



## Estate Officer, Kolkata Port Trust

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

1172/D

of 2011

Order Sheet No.

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### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

M/s Industrial <sup>VS</sup> Steel Craft

#### FINAL ORDER

The instant proceedings No. 1172/D of 2011 arises out of 2 (two) no of applications filed by the **Syama Prasad Mookerjee Port, Kolkata** [erstwhile Kolkata Port Trust, hereinafter referred to as '**SMP, Kolkata**'], the applicant herein, bearing No. Lnd.4629/17/2214 dated 14.07.2017 and Lnd. 4629/20/2176 dated 09.10.2020, praying for an order of recovery of dues on account of Compensation etc. along with accrued interest thereon in respect of the subject public premises, against **M/s Industrial Steel Craft**, (hereinafter referred to as **O.P.**), under the relevant provisions of **Public Premises (Eviction of Unauthorized Occupants) Act, 1971** (hereinafter referred to as '**the Act**').

The fact of the case in a nutshell is that the O.P. came into occupation of the port property of piece or parcel of land measuring 1387.134 sqm or thereabouts situated at diverted Circular Garden Reach Road, comprised under occupation no D-168/3 and SF-230, on a long term lease basis for a period of 10 years with effect from 02.09.1981 with an option for renewal for further period of 10 years. The O.P. failed to accept the terms and conditions of SMP, Kolkata's offer for renewal with effect from 02.09.1991 in terms of the option clause in the mother lease inspite of reminder to O.P. Thereafter, a notice demanding possession dated 11.06.2001 was issued by SMP, Kolkata to the O.P. requesting the O.P. to vacate the premises on 02.07.2001. As the O.P. did not vacate the premises, a proceeding was initiated by SMP, Kolkata against the O.P. before this Forum of law under relevant provisions of the Act. Subsequently, the Final Order of eviction of O.P. was passed by this Forum on

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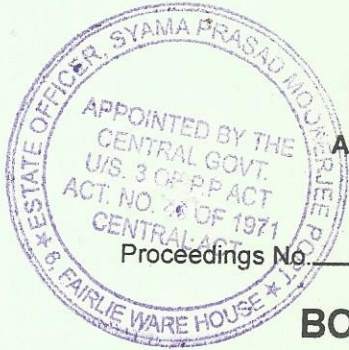
### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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26.12.2016. Thereafter, the possession of the premises was taken over on 17.03.2017 by SMP, Kolkata in vacant, peaceful and unencumbered condition. Thereafter, SMP, Kolkata vide applications dated 14.07.2017 and 09.10.2020 has submitted its claim on account of compensation/ mesne profit/ damage charges, which reportedly was due and recoverable from the O.P. for its use and enjoyment of the port property in question. After considering the claim of SMP, Kolkata, this Forum formed its opinion to proceed against the O.P. and issued Show Cause Notice dated 06.11.2020 (vide Order-26 dated 06.11.2020) u/s 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971. The Notice was issued calling upon the O.P. to show cause as to why an order requiring payment of arrear compensation/ mesne profit/ damage together with interest would not be made against the O.P. The O.P. was also called upon to appear before this forum in person or through authorized representative/s, capable to answer all material questions connected with the matter, along with the evidence which the O.P. intends to produce in support of this case.

The said Notice was sent through 'Speed Post' to both the recorded addresses of O.P. at '2, Barretto Lane (off Mangoe Lane), Kolkata- 700 069' and at '2, Barretto Land, 2<sup>nd</sup> Floor, Room No 202, Kolkata- 700 001, however, the notice was returned undelivered by the Postal Department with the remark 'Not claimed return on 01.12.2020' and 'D/C' (Door Closed) on multiple occasions. The 'Process Server' attached with this Forum for service of such Notices/ Orders etc. has submitted a report dated 15.01.2021 stating that the door was closed at the premises at the time of his visit on 15.01.2021.



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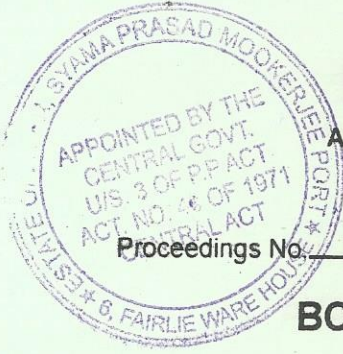
### BOARD OF TRUSTEES OF THE PORT OF KOLKATA

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However, the Process Server in his report dated 15.01.2021 has submitted that the said notice was affixed on the premises, as per the mandate of the Act. In spite of such efforts being made, the appearance of O.P. could not be procured and such efforts remained futile. Then the possibility of O.P. having an alternative address was explored by this Forum and SMP, Kolkata was directed to provide the alternative address, if any, of O.P. vide Order dated 22.01.2021. In response, the representative of SMP, Kolkata submitted during the course of hearing on 17.05.2021, that they have no alternative address of O.P. other than the two recorded addresses as aforesaid. Accordingly, a decision was taken vide Order dated 17.05.2021 to publish a notice in a widely circulated newspaper for a notice to all concerned about the pendency of the instant proceeding in order to give a chance to the O.P. to appear before this Forum and to represent their case. Such notice was published in 'The Times of India (Kolkata edition)' on 29.07.2021 fixing the date for the O.P's appearance, filing reply to Show Cause on 20.08.2021 at 3 pm. However, 20.08.2021 was declared as a Holiday on the occasion of Muharrum. Thereafter, on the next occasion on 27.08.2021, when the matter was taken up for hearing, it was informed by the Department that neither O.P. nor anyone interested in the property made a contact or approached the Forum in the meantime in connection with the Show Cause Notice issued by this Forum. Considering the situation that the attendance of O.P. could not be procured by this Forum at any point of time in spite of every possible efforts being made, even after the publication of a Notice in the English daily newspaper and even thereafter, I am inclined to proceed ex-parte against the O.P.



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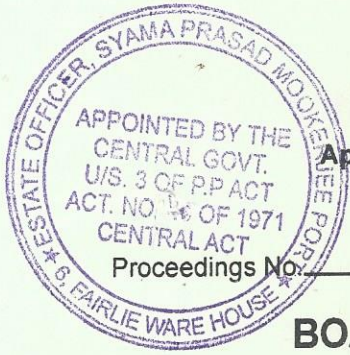
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I find that SMP, Kolkata has produced detailed statement of accounts dated 06.10.2020 filed under the cover of SMP, Kolkata's application dated 09.10.2020 in respect of the said premises in question. It appears from the said statements of accounts that no payment, whatsoever, was made by O.P. in respect of the premises in question for decades. In my view, such statements maintained by a statutory authority/ SMP, Kolkata in its usual course of business has definite evidentiary value, unless challenged with fortified documents/evidences etc, ready to bear the test of legal scrutiny. During the course of hearing, I am given to understand by SMP, Kolkata that the rent as well as mesne profit/compensation/ damages charged from time to time is based on the rates notified by the Tariff Authority for Major Ports (TAMP) in the Official Gazette, which is binding on all users of the port property. Non-payment of dues by O.P. for decades together is very much prominent and established, as discussed above. Hence, I have no bar to accept the claim of SMP, Kolkata on account of rent and damages/compensation/ mesne profit etc. I have nothing to disbelief in respect of SMP, Kolkata's claim against O.P. as per statement of accounts maintained regularly in SMP, Kolkata's office in regular course of business.

Thus, it is my considered view that a sum of Rs 1,49,35,118.36 (Rupees One Crore Forty Nine Lakhs Thirty Five Thousands One Hundred Eighteen and paise Thirty Six Only) for Plate no D 168/3 and Rs 36,50,275.73 (Rupees Thirty Six Lakhs Fifty Thousand Two Hundred Seventy Five and paise Seventy Three Only) for Plate No SF- 230 is due and recoverable from the O.P. for the period from 01.10.2007 to 17.03.2017 by the Port



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authority on account of compensation/ mesne profit/ damage charges.

O.P. must have to pay such dues to SMP, Kolkata on or before 18.10.2021. Such dues attracts Compound Interest @ 6.20 % 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 incurrance of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMP, Kolkata's books of accounts.

The formal order u/s 7 of the Act is signed accordingly.

I make it clear that in the event of failure on the part of O.P. to pay the dues/charges as aforesaid; SMP, Kolkata is at liberty to recover the dues etc. in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(PABITRA MUKHOPADHYAY)  
ESTATE OFFICER.

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



OK

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

ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT, KOLKATA  
(erstwhile 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

OFFICE OF THE ESTATE OFFICER  
6, Fairley Place (1st Floor)  
KOLKATA - 700 001

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Court Room At the 1<sup>st</sup> Floor  
of Kolkata Port Trust's  
Fairley Warehouse  
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 35 DT 28.09.2021  
PROCEEDINGS NO. 1172/D OF 2011

**Form "G"**

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. Industrial Steel Crafts**  
**2, Barretto Lane (off Mangoe Lane),**  
**Kolkata - 700 069**  
and also of  
**2, Barretto Lane,**  
**2<sup>nd</sup> floor, Room No. 202,**  
**Kolkata - 700 001.**

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

And whereas by written notice dated 06.11.2020 ( Vide Order No 26 dated 06.11.2020) you were called upon to show- cause on/or before 27.11.2020 why an order requiring you to pay a sum of Rs 1,49,35,118.36 (Rupees One Crore Forty Nine Lakhs Thirty Five Thousands One Hundred Eighteen and paise Thirty Six Only) for Plate no D 168/3 and Rs 36,50,275.73 (Rupees Thirty Six Lakhs Fifty Thousand Two Hundred Seventy Five and paise Seventy Three Only) for Plate No SF- 230 being damages payable together with compound interest for unauthorised use and occupation of the said premises, should not be made.

And whereas you have not made any objections or produced any evidence before the said date;

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs 1,49,35,118.36 (Rupees One Crore Forty Nine Lakhs Thirty Five Thousands One Hundred Eighteen and paise Thirty Six Only) for Plate no D 168/3 and Rs 36,50,275.73 (Rupees Thirty Six Lakhs Fifty Thousand Two Hundred Seventy Five and paise Seventy Three Only) for Plate No SF- 230 for the period from 01.10.2007 to 17.03.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 18.10.2021.

Please see on reverse



:2:

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.20 % 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) on the above sum with effect from the date of incurrance of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

A copy of the reasoned order no. 35 dated 28.10.2021 is attached hereto.

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

#### Plate no - D 168/3 & SF-230

The piece or parcel of land Msg. 1387.134 Sq.m or thereabouts situated at diverted Circular Garden Reach Road, P.S.: West Port, Kolkata, Dist. : South 24 Parganas, Regn. Dist.: Alipore. It is bounded on the North by Diverted Circular Garden Reach Road On the East and South by Trustees' land previously leased to M/s. Braithwaite Burn & Jessop Co. Ltd., On the West by the Trustees open land and ditch.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Dated: 01.10.2021

Signature and seal of the  
Estate Officer.

**COPY FORWARDED TO THE ESTATE MANAGER, KOLKATA PORT TRUST FOR INFORMATION.**