house by the opposite party, came over to her father's place on the same day and has been staying at father's house with his family members.

6. The opposite party was served with a pleader's notice to send your petitioner Rs. 900 every month for her maintenance but with no result. Having regard to the violent temper of H and his inhuman way of beating your petitioner she does not venture to go back to the place of the opposite party.

Your petitioner, therefore, prays that Your Honour may be pleased to issue notice on the opposite party and after taking evidence of both sides be pleased to order the opposite party to pay the petitioner maintenance at the rate of Rs. 900 per month.

And your petitioner, as in duty bound, shall ever pray.



*Verification*

I, W, daughter of MN residing at ..... do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named and I know the facts and circumstances of the case and I am able to depose thereto.
2. The statements in the paragraphs 1, 2, 3, 4, 5 and 6 of the foregoing petition are true to my knowledge and that I have not suppressed any material fact.

Solemnly affirmed by the said  
Mrs. W on the ..... day of .....  
2000 in the Court House at Calcutta

Before me  
Notary

**Petition by Wife for Enforcing Maintenance Allowance Ordered by Court under section 128, Cr PC**

In the Court of..... Judicial Magistrate of .....

*Petitioner* (wife) W .....

*Opposite Party* (husband) H

*versus*

Daughter of .....

Son of .....

Village .....

Village .....

Thana .....

Thana .....

In the matter of petition by the wife for enforcing the order as to the payment of maintenance

The humble petition of petitioner (wife) W

**MOST RESPECTFULLY SHEWETH:**

1. That the opposite party was ordered by Your Honour by Order No. .... dated ..... passed in Case No. 365 to pay a monthly allowance of Rs. 850 to his wife, the petitioner.

2. That since the order the opposite party has not paid any money to the petitioner in terms of the aforesaid order or otherwise. A copy of the order which was furnished to the petitioner by the Learned Court is attached hereto.

Your petitioner prays that after issuing notice to the opposite party Your Honour may be pleased to enquire into the statements made in the petition

and on being satisfied that they are true may be pleased to attach the properties of the opposite party mentioned in the Schedule hereunder for enforcing payment or in the alternative the Learned Court may be pleased to issue a warrant for the arrest of the opposite party and put him into prison for such a period as the Learned Court may deem proper.

And your petitioner, as in duty bound, shall ever pray.

#### *The Schedule*

All that pieces and parcels of land measuring 5 cottahs with two-storeyed building thereon being premises No. .... of .....

#### *Verification*

I, W, daughter of MN and wife of H residing at ..... do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know the facts and circumstances of this case and I am able to depose thereto.
2. The statements in the foregoing petition are true to my knowledge and I have not suppressed any material fact.

Solemnly affirmed by the said W  
on ..... at the Court House  
at Calcutta

Before me

Notary/Proper Officer

#### **Deed of Separation between Husband and Wife**

THIS DEED OF SEPARATION is made on the ..... day of ..... 2000 BETWEEN AB, son of DC, aged 40 years residing at ..... (hereinafter called the HUSBAND) of the one part and BW, wife of AB and daughter of MN, aged about 30 years residing at ..... (hereinafter called the WIFE) of the other part.

WHEREAS differences have arisen between the HUSBAND and the WIFE and they have mutually agreed to live apart from each other and to enter into an arrangement to that effect.

AND WHEREAS the HUSBAND has by the wife four children, namely EF, GH, JK and LM.

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

1. The WIFE may at all times hereafter live separate and apart from the HUSBAND in all respects and neither the HUSBAND nor the WIFE shall interfere with the living of the other.



2. The WIFE shall have the sole custody and control of the aforesaid children and the responsibility of their education and upbringing during their minority but shall allow the husband at all convenient and reasonable times free access and communication with them.

3. The HUSBAND shall pay to the WIFE during her life and so long as she shall continue to live a life of chastity, shall not engage herself in any gainful employment or profession and perform and observe the conditions and terms herein contained, the monthly allowance of Rs. 5000 for her maintenance on the first day of each month in advance commencing from 1st January 2001.

4. The HUSBAND shall pay to the wife in addition to the monthly payments stipulated in cl. 3 above a further monthly sum of Rs. 4000 for the maintenance and education of each of the said children until he or she attains the age of 18 years and the WIFE shall, out of such sum, maintain and educate the said children and shall also keep the HUSBAND indemnified from and against all claims and demands in respect of the maintenance and education of such children.

PROVIDED that if any of the said children before attaining the said age of 18 years dies or is settled in life and begins to earn his or her own livelihood or in the case of female child EF marrying, proportionate allowance herein stipulated to be paid for his or her maintenance shall cease to be payable.

5. The WIFE shall be at liberty to forthwith remove from the husband's house all her wearing apparel, jewellery and personal effects and also such of the further and other household goods and effects at the said house as belong to her as her separate property/stridhan along with children's clothes, dolls, playing or sports goods.

6. The WIFE shall pay and discharge all debts and liabilities incurred by her after the date hereof and keep the HUSBAND, his heirs, executors and administrators indemnified therefrom and if the HUSBAND has to pay any such debt or liability, he will be at liberty to deduct the same from the maintenance allowance of the WIFE.

7. In case the WIFE dies during the lifetime of the HUSBAND, all her separate estates, movables as well as immovable, which remain undisposed of in her lifetime or by will shall go to the person or persons who would become entitled to it if the husband died in her lifetime and the husband shall permit her will to be proved or administration to her estate to be taken out by the person entitled to.

8. If the parties shall reconcile and return to cohabitation or if their marriage shall be dissolved or they shall be judicially separated by reason

of any misconduct of the WIFE or the husband occurring after the date hereof, then and in any such case, all the covenants and provisions herein contained shall become void but without prejudice to the right of any party to take proceedings in respect of any antecedent breach of any such covenant or provisions.

9. This deed shall not stand revoked by the death of the WIFE or the HUSBAND or of any child till the children attain majority and become capable of earning their livelihood. The estate of the HUSBAND shall remain charged with the payment of the said maintenance.

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

Signed and delivered by AB in the presence of:

Signed and delivered by BW in the presence of: