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**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

\*\*\*\*\*

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.17 DT 16-3-2022  
PROCEEDINGS NO. 1575/D of 2017

**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 LMJ Commercial Pvt. Ltd,  
Chowringhee Mansion,  
Block-C, 2<sup>nd</sup> Floor,  
30, J.L. Nehru Road, Kolkata- 700016**

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 14.02.2018 (Vide Order No 03  
dated 02.02.2018) you were called upon to show- cause on/or before  
14.03.2018 why an order requiring you to pay a sum of Rs. 3,18,61,708/-  
(Rupees Three Crores Eighteen Lakhs Sixty One Thousand Seven Hundred  
Eight Only) 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. 3,18,61,708/- (Rupees  
Three Crores Eighteen Lakhs Sixty One Thousand Seven Hundred Eight Only)  
for the period from 01.05.2014 to 24.05.2017 assessed by me as damages on  
account of your unauthorised occupation of the premises to Kolkata Port Trust,  
by 01.4.2022.

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 @ 6.30 % 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.

Please see on reverse

:2:

A copy of the reasoned order no. 17 dated 16.3.2022 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**

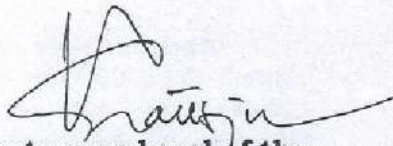
**Plate no - D-800**

The said piece or parcel of land msg. 2514.40 sqm and structure msg. about 3045.482 sqm at Boat Repairing Shed, Wattgunge, ( under plate no D-800) under South Port Police Station.

It is bounded on the North by the River Ganges, on the South by the Trustees' common passage & office, on the East by the Trustees' slipway & Land and on the West by the Government Property.

Trustees' means the Board to Trustees' Syama Prasad Mookerjee Port, Kolkata, (Erstwhile Board of Trustees' for the Port of Kolkata)

Dated: 17.3.2022

  
Signature and seal of the  
Estate Officer.

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



# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1575, 1575/D of 2017 Order Sheet No. 17

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*M/s. L.M.J Commercial (P) Ltd* **VS**

## FINAL ORDER

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16.3.2022

The instant proceedings No. 1575 and 1575/D of 2017 arise out of the application bearing No. Lnd 5504/16/1220 dated 30.06.2016 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/ KoPT, hereinafter referred to as 'SMPK'], the applicant herein, under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971** (hereinafter referred to as 'the Act') praying for an order of eviction and recovery of rental, compensation dues/mesne profit/ damages and other charges etc. along with accrued interest in respect of the public premises, being the Trustees' piece or parcel of land measuring 2514.40 sqm and structure measuring about 3045.482 sqm at Boat Repairing Shed, Watgung, under plate no D-800, against **M/s LMJ Commercial Pvt. Ltd.** (hereinafter referred to as **O.P.**).

The factual matrix which needs to be highlighted is put forward in a nutshell for clear understanding of the issues involved in this matter. It is the case of SMPK, the applicant herein, that M/s LMJ Commercial Pvt. Ltd./O.P. herein violated the condition of tenancy under licence as granted by the Port authority by way of not making payment of licence fees/rent in respect of SMPK's said land msg. 2514.40 sq.m plus structure msg. 3045.482 sqm. or thereabouts situated at Watgunge. It is also the case of SMPK that O.P's occupation has become unauthorised after the expiry of licence period on 01.05.2014 as also after service of notice, bearing No. Lnd.5504/16/4148 dated 31.03.2016, revoking the licence; and O.P is liable to pay damages/compensation for unauthorised use and occupation of the Public premises upto the date of handing over of clear and vacant possession to the Port Authority @ 3 times of the licence fee, as applicable in the last month of valid licence period, from 01.05.2014, as per the then existing licence agreement.

By Order of:  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*17.3.2022*  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

*[Signature]*  
SMPK, vide application bearing No. 5504/17/1627 dated 06/14.06.2017 submitted that the O.P. has on their own accord



**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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Proceedings No. 1575, 1575/D Of 2017 Order Sheet No. 18

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*M/s. L M J Commercial (P) Ltd.* **VS**

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handed over possession of the premises on 24.05.2017 and prayed for recovery of outstanding dues as the prayer for eviction stands expunged due to the recovery of possession.

This Forum issued the Show Cause Notice dated 14.02.2018 ( vide no 03 dated 02.02.2018) asking the O.P. to Show cause regarding their non-payment of compensation charges for their alleged unauthorized occupation of the premises after expiry of the licence period granted by SMPK. They were advised to file their reply on or before 14.03.2018.

The O.P. contested the matter through its Ld. Advocate and filed Reply to the show cause notice on 18.05.2018. The O.P. filed their written notes of arguments on 01.11.2018 and thereafter on 14.12.2018. It appears that the said reply was signed by one Shri Siddharth Jain, identifying himself as the Director of O.P. The main contentions of the O.P., as can be summarized from the said Reply and written notes of arguments may be indicated as follows:

- 1) O.P. could not utilize the land as it was not suitable for production/construction work as the same was covered with junk materials and SMPK, despite several requests made to them, failed to clear the area.
- 2) O.P. had much difficulty in procuring the CESC line for which they did not receive SMPK's co-operation.
- 3) Further, it is the contention of the O.P. that the company had applied for fresh grant of licence on 21.03.2014 but SMPK had communicated the fresh licence only on 05.02.2015, after expiry of 10 months for which the company suffered huge losses.
- 4) O.P. prayed for grant of extended licence which was denied by SMPK.
- 5) The O.P. also prayed for waiver of licence fees because of virtual non-utilization of area.

By Order of :  
**THE ESTATE OFFICER**  
**SYAMA PRASAD MOOKERJEE PORT**  
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 PASSED BY THE ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE PORT**  
*[Signature]*  
 17.3.2022  
 Head Assistant  
 OFFICE OF THE LD. ESTATE OFFICER  
**SYAMA PRASAD MOOKERJEE PORT**

*[Handwritten signature]*

# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1575, 1575/A of 2017 Order Sheet No. 19

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s L.M.J. Commercial (P) Ltd **VS**

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- 6) O.P. could not utilize the land and in view of the non utilization of the premises, the company surrendered possession of the land to SMPK on 24.05.2017.
- 7) Though the land was not utilized for any productive purpose, O.P. has paid Rs. 21,96,726/- as security deposit and Rs. 39,44,256.00/- including TDS as a rent for 13 months.

O.P. again filed another Reply in the form of a written statement on 20.07.2018, where-in the contentions made in the previous reply were reiterated; annexing the documents relied upon by O.P.

On 07.08.2018, SMPK filed their rejoinder to the reply of O.P. The main contentions of SMPK against the reply of O.P. are as follows;

- 1) Tender of the said land was on "as is where is basis" for the purpose of storage and warehousing.
- 2) That it was clearly mentioned in the terms of tender, amongst other clauses, that ;
  - a) The tenderer might inspect the shed/godown/ other miscellaneous structures at their own cost.
  - b) Licencee would be allowed to carry out repair of godown/structure as may be necessary at their own cost with mandatory prior permission of SMPK.
- 3) Though O.P. had taken the godown, on 'as is where is' basis, they have, without prior permission from SMPK, dismantled some of the existing structures which was uncalled for.
- 4) O.P. did not accept the offer for renewal of their licence communicated to them vide SMPK's letter dated 05.02.2015.

By Order of:  
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SYAMA PRASAD MOOKERJEE PORT  
17.3.2022  
Head Assistant  
ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



1575, 1575/D Of 2017 Order Sheet No. 20

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

*m/s L.M.J. Commercial (P) Ltd* VS

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- 5) It had been communicated to O.P. vide letter dated 18.09.2015 that pending the issue of non acceptance of the offer letter, prayer for NOC for laying pipelines/ cable could not acceded to.
  - 6) O.P. made payment of licence fees and taxes up to 30.4.2014 deducting TDS, amounting to Rs 1,22,900/- but defaulted in submitting TDS certificate, as a result of which the deducted amount of Rs 1,22,900/- towards payment of licence fees and taxes, is still outstanding.
  - 7) O.P. failed to liquidate the damage/ mesne profit accrued on the unauthorized occupation of O.P. after the expiry of licence calculated @ 3 times from 01.05.2014 to 24.05.2017.

Heard and considered the contending arguments submitted by both the parties and the documents filed before this Forum, viz., SMPK's applications dated 30.06.2016, 23.06.2017, 30.01.2018, O.P.'s replies to the show cause notice dated 18.05.2018 and 20.07.2018, SMPK's rejoinder dated 07.08.2018, O.P.'s written notes of argument dated 01.11.2018 and 14.12.2018 and SMPK's application dated 25.02.2019.

The main contention of O.P. as is seen from the replies to the show Cause Notice and written notes of argument is that O.P. was unable to use the land as the plot was for production/ construction work and the same was completely covered with junk.

SMPK, however, in their submissions has pointed out that in the tender document based on which O.P. was granted the licence of the said premises, it was clearly stated that licence was for 11 months, for the period from 01.06.2013 to

By Order of :

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Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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



Proceedings No. 1575, 1575/D of 2017 Order Sheet No. 21

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

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30.04.2014, on "as is wherein basis". In effect, clause (xi) of the License agreement signed by and between the two parties, viz., SMPK and M/S LMJ Commercial Pvt Ltd on 01.06.2013 is a clear pointer to that. It is also the case of SMPK that the licensee would be allowed to carry out repair of the godown/ structure as may be necessary, at their own cost with mandatory prior permission of SMPK. In spite of the acceptance of the Licence agreement by OP, where-in clause (xi) of the same clearly stipulated the usage of the premises on 'as is where is basis', O.P. dismantled some of the structures which were expressly committed beyond the scope of the said licence granted. This has been incidentally corroborated by O.P. in their letter addressed to SMPK dated 07.05.2014 where-in it has been clearly mentioned by the O.P. that they had dismantled some brick portion and a few no of columns to start their project, for which they had also tendered an apology with an assurance that recurrence of such incidents will not happen in future.

Further, I find substance in the submissions of SMPK that the O.P. is required to produce the TDS certificate for deduction of TDS amount of Rs 1,22,900/- for the amount deposited by them to SMPK as part of arrear rental dues for the period of 01.06.2013 to 30.04.2014. I find that it is not the case that O.P. had defaulted in making payment of the rental dues to SMPK; rather the O.P. had failed to produce the TDS certificate for deduction of TDS amount of Rs 1,22,900/- only, for the amount deposited by them to SMPK as rent for the relevant period and as such, the amount is still payable by O.P. to SMPK. It is the case of SMPK that barring the TDS amount of Rs 1,22,900/-, all amount due as 'rent' had been liquidated by the O.P. My attention was drawn to the statement of accounts of SMPK dated 31.05.2016 in this regard. It is found that only the submission of T.D.S. Certificate remained due all through the years. In my view, such issue, falling within the ambit of procedural compliance, does not call for a direct interference by this Forum at this

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*16.3.2022*  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**



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

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**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

*m/s L.M.J. Commercial (P) Ltd.* **VS**

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stage, through its exercise of powers under the provisions of the Public Premises Act and could effectively be resolved by the parties involved. Hence, the O.P. is directed to file the T.D.S. certificate for the relevant period to SMPK within 21 days' time and intimate the Forum accordingly. SMPK is also directed to intimate the Forum upon receipt of the said T.D.S. Certificate from O.P. However, I must say that in case of failure by the O.P. to produce the said T.D.S. certificate to SMPK in time, this Forum would have no option but to hold the O.P. liable for the said rental dues as well as for the interest for the relevant period of occupation in the premises by O.P.

Considering all the contentions and the applications filed before this Forum, by and between the parties and after going through the arguments raised therein, this Forum finds that, the valid period of licence by and between the parties was for the period from 01.06.2013 to 30.04.2014 only, as after the expiry of the said licence period on 30.04.2014, no licence agreement was ever executed between the parties. Although SMPK offered a fresh licence to O.P. for the period of 11 months from 01.05.2014 to 31.03.2014 vide SMPK's letter dated 05.02.2015, clearly indicating that acceptance of the same, if any, is required to be made by the O.P., within specified days from the date of the receipt of the letter. But, in terms of the papers placed to the Forum during the course of the hearing for my perusal, I could not find any referral material attesting O.P.'s conveyance of acceptance of the licence offered by SMPK, within the specified days or within a reasonable time thereafter, which would culminate in fulfillment of the jural obligations as laid down in the said licence. Hence, there is no privity of estate between the parties after the expiry of the original period of licence on 30.04.2014.

Now, it is the settled principle of law that after expiry of the licence, the occupation becomes "unauthorised" in terms of Sec. 2 (g) of the P.P. Act, 1971. As per the said Section, the "unauthorized occupation", in relation to any public premises,

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17-3-2022  
Head Assistant  
OFFICE OF THE E.D. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT



# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s. L.M.J. Commercial <sup>VS</sup> (P) Ltd.

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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. Moreover, it is seen that O.P. has failed to obtain any fresh licence/ tenancy from the Port Authority, after expiry of licence earlier granted to it. Therefore, there cannot be any doubt or ambiguity regarding the treatment of the occupation of the O.P. as "unauthorised" right from the date of expiry of the licence in question.

Subsequently, the possession of the subject premises was taken over by the representative of SMPK and the same was handed over by the O.P. in a peaceful and vacant condition on 24.05.2017.

It is also a settled principle of law that a person is liable to compensate the landowner, in case of unauthorised occupation of land. As per law, O.P. is bound to deliver up vacant and peaceful possession of the public premises in its original condition to SMPK after expiry of the contractual period of licence, which the O.P. had ostensibly failed to do.

"Damages" are like "mesne profit", that is to say, the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the licence in question, O.P. had lost its authority to occupy the public premises, and O.P. is liable to pay damages for such unauthorised use and occupation. To arrive at such a conclusion, I am fortified by the decision/observation of the Hon'ble Supreme Court in Civil Appeal No.7988 of 2004, decided on 10<sup>th</sup> December 2004, reported (2005)1 SCC 705, para-11 (Atma Ram's case) of the said judgment reads as follows:

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SYAMA PRASAD MOOKERJEE PORT  
17.3.2022  
Head Assistant  
OFFICE OF THE UD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

# Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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



Proceedings No. 1575/1575/D of 2017 Order Sheet No. 24

## BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

M/s <sup>VS</sup> L.M.J. Commercial (P) Ltd

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16.3.2022

Para:11-“ under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act 1882, once the tenancy comes to an end by determination of lease u/s.111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant. .... ”

Now, the question arises at what rate O.P. is/was liable to pay the compensation/damages. In course of hearing, I find that SMPK has made out an arguable claim against O.P., founded with sound reasoning that during the period of unauthorised occupation, O.P. is liable to pay damages/compensations @ 3 times of the licence fees as applicable in the last month of valid licence period upto the date of handing over of clear, vacant, peaceful and unencumbered possession of the premises. I find that in terms of clause (ix) of the agreement of SMPK with O.P. dated 01.06.2013, after expiry or termination of the licence, if the O.P. does not vacate the premises within the due time, compensation @ 3 times of the licence fees as applicable in the last month, will be charged from the date of the expiry of the licence, upto the date when the property is returned to SMPK in vacant and unencumbered condition. It is the submission of SMPK that such rates are applicable on all the licence holders of the port property in a similarly placed situation and an unauthorised occupant like that of the O.P. cannot claim any preferential treatment.

In view of the discussions above, I have no hesitation to conclude that the calculations of monthly damages/compensation amounts by SMPK are correct and just and O.P. is liable to pay such amounts to SMPK. I may add that O.P. is also liable to pay interest, for default in payment of damages, as per the rates mentioned in the Public

By Order of  
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SYAMA PRASAD MOOKERJEE PORT  
16.3.2022  
Head Assistant  
OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT

**Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**



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

Proceedings No. 1575, 1575/D Of 2017 Order Sheet No. 25

**BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**VS**  
M/S. L.M.I. Commercial (P) Ltd

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Premises Act, 1971 read with Interest Act, 1978 from time to time.

NOW THEREFORE, I hereby assess the damages payable by the O.P. for wrongful and unauthorised occupation of the public premises in question, for the period 01.05.2014 to 24.05.2017 as Rs. 3,18,61,708/- (Rupees Three crores eighteen lakhs sixty one thousand seven hundred and eight). Such dues attract compound interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 from the date of incurrence 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 SMPK's books of accounts.

The O.P. is directed to pay the said amount to SMPK by 01.4.2022.

I sign the formal order u/s 7 of the Act.

I make it clear that in the event of failure on the part of O.P. to pay the amount to SMPK as aforesaid; Port Authority is entitled to proceed further for recovery of its claim in accordance with law. All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

  
(K. Chatterjee)  
ESTATE OFFICER

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

By Order of :  
THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
CERTIFIED COPY OF THE ORDER  
PASSED BY THE ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT  
17.3.2022  
Head Assistant  
OFFICE OF THE LD. ESTATE OFFICER  
SYAMA PRASAD MOOKERJEE PORT