REGISTERED POST WITH A/D
HAND DELIVERY
AFFIXATION ON PROPERTY

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place (Fairlie Warehouse),
Kolkata-700001
****

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

REASONED ORDER NO. 42 DT 07.05.2019
PROCEEDINGS NO.1542 OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. T. D. Kumar & Bros. (P) Ltd. (as O.P.)

F O R M – "B"

ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s. T. D. Kumar & Bros. (P) Ltd., of 2, Maharshi Debendra Road (Old Dharmatala Street), Burrabazar, Kolkata 700007 AND also at 67-4, Strand Road, Kolkata 700001 AND also at Beside PTR Siding no. 16, Shalimar, Howrah, Howrah 711102** is in unauthorized occupation of the Public Premises specified in the Schedule below:

R E A S O N S

1. That O.P. Company has failed to appear before this Forum and failed to submit its Reply to the Show Cause Notice u/s.4 and 7 of the Act in spite of sufficient chance.
2. That O.P. Company has failed to bear any witness or adduce any evidence in support of its occupation into the public premises in spite of sufficient chance.
3. That in gross violation of the condition of tenancy as granted by the Port Authority, O.P. Company has abandoned the public premises in favour of a rank outsider, namely Madhu Kant Surelia alias Madhu Surelia alias Madhu Kant Sharma who is in enjoyment of the public premises in question by way of commercial establishment.
4. That O.P. Company has clearly parted with possession of the public premises unauthorizedly without having any authority under law.
5. That unauthorised constructions have been erected in the public premises in question without having any approval of KoPT or the concerned Municipal Authority or the other Authorities in question.

Please see overleaf....

6. That the Notice to Quit / ejectment notice dated 04.06.2014 as issued by the Port Authority is valid, lawful and binding upon the parties.
7. That O.P. Company was clearly a defaulter of rent and taxes, at the time of issuance of the said Notice to Quit.
8. That O.P. Company has lost its authority to occupy the public premises after determination/termination of the lease as mentioned in the notice to Quit dated 04.06.2014.
9. That O.P.'s occupation and occupation of any outsider into the public premises is wrongful on and from the date of coming into effect of the Notice to Quit dated 04.06.2014 and O.P. is liable to pay damages for such unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 42 dated 07.05.2019 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said **M/s. T. D. Kumar & Bros. (P) Ltd., of 2, Maharshi Debendra Road (Old Dharmatala Street), Burrabazar, Kolkata 700007 AND also at 67-4, Strand Road, Kolkata 700001 AND also at Beside PTR Siding no. 16, Shalimar, Howrah, Howrah 711102** and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said **M/s. T. D. Kumar & Bros. (P) Ltd., of 2, Maharshi Debendra Road (Old Dharmatala Street), Burrabazar, Kolkata 700007 AND also at 67-4, Strand Road, Kolkata 700001 AND also at Beside PTR Siding no. 16, Shalimar, Howrah, Howrah 711102** and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

SCHEDULE

The said piece or parcel of land Msg. about 612.42 Sq.mts. or thereabouts situated at Shalimar P.T.R. Siding No.16, Howrah, P.S. Shibpur, District and Registration District Howrah. It is bounded on the North partly by Kolkata Port Trust's land occupied by M/s. Lodna Colliery and partly by Trustees' open land alongside Railway Track, on the South by the Trustees' passage, on the East partly by the Trustees' open land alongside Railway Track and partly Trustees' land occupied by Nalini Behari Sett and on the West by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' passage.

Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 07.05.2019

Signature & Seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, KOLKATA PORT TRUST FOR INFORMATION.

REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place (Fairlie Warehouse),
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Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

REASONED ORDER NO. 42 DT 07.05.2019
PROCEEDINGS NO.1542/R OF 2017

Form " E"

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. T. D. Kumar & Bros. (P) Ltd. (as O.P.)

Form of order under Sub-section (1) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act,1971

To
M/s. T. D. Kumar & Bros. (P) Ltd.,
2, Maharshi Debendra Road
(Old Dharmatala Street), Burrabazar,
Kolkata 700007

AND also at 67-4, Strand Road,
Kolkata 700001

AND also at Beside PTR Siding no. 16,
Shalimar, Howrah,
Howrah 711102

WHEREAS you are in occupation of the public premises described in the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 16.01.2017 you were called upon to show cause on/or before 25.01.2017 why an order requiring you to pay a sum of Rs. 15,38,207.34/- (Rupees Fifteen Lakhs Thirty Eight Thousand Two Hundred Seven and paise thirty four only) being the rent payable together with compound interest in respect of the said premises should not be made;

And whereas you have failed to represent the instant proceedings inspite of repeated chances given to you. As such no evidence have been produced by you in support of your case.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby require you to pay the sum of Rs. 15,38,207.34/- (Rupees Fifteen Lakhs Thirty Eight Thousand Two Hundred Seven and paise thirty four only) for the period 31.07.1983 to 15.07.2014 (both days inclusive) to Kolkata Port Trust by 31.05.2019.

PLEASE SEE ON REVERSE

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest at the rate of 7.35% per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

The said piece or parcel of land Msg. about 612.42 Sq.mts. or thereabouts situated at Shalimar P.T.R. Siding No.16, Howrah, P.S. Shibpur, District and Registration District Howrah. It is bounded on the North partly by Kolkata Port Trust's land occupied by M/s. Lodna Colliery and partly by Trustees' open land alongside Railway Track, on the South by the Trustees' passage, on the East partly by the Trustees' open land alongside Railway Track and partly Trustees' land occupied by Nalini Behari Sett and on the West by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' passage.

Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 07.05.2019

Signature and seal of the

Estate Officer

REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place (Fairlie Warehouse),
Kolkata-700001
****

Form G

Court Room At the 1st Floor
6, Fairlie Place Warehouse
Kolkata- 700 001.

REASONED ORDER NO. 42 DT 07.05.2019
PROCEEDINGS NO.1542/D OF 2017

BOARD OF TRUSTEES OF THE PORT OF KOLKATA
-Vs-
M/s. T. D. Kumar & Bros. (P) Ltd. (as O.P.)

Form of order under Sub section (2) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To
M/s. T. D. Kumar & Bros. (P) Ltd.,
2, Maharshi Debendra Road
(Old Dharmatala Street), Burrabazar,
Kolkata 700007

AND also at 67-4, Strand Road,
Kolkata 700001

AND also at Beside PTR Siding no. 16,
Shalimar, Howrah,
Howrah 711102

Whereas I, the undersigned, am satisfied that you are in unauthorised occupation of the public premises mentioned in the Schedule below:

And whereas by written notice dated 16.01.2017 you were called upon to show cause on/or before 25.01.2017 why an order requiring you to pay damages of Rs. 7,88,793.71/- (Rupees Seven Lakhs Eighty Eight Thousand Seven Hundred Ninety Three and paise Seventy One only) together with compound interest for unauthorised use and occupation of the said premises, should not be made.

And whereas you have failed to represent the instant proceedings inspite of repeated chances given to you. As such no evidence have been produced by you in support of your case.

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of

PLEASE SEE ON REVERSE

Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs. 7,88,793.71/- (Rupees Seven Lakhs Eighty Eight Thousand Seven Hundred Ninety Three and paise Seventy One only) for the period 16.07.2014 to 05.07.2016 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust by 31.05.2019.

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest at the rate of 7.35% per annum on the above sum till its final payment being the current rate of interest as per the Interest Act, 1978.

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.

SCHEDULE

The said piece or parcel of land Msg. about 612.42 Sq.mts. or thereabouts situated at Shalimar P.T.R. Siding No.16, Howrah, P.S. Shibpur, District and Registration District Howrah. It is bounded on the North partly by Kolkata Port Trust's land occupied by M/s. Lodna Colliery and partly by Trustees' open land alongside Railway Track, on the South by the Trustees' passage, on the East partly by the Trustees' open land alongside Railway Track and partly Trustees' land occupied by Nalini Behari Sett and on the West by the Trustees' land occupied by M/s. Lodna Colliery and partly Trustees' passage.

Trustees' means the Board of Trustees of the Port of Kolkata.

Dated: 07.05.2019

Signature and seal of the

Estate Officer

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1542, 1542(R), 1542(1) Of 2017 Order Sheet No. 53

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S T. D. Kumar & Bros (P) Ltd.

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07-05-2019

FINAL ORDER

The matter is taken up today for final disposal. Factual aspect involved in this matter is required to be stated in a nutshell in order to link up the chain of events leading to this proceedings. A plot of land measuring about 612.42 sqm, comprised under Plate No.HL-391/1, situated at Shalimar PTR Siding no. 16, Howrah, Thana-Shibpur Police Station, was allotted to M/s. T. D. Kumar & Bros. (P) Ltd. (O.P. herein) by Kolkata Port Trust (KoPT), Applicant herein, on short term lease basis, w.e.f. 01.07.1935. It is the case of KoPT that said O.P. not only defaulted in making payment of rental dues but also parted with possession in favour of rank outsiders and made unauthorised construction in the public premises in question. On the above said grounds, the said short term lease granted by KoPT to O.P. was determined/terminated by issuing Notice to Quit dated 04.06.2014 but O.P. failed and neglected to hand over possession of the public premises in question to the Port Authority.

On the basis of KoPT's application before this Forum, dated 28.09.2016, this Forum of Law formed its opinion to proceed against O.P. under the relevant provisions of the Act and issued Show Cause Notice u/s. 4 of the Act (for order of eviction) and u/s. 7 of the Act (for recovery of rent, damages, interest etc), all dated 16.01.2017.

It is seen from record that the letters sent to the O.P. through registered post returned undelivered. Personal service of the Notice/s was effected on one

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1542, 1542(K), 1542(O) Of 2017 Order Sheet No. 54

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S T. D. Kumar Bros (P) Ltd.

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Madhu Kant Surelia who was present in the public premises and received the same on 16.01.2017 on behalf of the O.P. On 17.02.2017, a Vakalatnama signed by said Madhu Kant Surelia as Proprietor of Jugmug Containers, in favour of Shri Puspal Chakraborty and Shri Suman Pathak, Advocates was filed before this Forum with verbal prayer for adjournment by said Shri Puspal Chakraborty, Advocate. On the next date of hearing i.e. 17.03.2017, an application praying for adjournment was again filed by said Shri Puspal Chakraborty, Advocate. This was followed by another application for adjournment filed on 24.04.2017 by Shri Suman Pathak, Advocate. Finally on 08.05.2017 a Written Objection came to be filed by said Madhu Kant Surelia claiming to be representative of the O.P. i.e. M/s. T. D. Kumar & Bros. (P) Ltd. , annexing therewith an Affidavit and a photocopy of a Power of Attorney dated 19.07.1995. KoPT vide their application dated 09.06.2017 filed comments against the said Written Objection. On 14.06.2017, said Madhu Kant Surelia filed a Reply to the Show Cause Notice/s issued to the O.P. by this Forum. This was duly replied to by KoPT vide their application dated 12.07.2017. In order to ascertain the actual situation through local inspection, this Forum directed for a joint inspection of the premises which was carried out by all concerned on 28.07.2017 and report thereof was filed before this Forum. However the same was objected to by Shri Suman Pathak, Advocate and said Madhu Kant Surelia filed an application on 23.08.2017 (styled as sur-rejoinder) objecting to the said local inspection

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Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1542, 1542(R), 1542(D) Of 2017 Order Sheet No. 55

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S T. D. Kumar & Bros (P) Ltd.

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and also praying for cross-examination etc of the KoPT Officials who conducted the inspection jointly with him or his representatives. Against such background, KoPT came up with an application dated 22.09.2017 annexing the vital documents it intends to rely upon and claiming that vacant land was allotted to the O.P. whereas unauthorized constructions are now standing on the public premises, as confirmed through the joint inspection. An application styled as a Reply thereafter came to be filed by said Madhu Kant Surelia claiming that the structures are partial temporary construction etc. Another application u/s 8 of the P.P. Act, 1971 came to be filed by said Madhu Kant Surelia on 21.02.2018 claiming that the provisions of the Civil Procedure Code (CPC, in short) and the Evidence Act are applicable to the instant proceedings and also claiming to be entitled to examination by way of trial. This Forum, vide Orders dated 14.03.2018 and 04.05.2018 made it amply clear that CPC and Evidence Act are not at all applicable in the proceedings under the P.P. Act and also that there is no scope for entertaining the interim applications one after the other. It was also made clear that the power u/s 8 of the Act is an enabling provision, to be used in deserving circumstances. The numerous attempts on the part of the said Madhu Kant Surelia to drag on with the proceedings was also highlighted. It was at this juncture, that Madhu Kant Surelia came up with a plea that original contractual documents has not been produced by KoPT. For the sake of natural justice, this Forum directed KoPT to produce the original documents

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1542, 1542/A, 1542/B Of 2017 Order Sheet No. 56

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S T. D. Kumar & Bros (P) Ltd.

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forming the contract between the parties (in this case, offer letter dated 20.06.1935, acceptance letter dated 21.06.1936 and possession certificate dated 01.07.1935) and such order was duly complied with by KoPT on 20.07.2018 by producing the original documents to the satisfaction of this Forum in the presence of the representative of said Madhu Kant Surelia. Even in such a situation, an affidavit dated 19.09.2018 to the effect that no original documents were available with "Madhu Suralia", came to be filed under signature of Madhu Kant Surelia. Due to such anomalies in name as well as corrections/additions in the Affidavit, the same was rejected vide order dated 19.09.2018. However, taking into account the repeated objections of the representatives of Madhu Kant Surelia as also to ensure natural justice, a joint re-inspection of the premises was again ordered vide the same order, and such re-inspection took place on 14.03.2019 in the presence of the KoPT Officials as well as Madhu Kant Surelia and his representatives. Apparently, the report of such reinspection was prepared during the course of the day but Madhu Kant Surelia and his representatives refused to sign the same. Finally, on 19.03.2019 the said representatives (without written authority) of Madhu Kant Surelia signed the report before this Forum. Hearing was concluded and an opportunity was granted to all concerned to file written notes of arguments with supporting documents, if any, on 02.04.2019. On 02.04.2019, instead of filing written notes, a communication addressed to this Forum was filed by one Bisakha Pal, Advocate, claiming that her client M/s. T. D.

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1542, 1542(R), 1542(D) Of 2017 Order Sheet No. 57

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S T.D. Kumar Bros (P) Ltd.

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Kumar & Bros. (P) Ltd. and another has filed Writ Petition before the Hon'ble High Court, Calcutta challenging the order dated 19.03.2019 of this Forum. An application with prayer for recalling the order dated 19.03.2019 was also filed on the same day, which was rejected by the Forum vide reasoned order dated 02.04.2019. A further 7 days time was granted to all concerned to file the written notes of arguments, if any, and the matter was re-fixed to 09.04.2019. On 09.04.2019, said Bisakha Pal, Advocate, appeared before the Forum with submission that the Hon'ble High Court, Calcutta has extended the time for submitting the written notes of argument for a fortnight from 05.04.2019. In due compliance to the Order of the Hon'ble High Court, Calcutta (in W.P. no. 171 of 2019), this Forum immediately extended the time and allowed a fortnights time from 05.04.2019 to both the parties for filing written notes of arguments, if any. It was made clear vide the said Order dated 09.04.2019 of this Forum that upon receiving such written notes within the time frame set by the Hon'ble High Court, Calcutta, the matter will be decided finally. It is seen from record that on 19.04.2019 (i.e. upon expiry of the said fortnights time from 05.04.2019) the representative of Madhu Kant Surelia namely Bisakha Pal, Advocate, instead of filing the said written notes, preferred another application dated 19.04.2019 intimating that an Appeal has been preferred against the Order dated 05.04.2019 of the Hon'ble High Court, Calcutta, and prayed for two weeks time. Today, i.e. 07.05.2019 when I have taken up the matter for final disposal, I find that till

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1542, 1542(R), 1542(D) Of 2017 Order Sheet No. 58

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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M/S T. D. Kumar & Bros (P) Ltd.

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date Madhu Kant Surelia or his representatives has neither filed the written notes nor filed any Order of the Hon'ble High Court, Calcutta or any other Forum of Law staying or varying the Order dated 05.04.2019 of the Hon'ble High Court, Calcutta in W.P. no. 171 of 2019. That being so, I am proceeding to deliver the final order on the basis of the materials on record and the submissions of the parties, keeping in mind the decision dated 05.04.2019 of the Hon'ble High Court, Calcutta.

It is seen from the record that the allegations of the Port Authority against the O.P. herein (M/s. T. D. Kumar & Bros. P. Ltd.) for determination of the lease, is three-fold, i.e. non-payment of rent and taxes, unauthorized construction and unauthorized parting with possession to rank outsiders. During course of hearing, no Director, Officer or Staff of the O.P. Company appeared before this Forum. The only person who appeared was one Madhu Kant Surelia, who claims to be a representative of the O.P. Company in the form of holder of a Power of Attorney dated 19.07.1995. The first and foremost question to be decided by this Forum is whether, said Madhu Kant Surelia can be said to be a valid representative of the O.P. Company, or in other words, whether the O.P. Company can be said to have contested the case through said Madhu Kant Surelia. Upon holistic consideration of the entire facts and gamuts of the case, it is my strong view that O.P. Company is neither in possession of the public premises nor is in any manner interested in the property in question. It is also my conclusion

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1542, 1542(R), 1542(D) Of 2017 Order Sheet No. 59

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

M/S T. D. Kumer & Bros (P) Ltd.

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that Madhu Kant Surelia cannot be said to be a present representative of the O.P. Company and he is contesting the instant case solely in his personal capacity. My conclusion is based on the following facts:

i) Originally, the contract was entered into with KoPT by M/s. T. D. Kumer & Bros. Ltd. whose Managing Director issued a letter dated 21.06.1935 accepting the terms and conditions of the KoPT's offer for monthly lease. The address of the Company is shown as "67-4, Strand Road, Barabazar, Calcutta" in the said communication.

ii) KoPT's series of communications addressed to O.P. Company at the above address as well as two other addresses (one of them being the public premises in question) in the year 2012, 2013 and 2014 were all received by Madhu Kant Sharma/ Madhu Kant Surelia. Even the Notice to Quit dated 04.06.2014 was also received by him. As per Affidavit dated 08.06.2017 (sworn before Judicial Magistrate 1st Class, Howrah) filed before this Forum, Madhu Kant Surelia, Madhu Kant Sharma and Madhu Surelia are the same and identical person.

iii) The three Notice/s issued by this Forum u/s 4 and 7 of the P.P. Act (all dated 16.01.2017) in the name of the O.P. Company and sent through registered post were all returned back with various postal

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endorsements such as "addressee cannot be located", "insufficient address" etc.

iv) When the said Notice/s were served on the public premises by way of hand delivery, they were all received by Madhu Kant Surelia, claiming to be signing on behalf of the O.P. Company.

v) The Vakalatnama in the name of Shri Puspal Chakraborty & Shri Suman Pathak was signed by Madhu Kant Surelia as Proprietor of "Jugmug Containers".

vi) Adjournment Petitions were thereafter filed before this Forum on behalf of "Jugmug Containers".

vii) On query by this Forum as to the capacity of Proprietor of Jugmug Containers to represent the O.P. Company, a submission was made for the first time on 08.05.2017 by an Advocate (without written authority) appearing on behalf of Madhu Kant Surelia that by the strength of a Power of Attorney dated 19.07.1995 he is authorised to represent the O.P. Company.

viii) Thereafter, a photocopy of a Power of Attorney (apparently, notarised) was produced before this Forum by Madhu Kant Surelia. No original document was ever produced before the Forum.

ix) The said Power of Attorney empowers Madhu Kant Surelia to practically perform all functions in relation to the demised public premises, such as, take all steps with respect to the maintenance and

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business of the Company, to make all payments with regard to the lease rentals to the Port Trust Authorities, to allow the Port Trust Authorities to inspect etc., to represent the Company before any Court of Law, Tribunal, Forum etc.

x) Though the said document purports to convey so much authority to Madhu Kant Surelia, it is an unregistered document and never been re-validated after 1995. The document also does not portray why so much authority is required to be given to Madhu Kant Surelia and in what capacity.

xi) Surprisingly, the Company does not even issue a single letter/communication during the entire proceedings, to defend itself or atleast to convey and confirm its representation through Madhu Kant Surelia.

xii) More surprisingly, an Affidavit is sworn by Madhu Kant Surelia on 08.05.2017 that he mistakenly appeared before this Forum on earlier occasions as the Proprietor of "Jugmug Containers" since at that time the Power of Attorney dated 19.07.1995 could not be handed over to his Advocate-on-Record as the same was not in his custody due to inadvertence. This is an unbelievable statement of Madhu Kant Surelia. How is it possible that Madhu Kant Surelia was simply ignorant and forgetful about the Power of Attorney of 1995 although he boasts to be representative of O.P.

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Company while receiving the various communications of KoPT as well as this Forum, in the years 2012, 2013, 2014, 2017 etc.

xiii) From the bank statement produced by Madhu Kant Surelia, it is seen that apparently some payments have been made to KoPT not only from the personal bank account/s of Madhu Kant Surelia (maintained in State Bank of India) but also from the bank account/s of "Jugmug Containers" (maintained in Punjab & Sind Bank). It is seen that Madhu Kant Surelia made applications to Standard Chartered Bank and Punjab & Sind Bank also, in the letter-head of Jugmug Containers. Moreover, from the copy of the cheque/s produced by Madhu Kant Surelia himself, it is seen that he had apparently made certain payments to KoPT signing thereby as Proprietor of Jugmug Containers.

xiv) During joint inspection held on 28.07.2017 and 14.03.2019. no trace of the O.P. Company was found at the premises. Whereas, business is being conducted in the public premises by Madhu Kant Surelia.

xv) Even when its possession is under threat, O.P. Company appears neither before this Forum nor before the Hon'ble High Court, Calcutta. The Writ Petition before the Hon'ble High Court, Calcutta is filed in the name of the O.P. Company through the pen

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of none other than the said Madhu Kant Surelia only.

xvi) Madhu Kant Surelia claims in the application filed on 21.02.2018 that the registered office of the O.P. Company is at the demised premises itself. This is in stark contradiction to the ground realities where there is no existence of the O.P. Company in the public premises in question. Moreover, no document (such as trade license, certificate of enlistment of Municipal Authorities, tax statements etc in the name of O.P. Company) has ever been produced before this Forum which shows that O.P. Company is carrying on its business in the public premises in question.

Perusal of the above makes it ample clear in my mind that existence of O.P. Company in the public premises in question is a hoax and the O.P. Company has abandoned the public premises in favour of Madhu Kant Surelia, who in order to lend legality to his otherwise illegal and unauthorized occupation has procured a Power of Attorney, which, even if genuine, cannot come to his protection. In my firm view, it is not a case of a simple Power of Attorney holder at all but it is an instrument to befool the public authorities and the respected Judicial Fora. Such a Power of Attorney must not be given a literal interpretation but must be pierced apart to extract the real intention behind such document. Behind the garb of a Power of Authority, I find that complete possession, full control and

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exclusive use and occupation with right to do any business on the property has been granted to the said Madhu Kant Surelia which clearly establishes parting of possession and abandonment in favour of a complete stranger. As is judicially established, in order to constitute parting with possession, there must be a transfer of an exclusive right to enjoy the property, which is exactly the situation in the case in hand. Moreover, most surprisingly, the same Madhu Kant Surelia is also claiming to be the Power of Attorney holder in respect of another adjacent occupation in the name of another Company (whose proceedings is underway separately) with whom the plots have been amalgamated, as revealed through joint inspection. I fail to understand why the different occupations in the locality of the public premises would leave their full possession and control in the hands of one Madhu Kant Surelia who has no connection whatsoever with the said Companies. I can only conclude that the said Power of Attorneys have been prepared/procured for the purpose of contesting the subject eviction proceedings and such being the case, I am not at all inclined to protect the occupation of O.P. and/or Madhu Kant Surelia any longer, at the cost of the public exchequer.

Discussions against the foregoing reveals that the contention of KoPT against the O.P. Company of unauthorized parting of possession, is very much true and correct. Such being the case, the submissions of Madhu Kant Surelia or Ld Advocates on his behalf (with or without authority) cannot be

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treated as submissions of O.P. Company and as such, the matter is decided ex-parte O.P. As regards the submissions by or on behalf of Madhu Kant Surelia, I treat them as submissions of a stranger in occupation as by virtue of the P.P. Act, all persons interested in the property are eligible to participate in the proceedings. But I must add that Madhu Kant Surelia has failed to justify his prolonged use and occupation of the premises. Even if he is seen as representative of O.P. (for the sake of argument, not admitting) then also the breach of non-payment of rent and taxes is very much glaring from the statements of accounts produced before me by KoPT. Certain documents showing erratic and inconsistent payments have been produced by Madhu Kant Surelia, but no comprehensive statement has been produced refuting each and every month's claim of KoPT. As regard unauthorized constructions, it is rightly pointed out by KoPT that "a plot of land" had been handed over to O.P. Company with the stipulation in the offer letter that plans were to be submitted in triplicate together with site plans of any structure that is intended to be erected on the land. It was also a clear stipulation of the offer letter dated 20.06.1935 (duly accepted by the O.P.) that O.P. will not be allowed to commence construction until the plans are sanctioned. On the contrary, it is revealed through joint inspection that huge structure is standing on the land (that too amalgamated with adjacent occupations) and no effort has been made by Madhu Kant Surelia to even justify such

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construction, much less produce sanctioned plans thereof.

Much effort has been laid on behalf of Madhu Kant Surelia to the pleas of leading "oral evidence" before this Forum followed by "cross-examination". I have already dealt with such submissions in my orders dated 14.03.2018, 04.05.2018, and 02.04.2019 to the effect that the rigours of the C.P.C. and the Evidence Act are not at all applicable in the proceedings under the P.P. Act, which are, by their very nature, summary proceedings requiring time bound and quick disposal. At the cost of repetition, I must say that the P.P. Rules, 1971 very clearly lays down that the Forum is to take note of only the "summary" of the evidence and as such I do not find any need for examination and cross-examination of parties in the instant case, when documentary evidence to my satisfaction has already been produced by KoPT. I take note of the fact that O.P. is absent and apparently the only person affected by the proceedings i.e. Madhu Kant Surelia has failed to produce any document whatsoever to justify the constructions in question. I also take note that said Madhu Kant Surelia has not produced sufficient or justifying document/evidence which shows that KoPT has at any point of time accepted "rent" after determination of the relationship with the O.P. I must not also forget that said Madhu Kant Surelia has also failed to establish himself as representative of O.P. Company despite long drawn proceedings. Now, when Madhu Kant Surelia is not in a position to produce any cogent defence at all, I do not think

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any meaningful purpose will be served by examination and cross-examination of the parties. It is my firm conviction that in the facts and circumstances of the case, such plea is only intended to drag and delay the proceedings further, and in a way abuse of the spirit of the P.P. Act, 1971. I therefore conclude that this is not at all a fit case for exercising any such power u/s 8 of the Act at all.

Effort has also been made on the part of Madhu Kant Surelia to question the jurisdiction of this Forum to deal with the instant proceedings, citing the decision of Hon'ble Supreme Court in the case of Suhas H. Pophale v. Oriental Insurance Co. Ltd. However, I must say that I am not at all inspired by such submission. The public premises in question, belongs to the Kolkata Port Trust, a statutory authority of the Central Government, the land owned by whom always satisfied the definition of "public premises", be it prior to 1958 or not. There is nothing in the P.P. Act or in the said judgment of the Hon'ble Supreme Court which debars the Estate Officer from adjudicating over lease/license entered into prior to 16.09.1958, in respect of such categories of public premises. In my view, the case in hand is clearly distinguishable from the one forming the subject matter before the Hon'ble Supreme Court in Suhas H. Pophale v. Oriental Insurance Co. Ltd. and such distinction has also been recognized by Hon'ble Justice Dipankar Datta of Hon'ble High Court, Calcutta in Judgment dated 16.09.2014 in WP no. 15067 (W) of 2014, M/s B C

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Shaw & Sons v. The Union of India & Ors. Thus, I find no scope to accede to the submission on behalf of Madhu Kant Surelia.

Discussions against the foregoing reveals that the Notice to Quit dated 04.06.2014 as issued by KoPT is very much valid, enforceable and in accordance with law. As per Section 2 (g) of the P.P. Act, 1971, the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises **without authority** for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been **determined for any reason whatsoever.** In my view, said provision is squarely attracted in the instant case, for the reasons I have recorded above. Moreover, I find from the offer letter of KoPT (which was duly accepted by the O.P. in the year 1935) that KoPT is very much within its rights to determine the relationship by virtue of this Notice to Quit. In such a situation, when a stranger/rank outsider is carrying out commercial activity in a public premises belonging to the statutory authority, that too by amalgamating the adjacent plots of land without any authority whatsoever, this Forum cannot sit silent. I find that this is a fit case for passing order of eviction against O.P. and Madhu Kant Surelia, and hence, being satisfied as above, I hereby issue order of eviction u/s. 5 of the Act on the following reasons/grounds:

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1. That O.P. Company has failed to appear before this Forum and failed to submit its Reply to the Show Cause Notice u/s.4 and 7 of the Act in spite of sufficient chance.
2. That O.P. Company has failed to bear any witness or adduce any evidence in support of its occupation into the public premises in spite of sufficient chance.
3. That in gross violation of the condition of tenancy as granted by the Port Authority, O.P. Company has abandoned the public premises in favour of a rank outsider, namely Madhu Kant Surelia alias Madhu Surelia alias Madhu Kant Sharma who is in enjoyment of the public premises in question by way of commercial establishment.
4. That O.P. Company has clearly parted with possession of the public premises unauthorizedly without having any authority under law.
5. That unauthorised constructions have been erected in the public premises in question without having any approval of KoPT or the concerned Municipal Authority or the other Authorities in question.
6. That the Notice to Quit / ejectment notice dated 04.06.2014 as issued by the Port Authority is valid, lawful and binding upon the parties.

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7. That O.P. Company was clearly a defaulter of rent and taxes, at the time of issuance of the said Notice to Quit.

8. That O.P. Company has lost its authority to occupy the public premises after determination/termination of the lease as mentioned in the notice to Quit dated 04.06.2014.

9. That O.P.'s occupation and occupation of any outsider into the public premises is wrongful on and from the date of coming into effect of the Notice to Quit dated 04.06.2014 and O.P. is liable to pay damages for such unauthorized use and occupation of the public premises upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

ACCORDINGLY, I sign the formal order of eviction u/s. 5 of the Act as per Rule made there under, giving 15 days time to O.P. and any person/s whoever may be in occupation, to vacate the premises. I make it clear that all person/s whoever may be in occupation, including Madhu Kant Surelia alias Madhu Surelia alias Madhu Kant Sharma, are liable to be evicted by this order and the Port Authority is entitled to claim damages for unauthorized use and occupation of the property against O.P. in accordance with Law up to the date of recovery of possession of the same.

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I am satisfied that a sum of Rs. 15,38,207.34/- for the period 31.07.1983 to 15.07.2014 (both days inclusive) is due and recoverable from O.P. as arrears of rent and the arrear rental dues as aforesaid, shall be payable by O.P. to KoPT on or before 31.05.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7.35 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, made so far by O.P., in terms of KoPT's books of accounts. I sign the formal order u/s 7 (1) & (2-A) of the Act.

Likewise, I find that KoPT has made out an arguable claim against O.P., founded with sound reasoning, regarding the damages/compensation to be paid for unauthorised occupation. As such, since the Notice for Damages was issued for a particular period, I must say that Rs. 7,88,793.71/- as claimed by the Port Authority as damages in relation to the Plate in question, is correctly payable by O.P. for the period 16.07.2014 to 05.07.2016 (both days inclusive) and it is hereby ordered that O.P. shall also make payment of the aforesaid sum to KoPT by 31.05.2019. In terms of Section 7 (2-A) of the PP Act, 1971, such dues attract simple interest @ 7.35 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, made so far by O.P., in terms of KoPT's books of accounts. I sign the formal order u/s 7 (2) & (2-A) of the Act.

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I make it clear that KoPT is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such liability of O.P. to pay damages extends beyond 05.07.2016 as well, as the possession of the premises is still with the O.P.. KoPT is directed to submit a statement comprising details of its calculation of damages after 05.07.2016, indicating there-in, the details of the rate of such charges, and the period of the damages (i.e. till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. and/or any other person in occupation, to comply with this Order, Port Authority is entitled to proceed further for recovery of possession in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(SATYABRATA SINHA)
ESTATE OFFICER

*** ALL EXHIBITS AND DOCUMENTS ARE REQUIRED TO BE TAKEN BACK WITHIN ONE MONTH FROM THE DATE OF PASSING OF THIS ORDER ***