

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE**

Appeal No. 144/2024 (WZ)

ALCHEMIST

ASSET

RECONSTRUCTION COMPANY LTD. ...Appellant

V/s.

GOA COASTAL ZONE MANAGEMENT

AUTHORITY & Anr.

...Respondents

**ADDITIONAL AFFIDAVIT IN REPLY ON
BEHALF OF RESPONDENT NO. 2.**

MAY IT PLEASE YOUR LORDSHIP:

I, **MR. SELSO FERNANDES**, resident of H. No. 439, Val Aframento, Agonda, Canacona, Goa, 403702, the Respondent No. 2 herein, do hereby solemnly affirm and state as follows:

1. I say that I have been served with a copy of the rejoinder filed by the Appellants in the present appeal on 06.01.2025. In view of the averments made in the said rejoinder, I crave leave to file present additional affidavit for the limited purpose of disputing the allegations made in the rejoinder

and to place on record Deed of Rectification dated 23.09.2020, which was duly registered in the office of the Sub Registrar at Canacona.

2. At the outset, I deny all averments and/or allegations made in the Affidavit in Rejoinder and reiterate the contents of the Affidavit in Reply filed by me.
3. I say that the Deed of Rectification dated 23.09.2020, which is duly registered in the office of the Sub Registrar at Canacona and was produced by the Appellants in the Original Application No. 15/2023. I say that a Rectification Deed was made and executed between the parties to rectify errors in the description of the structures contained in the original Deed of Lease dated 12.09.2016. However, it is apparent that despite rectifying errors in the Lease dated 12.09.2016, some errors crept in the Deed of Lease dated 23.09.2020, which was relied by the Appellant before this Hon'ble Tribunal.



4. I say that I further place reliance upon the Memo of Writ Petition filed before the Hon'ble High Court of Bombay at Goa, registered as Writ Petition No. 13/2021, filed jointly by Duggal Projects Development Company Pvt. Ltd. and the Appellant herein, both represented through the duly appointed Resolution Professional. It is material to note that though the Appellant herein is presently distancing itself from the letter dated 12.06.2019, at the relevant point in time, the Appellant and Resolution Professional worked in tandem, which is apparent from the averments in the Writ Petition No. 13/2021.



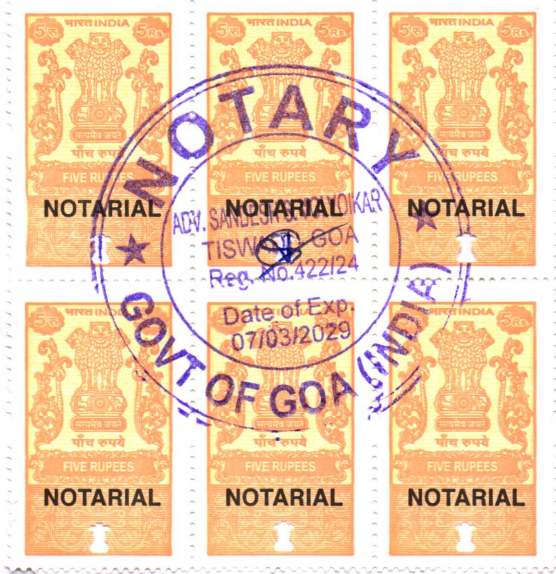
5. I say that I rely on the true and correct interpretation of the documents placed on record and respectfully submit that the same be considered while deciding the matter.

6. I say that the contents of the present Additional Affidavit in Reply at Paragraph Nos. 1 to 5 above are true and correct to my personal knowledge and belief and/or based on information derived from the records and/or inferences.

A handwritten signature in blue ink, appearing to be 'A. A.', located at the bottom center of the page.

Solemnly affirmed at Panaji, Goa,
On this 15th day of January, 2025.

DEPONENT



SOLEMNLY AFFIRMED AND VERIFIED
BEFORE / ME BY Mr. Selsa Fernandes
WHO IS IDENTIFIED BEFORE/ME
BY Aadhar No. 6606 7085 3073
WHOM I KNOW
SERIAL NO. 190 DATED 15/1/2025

Sandesh S. Volvoikar
ADVOCATE & NOTARY
Govt. of Goa (India)
Panaji, Tiswadi - Goa 403 001



गोवा GOA

Date: 24/12 Sr. No. 2705 Vendor's Name & Address: 572100
 Value of Stamp Paper Rs. 1000 Chandrakant B Naik
 Vendor's Licence No. JUDV/11/IC H. No. 239/1, Delem
 2/2005/AC, Panaji
 Canacona-Goa
 Place of Vendor: Panaji
 Name of Purchaser: Vijay G. Komarpant -
 Residence: Panaji Rehabilitation to Deed
 Name of Father: A. Komarpant -
 Transacting Parties: One party
 Sign of Stamp Vendor: [Signature] Sign of Purchaser: [Signature]



Vijay G. Komarpant [Signature]

DEED OF RECTIFICATION OF LEASE

[Signature] [Signature]

...2/-



---2---

This Deed of Rectification of lease is made at Canacona- Goa, on this 23rd day of the month of September, of the year Two Thousand and Twenty;

BETWEEN

1) MR. SELSO AMARO PRESENTACAO FERNANDES,

son of late Mr. Pedro Antonio Fernandes, aged 60 years, occupation business, PAN card Number ABCPF1940P and having Addhaar Card No: 660670853073, having contact number 7798435441, along with his wife;

2) MRS. CONCEICAO FERNANDES, daughter of Mr.

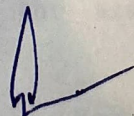
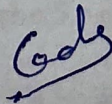
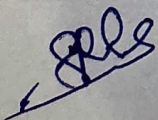
Joaquim Fernandes, aged 53 years, married, housewife, PAN card Number No: ACYPF1053G, and having Addhaar Card No: 781007989966, having contact number 8408829021, both above are Indian Nationals, residing at H. No: 439, Val Aframento Agonda, Taluka Canacona, hereinafter referred to as "**LESSORS**" (which expression shall unless repugnant to the context or meaning thereof include their heirs, successors, legal representatives, executors, administrator and assigns) of the **OF THE FIRST PART.**

...3/-

AND

1) MR. VIJAY GOKULDAS KOMARPANT, son of Mr. Gokuldas Komarpant, aged 44 years, married, businessman, Indian National, having Pan Card No: AMLPK3435A, Adhaar Card No:262051370772, having contact number 9673501912, resident of Omkar Building, near Bus Stand Canacona, Goa hereinafter referred to as "LESSEE" (which expression shall unless repugnant to the context or meaning thereof include his heirs, successors, legal representatives, executors, administrator and assigns) of the **OF THE SECOND PART**

AND WHEREAS, there exists two houses/structures bearing House no: 438 and 439 located at Val Agonda, Taluka, Canacona, Goa and existing in the land bearing Survey No: 100/10 of Village Agonda of Canacona Taluka, within the Village Panchayat of Agonda, which houses belong to the Lessors and are better described in **SCHEDULE I** herein under and hereinafter referred to as said houses.



...4/-

AND WHEREAS, the Lessors have declared and represented to the Lessee the following:-

- a) That the said houses are owned by the Lessors and shown recorded in the record of rights of Village of Agonda, Cancona, Taluka, maintained in Form I and XIV in name of Ms. Maria Florenca Fernandes, the mother of Lessor No: 1 and accordingly her name appears in the Column "other rights" of said Form I and XIV, however, in the records of Village Panchayat of Agonda, the houses are now found registered in the name of the Lessor No: 1.

- b) That the Lessor No: 1 is regularly paying house tax in respect of both above said houses.

- c) The said houses are registered in the office of the Department of Tourism, Government of Goa as Guest House and the same is certified by Certificate dated 15/6/2016, bearing No: HOTS000250, which registration was valid till 31/3/2017 and thereafter time to time renewed with the assistance and sponsorship. of the Lessee



...5/-

- d) There is an existing motorable road by which the two houses are accessible and which the road would be available to use of and by Lessee as also the prospective customers of the business.
- e) The said houses are suitable for conducting the business of hotel and restaurant.
- f) That the said houses have electrical connection which would available for the use of Lessee.
- g) That the Lessors hold a license from the Department of Excise, Government of Goa for retail sale and Indian made foreign liquors/country liquor and the said license is bearing No: RS/IMFC&CL/CONS/275.
- h) That exists a Well between the said two houses which is available for exclusive usage of the Lessee for commercial purpose.

...6/-





---6---

AND WHEREAS, the Lessee is engaged in the business of hotel and hospitality and desirous of conduct hotel business in the said two houses.

AND WHEREAS, on the basis of the assurances and representations mentioned in the Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016 and made herein above, the Lessee evinced interest in taking the said two houses and the land beneath them on lease on the terms and conditions mentioned in the said Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016.

AND WHEREAS, inadvertently there have been some errors/omissions in the said Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at

...7/-



---7---

Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016, with regard to the description of the said houses, tenure of the lease period and furthermore, the payment of lease rent to the Lessors.

AND WHEREAS, pursuant to Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016 and the Power of Attorney dated 8/9/2016, executed by the Lessors in favour of the Lessee, before Adv. F. Bhangui, Margao, Salcete, Goa, under No: 936 on 8/9/2016, the Lessee has obtained permissions for reconstruction and repair, Goa Coastal Zone Management Authority, Town and Country Department, Village Panchayat of Agonda and other statutory bodies to reconstruct, repair and renovate the said houses.

...8/-



---8---

AND WHEREAS, the Goa Coastal Zone Management Authority vide letter dated 4/4/2017, bearing No: GCZMA/S/16-17/70/35, communicated to the Lessee that in their 144th meeting which was held on 21/3/2017, the GCZMA examined the proposal for reconstruction the aforesaid house bearing No: 438 and granted consent/approval to re-construct the existing house bearing No: 438 subject to conditions enumerated in letter dated 4/4/2017 and as per plan annexed to the said letter.

AND WHEREAS, the Goa Coastal Zone Management Authority vide letter dated 4/4/2017, bearing No: GCZMA/S/16-17/69/35, communicated to the Lessee that in their 144th meeting which was held on 21/3/2017, examined the proposal for reconstruction the aforesaid house bearing No: 439 and granted consent/approval to re-construct the existing house bearing No: 439 subject to conditions enumerated in letter dated 4/4/2017 and as per plan annexed to the said letter.

....9/-



pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016, in respect of the said house in the manner stated herein below.

**NOW THIS DEED OF RECTIFICATION
WITNESSETH AS UNDER:**

1. That on page 12 in 3rd Covenant, line 9th of the said Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016, after words "and renovation" and before words "and other related work" words **"and re-construction"** be added
2. That on page 13 in the 4th covenant last line of the said Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016, after words "Mrs. Chetan Vijay Komarpant add words **"and their children"**.

---11---

3. That on page 13 in the 6th covenant 6th line of the of the said Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016, after words "resolved by arbitration by Sole Arbitrator" remove/delete words "**Adv. Fatu B. Bhaangui, presently having office at Adelina Apartment, behind Civil Court, Old Market, Margao, Goa**" and substitute word "**under**"
4. On Page 14 after end of 6th Covenant in the of the said Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016 add following:



...13/-

SCHEDULE I
(SAID HOUSES)

All those two structures which are constructed on part of all that landed property known as "VAL" situated at Val, within the jurisdiction of the Village Panchayat Agonda, Taluka and Sub-District of Canacona, District of South Goa, state of Goa, which is not described in the Land registration office of Quepem nor enrolled in taluka revenue office of Canacona but Survey under No: 100/10 of Village Agonda of Canacona Taluka, within the Village Panchayat of Agonda and said two structures are registered in the House Tax Assesment register of the Village Panchayat of Agonda under H. No: 438 and 439 having a Well between them and both the houses are collectively bound on four sides as under:-

On the West:- Beach land bearing Survey No: 151

On the East: - Property bearing Survey No: 100/11 and & also katcha road access in survey no: 100/10

On the North:- Property bearing Survey No: 100/8

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[Handwritten signature]

[Handwritten checkmark]

..13/-

---13---

On the South:- Property bearing Survey
No: 100/12 and 100/13

5. This Deed of Rectification is to be construed for all purposes to be a part of the original Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016 and has to be read along with the said Deed of Lease dated 12/9/2016, registered in the office of the Sub Registrar at Canacona under registration No: 317, at pages 190 to 213, Book No: 1 Volume No: 315, registered on 16/9/2016.

SCHEDULE - I

(DESCRIPTION OF THE SAID HOUSES)

All those two structures which are constructed on part of all that landed property known as "VAL" situated at Val, within the jurisdiction of the Village Panchayat Agonda, Taluka and Sub-District of Canacona, District of South Goa, state of Goa, which is not described in the Land registration office of Quepem nor



...14/-

...14...

enrolled in taluka revenue office of Canacona, but Survey under No 100 sub division 10 of Village Agonda of Canacona Taluka, within the Village Panchayat of Agonda and registered in the House Tax Assesment register of the Village Panchayat of Agonda under H No 438 and 439 having a Well between them and both the houses are collectively bound on four sides as under:-

On the West:- Beach land bearing Survey No: 151

On the East :- property bearing Survey No: 100/11 and & also katcha road access which

On the North :- property bearing Survey No: 100/8

On the South:- property bearing Survey No: 100/12 and 100/13

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands on the day and the year first hereinabove written.



...15/-

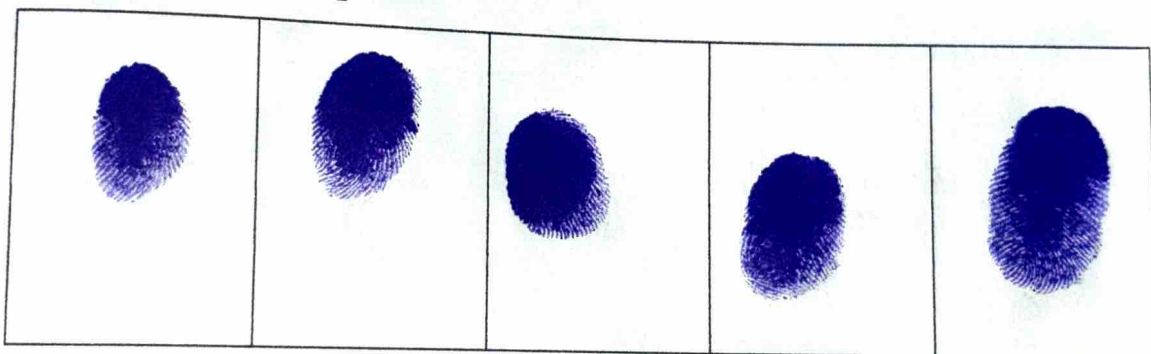
SIGNED, SEALED AND DELIVERED)
BY THE WITHIN NAMED LESSORS)



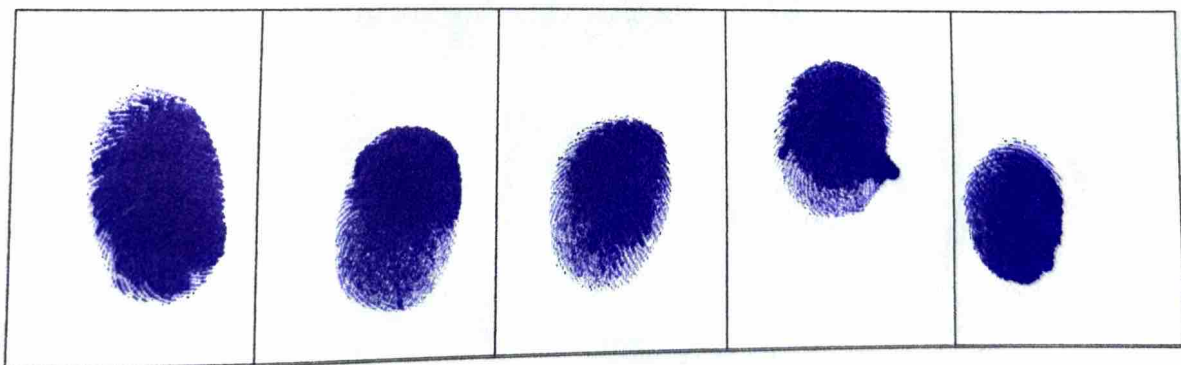
1

MR. SELSO AMAROPRESENTACAO FERNANDES

Left hand finger prints



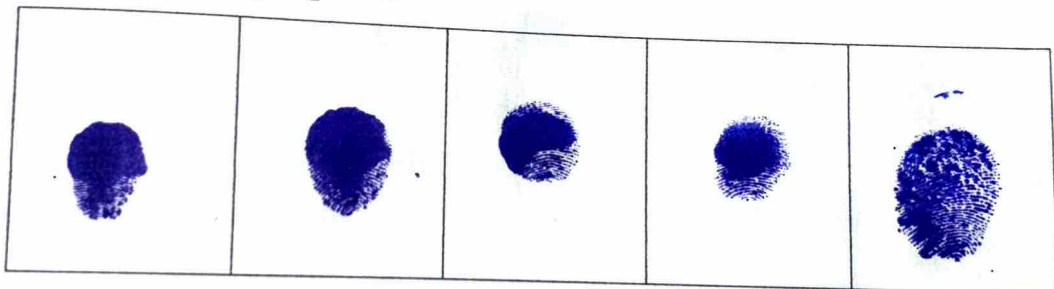
Right hand finger prints



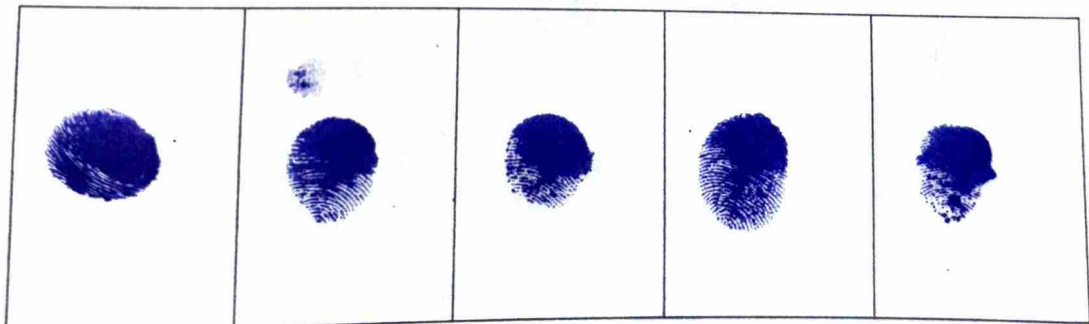


2 *cf*
MRS. CONCEICAO FERNANDES

Left hand finger prints



Right hand finger prints



SBC *cf* *h*

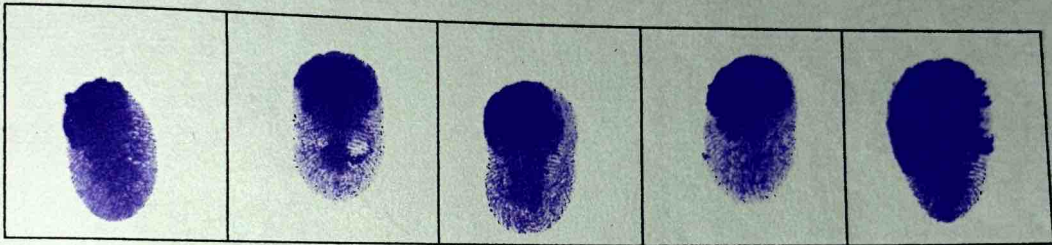
SIGNED SEALED AND DELIVERED) BY THE WITHINAMED LESSEE)



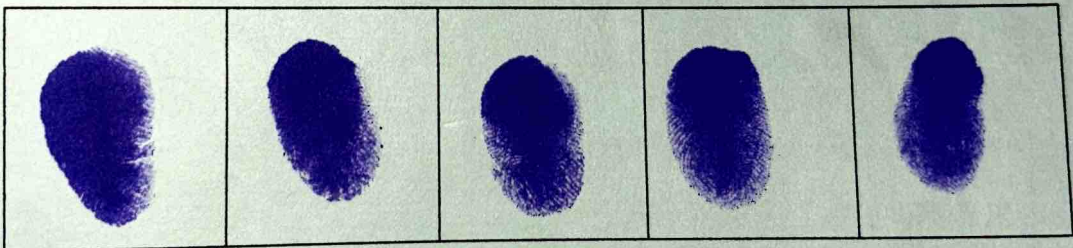
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MR. VIJAY GOKULDAS KOMARPANT

Left hand finger prints



Right hand finger prints



In the presence of:-

1. KUSHWANT BHAGAT

[Handwritten signature of Kushwant Bhagat]

2. Rama P. Pagi

[Handwritten signature]

[Handwritten initials/signatures]

2020-CAN-123

Document Registration Summary 1

Date :-28-Sep-2020

Office/2020-CAN-123

- Market Value: ₹0/-
- Consideration Amount: ₹1320000 /-
- Paid Stamp Duty: ₹1000 /-

On Date 28-09-2020 Presented at Office of the Civil
Registrar-cum-Sub Registrar, Canacona
Signature of Presenter

Receipt : 143075

Receipt Date : 28-09-2020

Presenter Name: VIJAY KOMARPANT

Registration Fee ₹1000

Stamp Duty ₹1000

Processing Fee ₹340

Office of the Civil Registrar-cum-Sub Registrar,
Canacona


**SUB-REGISTRAR
CANACONA**

Total ₹2340

Payment Head	Amount To Be paid	Paid Amount	Balance Amount	Payment Mode	Payer Name	Reference No.	Payment Amount
Stamp Duty	1000	1000	0	Stamp Paper		Stamp Paper Serial Number : 572100	1000
Registration Fee	1000	1000	0	E-Challan		Challan Number : 202000759619 CIN Number : CPAAHZHIG3	1000
Processing Fee	340	340	0	E-Challan		Challan Number : 202000759619 CIN Number : CPAAHZHIG3	340
Sub Total	2340	2340	0				

Article : Rectification



Government of Goa

Document Registration Summary 2

Office of the Civil Registrar-cum-Sub Registrar, Canacona

Print Date & Time : - 28-Sep-2020 01:09:10 pm

Document Serial Number :- 2020-CAN-123

Presented at 12:09:35 pm on 28-Sep-2020 in the office of the Office of the Civil Registrar-cum-Sub Registrar, Canacona along with fees paid as follows

Sr.No	Description	Rs.Ps
1	Stamp Duty	1000
2	Registration Fee	1000
3	Processing Fee	340
	Total	2340

Stamp Duty Required :1000







Stamp Duty Paid : 1000

Presenter

Sr.NO	Party Name and Address	Photo	Thumb	Signature
1	VIJAY KOMARPANT ,S/o - D/o GOKULDAS KOMARPANT Age: 44, Marital Status: Married ,Gender:Male,Occupation: Business, Address1 - OMKAR BUILDING NEAR BUSSTAND CANACONA GOA, Address2 - , PAN No.: AMLPK3435A			







Recorder

Sr.NO	Party Name and Address	Photo	Thumb	Signature
1	SELDO AMARO PRESENTACAO FERNANDES ,S/o - D/o PEDRO ANTONIO FERNANDES Age: 60, Marital Status: Married ,Gender:Male,Occupation: Business, Address1 - H NO 439 VAL AFRAMENTO AGONDA CANACONA GOA, Address2 - , PAN No.: ABCPF1940P			

Sr.NO	Party Name and Address	Photo	Thumb	Signature
2	CONCEICAO FERNANDES ,S/o - D/o JOAQUIM FERNANDES Age: 53, Marital Status: Married ,Gender:Female,Occupation: Housewife, Address1 - H NO 439 VAL AFRAMENTO AGONDA CANACONA GOA, Address2 - , PAN No.: ACYPF1053G			
3	VIJAY KOMARPANT ,S/o - D/o GOKULDAS KOMARPANT Age: 44, Marital Status: Married ,Gender:Male,Occupation: Business, Address1 - OMKAR BUILDING NEAR BUSSTAND CANACONA GOA, Address2 - , PAN No.: AMLPK3435A			

Witness:

We individually/Collectively recognize the First Party, Second Party,

Sr.NO	Party Name and Address	Photo	Thumb	Signature
1	KUSHWANT RAMA BHAGAT, 39 , ,9822153903 , ,Business , Marital status : Married 403702, BHAGATWADA NAGARCEM PALOLEM CANACONA GOA, BHAGATWADA NAGARCEM PALOLEM CANACONA GOA Nagorcem-palolem, Canacona, SouthGoa, Goa			
2	RAMA PAGI, 48 ,1971-10-24 ,9860837733 , ,Business , Marital status : Married 403702, PALOLEM CANACONA GOA, PALOLEM CANACONA GOA Nagorcem-palolem, Canacona, SouthGoa, Goa			

Sub Registr

SUB-REGIST
CANACON



Document Serial No:-2020-CAN-123

Book :- 1 Document
Registration Number :- **CAN-1-119-2020**
Date : 28-Sep-2020

Sub Registrar(Office of the Civil Registrar-cum-Sub Registrar, Canacona)

**SUB-REGISTRAR
CANACONA**

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 13 of 2021

IN THE MATTER OF STATUTORY
AUTHORITY CAN TAKE INTO
CONSIDERATION A COLLUSIVE
DECREE MADE BY PARTIES TO
THE EXCLUSION OF PARTIES
RELATED TO SUBJECT MATTER
OF ISSUE.

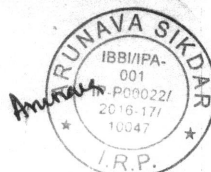
AND

IN THE MATTER WHERE
RESPONDENT NO.1 ARE
BOUND TO ACT ON THE BASIS
OF COLLUSIVE DECREE
PRESENTED BEFORE THEM OR
IGNORE THE SAME AS THE
SAME IS NOT BINDING TO ANY
OTHER PARTY OF AUTHORITY
WHO IS NOT A PARTY

AND

IN THE MATTER OF ARTICLE 226
AND 227 OF THE CONSTITUTION
OF INDIA

1. DUGAL PROJECTS DEVELOPMENT COMPANY PVT. LTD.
THROUGH RESOLUTION PROFESSIONAL
MR. ARUNAVA SIKDAR
HAVING ITS REGISTERED OFFICE AT:
MOHATTA BHAVAN, 4TH FLOOR
10, DR. E. MOSES ROAD, MUMBAI – 400 018



ALSO AT:

DUGAL PROJECTS DEVELOPMENT COMPANY PVT. LTD.
THROUGH RESOLUTION PROFESSIONAL
MR. ARUNAVA SIKDAR
HAVING OFFICE AT:
C-10, LGF, Lajpat Nagar, Part-III, NEW DELHI- 110024

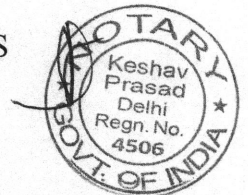
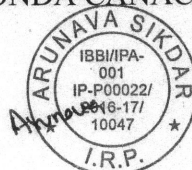
2. ALCHEMIST ASSETS RECONSTRUCTION
COMPANY LIMITED
THROUGH MR. AKSHAT SHARMA AUTHORIZED
REPRESENTATIVE
A - 270, 1st & 2ND FLOOR,
DEFENCE COLONY, NEW DELHI- 110024

....PETITIONERS

VERSUS

1. GOA COASTAL ZONE MANAGEMENT AUTHORITY
GOA HOUSING BOARD, PENHA DE FRANÇA
GOA - 403 521
2. M/S.COSTEIRO AZUL RESORTS
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN
PARTNERSHIP ACT, 1932
REGISTERED OFFICE AT H.NO. 259/C, GAVON, NEAR
KHURSABHAT, CAMORLIM, SALCETE, GOA
REPRESENTED BY ITS MANAGING PARTNERS
A) MR. DATTARAJ SAWANT
B) MRS. ARATI MENON
3. DR. SUBHASH. P. DESAI
AGED 70 YEARS
S/O. DR. PURSO DESAI R/O. SUVID, 13
R/O. 'SUVID' 135, NANDANVAN SOCIETY
SECTOR-17, LANE 7, NERUL, NAVI MUMBAI, MUMBAI
MAHARASHTRA - 400706
4. DR. VIDYA S. P. DESAI
W/O. SHRI. SUBHASH P. DESAI
R/O. 'SUVID' 135, NANDANVAN SOCIETY
SECTOR-17, LANE 7, NERUL, NAVI MUMBAI, MUMBAI
MAHARASHTRA - 400706
5. SHRI SADANAND ANANT NAIK GAUNKAR ALIAS
VINOD ANANT NAIK GAUNKAR
KARASHIR MOLL AGONDA
BEACH AGONDA CANACONA, 403702
6. SMT. PRAFULLA SADANAND NAIK GAUNKAR
KARASHIR MOLL AGONDA
BEACH AGONDA CANACONA, 403702

....RESPONDENTS



o All registered addresses as available.

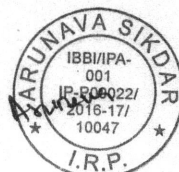
MAY IT PLEASE YOUR HONOUR

The Petitioners above named most respectfully states and submits as under:

1. The Petitioner is a citizen of India and as such is entitled to protection under the Constitution of India. The Petitioners are filing the present Writ Petition, *inter alia*, seeking a writ of certiorari, and/ or any other appropriate writ of this Hon'ble Court to declare that the proceedings instituted by the Respondent No.2, in the capacity of being a Lessee of Respondent Nos. 3 and 4, before the Respondent No.1 Authority seeking clearance for project attracting CRZ Notification to carry out construction on a piece of land admeasuring 1,125 sq. mt. in property known as "Tambdem" surveyed under Survey no.101/1 (part) and 833.30 sq. mt. in the same property surveyed under Survey No.101/3 (part) of Village Agonda of Canancona Taluka in the State of Goa (hereinafter referred to as 'the demised property'), be declared null and void and consequentially be set aside.

Annexed hereto and marked as
Copy of the Proceedings before
the Respondent No. 1
Authority is annexed as
ANNEXURE A.

2. The Petitioner No. 1 Company being under the Corporate Insolvency Resolution Process is being represented by the Resolution Professional being appointed by the Ld. NCLT, Mumbai. It is submitted that the Petitioner No.1 Company is the owner of 358814 sq. meters situated at Agonda, South Goa.

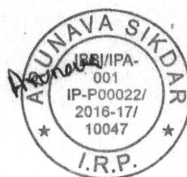


3. The Petitioner No. 2 Company is an Asset Reconstruction Company and has acquired the debt from the original lender and is now the sole financial lender of the Petitioner No. 1 Company. The total land area of 358814 sq. meters is mortgaged to Petitioner No. 2 and the land parcel under Survey No. 101/1 which admeasure 4062 sq. meters and under Survey No. 101/3 which admeasure 10626 sq. meters totaling to 14688 sq. meters is a part of the mortgage property.
4. The facts leading to the filing of the present petition are delineated as under:

4.1 It is most respectfully submitted before this Hon'ble Court, that the Respondents No. 3 to 6 had played a fraud on the legal system by obtaining the alleged collusive consent decree dated 14.11.2008 and using the said collusive consent decree to obtain the consent of CRZ authority for approval of the construction of the Hotel at the site and to use this collusive consent decree for other legal forms to deprive the Petitioners of their rights under the law.

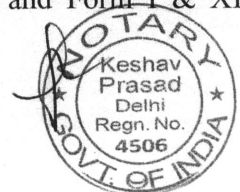
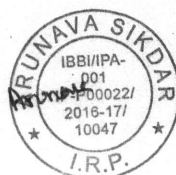
4.2 It is most respectfully submitted before this Hon'ble Court that the fraud of the Respondents 3 to 6 is crystal clear from the facts as mentioned below:-

- a. The Total area in $\frac{1}{4}$ Tambden is totaling 23500 sq. meters under Survey No. 101/1 which admeasure 6500 sq. meters, and under Survey No. 101/3 which admeasure 17500 sq. meters.
- b. Chart showing actual owners of the said land under Survey No. 101/1 & 101/3 is below:-



S.NO	PARTICULARS OF LAND OWNERS	LAND UNDER SURVEY NO. 101/1 (sq. meters)	LAND UNDER SURVEY NO. 101/3 (sq. meters)
1.	Petitioner No. 1 through Sale Deed (Serial No. 54/87)	271	709
2.	Petitioner No. 1 through Sale Deed (Serial No. 163/82)	406	1063
3.	Petitioner No. 1 through Sale Deed (Serial No. 160/82)	135.5	354
4.	Petitioner No. 1 through Sale Deed (Serial No. 72/82)	1625	4250
5.	Petitioner No. 1 through Sale Deed (Serial No. 73/82)	1625	4250
A	Total Land Parcel in favor of Petitioner No. 1	4062.5	10626
6.	Renu Narula (As per Form I & XIV)	-	594
7.	Karan Grover (As per Form I & XIV)	575	-
B	Total Land Parcel in favor of 6 & 7	575	594
A+B	Total land parcel	4637.5	11220
	Balance Land available	1862.5	6280
	Land as Claimed by the Respondent No. 3 & 4	2825	-
	Land as Claimed by the Respondent No. 5 & 6	-	2133.30

Annexed hereto and marked as
Copies of the above mentioned
sale deed and Form I & XIV



are annexed as ANNEXURE B

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A bare perusal of the above chart demonstrates that the balance land under Survey No. 101/1 is only 1862.5 sq. meters and to utter shock and surprise the Respondent Nos. 3 to 6 in the said collusive consent claim to be the purported owner of land admeasuring 1125 sq. meters and 1700 sq. meters totaling to 2825 sq. meters under Survey No. 101/1. That the said fact clearly demonstrates that a fraud has been played by the Respondent No. 3 to 6, on the basis of the said fraud they had misguided the court to pass the said alleged collusive consent decree dated 14.11.2008. By way of this fraudulent collusive decree, the following benefits have been arrogated by the Respondent No. 3 to 6 to themselves. Survey No. 101/1 is one the beach front and Survey No. 101/3 is on the back. The Respondent No. 3 to 6 have taken 2825 sq. meters in 101/1 out of only 1862.5 sq.meters available and have taken 2133.30 sq. meters out of 6280 sq. meters available. Thereby snapping the beach front land against the land at the back of the property.

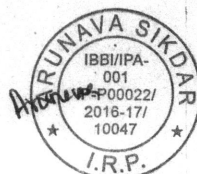
4.3 The Respondent No. 3 to 6 have demarcated the alleged land available to themselves and have bifurcated/divided the land in the survey No. 101/1 & 101/3 for their own self-serving interest without any process of law. It is also submitted that the Respondent had squatted on the land on the beach front to the prejudice of all other co owners of the land.

4.4 On the basis of the said alleged collusive consent decree dated



14.11.2008 a lease deed 11.01.2020 was executed Respondent Nos. 3 & 4 in favor of Respondent No. 2 and the same is now being relied upon in the proceedings before Respondent No. 1 authority. It would not be out of place to mention herein that the Respondents are now trying to use the said alleged collusive consent decree dated 14.11.2008 as a tool for their own wrongful gains.

4.5 It is most respectfully submitted that in the said proceedings so called collusive consent decree dated 14.11.2008 was passed by the Court of Adhoc District Judge –II, Fast Track Court-II, South Goa, at Margao in Special Civil Suit No. 21 of 2007 has been submitted by the Respondent No. 2 to claim that in the said decree the area has been demarcated with respect to the ownership of the part of the said land in Survey Nos. 101/1 & 101/3 which has been leased out to the said Respondent No.2. It is submitted that by way of the said decree, the alleged consent terms arrived at between the Plaintiffs and Defendants therein (Respondent Nos. 3 to 6 herein) were taken on record and the Suit bearing Special Civil Suit No. 21 of 2007 was decreed in terms of the alleged compromise arrived therein. It is pertinent to mention herein that the Respondent Nos. 3 and 4, are claiming their alleged right, title, interest, purported demarcation and possession over the respective properties. It is submitted at the outset that the filing of Special Civil Suit No. 21 of 2007 appears to be collusive and a complete sham and a tactic to obtain an order which would entitle them with purported division and demarcation of the property, thereby arrogating to themselves the most commercially exploitable part of the property on the side of the



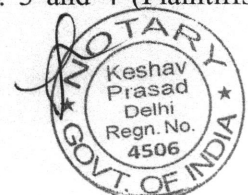
beach front thereby defeating the rights and interest of the other owners of the property.

4.6 It is pertinent to mention herein that the entire undivided and undemarcated land under Survey No. 101/1 which admeasure 6500 sq. meters and under Survey No. 101/3 which admeasure 17500 sq. meters totaling to 23500 sq. meters and Respondent Nos. 3 to 6 allegedly claiming an area of 4958 sq. meters in the entire undemarcated and un-divisoned area under Survey No. 101/1 and under Survey No. 101/3. It is further pertinent to mention herein that admittedly the Petitioner is the owner of 14,688 sq. meters on the said land under Survey Nos. 101/1 (4062.5 sq. meters) and 101/3 (10626 sq. meters) and there are other land owners on the said undemarcated and un-divisoned area of Survey Nos. 101/1 and 101/3 admeasuring.

4.7 That on the basis of the said collusive consent decree the Respondents No. 3 and 4 had entered into a lease deed dated 11.01.2020 for the demised premises with Respondent No. 2. The Respondent No. 2 has filed an application seeking permission with the Respondent No.1 Authority for construction on demised premises.

Annexed hereto and marked as
Copy of the lease deed dated
11.01.2020 is annexed as
ANNEXURE C.

4.8 That, for the ready and kind perusal of this Hon'ble Court, the prayers as sought for by the Respondent Nos. 3 and 4 (Plaintiffs



therein) in Special Civil Suit No. 21 of 2007 are quoted hereinunder:

- a) *That by Judgment, Order and Decree of this Hon Court in the nature of permanent injunction; the defendants, their servants, agents, relatives and/or whoever coming through the Defendants be permanently restrained from doing any constructions or raising structures and changing the nature of the land and conduct any business or any other activity in the "said Property" forming part of property surveyed under Survey No. 101/1 & 101/3 of Village Agonda.*
- b) *That by Judgment, Order and Decree of this Hon. Court in the nature of mandatory permanent injunction, the defendants be direct to demolish all the structures raised in the suit property and/or remove mud. Material etc. and restore the land to its original position.*
- c) *Pending hearing and final disposal of the case; ex-parte temporary injunction be granted in terms of prayers (a) & (b) above.*
- d) *Costs.*
- e) *Any other Order that this Hon. Court deems it fit and proper.*

4.9 That further, for the ready and kind perusal of this Hon'ble Court, the alleged consent terms arrived at between the Respondent Nos. 3 to 6 (Plaintiffs and Defendants therein) in Special Civil Suit No. 21 of 2007 are also quoted hereinunder:

- a) *That the Plaintiffs and the Defendants admit that Plaintiffs are in peaceful possession and enjoyment as owners thereof of an area of 1958.30 sq. m. i.e. an area of 1,125 sq.m. in property known as Tambdem surveyed under Survey No. 101/1 (part) and 833.30 sq.m. in the same property surveyed under Survey No. 101/3 (part) of Village Agonda of Canacona Taluka in the State of Goa; as shown in the plan annexed hereto and duly signed by both the parties.*
- b) *Plaintiffs and Defendants agree that the Defendants are in peaceful possession and enjoyment as owners thereof of an area of 3000 sq. m. i.e. an area of 1700 sq. mt. in property known as Tambdem surveyed under Survey No.101/1 (part) and 1300 sq.m. in the same property surveyed under Survey No. 101/3 (part) of village Agonda of Canacona Taluka in the State of Goa; as shown in the plan annexed hereto and duly signed by both the Parties.*
- c) *That the Plaintiffs and Defendants agree that hereafter they shall not claim any right or interfere in the above described each others property.*
- d) *The Suit thereof be disposed off in terms above.*



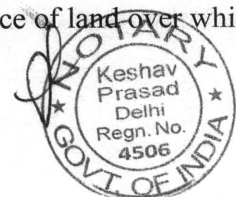
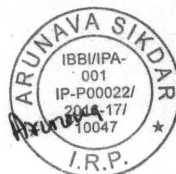
Annexed hereto and marked as Copy of the consent decree dated 14.11.2008 is annexed as **ANNEXURE D.**

4.10 It is most respectfully submitted the above mentioned collusive consent terms are completely fraud is as much as by the said collusive consent decree the Respondents 3 to 6 have obtained a decree showing ownership of 1125 sq. meters and 1700 sq. meters aggregating to 2825 sq. meters under Survey Nos. 101/1 whereas as per the Chart above the available land parcel in Survey No. 101/1 is only 1862.5 sq. meters.

4.11 That on the premise of the alleged consent decree dated 14.11.2008 the Respondent No. 2, being a Lessee of the Respondent Nos. 3 and 4 has preferred before the Respondent No.1 Authority an application seeking clearance for project attracting CRZ Notification to carry out construction over the demised premises on which admittedly no demarcation has been done even till date. It is further pertinent to mention herein that the alleged map of demarcation is drawn up by the said Respondents No. 3 to 6 collusively and is not authorized by any Authority and/ or any Revenue Court.

5 It is pertinent to note the following points:-

5.1 It is pertinent to mention herein that the Respondent No.1 Authority while dealing with the said application has issued a notice upon the Petitioner No. 1 asking him to file a reply to the same. However, it is most pertinent to mention herein that the piece of land over which



Respondent Nos. 3 to 6 have obtained an alleged collusive consent decree forms a part of a larger area of land in Survey Nos. 101/1 and 101/3. Land aggregating to approximate 14688 sq. mt. is under the ownership of the Petitioner No. 1 in of Survey Nos. 101/1 admeasuring 4062.50 sq. meters and 101/3 admeasuring 10626 sq. meters. It is also pertinent to mention that the entire area of land under Survey Nos. 101/1 and 101/3 is an undivided piece of land wherein no physical demarcation has ever been carried out till date to identify which piece of land belongs to which party.

5.2 That in case the application filed by the Respondent No.2 before the Respondent No.1 Authority is allowed and an order of clearance for project attracting CRZ Notification to carry out construction over the demised premises is granted in their favor, the same shall have a cascading and huge financial loss to Petitioners.

5.3 That the Respondent No.1 is constituted by Ministry of Environment and Forest, Government of India in exercise of power conferred by subsection (1) and (3) of section 3 Environment(Protection) Act, 1986. The mandate of the authority is to take measures for protecting and improving the quality of coastal Environment and preventing, abating and controlling environmental pollution in the areas of State of Goa. The powers and functions of the authority are subject to supervision and control of Central Government of India.

5.4 That the Respondent No.2 is a Lessee under a Deed of Lease dated 11.01.2020 executed with Respondent Nos. 3 and 4. By way of the said Lease Deed, the demised property has been granted to the



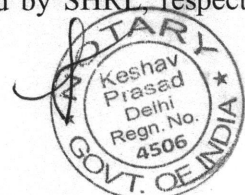
Lessee on lease for a period 60 months for conducting hospitality business and for that purpose to erect temporary huts / structures, commencing from 11.01.2020 to 11.01.2025 on a yearly rent of Rs.5,00,000/-.

6 That the facts and circumstances leading to filing of the present Writ Petition are as under:

6.1 A company namely Sima Hotels & Resorts Ltd. (hereinafter referred to as 'SHRL') had taken financial assistance from Industrial Finance Corporation of India (hereinafter referred to as 'IFCI'), Industrial Development Bank of India (hereinafter referred to as 'IDBI'), and, Industrial Credit & Investment Corporation of India (hereinafter referred to as 'ICICI') (hereinafter collectively referred to as 'Financial Institutions') for setting up a hotel project at Agonda in Goa.

6.2 The Petitioner No. 1 is the owner of a piece of land admeasuring 358814 sq. mt. situated at Village Agonda, Distt. Cancona, Goa. The abovementioned piece of land admeasuring 358814 sq. mt. situated at Village Agonda, Distt. Cancona, Goa was leased out to SHRL *vide* a Lease Deed dated 25.11.1987 for a period of 98 years upon payment of a rental of Rs.9,00,000/- per year. It is pertinent to bring to kind notice of this Hon'ble Court, that the admittedly Petitioner No. 1 Company had mortgaged the said land parcel to the Lenders for the loan facility availed by SHRL. Further the Petitioner No.1 Company also stood as the Corporate Guarantor for the loan facility availed by SHRL.

6.3 As there was continuous defaults committed by SHRL, respective

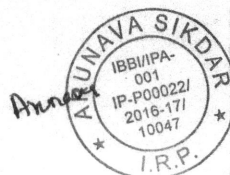


actions seeking recall / recovery of credit facilities were initiated by the Financial Institutions abovenamed both against SHRL and the Petitioner.

6.4 In view of non-repayment of the dues inspite of demand notices, the Financial Institutions abovenamed filed, in August 1990, a Civil Suit before the Hon'ble High Court of Bombay seeking recovery of a total amount of Rs.6,04,77,858.50 (comprising of principal term loan of Rs.4,50,00,000/- and unpaid interest of Rs.1,54,77,858.50 upto 31.07.1990) alongwith future interest, compound interest, liquidated damages, costs, charges and expenses etc. upto the date of repayment against SHRL and its guarantors including the Petitioner No. 1. In the said suit, the Hon'ble High Court of Bombay in July 1991 appointed a Court Receiver to take possession of the property belonging to the Petitioner No. 1, the same is evident from the order dated 28.09.2006 passed by DRT, Mumbai.

Annexed hereto and marked as Copy of the order dated 28.09.2006 is annexed and marked as **ANNEXURE E**.

6.5 Over the period of time, upon promulgation of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (hereinafter referred to as 'RDDBFI Act'), the Civil Suit No. 2654 of 1990 was transferred to the Debts Recovery Tribunal, Mumbai (hereinafter referred to as 'DRT') which was renumbered as OA No. 224 of 2002. The said suit was decreed on 06.05.2011 on the following



terms alongwith pendent lite interest @12% per annum with quarterly rests:

6.5.1.A.1 IDBI	-	Rs. 2,97,22,081/-
6.5.1.A.2 IFCI	-	Rs. 1,55,24,327.50/-
6.5.1.A.3 ARCIL	-	Rs. 1,52,09,450/-

The said amount of the decree was to paid by the Principal Borrower i.e SHRL and its Corporate Guarantor i.e the Petitioner No. 1 Company. The outstanding as on date as per the decree is more around Rs. 200 Crores and no payments had been made to the sole financial creditor i.e. Petitioner No. 2. It is pertinent to mention that the possession of the mortgaged assets remained with the Court Receiver of the Hon'ble High Court of Bombay.

Annexed hereto and marked as Copy of the decree dated 06.05.2011 passed by DRT is annexed as

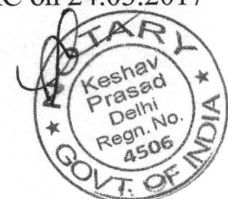
ANNEXURE F.

6.6 Further, over a period of time, the Financial Institutions abovenamed assigned their respective financial debts to Securitization Companies, details whereof are as under:

IFCI – Assigned to Alchemist ARC on 13.10.2014

ICICI – Assigned to ARCIL on 30.06.2004 and thereafter ARCIL assigned to Alchemist ARC on 26.02.2016

IDBI - Assigned to Alchemist ARC on 24.03.2017

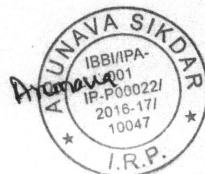


It is most respectfully submitted before this Hon'ble Court that the Petitioner No. 2 is the sole Financial Creditor and the entire land is mortgaged to it.

6.7 Thereafter, as disputes arose between the Promoters and lenders, Alchemist ARC filed before the Hon'ble National Company Law Tribunal, Mumbai Bench (hereinafter referred to as 'NCLT') a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to 'IBC') against the Petitioner No. 1 being the Corporate Guarantor to the original borrower. The said Petition was admitted by the NCLT *vide* order dated 08.05.2019 and Mr. Arunava Sikdar was appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP'). Later, *vide* order dated 07.06.2019, Mr. Arunava Sikdar was appointed as the Resolution Professional (hereinafter referred to as 'RP') and as per the provisions of the Code, took possession of the Petitioner No. 1.

Annexed hereto and marked as copy of the order dated 08.05.2019 is annexed as **ANNEXURE G.**

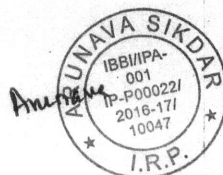
6.8 Thereafter, in order to discharge his duties as a Insolvency Professional, the Resolution Professional issued a letter dated 12.07.2019 addressed *inter alia* to the Respondent No.1 bringing to their notice about commencement of Corporate Insolvency Resolution Process (hereinafter referred 'CIRP') of the Petitioner No. 1. The Insolvency Professional further informed the Respondent



No.1 that in view of the order dated 08.05.2019 passed by NCLT, the Respondent No.1 should not grant any approval / consent / NOC / license or permission except in the name of the Petitioner No. 1, being the owner of land situated at Agonda Village having survey Nos. 93/1, 93/2, 94/1, 95/3,95/8, 95/9, 95/10, 95/13, 95/16, 96/1, 96/2, 96/3, 96/4, 96/5, 96/6, 96/7, 96/8, 96/12, 96/14, 96/15, 96/16, 96/17, 96/18, 96/19, 96/20, 96/21, 96/22, 97/7, 97/8, 98/1, 98/2, 98/3, 98/4, 98/6, 98/7, 99/4, 99/5, 100/1, 100/3, 100/4, 100/5, 100/6, 100/7, 100/8, 100/9, 100/10, 100/11, 100/12, 100/13, 100/14, 100/15, 100/16, 100/17, 101/1, , 101/3, 101/6, 101/7, 101/8, 101/9, 101/14, 101/15, 101/16, 101/17, 101/18, 101/19, 101/20, 101/21, 101/22, 101/23, 101/24, 102/1, 102/3, 102/6, 102/7 & 105/4.

Annexed hereto and marked as copy of the letter dated 12.07.2019 is annexed as **ANNEXURE H.**

6.9 Further, in pursuance of discharging his duties as prescribed under the IBC, the Resolution Professional took over on 23.07.2019 the physical possession of the Suit Property i.e. Sima Hotels & Resorts Ltd., land situated at Agonda Village, Distt. Cancona, Goa, admeasuring 358814 sq. mtr. on *as is where is* and *as is what is* basis as per order dated 10.07.2019 passed by the Hon'ble High Court of Bombay. Thereafter, the RP has been in uninterrupted and physical possession of the abovementioned piece of land belonging to the Petitioner No. 1.



Annexed hereto and marked as Copy of site report for taking physical possession by the Resolution Professional is annexed as ANNEXURE I.

6.10 During the pendency of CIRP of the Petitioner No. 1 before the NCLT, it is a matter of global fact that in view of sudden outbreak of *novel coronavirus* throughout the nation, a nationwide lockdown is imposed by the Central Government w.e.f. 23.03.2020. In view of the said lockdown, the CIRP of the Petitioner No. 1 came to a standstill. However, upon partial resumption of activities, the Resolution Professional is making all efforts to seek for a resolution / revival of the Petitioner No. 1 in terms of the provisions of the IBC.

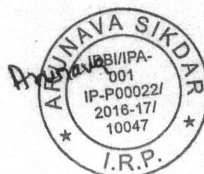
6.11 However, in the month of December 2020, the Resolution Professional of the Petitioner No.1 received an e-mail dated 04.12.2020 from the Respondent No.1 asking him to be personally present before its Committee on 10.12.2020 to respond to the application filed by the Respondent No.2 seeking permission for construction. It is only when the Resolution Professional appeared before the Respondent No.1 Authority through an Advocate on 10.12.2020 that he came to know that the Respondent No. 2, being the alleged Lessee of the Respondent Nos. 3 and 4, on the basis of an alleged collusive consent decree dated 14.11.2008 is claiming



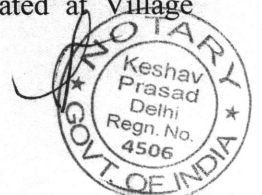
that the demised premises is leased out to it and claiming the right use and possession of an area of land which is allegedly demarcated in the said decree, which in actual has never been demarcated nor divisioned, which as per law, and have filed an application seeking clearance for project attracting CRZ Notification to carry out construction over the demised premises. Since, the Resolution Professional was unaware about the contents of the application filed by the Respondent No. 2, his representative sought for a copy of the same.

6.12 Thereafter, on 07.01.2021, the Resolution Professional through its Advocate appeared before the Respondent No.1 Authority. In the said hearing, the Resolution Professional submitted its initial reply *inter alia* bringing to the notice of the Respondent No.1 as under:

- Vide order dated 08.05.2019, in a petition filed under Section 7 of IBC against the Petitioner No. 1, moratorium under Section 14 of IBC has been declared and Shri Arunava Sikdar had been appointed as the Resolution Professional in view whereof he is required to take charge of and protect and preserve the properties of Corporate Debtor (Petitioner No.1);
- During the course of performing his duties, the Resolution Professional has become aware of several illegal constructions and encroachments in the properties of the Corporate Debtor (Petitioner No. 1), which were brought to the notice of all concerned authorities including the Respondent No.1.



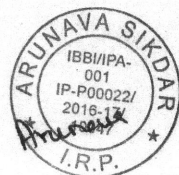
- Neither the Corporate Debtor (Petitioner No. 1) nor the Resolution Professional has been furnished and/ or supplied with any copy of the application filed by Respondent No.2 . In this regard, Resolution Professional sought for a copy of the said application and while reserving its rights, sought liberty to file a detailed reply to the same.
- Survey records for the demised premises show 8 persons in common and co-occupation on the said property. Survey records *per se* are not documents of title
- Alleged document purporting to lease any interest in the demised premises is nothing but a document of convenience which can convey no rights and / or authority to set up and / or construct any structure temporary or otherwise on the said property.
- Alleged consent decree dated 14.11.2008 passed by Special Civil Suit No. 21 of 2007 is a clear collusive suit without joining the other co-owners and / or occupants of the said property. The alleged consent decree is a nullity *ab initio* and not binding on any other party.
- NCLT by its order dated 10.10.2019 had directed the local district administration/ police authorities, SHO Canacona, Mamlatdar Canacona, Panchayat Agonda, and SP South Goa to extend assistance to the Resolution Professional in removal of the encroachment upon the land of the Corporate Debtor (Petitioner No.1), situated at Village



Agonda, Taluka Canacona, Goa. In these circumstances when there are directions to remove illegal encroachments, any permission by the Respondent No.1 authority would vitiate the said directions and render the process of removal of encroachments susceptible to lengthy and protracted litigation.

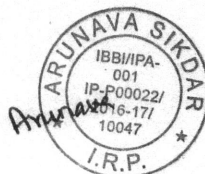
6.13 At this stage, it is pertinent to bring to the notice of this Hon'ble Court, the details of parcels of land owned by the Respondent No.1 Company in Survey Nos. 101/1 (part) and 101/3 (part), as under, which is mortgaged to Petitioner No. 2:

- A. Sale Deed bearing No. 77/82 dated 24.04.1982 registered with Sub-Registrar, Canacona, Goa, executed by Mr. Kashinat Narayan Naik Gaunkar & Mr. Anusya Naik Gaunkar in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 5875 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);
- B. Sale Deed bearing No. 73/82 dated 28.04.1982 registered with Sub-Registrar, Canacona, Goa, executed by Indirabai Bhozro Naique Gauncar, Premanand Bhozro Naique Gauncar, Pramodini Premanand Naique Gaoncar, Shaba Ganaba Nqiuue Gaoncar, Rukmini Shaba Nqique Gaoncar in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 5875 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);



- C. Sale Deed bearing No. 160/82 dated 17.12.1982 registered with Sub-Registrar, Canacona, Goa, executed by Anuradha Balkrishan Parte in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 490 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);
- D. Sale Deed bearing No. 163/82 dated 18.12.1982 registered with Sub-Registrar, Canacona, Goa, executed by Ganba Bhagdu Desai in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 1468 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);
- E. Sale Deed bearing No. 54/87 dated 11.05.1987 registered with Sub-Registrar, Canacona, Goa, executed by Vasanta Ganba Desai, s/o. Ganba Bhagdu desai, Nilabai Vasanta Desai, sadanand Mortu Desai and Tulsi Sadanand Desai D/o. Ganba Bhagdu Desai in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 980 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);

6.14 In view of the above, it is trite to state that since the Petitioner No. 1 owns a substantial piece of land in the demised premises i.e. area admeasuring 14688 sq. mtr., the claim of Respondent No. 2 to be in possession of 1125 sq. mtr. in Survey No. 101/1 (part) and 833.30



sq. mtr. in Survey No. 101/3 (part), which piece of land is neither demarcated nor divisioned, is erroneous incorrect and liable to be rejected outrightly.

6.15 Rather, it is the Resolution Professional being appointed by NCLT, is now left at the mercy of Respondent No.1 Authority to prove its right, title, use and occupation of the demised premises, which power is not even possessed by the said Respondent No. 1.

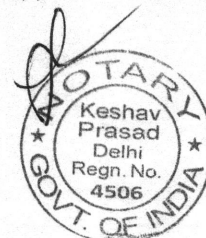
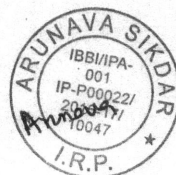
7 It is most respectfully submitted that if the Respondent No. 1 Authority goes ahead conducting the hearing and allowing the application filed by the Respondent No. 2, there is serious apprehension that the Petitioners shall be subjected to grave prejudice and inconvenience which shall have severe ramifications and cascading effects.

7.1 It is submitted that grave prejudice and irreparable loss, harm and injury shall be caused to the Petitioners in case the proceedings before the Respondent No.1 Authority on application preferred by Respondent No. 2 is not stayed in favour of the Petitioners.

8 Aggrieved with conduct of the Respondents, the Petitioners are approaching this Hon'ble Court by way of the present writ petition on the following amongst other grounds :

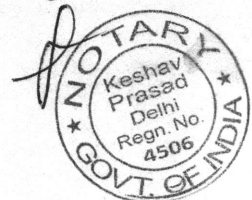
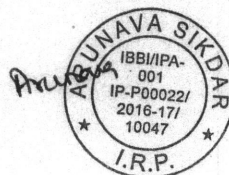
8.1 The actions of the Respondent No. 1 are vague, arbitrary, capricious and illegal in proceeding ahead with the application filed by the Respondent No. 2, being a Lessee of the Respondent Nos. 3 and 4 seeking clearance for project attracting CRZ Notification to carry out construction over the demised property.

8.2 The Respondent No. 1 being a Government organization is authorized only to grant permission(s) for constructions on CRZ



Land. Admittedly, the Respondent No. 1 authority does not possess any power to go into the correctness of a decree passed by a civil court. It is submitted that in the present case while the basis of the application filed by the Respondent No. 2, being a lessee of the Respondent Nos. 3 and 4, is wholly incorrect, misplaced and erroneous, however the Respondent No. 1 authority cannot go into the correctness of the same and may take such decree, despite being illegal, collusive and non-est in law at face value and act on the same. In view whereof it is seriously apprehended that prejudicial orders may be passed by the Respondent No. 1 against the Petitioner No.1.

- 8.3 That until physical demarcation of the demised property takes place, the Respondent No. 1 ought to restrain itself from passing any orders on the application of the Respondent No. 2.
- 8.4 The Respondent No.1 has failed to take into consideration that alleged collusive consent decree dated 14.11.2008 passed by Special Civil Suit No. 21 of 2007 is a clear collusive suit without joining the other co-owners and / or occupants of the said property. The alleged consent decree is a nullity *ab initio* and not binding on any other party.
- 8.5 The Respondent No.1 has failed to take into consideration that survey records for the demised property show 8 persons in common and co-occupation on the said property. Survey records *per se* are not documents of title and are at best only record of mutation. Further, the alleged document purporting to lease any interest in the demised premises is nothing but a self-serving document of

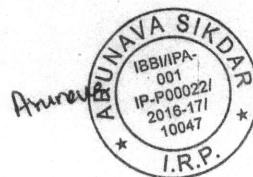


convenience, which can convey nor rights and / or authority to set up and / or construct any structure temporary or otherwise on the said property.

8.6 The Respondent Nos. 3 to 6 are guilty of suppressing material information. It is submitted that Respondent Nos. 3 to 6 have procured a collusive order by misleading the Hon'ble Court. The said order is now being heavily relied upon by Respondent Nos. 3 and 4 before the Respondent No.1 Authority to seek clearance for project attracting CRZ Notification to carry out construction over the demised property.

8.7 The Respondent No.1 has failed to take into consideration the preliminary reply submitted by the Resolution Professional wherein *inter alia* it was brought to their notice that *vide* order dated 08.05.2019, in a petition filed under Section 7 of IBC against the Petitioner No. 1, moratorium under Section 14 of IBC has been declared and Shri Arunava Sikdar had been appointed as the Resolution Professional in view whereof he is required to take charge of and protect and preserve the properties of Corporate Debtor (Petitioner No. 1).

8.8 The Respondent No.1 has failed to take into consideration that NCLT by its order dated 10.10.2019 had directed the local district administration/ police authorities, SHO Canacona, Mamlatdar Canacona, Panchayat Agonda, and SP South Goa to extend assistance to the Resolution Professional in removal of the encroachment upon the land of the Corporate Debtor (Petitioner No. 1), situated at Village Agonda, Taluka Canacona, Goa. In these

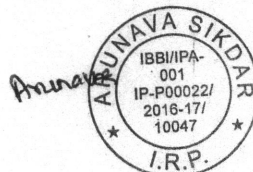


circumstances when there are directions to remove illegal encroachments, any permission by the Respondent No.1 authority would vitiate the said directions and render the process of removal of encroachments susceptible to lengthy and protracted litigation.

8.9 The Petitioner No. 1 herein is an owner of an aggregate piece of land admeasuring approximate 358814 sq. mt. situated at Village Agonda, Distt. Cancona, Goa. Further, out of the said piece of land, the Petitioner No. 1 is a recorded owner of land admeasuring approximate 14688 sq. mtr. in Survey Area Nos. 101/1 (part) and 101/3 (part). However, the said Survey Nos. are neither physically demarcated nor divisioned in the revenue records to physically identify the area of land under use and occupation of a particular party.

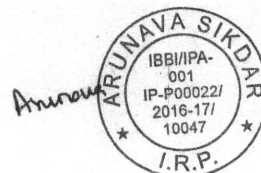
8.10 The Petitioner No. 1 had purchased land admeasuring 14,688 sq. mtr. in Survey Area Nos. 101/1 (part) and 103/1 (part) from erstwhile 8 co-owners by way of 5 separate Sale Deeds, details whereof are as under:

- (i) Sale Deed bearing No. 77/82 dated 24.04.1982 registered with Sub-Registrar, Canacona, Goa, executed by Mr. Kashinat Narayan Naik Gaunkar & Mr. Anusya Naik Gaunkar in favour of Petitioner No.1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 5875 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);
- (ii) Sale Deed bearing No. 73/82 dated 28.04.1982 registered with Sub-Registrar, Canacona, Goa, executed by Indirabai Bhozro Naique Gauncar, Premanand Bhozro Naique Gauncar,



Pramodini Premanand Naique Gaoncar, Shaba Ganaba Nqiuue Gaoncar, Rukmini Shaba Nqique Gaoncar in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 5875 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);

- (iii) Sale Deed bearing No. 160/82 dated 17.12.1982 registered with Sub-Registrar, Canacona, Goa, executed by Anuradha Balkrishan Parte in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 490 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);
- (iv) Sale Deed bearing No. 163/82 dated 18.12.1982 registered with Sub-Registrar, Canacona, Goa, executed by Ganba Bhagdu Desai in favour of Petitioner No.1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 1468 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);
- (v) Sale Deed bearing No. 54/87 dated 11.05.1987 registered with Sub-Registrar, Canacona, Goa, executed by Vasanta Ganba Desai, s/o. Ganba Bhagdu desai, Nilabai Vasanta Desai, sadanand Mortu Desai and Tulsi Sadanand Desai D/o. Ganba Bhagdu Desai in favour of Petitioner No. 1 (erstwhile known as Elbee Dugal Engineering Company Pvt. Ltd.) regarding land admeasuring 980 sq. mtr undivided share in Survey No. 101/1 (part) and 101/3 (part);



S.NO	PARTICULARS OF LAND OWNERS	LAND UNDER SURVEY NO. 101/1 (sq. meters)	LAND UNDER SURVEY NO. 101/3 (sq. meters)
1.	Petitioner No. 1 through Sale Deed (Serial No. 54/87)	271	709
2.	Petitioner No. 1 through Sale Deed (Serial No. 163/82)	406	1063
3.	Petitioner No. 1 through Sale Deed (Serial No. 160/82)	135.5	354
4.	Petitioner No. 1 through Sale Deed (Serial No. 72/82)	1625	4250
5.	Petitioner No. 1 through Sale Deed (Serial No. 73/83)	1625	4250
	Total Land Parcel in favor of Petitioner No. 1	4062.5	10626

8.11 The Respondent Nos. 2 to 5 have failed to join the other co-owners of the piece of land in Survey Area Nos. 101/1 (part) and 101/3 (part) to the Civil Suit filed in the year 2007. In the absence of other co-owners being present, the alleged consent decree dated 14.11.2008 is a nullity in law and a fraud on the Petitioners

8.12 The consent decree dated 14.11.2008 lacks the basic requirement of being lawful within the meaning of Order XXIII Rule 3 of Code of Civil Procedure, 1908 as the same has been procured by the Respondent Nos. 3 to 6 by concealing material facts and not even arraying the parties whose intent is affected in all manners.

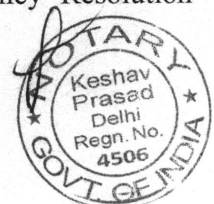
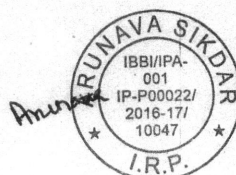


8.13 The consent decree dated, 14.11.2008 has a direct impact on the rights of the Petitioner No. 1 in its ongoing Corporate Insolvency Resolution Process. By way of the operation of the consent decree, unlawful rights have been alleged to be created in favour of the Respondent Nos. 3 to 6. It is on the basis of these created rights that the Respondent No. 2, being a Lessee of the Respondent Nos. 3 and 4, has preferred before the Respondent No.1 an application seeking clearance for project attracting CRZ Notification to carry out construction over the demised property.

8.14 The Hon'ble Apex Court as well as various High Courts have time and again held that a consent decree does not stand on a higher footing than a contract between parties. Thus, the Indian Contract Act makes it essential that all contracting parties should be competent to contract and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act.

8.15 The Petitioner has categorically submitted to the Respondent No.1 that the Petitioner No. 1 is the recorded owner of 14688 sq. mt. of land owned in Survey Area Nos. 101/1 (Part) and 101/3 (Part). Further, the said area of land is neither physically demarcated nor divisioned in the revenue records to physically identify the area of land under use and occupation of a particular party including the Petitioner.

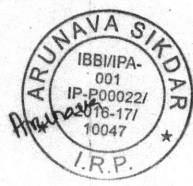
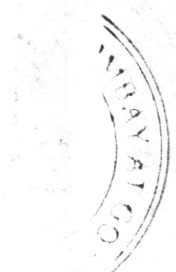
8.16 The Respondent No.1 has erred in appreciating that pursuant to the order dated 08.05.2019 passed by the National Company Law Tribunal, Mumbai Bench, the Corporate Insolvency Resolution



Process of the Petitioner No. 1 was commenced under the provisions of Insolvency and Bankruptcy Code, 2016. In pursuance of the same, the entire assets of the Petitioner No. 1 vests exclusively and solely with the Resolution Professional in accordance with Section 25 of IBC. Thus, any effect on the assets of the Corporate Debtor (Petitioner No. 1) shall have a direct and adverse effect upon the proceedings before the NCLT, which would be detrimental for the interest of the stakeholders at large.

8.17 The consequences of the Respondent No.1 Authority passing an order in favour of the Respondent No.2 would be grave and severe. An order granting permission to the Respondent No.2 to carry out construction activities on the demised property would have far-reaching and direct effects upon the ongoing CIRP of the Petitioner No. 1. In case, the Respondent No.1 Authority allows the application filed by the Respondent No.2, the same would tantamount to bypassing the mandatory process of partition prescribed under law. It is submitted that the Respondent No.2, in the garb of an application filed before the Respondent No.1 Authority is attempting to overreach the process of partition. It is further submitted that until physical demarcation of the demised property is done on site, the corresponding application filed by the Respondent No.2 with the Respondent No.1 Authority will be merely an exercise in perpetuating fraud on the Petitioners.

8.18 The actions of the Respondent No.1 shall have prejudicial and cascading effect upon the ongoing Corporate Insolvency Resolution Process of the Petitioner No. 1.



8.19 The Respondent No.1 has failed to take into consideration that during the course of performing his duties, the Resolution Professional has become aware of several illegal constructions and encroachments in the properties of the Petitioner No. 1, which were brought to the notice of all concerned authorities including the Respondent No.1.

8.20 That being aggrieved by the action of the Respondents, the Petitioner is filing the present Writ Petition and submit that the action of the Respondents are in violation of and contrary to the rights guaranteed under Article 14, 20, 21, and 22 of the Constitution of India.

9 That the Petitioners has no other alternative or equally efficacious remedy except filing the present petition before this Hon'ble Court and is in such conspectus, filing the present Writ Petition under Article 226 of the of the Constitution of India.

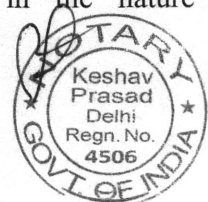
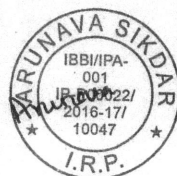
10 The Petitioners craves leave to add, amend, modify, vary and/or delete any or all of the foregoing grounds, if so required, in the facts and circumstances of the present case.

11 The Petitioners submits that he has not filed any other Petition either in this Hon'ble Court or in the Hon'ble Supreme Court of India or in any other High Court on the subject matter of the present Petition.

12 This Hon'ble Court has jurisdiction to hear and dispose the present Writ Petition.

13 The Petitioner therefore prays:

- a. That this Hon'ble Court be pleased issue a writ/ order/ direction in the nature of



certiorari and/or any other appropriate writ/ order/ direction of like nature for declaring that the proceedings instituted by the Respondent No.2, in the capacity of being a Lessee of Respondent Nos. 3 and 4, before the Respondent No.1 Authority seeking clearance for project attracting CRZ Notification to carry out construction on a piece of land admeasuring 1,125 sq. mt. in property known as "Tambdem" surveyed under Survey no.101/1 (part) and 833.30 sq. mt. in the same property surveyed under Survey No.101/3 (part) of Village Agonda of Canancona Taluka in the State of Goa (hereinafter referred to as 'the demised property'), as null and void and consequentially be set aside;

- b. Writ of mandamus or any other appropriate writ, order or direction directing the Respondent no.1 not to place any reliance on the consent decree dated 14.11.2008 or the lease deed dated 11.01.2020 for passing any orders on the application dated 10.12.2020 filed by the Respondent No.2 seeking NOC for Project attracting CRZ notification to



carryout construction on the demised property.

- c. Pass an order directing the Respondent No. 1 not to pass any order upon the application filed by the Respondent No. 2, until physical demarcation of the demised property takes place;
- d. Set aside the consent decree dated 14.11.2008;
- e. Pass an ad-interim order in terms of prayer clause (b), (c) and (d) above; and
- f. Grant such other order or direction as deems fit to grant in the facts and circumstances of the case.



ADVOCATES FOR THE PETITIONER

PLACE: PANAJI GOA
DATE: 13 .01.2021



VERIFICATION

I, Arunava Sikdar, working for gain at C-10, LGF, Lajpat Nagar, Part-III, New Delhi – 110 024, being the Resolution Professional of the the Petitioner No. 1 herein, do hereby verify the contents of the above petition and state that the contents thereof viz. paragraphs 1, 2, 3, 4, 5, 6, 7 8, 9, 10, 11 & 12 which are based on facts of the case are true and correct to my knowledge, and the legal submissions contained therein viz. in paragraphs 4.8, 4.9, 6.5, 6.7 and 13 are based on legal advice of our advocate which I believe to be true.

Arunava
DEPONENT

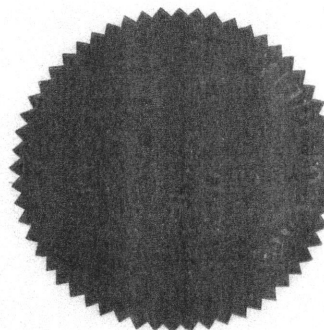
Place: Panaji-Goa.

Date: 13.01.2021

Identified by: *Ashwani*
2/13/20/21

Identify the deponent who
signed in my Presence

Solemnly Affirmed Sworn Before me
[Signature]
NOTARY PUBLIC
Govt. of India (Delhi)



KESHAV PRASAD
Advocate
Supreme Court of India

13 JAN 2021

Register No. 738/21

