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ofc

ESTATE OFFICER, KOLKATA PORT TRUST
Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorised Occupants) Act 1971
OFFICE OF THE ESTATE OFFICER
6, FAIRLEY PLACE (1st FLOOR) KOLKATA-700001

FORM -G

PROCEEDINGS NO. 920/D OF 2017
ORDER NO. 38 DATED: 08.08.2019

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

To,

M/s Prime Products Ltd

20, Gariahat Road, Kolkata 700019,
AND also of 38, Strand Road, Kolkata 700001

Whereas I, the undersigned, am satisfied that you ^{with MS} are in unauthorised occupants of
the public premises described in the schedule below:

AND, whereas, by written notice dated 28.06.2019 you were called upon to
show cause on or before 02.07.2019 why an order requiring you to pay the Principal
sums of Rs 37,58,571.47/- (Rupees Thirty Seven Lakhs Fifty Eight Thousand Five
Hundred Seventy One and paisa Forty Seven only) (for Plate no. JS20/9) and Rs
34,24,178/- (Rupees Thirty Four Lakhs Twenty Four Thousand One Hundred and
Seventy Eight only) (for Plate no. SF175) being the damages payable together with
compound interest in respect of the said premises should not be made;

AND whereas you have failed to produce any objection and/or evidence inspite
of sufficient opportunities.

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 require you to pay the principal sums of Rs 37,58,571.47/- (Rupees Thirty
Seven Lakhs Fifty Eight Thousand Five Hundred Seventy One and paisa Forty Seven
only) (for Plate no. JS20/9) and Rs 34,24,178/- (Rupees Thirty Four Lakhs Twenty
Four Thousand One Hundred and Seventy Eight only) (for Plate no. SF175) assessed
by me as damages on account of your unauthorised occupation of the public premises
for the period 01.06.1990 to 23.05.2019 to Kolkata Port Trust by 23.08.2019.

PLEASE SEE ON THE REVERSE

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In exercise of the powers conferred by Sub-section (2-A) of Section 7 of the said Act, I also hereby require you to pay simple interest at the rate of 15% per annum upto 18.09.1996 and thereafter @18% per annum upto 06.04.2011 and thereafter at the rate of 14.25% per annum on the above sum till its final payment in accordance with Kolkata Port Trust Notification Published in Official Gazette/s.

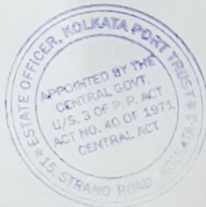
In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

SCHEDULE

Plate Nos JS20/9 and SF175 - Compartment no. 9 msg. 103.773 sqm or thereabouts, situated in the Trustees asbestos shed godown known as Import Warehouse (South) which is situated on the west side of Strand Road, under the jurisdiction of the North Port Police Station within the presidency town of Kolkata.

Trustees' mean the Board of Trustees for the Port of Kolkata.

Dated: 08.08.2019



[Handwritten Signature]
Signature and Seal of the
ESTATE OFFICER

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



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FINAL ORDER

The matter is taken up for final disposal today. To sum up, the instant proceeding no. 920/D arose out of an application dated 24.06.2019 filed by Kolkata Port Trust (KoPT), praying for recovery of dues from the O.P. (Prime Products Limited) in terms of the P.P. Act, 1971, in furtherance to KoPT's original application dated 22.02.2001. The factual aspect of the matter in a nutshell is that the O.P. came into occupation of KoPT's godown space measuring about 103.773 sqm being the Compartment No 9 situated on the ground floor of KoPT's Import Warehouse (South) on the west side of the Strand Road, Thana-North Port Police Station, in the Presidency Town of Kolkata, comprised under the occupation nos. JS 20/9 and SF 175, as a monthly (short term) lessee. As the O.P. violated the conditions of the lease and the land was required by KoPT for implementation of the land use plan, a Notice to Quit dated 05.04.1990 was served upon the O.P. But the O.P. failed to vacate the premises in compliance of the notice. Thereafter, KoPT filed proceedings before this Forum for eviction and recovery of dues etc. under the Public Premises Act, 1971 and the case was registered as Proceeding No. 920 of 2007. As per the available records the Notice/s to Show Cause were issued by this Forum on 21.05.2015.

After a prolonged hearing on the contested applications/arguments for a period of approximately 3 years, this Forum finally passed the Order of eviction vide its Order no. 29 dated 28.09.2018. Thereafter, upon the prayer of KoPT, an Authorised Officer was appointed to take over the possession of the premises, followed by order for Police assistance in terms of the provisions of the Public Premises Act and the Rules framed there under. The possession was finally recovered from the O.P. by the Authorised Officer on 24.05.2019 with some goods / materials lying inside the

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premises. In terms of Sec. 6 of the Act, this Forum proceeded for newspaper publication (in Times of India on 01.06.2019), followed by an Order no. 33 dated 20.06.2019 for Auction of the materials left over at the premises by the O.P. as the dues were not liquidated by O.P. or any other person interested, within the stipulated time. Thereafter, KoPT came up with an application dated 24.06.2019, intimating that certain sum of money is still recoverable from the O.P. for its continuous possession of the premises till the date of taking over of possession. Accordingly, this Forum vide an Order dated 27.06.2019 issued a Notice to Show Cause upon the O.P. u/s 7 of the Public Premises Act, 1971 as to why an Order requiring the O. P. to pay the damages/ compensation/means profit together with interest should not be made by this Forum, thus culminating into the present proceedings i.e. 920/D.

It is seen from records that all attempts were made to serve the said Notice upon the O.P.; however, the Notice sent through registered post to the available addresses of O.P. were returned back, with postal endorsement "not known" and "insufficient address" respectively. Even as per the Report of the Process Server dated 01.07.2019, the personal service of the Notice could not be made as the O.P. was not found at the said recorded addresses of the O.P. On 02.07.2019 i.e. the date fixed for appearance and filing of reply to Show Cause by the O.P., none appeared on behalf of O.P. before this Forum; otherwise also, the Estate Officer having been engaged in other official work on that day, the matter was adjourned. Subsequently, when the case was taken up for hearing on 09.07.2019, again none appeared on behalf of O.P. Considering the circumstances of the case and following the principles of Natural Justice, this Forum then directed vide Order dated 09.07.2019 to publish a Notice in a daily Newspaper in circulation in the

[Handwritten signature]



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locality for wider Notice to all concerned. Direction was also issued to publish such Notice in the Official website of the Kolkata Port Trust for information of all concerned. Such directions were duly complied with and the Notice came to be published in the Kolkata edition of the newspaper 'Times of India' on 15.07.2019. The Notice required the O.P. / all other persons interested in the property to appear/ file Reply to the Show Cause issued u/s 7 of the Act on the next date of hearing fixed on 23.07.2019 at 3 PM. When the matter was taken up for hearing on 23.07.2019 by the undersigned, one Sri Chinmoy Guhathakurta, Advocate appeared for O.P. without Vakalatnama/ any Letter of Authority in his favour. Hence, an Order was passed upon the O.P. or any person interested in the proceeding to appear with proper Authority and/ or Board Resolution of the Company for further representation of the case and the next date of the matter was fixed on 24.07.2019. On 24.07.2019 one Sri Dinesh Chauhan claiming himself as the Authorised Signatory on behalf of the O.P. Company on the purported strength of a Resolution made in the General Meeting held on 07.12.18 authorising him to be the signatory for an Appeal which might be preferred before the City Civil Court, Calcutta against one purported order dated 05.12.18 passed by this Forum against proceeding No. 920 of 2007 and a Letter of Authority dated 24.07.19 issued by him in favour of his Advocates, along with a purported Reply to the Show Cause Notice. After hearing the respective arguments of the parties, the matter was reserved for passing the Final Order vide this Forum's Order no. 37 dated 24.07.19.

Now, after due consideration of the submissions /arguments made on behalf of the parties and after careful consideration of all relevant papers/documents as brought before me during the course of hearing, I find that the following issues



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deserve adjudication for final disposal of the matter
u/s 7 of the Act:-

1. Whether the instant proceedings before this Forum is maintainable, or not;
2. Whether the representation of Sri Dinesh Chouhan (claiming himself as the Authorised Representative of O.P. Company) can be considered to be the representation of the O.P. Company;
3. Whether the Notice u/s 7 (2) and u/s 7 (2A) of the Act, as issued by this Forum, can be said to be bad in law, or not;
4. What is the period of "unauthorised occupation" of the O.P., if any;
5. What is the rate of interest payable by the O.P., if at all.

With regard to issue No. 1, I must say that as per Sec. 2 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the properties owned and controlled by the Port Authority have been declared as "Public Premises" and Sec. 15 of the said Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorised occupants from the public premises and recovery of dues and/or damages, etc. KoPT has come up with an application for recovery of damages, interest etc. from the O.P. on the ground of unauthorised occupation of the public premises in question. So long the property of the Port Authority is coming under the purview of "Public Premises" as defined under the Act, adjudication process by serving Show Cause Notice u/s 7 of the Act is very much maintainable and there cannot be any question about the maintainability of proceedings before this Forum of Law. In fact, proceedings before this Forum of Law is not statutorily barred unless there is any specific order of stay on such proceedings by any competent court of law. In the instant case, recovery of

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possession of the Public Premises is, admittedly, not the subject matter of dispute, as possession of the Public Premises has already been taken over by the Port Authority from O.P. on 24.05.2019. Under such a situation, I have no doubt that this Forum is very much within its authority to issue Notice u/s 7 of the Act. The issue is thus, decided accordingly.

On issue no 2, I must say that no substantial piece of authorisation/evidence has been produced by Sri Dinesh Chouhan before this Forum in connection with the subject proceeding, which can be taken into account by this Forum to be the actual representation of the O.P. Company. I must say that I have carefully considered the Authorisation, Resolution etc. filed before this Forum in connection with this Damages Proceeding (bearing no 920/D) before making such observation. The rationale behind not accepting the representation of Sri Dinesh Chouhan as the actual representation of the O.P. Company has been elaborated in my previous Order no 37 dated 24.07.2019. For the sake of brevity, I am not repeating my observations in this Order. Even if the appearance of Sri Dinesh Chouhan is considered as the appearance of an interested person in terms of Sec. 4 of the Act, then also I must say that said Shri Chouhan has not at all disclosed or revealed how and in what capacity he is claiming interest in the property. In such facts and circumstances of the case, this Forum has no other alternative but to treat the proceeding as 'ex-parte' proceeding against the O.P. Company and the issue is decided accordingly.

On Issue 3, this Forum takes note of the arguments advanced vide the reply/application filed by said Shri Dinesh Chouhan on 24.07.2019 (which has been otherwise rejected vide my Order dated 24.07.2019). It has been submitted that a Misc Appeal 70/2018 has been preferred against the eviction order no 29 dated 28.09.2018 of this



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Forum, before the Hon'ble City Civil Court, Calcutta. However, I must say that Sri Dinesh Chouhan neither produced any relevant papers in connection with such Appeal nor any order/direction from the Hon'ble Court restraining the proceedings to be held under this Forum. As per law, mere filing of any Appeal does not operate as an automatic stay of the order under challenge. Moreover, the instant proceedings 920/D is a fresh proceeding and no Order of any competent Court of law has been produced before this Forum staying or restraining the said proceedings 920/D. It requires mention here that as the rent amount has already been liquidated as reported by KoPT vide application dated 27.06.2019, no Notice u/s 7 (1) was issued by this Forum. As such, the prayer of Sri Dinesh Chouhan is rejected and the issue is decided accordingly.

Issues No. 4 and 5 are taken up together. The possession of the public premises has been taken over by KoPT on 24.05.2019. Now, the definition of "unauthorised occupation" as provided u/s 2 (g) of the P.P. Act, 1971 is as follows :-

"Unauthorised 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 the instant case, it has been recorded in the eviction order passed by this Forum on 28.09.2018 that the contractual period of lease between the parties had come to an end on 01.06.1990 in terms of the Notice to Quit dated 05.04.1990. In my view, O.P.'s occupation on and from 01.06.1990 must be termed as "unauthorised" under sec 2 (g) of the P.P.

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Act, that is to say, after expiry of the period allowed under such notice to quit.

It is needless to mention that Transfer of Property Act provides for determination of lease by way of Notice to Quit as per section 111 of the Act. As such, I have no doubt or confusion to hold that the period of unauthorised occupation of the O.P. is from 01.06.1990 to 23.05.2019 i.e. till the date of taking over of the possession by the KoPT.

During course of hearing, the representative of KoPT produced the summarised statement of accounts, maintained in usual course of business, clearly depicting the dues on the part of the O.P. Company. It is also claimed by KoPT that after determination of the lease, the O.P. is liable to pay compensation charges as determined from time to time under the relevant Gazette Notifications of the Tariff Authority for Major Ports (TAMP). The said TAMP being a statutory body under the Major Port Trusts Act, 1963, its Orders are very much applicable on all users of the port property. In my view, there is no scope to grant special treatment to anybody. It appears to me that the claim of the Port Authority as regards to compensation is very much logical and reasonable and cannot be said to be unjust. Moreover, I must take note of the fact that on one hand there is no lawful representation on behalf of the O.P. Company and on the other hand the person/s who have appeared before this Forum have nowhere questioned the rate/quantum of such dues. As such, I have no hesitation to uphold the claim of the Port Authority as correct and reasonable.

As regards to interest, I am of the view that interest is a natural fall-out for delayed payment/non-payment of rent and taxes and O.P. Company must be called upon to pay interest in the instant case, in



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the facts and circumstances mentioned above. As such, I also upheld the claim of the Port Authority as regards to the interest. The issues are decided accordingly.

NOW THEREFORE, I hereby assess the damages payable by the O.P. Company for wrongful and unauthorised occupation of the public premises in question, for the period on and from 01.06.1990 to 23.05.2019 as Rs 37,58,571.47/- (for Plate no. JS20/9) and Rs 34,24,178/- (for Plate no. SF175) (principal amounts). The O.P. is directed to pay the said amount to KoPT by 23.08.2019. O.P. shall be liable to pay simple interest @ 15% per annum upto 18.09.1996 and thereafter @ 18% per annum till 06.04.2011 and thereafter @ 14.25% per annum on the above sum from the date of incurrance of liability till its final payment in accordance with the relevant notification/s published in Official Gazette. 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. Company to comply with this Order, Port Authority is entitled to proceed further for recovery of its dues in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

N. Biswas
(Nirmalya Biswas)
ESTATE OFFICER

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