

Two things that distinguish the hire-purchase agreement from an ordinary contract of sale are (i) payment of instalments and (ii) option to purchase the goods hired. Such agreements should be drafted like hire contracts with the usual conditions, but with a clause or clauses providing for the said option to purchase. The additional clause should be carefully drafted so as to provide for that option or for the property in the goods passing to the hirer on the payment of all the instalments and on the hirer duly observing the conditions of hire contract. Two points should be carefully borne in mind in drafting this clause, viz.,

1. It should not amount to an agreement to buy but should only give the hirer an option to purchase, for under the agreement to buy the hirer having got possession of the goods would be able to give good title to any one who takes the goods on sale or pledge from him without notice of the hire-purchase contract [vide Section 30(2) Indian Sale of Goods Act, 1930] and the intention of the owner will thereby be defeated. But if the agreement does not amount to an agreement to buy and gives the hirer only an option to buy the hirer cannot give a valid title to any one, even if the latter takes the goods without notice.
2. There should be an express stipulation that the property in the goods shall not pass to the hirer until all the instalments have been paid. In the absence of this clause, the power to seize the goods in default of payment of instalments might be held to make the agreement a contract of sale. The owner has in him vested not only his contractual right under the agreement but also a reversionary interest in the goods which form the subject of agreement. Similarly, the agreement confers two distinct sets of rights on the hirer, viz., the benefit of the hiring-which constitutes the bailment part of the contract-and the option to purchase which it is now established constitutes a separate and proprietary right. Each of the two interests of both the owner and the hirer, is capable of separate assignment. But the legal position of hirer shall be of bailee towards the goods as well as to the seller.

Minimum Payment Clause

In order to provide for depreciation of the article taken under the hire purchase agreement, it is usual to insert a "minimum payment" clause which provides that in the event of the determination of the agreement by the hirer or the owner the hirer shall be liable to pay 50 per cent of the total price after deduction of the instalments already paid by the hirer.

Types of Hire-Purchase Agreements.

The Hire-purchase agreements, ignoring variations of detail, broadly takes one or other of two forms.

1. When the owner is unwilling to look to the purchaser of goods to recover the balance of the price, and the financier who pays the balance undertakes the recovery. In this form, goods are purchased by the financier the dealer, and the financier obtains a hire-purchase agreement from the customer under which the latter becomes the owner of the goods on payment of all the instalments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price.
2. In the other form of transactions, goods are purchased by the customer, who in consideration of executing a hire-purchase agreement and allied documents remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the owner or dealer, and the financier obtains a hire-purchase agreement which gives him a license to seize the goods in the event of failure by the customer to abide by the conditions of the hire-purchase agreement.

Generally there is a guarantor who also signs the agreement as a surety.

Stamp Duty and Registration

A deed of hire-purchase is liable to stamp duty as an agreement under Article 5 of the Indian Stamp Act, 1899. Registration is not compulsory.

The Hire-Purchase Act, 1972

The Hire-Purchase Act, 1972 passed by the Parliament received the assent of the President on June 1972 and was to have come in force on September 1, 1973, but operation was postponed *sine die* by a Notification in the *Gazette of India* on 30th August, 1973.

The provisions of the Hire-Purchase Act, 1972, although the Act has not been enforced as law, still provide ample guidance and the same should be adhered to in providing a legal cover to the transaction of hire-purchase. Some of the important aspects of the Act, relevant to hire-purchase agreements, are given below:

Hire-Purchase agreement to be in writing and signed by parties thereto:

(1) Every hire-purchase agreement shall be:

- (a) in writing, and
- (b) signed by all the parties thereto.

(2) A hire-purchase agreement shall be void if in respect thereof any of the requirements specified in (1) above has not been complied with.

(3) Where the hire-purchase is associated with a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, the hire-purchase agreement shall be voidable at the option of the owner.

Important Contents of hire-purchase agreements:

(1) Every hire-purchase agreement shall state:

- (a) the hire-purchase price of the goods to which the agreement relates;
- (b) the cash price of the goods, that is to say, the price at which the goods may be purchased by hirer for cash;
- (c) the date on which the agreement shall be deemed to have commenced;
- (d) the number of instalments by which the hire-purchase price is to be paid, the amount of each of those instalments, and the date, or the mode of determining the date, upon which it is payable and the person to whom and the place where it is payable; and
- (e) the goods to which the agreement relates, in a manner sufficient to identify them.

(2) Where any part of the hire-purchase price is, or is to be, paid otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description of that part of the hire-purchase price.

(3) Where any of the requirements specified in (1) and (2) above has not been complied with, the hirer may institute a suit for getting the hire-purchase agreement rescinded; and the court may, if it is satisfied that the failure to comply with any such requirement has prejudiced the hirer, rescind the agreement on such terms as it thinks just, or pass such other order as it thinks fit in the circumstances of the case.

Two or more agreements when treated as a single hire-purchase agreement: As provided in the above referred Hire-Purchase Act, 1972, where by virtue of two or more agreements in writing, none of which by itself-constitutes a hire-purchase agreement, there is a bailment of goods and the bailee has an option to purchase the goods and the requirements of Section 3 and Section 4 of the Hire-Purchase Act, 1972, are satisfied in relation to such agreements, the agreement shall be treated for the purposes of that Act as a single hire-purchase agreement made at the time when the last of the agreements was made.

Warranties and conditions to be implied in hire-purchase agreements:

(1) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be an implied warranty:

- (a) that the hirer shall have and enjoy quiet possession of the goods; and
 - (b) that the goods shall be free from any charge or encumbrances in favour of any third party at the time when the property is to pass.
- (2) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be:
- (a) an implied condition on the part of the owner that he has a right to sell the goods at the time when the property is to pass;
 - (b) an implied condition that the goods shall be of merchantable quality, but no such condition shall be implied by virtue of this clause:
 - (i) as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or
 - (ii) as regards defects specified in the agreement (whether referred to in the agreement as defects or by any other description to the like effect), or
 - (iii) where the hirer has examined the goods, or a sample thereof, as regards defects which the examination ought to have revealed, or
 - (iv) if the goods are second-hand goods and the agreement contains a statement to that effect. (3) Where the hirer, whether expressly or by implication:
 - (a) has made known to the owner the particular purpose for which the goods are required, or
 - (b) in the course of any antecedent negotiations has made that purpose known to any person by whom those negotiations were conducted, there shall be an implied condition that the goods shall be reasonably fit for such purpose.
- (4) Where the goods are let under a hire-purchase agreement by reference to a sample, there shall be:
- (a) an implied condition on the part of the owner that the bulk will correspond with the sample in quality, and
 - (b) an implied condition on the part of the owner that the hirer will have reasonable opportunity of comparing the bulk with the sample.
- (5) Where the goods are let under a hire-purchase agreement by description, there shall be an implied condition that the goods will correspond with the description; and if the goods are let under the agreement by reference to a sample as well as by description, it shall not be sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.
- (6) An owner shall not be entitled to rely on any provision in a hire-purchase agreement excluding or modifying the condition set out in Sub-section (3) above, unless he proves that before the agreement was made, the provision was brought to the notice of the hirer and its effect made clear to him.
- (7) Nothing shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

Passing of Property: The property in the goods to which a hire-purchase agreement relates shall pass to the hirer only on the completion of the purchase in the manner provided in the agreement, subject of course to the other terms in the hire-purchase agreement and in case of doubt to the provisions of the Hire-Purchase Act, 1972.

The hirer to purchase at any time with rebate:

- (1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving the owner not less than fourteen days' notice in writing of his intention so to do, complete the purchase of the goods

by paying or tendering to the owner the hire-purchase price or the balance thereof as reduced by the rebate calculated in the manner provided in the relevant clause of the hire-purchase agreement.

(2) The rebate for the purposes of the above Sub-section (1) could normally be equal in two-thirds of an amount which bears to the hire-purchase charges in the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price.

Explanation: "Hire-purchase charges" mentioned in this clause mean the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement."

(3) It should be ensured that the provisions contained hereinabove shall have effect notwithstanding anything to the contrary contained in the hire-purchase agreement, but where the terms of the agreement entitled the hirer to a rebate higher than that allowed by the proviso mentioned hereinabove, the hirer shall be entitled to the rebate provided by the agreement.

Right of hirer to terminate agreement any time:

(1) Normally the hire-purchase agreement provides that the hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving the owner not less than fourteen days' notice in writing of his intention so to do and re-delivering or tendering the goods to the owner, terminate the hire-purchase agreement by payment or tender to the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under the above referred Sub-clause (2).

(2) Where the hirer terminates the agreement under the above referred Sub-clause (1) and the agreement provides for the payment of a sum named on account of such termination, the liability of the hirer to pay that sum shall normally be made subject to the following conditions, namely:

- (a) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one-half of the hire-purchase price, the hirer shall not be liable to pay the sum so named;
- (b) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination does not exceed one half of the hire-purchase price, the hirer shall be liable to pay the differences between the said sum total and said, one half, or the sum named in the agreement, whichever is less.

(3) Nothing contained in the immediately preceding paragraph shall relieve the hirer from any liability for any hire which might have accrued due before the termination.

(4) Any provision in any agreement, whereby the right conferred on a hirer to terminate the hire-purchase agreement before the completion of the full payment, is excluded or restricted, or whereby any liability in addition to the liability imposed by the hire-purchase agreement itself is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this early termination clause shall be void.

(5) Nothing herein shall prejudice any right of a hirer to terminate a hire-purchase agreement otherwise than by virtue of such early termination clause.

Rights of hirer to appropriate payment in respect of two or more Agreements: As provided in the Hire-Purchase Act, 1972, a hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction of the sums due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and if he fails to make any such appropriation as aforesaid, the sum so said shall, by virtue of this clause, stand appropriated towards the satisfaction of

the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

Assignment and transmission of hirer's right or interest under hire-purchase agreements:

(1) The Hire-Purchase Act provides that the hirer may assign his right, title and interest under the hire-purchase agreement with the consent of the owner, or, if his consent is unreasonably withheld, without his consent.

(2) Except as otherwise provided in the preceding paragraph, no payment or other consideration shall be required by the owner for his consent to an assignment under the clause referred to in the preceding paragraph and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where on a request being made by a hirer in this behalf, the owner fails or refuses to give his consent to an assignment under clause (1) the hirer may apply to the Court for an order declaring that the consent of the owner to the assignment has been unreasonably withheld, and where such an order is made, the consent shall be deemed to be unreasonably withheld.

Explanation: In this agreement wherever the word "Court" occurs, it should mean a Court which would have jurisdiction to entertain a suit for the relief claimed in the application.

(4) As a condition of granting such consent, the owner may stipulate that all defaults under the hire purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved by the owner, whereby without affecting the continuing personal liability of the hirer in such respects, the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities.

(5) The right, title and interest of a hirer under a hire-purchase agreement shall be capable of passing in by operation of law to the legal representative of the hirer but nothing in this clause shall relieve the legal representative from compliance with the provisions of the hire-purchase agreement.

Explanation: In this Agreement the expression "legal representative" has the same meaning as in Clause (11) of Section 2 of the Code of Civil Procedure, 1908 (5 of 1908) and the provision of that section shall apply notwithstanding anything to the contrary contained in the hire-purchase agreement.

Obligations of hirer to comply with agreement: Subject to the provisions of the Hire-Purchase Act, a hirer shall be bound:

- (a) to pay the hire in accordance with the agreement, and
- (b) otherwise to comply with the terms of the agreement.

Obligation of hirer in respect of care to be taken of goods:

(1) A hirer in the absence of a contract to the contrary:

- (a) shall be bound to take as much care of the goods to which the hire-purchase agreement relates as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value;
- (b) shall not be responsible for the loss, destruction or deterioration of the goods, if he has taken the amount of care thereof described in clause (a).

(2) The hirer shall be liable to make compensation to the owner for any damage caused by failure to take care of the goods in accordance with the provisions of Sub-section (1) hereof.

Obligation of hirer in respect of use of goods: If the hirer makes any use of the goods to which the hire-purchase agreement relates which is not according to the conditions of the agreement, the hirer shall be liable to make compensation to the owner for any damage arising to the goods from or during such use.

Obligation of hirer to give information as to whereabouts of goods:

(1) Where by virtue of hire-purchase agreement a hirer is under a duty to keep in his possession or control the goods to which the agreement relates, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are, at the time when the information is given or, if it is sent by post, at the time of posting.

(2) If the hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees.

Rights of hirer in case of seizure of goods by owner: Where the owner seizes the goods let under a hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price falls short of the aggregate of the following amounts, namely:

- (i) the amounts paid in respect of the hire-purchase price up to the date of seizure; (ii) the value of the goods on the date of seizure.

For the purposes mentioned hereinabove the value of any goods on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date less the aggregate of the following amounts, namely:

- (i) the reasonable expenses incurred by the owner for seizing the goods;
- (ii) any amount reasonably expended by the owner on the storage, repair or maintenance of the goods;
- (iii) (whether or not the goods have subsequently been sold or otherwise disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods; and
- (iv) the amount spent by the owner for payment of arrears of taxes and other dues which are payable in relation to the goods under any law for the time being in force and which the hirer was liable to pay.

(3) If the owner fails to pay the amount due from him under the provisions stated hereinabove, or any portion of such amount, to the hirer within a period of thirty days from the date of notice for the payment of the said amount is served on him by the hirer, the owner shall be liable to pay interest on such amount at the rate of twelve per cent per annum from the date of expiry of the said period of thirty days.

(4) Where the owner has sold the goods seized by him, the onus of proving that the price obtained by him for the goods was the best price that could be reasonably obtained by him on the date of seizure shall lie upon him.

Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions:

(1) Where a hirer makes more than one default in the payment of hire as provided in the hire-purchase agreement then, subject to the provisions of Section 21 of the Hire-Purchase Act, 1972 and after giving the hirer notice in writing of not less than:

- (i) one week, in a case where the hire is payable at weekly or lesser intervals; and
- (ii) two weeks, in any other case;

the owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing:

Provided that if the hirer pays or tenders to the owner the hire in arrears together with such interest thereon as

may be payable under the terms of the agreement before the expiry of the said period of one week or, as the case may be, two weeks, the owner shall not be entitled to terminate the agreement.

(2) Where a hirer:

- (a) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or
- (b) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement,

the owner shall, subject to the provisions of Section 22 of the Hire-Purchase Act, 1972 be entitled to terminate the agreement by giving the hirer notice of termination in writing.

Rights of owner on termination: Where a hire-purchase agreement is terminated then the owner shall be entitled:

- (a) to retain the hire which has already been paid and recover the arrears of hire due:
Provided that when such goods are seized by the owner, the retention of hire and recovery of the arrears of hire due shall be subject to the provisions of Section 17 of the Hire-Purchase Act;
- (b) to forfeit the initial deposit subject to the conditions specified in Clause (a) and (b) of Sub-section (2) of Section 10 of the Hire-Purchase Act, and provided in the agreement;
- (c) subject to the provisions of Section 17 and Section 20 of the Hire-Purchase Act and subject to any contract to the contrary, to enter the premises of the hirer and seize the goods;
- (d) subject to the provisions of Section 21 and Section 22 of the Hire-Purchase Act, to recover possession of the goods by application under Section 20 or by suit;
- (e) without prejudice to the provisions of Sub-section (2) of Section 14 and of Section 15 of the Hire-Purchase Act to recover damages for non-delivery of the goods, from the date on which termination is effective, to the date on which the goods are delivered to or seized by the owner.

Model Forms of Hire-Purchase Agreements

Four model forms of the higher-purchase agreements are given below which could be adopted with suitable modifications suiting to the circumstances of each case.

1. Agreement for Hire Purchase

THIS AGREEMENT made this..... day of..... between..... (hereinafter called the owners which expression shall include the successors and assigns where the context so admits) of the one part AND..... (hereinafter called the hirer) of the other part.

WHEREAS, the owner is engaged in the business of manufacturing..... and has agreed to let to the hirer..... and the hirer has agreed to take on hire the said goods more particularly described in the Schedule A hereto for the term of..... years from..... 2017 on the terms hereby agreed to between the owner and hirer as follows:

1. *Hire:* The hirer shall pay to the owner on the execution of this agreement the sum of Rs..... the hire for the first month and on the first day of every calendar month or year during the hiring the sum of Rs..... by way of hire for the said goods, or shall pay the rent specified in Schedule-B hereto and payable without demand on the day therein mentioned.

2. *Option to purchase:* The hirer shall at any time during the hiring have the option of purchasing the said goods for Rs..... and in that event the hirer shall receive credit for all sums previously paid by him under the preceding clause. Until a purchase shall have been effected and the price fully paid the said goods shall remain the property of the owner.

3. *Hirer's covenants:* During the hiring tenure the hirer will:

- (a) not sell, pledge, hypothecate, charge or in any manner encumber the goods or part with possession of the said goods or any of them;
- (b) not without the consent in writing of the owner, remove the said goods or any part thereof from the premises of the hirer at..... and shall keep the owner informed forthwith of any change in address or shift of place;
- (c) will not lend or transfer the goods to any other person without the previous sanction in writing of the owner;
- (d) will keep the goods in good order and condition and will, on the expiry of years or earlier termination of this agreement, return the same to owner in the same condition in which it has been lent, reasonable wear and tear excepted, and all loss or damage due to breakage or any other cause shall be made good by hirer at his own cost;
- (e) pay all taxes, fees, duties, fines, registration charges, other expenses, payable in respect of the assets - when the same shall become due;
- (f) permit the owner or his authorised agent or nominee at all reasonable times to inspect and examine the condition of the said goods;
- (g) shall keep the goods insured against all losses or damage by fire, tempest or theft upto the value of Rs..... with an Insurance Company to be approved by the owner and shall punctually pay all premia and produce to owner when so required the receipts for the last premium payable and keep the insurance alive during the continuance of the agreement. If the said hired goods is injured or destroyed by fire or lost by theft all moneys received in respect of such insurance shall be paid forthwith to the owner and the hirer shall pay to the owner all sums of money received in respect of such insurances who shall apply such money in making good the loss by replacement of such damaged part or parts or the entire goods of similar description and value whereupon such substituted part or parts or goods shall become subject to this agreement in the same manner as the original goods;
- (h) in case of default by hirer in payment of any insurance premium as mentioned in sub-clause (g) or the charges mentioned in sub-clause (e) above, the owner may pay the same or any part thereof and any sum so paid by them shall be reimbursed by the hirer together with interest thereon at the rate of 15% p.a. from the date of payment by the owner;
- (i) the hirer shall indemnify the owner against claims by third parties arising by accident caused by user of the asset until the determination of this agreement;
- (j) the hirer shall not use or permit or suffer the asset to be used in contravention of any statute and regulations for the time being in force or otherwise in any way contrary to law excepting as permitted under this agreement.

(Other conditions settled as may be or prescribed by the owner and necessary according to the nature of the hired goods be incorporated here). The clauses should invariably cover *inter alia* the following matters:

- (i) Hirer agrees to make good to the owner all damages to the asset (fair wear and tear excepted) and pay the owner the full value of the asset in event of a total loss, whether the damage or loss be caused accidentally or otherwise and by any reason whatsoever and to keep the asset at the sole risk of the hirer, until the hirer purchases the asset or returns it to the owner.
- (ii) Hirer agrees to pay expenses for repair deemed necessary by the owner, replace any damaged parts and not make any alteration or addition without previous written approval of the owner.

(iii) Hirer has examined or caused to be examined the asset and the receipt by him of the same shall be conclusive evidence that the asset has been accepted duly in perfect order and working condition, etc.)

4. *Change in address:* The hirer shall forthwith intimate the owners any change of address of the hirer and of the address of the premises where the asset is kept and shall further more forthwith notify the owner in writing of any loss or damage to the said asset.

5. *Default clause:* If the hirer shall make default in the punctual payment in full, of the said monthly hire or in the observance or performance of any of the provisions of this agreement, on his part to be observed and performed the hiring shall immediately determine (specify here other conditions stipulated by the owner).

6. *Owner to make possession:* On the determination of the hiring, the owner may without notice or demand retake possession of the said goods and for that purpose may by himself or by his agent or servants enter into or upon any premises occupied by the hirer and search the same if necessary for the hired goods.

7. *Option to terminate hiring:* The hirer may terminate this agreement at any time by returning the said goods at the owner's place of business.

8. *Rights of damages not affected:* If the hiring is terminated by the hirer under clause 8 such termination shall not prejudice the owner's right to recover the hire upon the date of such termination nor his right to recover damages for any prior breach of this agreement by the hirer, and the hirer shall not be allowed credit or set off for on account of any payments previously made by him.

9. *Compensation for depreciation:* At the termination of this agreement either at the instance of the hirer or the owner, the hirer shall pay to the owner by way of compensation for depreciation of the said article such sum as with the amount previously paid for hire shall make up a sum equal to not less than one half of total amount payable under the agreement.

10. Any time or other indulgence granted by the owner shall not prejudice or affect his strict rights under this agreement.

SCHEDULE A

(Above referred to)

Description of Assets

1. Name.
2. Accession No.
3. Mark/Trade Name.
4. Year of Manufacture.
5. Type of Machine.
6. No. of Machine.
7. Other description:
.....
.....
.....
8. Accessories affixed to the asset:
.....

.....
.....
.....

SCHEDULE B

The amounts payable under this Agreement are as under:

<i>Due Date</i>	<i>Amount (Rs.)</i>
...	...
...	...
...	...

IN WITNESS WHEREOF the parties hereunto have set and subscribed their hands the day, month and year hereinbefore mentioned and bind themselves their heirs, successors and administrators and assigns.

Witness: 1. Signature of Hirer
 Witness: 2. Signature of Owner

(2) Agreement for Hire-Purchase - Another Form - Financier with a Guarantor

(Three Party Agreement)

THIS AGREEMENT made this day..... BETWEEN the..... (hereinafter called "the Owner") which expression..... of the first part and the..... (hereinafter called the "Hirer" which expression.....) of the second part and the..... (hereinafter called "the guarantor" which expression.....) of the third part.

WHEREAS the owner on the request of the hirer has purchased the goods described in the Schedule A hereto from the dealer in order to let the same to the hirer on the terms and conditions hereinafter appearing and the guarantor has agreed to guarantee the payment of the hire and performance of other conditions by the hirer in accordance with the terms of this agreement.

WHEREBY in consideration of the above it is agreed between the parties as follows: Paras 1, 2, 3, 4, 5, 6, 7, 8 and 9 same as in Form No. 1.

10. *Consequences of breach:* The guarantor further agrees that in consideration of the premises, and in case of breach of the terms of this contract by the hirer, he shall restore possession of the asset to the owner and shall pay such sums of hire of the asset as may have fallen due to the owner alongwith any other sum that may become payable to the owner.

Para 11 the same as para 10 in Form No. 1. Schedule A & B as in Form No. 1.

IN WITNESS WHEREOF, etc. same as in Form No. 1. With suitable change for guarantor.

(3) Agreement for Hire-Purchase of Printing Machinery

This AGREEMENT is made on this..... day of..... 2017 BETWEEN..... (hereinafter called "the Company") of the one part AND..... (hereinafter called "the hirer") of the other part.

WITNESSETH:

1. That the company hereby agrees to let to the hirer and the hirer hereby agrees to take on hire from the company the (*description of the printing machinery*) (referred to as "*the machinery*") for the purpose of carrying on the hirer's business of printers at (*place*) for..... months from the date of delivery of the same upon the terms and conditions herein contained.

2. That the hirer shall pay to the company as hire of the machinery the sum of Rs..... as follows; viz., the sum of Rs..... to be paid on the execution of this agreement and the balance of Rs..... to be paid in..... equal monthly instalments of Rs..... each, the first of such instalments to be paid on the..... day of 2017 and the remaining instalments on the (date) of every succeeding calendar month thereafter.
3. That if the hirer shall fail to pay any of the said stipulated instalments on the respective dates on which the same should be paid as hereinbefore mentioned then the hirer shall pay interest on the amount in arrears until payment thereof at the rate of..... per cent, per annum.
4. That the hirer shall, on the execution of this agreement, execute and deliver to the company promissory notes or bills of exchange for the respective amounts of the said instalments payable hereunder and such notes or bills shall respectively be made payable on the dates on which such instalments are respectively payable under this agreement and shall bear interest at the said rate of..... per cent, per annum after the due dates. The said bills shall be deemed to be collateral security for the payment of the said instalments and shall not suspend or affect any other remedy or remedies of the company hereunder.
5. That the hirer shall not, during the continuance of this agreement, in any way sell, assign, sublet or otherwise part with the possession of the machinery or any part or parts thereof or remove the same from one building to another or attempt so to do or part with possession of their interest in the premises where the machinery is kept, without first informing the company of such intended removal and receiving its consent in writing to do so. The machinery shall at all times be at the risk of the hirer who shall bear any loss arising from destruction, loss thereof or damage thereto howsoever caused and who shall take all reasonable care thereof so long as the agreement for hiring remains in force and shall permit the company or its agents at all reasonable times to inspect the same; and if at any such inspection any part or parts of the machinery shall be found broken, damaged or destroyed, the hirer shall forthwith at his own expenses, and to the satisfaction of the company, replace and repair the part so broken, damaged or destroyed. The hirer shall not any time during the said period purchase any parts as may be required to be used with or in connection with the machinery except from the company, who shall from time to time supply the same at their ordinary prices current in (*name of place*) at the respective dates when such parts are required.
6. That the hirer shall punctually pay all rents, rates and taxes payable in respect of the premises wherein the machinery or any part thereof is kept and shall, upon demand, produce to the company or its agents the receipts for the said rents, rates and taxes and in the event of the same being in arrears, the company is hereby empowered to pay the same together with any expenses necessary for the purpose and the hirer shall on demand repay the company any sums so paid.
7. That the hirer shall at all times during the continuance of the hiring keep in a conspicuous position on the machinery such plate or plates as the company may approve of for denoting that the machinery is the property of the company and the hirer shall not remove or obliterate any such plates or allow the same to be removed or obliterated.
8. That the company/hirer shall insure the machinery against fire in a recognised fire insurance office in the sum of Rs..... and shall if required produce to the..... for his or its inspection the policy of insurance and the receipts of the premiums paid (and the hirer shall on demand repay to the company the premiums paid by it).
9. That if any of the instalments of hire or any part thereof shall be in arrear and unpaid for one calendar month after the same shall have become due, or if the hirer shall at any time fail or neglect to perform or observe any of the stipulations or provisions herein contained and on his part to be performed and observed, or if a warrant of attachment or seizure shall be issued or executed against any of the property of the hirer, or if a receiver shall be appointed of any of the assets of the hirer, then and in any such case the company may even without notice to the hirer terminate the agreement of hiring hereby made and may by its servants or agents, without

any previous notice to the hirer, enter upon and into any premises or building where the machinery or any part or parts thereof may be and seize and take possession of and remove the same to such place as the company may think fit notwithstanding any payments previously made by the hirer; and for that purpose leave and licence are hereby given to the company, its agents and servants or any other person employed by it, to break open and enter any building, premises or place where the said machinery may be or be supposed to be and take possession of the same without being liable to any suit, action or other proceeding by the hirer or any other person claiming under him.

10. That if the agreement of hiring shall be determined under the preceding clause hereof, the company shall not be liable to any claim or demand at the instance of any person whosoever in respect of any payments previously made by the hirer, all of which shall in every such case as aforesaid be absolutely forfeited to the company and the company shall further be entitled to recover from the hirer or his estate all such instalments (if any) or hire aforesaid as may then be in arrears with interest thereon as aforesaid and also the instalment payable during the month in which the determination shall take place and in addition thereto such sum (if any) as shall be required with the money so to be paid for hire (exclusive of interest) and the sum previously paid for hire (exclusive of interest) to make up a sum equal to 60 per cent, of the said amount of Rs..... payable as hire under clause 2 hereof and the company shall also be entitled to recover from the hirer or his estate all costs and expenses incurred in or about the entry, seizure and removal as hereinbefore provided under this agreement and the hirer shall not nor any person claiming through him, commence or maintain any action or proceeding against the company, its servants or agents by reason of the company taking possession of the machinery or the temporary possession of the premises where the machinery or any part thereof may then be for such time as may be reasonably required in the removal of the same.

11. That the hirer may determine the agreement of hiring hereby made upon giving to the company one calendar month's previous notice in writing of his intention so to do specifying the date on which the hiring is to terminate and upon delivering up at his own cost the machinery to the company on or before that date in good repair at the godown of the company at (place); provided that the hirer shall at the same time pay to the company all moneys payable hereunder up to that date and in addition such sum (if any) as with the sums then and previously paid for hire (exclusive of interest) shall be required to make up a sum equal to 60 per cent of the total amount of Rs..... payable as hire under clause 9 hereof.

12. That if the hiring hereby constituted shall be determined under clause 2 or clause 11 hereof, the company shall, upon payment by the hirer of all sums payable under clause 10 or 11 hereof, as the case may be, return to the hirer duly cancelled such of the notes and bills mentioned in clause 4 hereof as shall not at the time of such payment have fallen due.

13. That upon payment by the hirer to company of the full sum of Rs..... and interest (if any) payable hereunder on the days and in manner aforesaid, the hiring shall cease and determine and the machinery shall thenceforth be and become the sole and absolute property of the hirer; but until such payment the machinery shall remain the sole and absolute property of the company but let on hire to the hirer.

Signed by the said..... (company) by and through..... duly authorised in that behalf under a power-of-attorney/resolution (date and description of the power-of-attorney or the resolution) in the presence of:

- 1.
- 2.

Signed by the said..... (hirer) in the presence of

- 1.
- 2.

(4) Agreement for Hire-Purchase of Motor Vehicle

THIS AGREEMENT made this day of..... between carrying on business at..... (hereinafter called the Owners, which expression shall include their successors and assigns where the context so admits) of the First part and..... (hereinafter called the Hirer) of the Second part and..... (hereinafter called the Guarantor) of the Third part.

WHEREAS the Hirer has completed and signed a proposal form (which is to be regarded as the basis of this contract) it is hereby agreed as follows:

1. The Owner will let and the Hirer will take on hire upon the terms and conditions hereinafter expressed the Motor Vehicle with body, equipment and accessories described in the Schedule 'A' hereto (hereinafter called "the Vehicle") for the term of..... months from the (date) at the rent specified in the Schedule 'B' hereunder and payable without demand on the date therein mentioned.

SCHEDULE 'A'

No.	New or used	or Make Trade Name	Model Year	Type of Body	H.P. Chasis Number	Engine Number	Registration Number

2. It is agreed between the parties that on account of the expected depreciation in the price of the Vehicle, the hire for the first month is fixed at Rs..... and the hire for future months shall be as mentioned in the Schedule 'B' of this agreement.

3. The Hirer and the Guarantor hereby expressly agree to execute jointly and deliver to the Owners at their option either a Demand Promissory Note or Usance Hundies and by way of collateral security for the due payment of the Hire and they further agree that the Owners shall be entitled to negotiate the Promissory Note or Hundies and also to sue upon the same. They further agree that any such negotiation of suits upon the Promissory Note or Hundies which have already become due or any judgement on the Promissory Note or the Hundies obtained by the Owners Will in no way prejudice the right of the Owners to repossess the Vehicle under this Agreement, provided always that in case such court action results in the Owners realising more than the amount justly due to them including interest, all costs and damages, such surplus shall be paid by them to the Hirer or Guarantor from whom it is realised.

4. The Hirer will, during the tenure of hire:

- (a) Punctually pay the said rent specified in the Schedule 'B' hereto as the same shall become due respectively.
- (b) Register the Vehicle in the name of the Owners, and the Hirer shall not represent or hold himself out as or to or suffer anything whereby he may be required to be the Owner of the said Vehicle.
- (c) Keep the Vehicle in good and serviceable repair, order and condition to the satisfaction of the Owners.
- (d) Authorise the Owners to insure and keep insured the Vehicle against loss or damage by fire, accident third party risks and riot risks for the sum of Rs..... at least, in the name of the Owners with the..... Insurance Company and pay punctually the premium and all money payable in respect of such insurance.
- (e) Authorise the Owners in selecting the Insurance Company for insuring the Vehicle described in Schedule 'A' hereto and the option made by the Owners is final and the Hirer or the Guarantor will under no circumstance raise objection for insuring the Vehicle with any Insurance Company selected by the Owner.

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- (f) Pay all taxes, fees, duties, fines, registration charges and other charges payable in respect of the Vehicle and all rents and outgoings payable by the Hirer in respect of the premises where the Vehicle shall for the time being be kept or garaged when the same shall respectively become due.
- (g) Further agrees that the hire payments to be made by the Hirer are not subject to any suspensions or delay by reason of the Vehicle suspended by any Traffic authority or of the any pending insurance claim or due to any other cause or reason whatsoever.
- (h) On demand produce to the Owners the Policy of Insurance in respect of the Vehicle and receipts for the last premium and the last payments due towards the said taxes, license fees, duties, registration charges, rent and outgoings mentioned above.
- (i) Not sell, charge, pledge, assign or part with possession of the Vehicle.

5. In case of default by Hirer in payment of any insurance premium under sub-clause (d) or the charges mentioned in sub-clause (f) of the preceding clause, the Owners may pay the same or any part thereof, and any sum so paid by them shall be paid by the Hirer together with interest thereon at the rate of 15%. (Flat) per annum from the date of payment by the owner.

6. The Hirer agrees to make good to the Owner all damages to the Vehicle (fair wear and tear excepted) and pay the Owner the full value of the Vehicle in the event of a total loss, whether the damage or loss be caused accidentally or otherwise and by any reason whatsoever and to keep the Vehicle at the sole risk of the Hirer until the Hirer purchases the Vehicle or returns the Vehicle to the Owner.

7. The Hirer shall:

- (i) Permit the Owner, their agents and servants to examine the Vehicle at any time during the currency of this Agreement;
- (ii) Pay expenses for repairs deemed necessary by the Owners, replace any damaged parts and not to make any alteration or additions without previously obtaining the written permission of the Owners.

8. It is agreed and declared that any accessories which shall be fixed and additions, renewals and replacements which shall be made to the Vehicle shall for all purposes be deemed to have become part of the Vehicle and be subject to the provisions of this Agreement.

9. The Hirer has examined or caused to be examined the Vehicle, and the receipt by him of the same shall be conclusive evidence that the Vehicle has been accepted duly fitted and equipped according to the contract. No claim or objection thereafter shall be admissible and no warranty on the part of the Owners as to the quality or state of the Vehicle or accessories or spare parts supplied (thereto or as its or their fitness for any purpose or as to tradeworthiness is herein made implied and any implied warranty is hereby expressly excluded).

10. The Hirer shall forthwith intimate the Owners of any change of address of the Hirer and of the address of the premises where the Vehicle is kept and shall furthermore forthwith notify the owners in writing of any loss or damage to the Vehicle.

11. The granting of time or any other indulgence or the acceptance of any other payment after the due date or otherwise than at the Owner's Office at..... shall in no way or manner prejudice, alter or be deemed to vary any right, or claim vested in the Owner under this Agreement.

12. The Hirer shall indemnify the Owner against claims by third parties arising out of accident caused by the Vehicle until the Vehicle is returned to the Owner or purchased by the Hirer.

13. The Hirer shall not use or permit or suffer the Vehicle to be used in contravention of any statute and regulations for the time being in force or otherwise in any way contrary to the law, except described in the relative proposal for hire purchase.

14. The Vehicle being the property of the Owners shall not be subject to any lien, charge or claim in respect of any rent due by the Hirer to the landlord in respect of the premises where the Hirer is residing or where he is carrying on business or in respect of the premises where the Vehicle is garaged or placed at any time.

15. If the Hirer shall:

- (a) make default in payment of any rent specified in the Schedule 'B' hereto or any part thereof within seven days after the same shall become due whether the same shall have been demanded or not; or
- (b) make default in payment of the insurance premium, taxes, license, fees, fines, duties, registration charges, other charges, rents or outgoings; or
- (c) become insolvent or make any arrangement with the creditors; or
- (d) suffer any distress or execution to be levied upon any of his property; or
- (e) fail to observe or perform any stipulation or condition contained in this Agreement and on his part to be observed and performed, then and in any such case and so often as any such event shall happen, the hiring shall immediately be determined and the Owners may without notice or demand retake possession of the Vehicle whether the same shall be in the possession of the Hirer or of any other person and for that purpose the Owners, their Agents or Servants may enter the premises where the Vehicle shall for the time being parked, garaged or kept for the purpose of such retaking possession of the Vehicle. It shall, however, be at the option of the owner to reinstate this contract on such conditions as they deem fit after the determination of the hiring aforesaid.

16. Upon the determination of the hiring under the last preceding clause herein, all arrears of hires specified in the Schedule 'B' hereto and apportioned parts thereof to the date of determination and all costs and expenses incurred by the Owners in the exercise of the powers conferred by this Agreement shall forthwith be paid by the Hirer to the Owners and the Hirer shall not be entitled to any repayment of credit or allowance of any sum previously paid and all such hire and sum shall belong to the Owners absolutely.

17. The Hirer shall pay the Owner all expenses, costs or expenses incurred in ascertaining or endeavouring to ascertain the whereabouts of the Hirer or the Vehicle or in recovering or in endeavouring to recover any hire specified in the Schedule 'B' hereto and all other amounts payable by the Hirer in and by this Agreement.

18. All moneys payable to the Hirer by any insurer for loss or damage to the Vehicle are hereby assigned to the Owner who may notify the insurer of this condition.

19. The Hirer may determine the hire at any time by (a) delivering the Vehicle to the Owner during ordinary business hours at the premises of the Owner and (b) paying to the Owners, as apportioned, part of the current hire due upto the date of such delivery and all other sums, if any, which upto such date, the Hirer may have become liable to pay to the Owner under the provisions of this Agreement.

20. All sums due from the Hirer to the Owners under this Agreement will carry interest at the rate of 15% per annum from the due date until the date of payment by the Hirer.

21. If the Hirer shall duly observe and perform all the conditions and stipulations herein contained and on his part to be observed and performed, shall duly pay to the Owner all hire hereby reserved during the term of hiring together with all other sums, if any, payable by him to the Owners under the provisions of this Agreement, then and at the termination of hiring, the Hirer may purchase the Vehicle from the Owners provided the Hirer pays the Owner the price of Rs..... and also any sums chargeable, due, collected or recovered as and for Sales Tax under the provisions of the Sales Tax Law in force in respect of the transaction of Hire-Purchase Agreement entered into herein, (the liability for which shall always rest and remain on the Hirer whether the same be demanded or collected before or after the Hirer exercises his option to purchase the Vehicle).

22. The Hirer may at any time determine the hiring and become purchaser of the Vehicle by paying to the

Owner such a sum as together with the sums previously paid will amount to the total sum payable by way of hire hereunder together with all sums, if any, payable by him to the Owners under the provisions of this Agreement and in addition a sum of Rs..... together with any sums chargeable, payable, due, collected or recovered as and for Sale Tax under the Provisions of the Sales Tax Law in respect of the transaction of Hire-Purchase Agreement entered into herein (the liability for which always rest and remain on the Hirer whether the same be demanded or collected before or after the Hirer exercises his option to purchase the Vehicle).

23. If the Hirer fails to observe and perform the conditions and stipulations herein contained and fails to exercise the option of purchasing the Vehicle in accordance with the termination of the hiring, the Hirer shall pay the Owners a sum of Rs..... every month until the Vehicle is handed over to the Owners by the Hirer.

24. Until the Vehicle shall have become the property of the Hirer under the provisions of this Agreement it shall remain the absolute property of the Owner and the Hirer shall have no right or interest in the same other than Hire under this Agreement.

25. The agreement is personal to the Hirer and the rights of the Hirer shall not be assignable or chargeable by him.

26. It is expressly agreed that any Motor Dealer or anybody else by or through whom this transaction may have been introduced, negotiated or conducted is not an authorised Agent of the Owner and the owner has no liability for any representation or statements not made directly by the Owner to the Hirer.

27. Any letter, notice or other communication despatched to the Hirer or the Guarantor, whether through Post or Telegraph Office or through Owners representative at the address last notified to the Owners by the Hirer or the Guarantor shall be deemed to have been delivered or served on them respectively although returned with the remarks 'refused', 'whereabouts not known' or words to that effect, or for any other reason whatsoever.

28. The Owners agree to permit the Hirer to have the registration of the Vehicle, in his own name, for the purpose of conforming with the provisions of Motor Vehicle Acts (Act IV of 1939)⁸ and the Rules framed thereunder, provided that the Hirer shall transfer the registration in the name of the Owner whenever required to do so by them especially when the Hirer commits a breach of any of the conditions of this Agreement stated supra, and the Owners are obliged to take possession of the Vehicle.

29. This Agreement has been accepted and executed by the Owners at and it has been agreed between the parties here that all the CLAUSES, TERMS AND CONDITIONS of this Agreement shall be observed and performed at..... and the Hirer and the Guarantor specifically agree and undertake that they or their representatives and agents shall institute any arbitration or other legal proceedings in..... Courts only which shall have the exclusive jurisdiction to try any arbitration or legal proceedings, or any suit, in respect of any matter, claim or dispute arising out of this Agreement and the Motor Vehicle hired out.

30. The Hirer and the Guarantor hereby admit that this Agreement has been fully explained to them and that they have fully understood the meaning of each and every CLAUSES, TERMS AND CONDITIONS and they have signed this Agreement, with full knowledge and understanding of the obligations herein willingly undertaken, agreed and accepted. This Agreement contains the entire undertaking of respective PARTIES and there is no other understanding or representation, express or implied. It is further expressly agreed that no employee of the Owners is authorised to alter or modify this Agreement in any way.

31. The Hirer further agrees with the Owner that in case of litigations all parties shall submit to the Jurisdiction of Courts in the City of.....

32. The amounts payable under this Agreement are payable at the Owners Office at.....

8. Refer to Section 31A of the Act.

SCHEDULE 'B'

- | | |
|-----|-----|
| 1. | 2. |
| 3. | 4. |
| 5. | 6. |
| 7. | 8. |
| 9. | 10. |
| 11. | 12. |
| 13. | 14. |
| 15. | 16. |
| 17. | 18. |
| 19. | 20. |
| 21. | 22. |
| 23. | 24. |
| 25. | 26. |
| 27. | 28. |
| 29. | 30. |
| 31. | 32. |
| 33. | 34. |
| 35. | 36. |

IN WITNESS WHEREOF the parties hereunto have set and subscribed their hand the day, month and year herein before mentioned and bind themselves, their heirs, successors, administrators and assigns.

<i>Witness:</i>	Signature of Hirer/s
1.	Signature of Guarantor/s
2.	Signature of the Owners

FAMILY SETTLEMENT DEEDS

Concept of Family Arrangement

Halsbury's Laws of England, 4th Edn. Vol. 18 at 135, Para 301 mentions:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour."

It has been pointed out by Halsbury that though the agreement may be implied, it is more usual to embody or to effectuate the agreement by a deed to which the term "family arrangement" is applied.

Further it says “family arrangements are governed by principles which are not applicable to dealings between strangers. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the Court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matter which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements. Conversely, an intention to create a legally enforceable contract may be negated more readily where the parties to an arrangement are members of the same family than where they are not.” [Halsbury’s Laws of England, 4th Edn. Vol. 18 at 137, Para 304]

The concept of family arrangement in England has been accepted by Courts in India, adopting the concept to suit the family set up in our country. The Supreme Court has generally taken a broad view of the matter and leaned heavily in favour of upholding any such arrangement. According to the Supreme Court, a family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of few, is undoubtedly a milestone in the administration of social justice. The object of such arrangement is to protect the family from long drawn litigation or perpetual strife’s which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family.

Essentials of Family Settlement

The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

In *Kale v. Dy. Director of Consolidation*, AIR 1976 SC 807 the Supreme Court has laid down the following propositions to put the binding effect and the essentials of a family settlement in a concretised form:

- (1) The family settlement must be a *bona fide* one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.
- (3) The family arrangement may be even oral in which case no registration is necessary.
- (4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and, therefore, does not fall within the mischief of Section 17 (2) (*sic*) (Section 17 (1) (*b*)) of the Registration Act and is, therefore, not compulsorily registrable.
- (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties of the settlement has no title but, under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.
- (6) Even in *bona fide* disputes, present or possible, which may not involve legal claims are settled by a

bona fide family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement.

The fifth proposition quoted above clearly contemplates that even if a party to the settlement had no title but, under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same. [*CIT v. R. Ponnammal*, (1987) 164 ITR 706 (Mad)].

Family Arrangement When Enforceable?

No doubt, a family arrangement, which is for the benefit of the family generally, can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon. [*Lakshmi Perumallu v. Krishnavenamma*, AIR 1965 SC 825 : 1965 (1) SCR 261.]

SPECIMEN FORM

Settlement of Family Business

This Deed of Family Arrangement is executed on this in the year 2017 between :

A B S/o MN aged years, occupation R/o (hereinafter called as the first party)

and

CD S/o XM aged years, occupation and R/o (hereinafter called as the second party)

WHEREAS

- (1) The first party has started and carried out the business and undertaking described in Schedule 'C' by his own initiative and efforts with his own capital and funds.
- (2) The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'D' and the second party shall hold the share in business and properties described in Schedule 'E'.
- (3) The movable and immovable properties, which is also described in Schedule 'C' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits.

NOW THIS DEED WITNESSETH AS FOLLOWS :

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'E' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.
2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'D' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'D'.

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this day of in the year at

Witnesses

- 1. Signatures
- 2. First Party
- Second Party

Schedule 'C'

Schedule 'D'

Schedule 'E'

LESSON ROUND UP

- A promissory note is defined by Section 4 of the Negotiable Instruments Act, 1881 as “an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument”.
- A power of attorney includes an instrument empowering a specified person to act for and in the name of the person executing it. It is always kept by the attorney. It may be either general or special, i.e., to do all acts or to do some particular act”.
- A power of attorney can be executed in favour of more than one person. A power of attorney can be executed only in favour of a major.
- A power of attorney need not be attested. However, it would be advisable to execute the power of attorney before and have it authenticated by a Notary Public or any Court Judge/Magistrate, Indian Consul or Vice-Consul or representatives of the Central Government.
- Unless expressly or impliedly limited for a particular period, a general power of attorney will continue to be in force until expressly revoked or determined by the death of either party.
- Registration of a power of attorney is not compulsory.
- A contract of hire is a contract of bailment and is governed by the provisions of Chapter IX of the Indian Contract Act, 1872. Two things that distinguish the hire-purchase agreement from an ordinary contract of sale are (i) payment of instalments and (ii) option to purchase the goods hired. Such agreements should be drafted like hire contracts with the usual conditions, but with a clause or clauses providing for the said option to purchase.

A deed of hire-purchase is liable to stamp duty as an agreement under Article 5 of the Indian Stamp Act, 1899.Registration is not compulsory.

- A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

SELF TEST QUESTIONS

- 1. Define ‘Irrevocable Power of Attorney’. Draft a specimen Irrevocable Power of Attorney to be executed

Lesson 6

Drafting and Conveyancing Relating to Various Deeds and Documents (III)

LESSON OUTLINE

- Essential Requirements of Sale of Immovable Property
- Drafting of Deed of Sale of Immovable Property
- Mortgage & its Types
- Drafting of Deed of Mortgage
- License
- License when Transferable
- Revocation of License
- Form of Deed of License
- Lease
- Essential Points to be observed for Drafting of Lease Documents
- Drafting of a Lease
- Distinction between License and Lease
- Specimen Forms of Leases
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

The law relating to transfer of property is governed by the Transfer of Property Act, 1882. Transfer of Property' means an act by which a living person conveys property, in present or future, to one or more other living persons, or to himself, and one or more other living persons. 'Living person' includes a company or association or body of individuals, whether incorporated or not. Property has, always, been on the fundamental elements of socio economic life of an individual.

Consequently, the law relating to transfer of property is not only an important branch of civil law but also one that demands proper elucidation due to its complexity.

Therefore, while drafting sale deeds relating to immovable property, students should be well versed in this subject so as to understand the intricacies involved in the transfer of property.

DEEDS OF SALE OF LAND AND BUILDING

Introduction

Sale of immovable property is governed by the provisions of Transfer of Property Act, 1882. Chapter-III of the said Act deals with the sale of immovable property exclusively. Section 54 of the said Act defines sale.

“Sale” defined - “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale - A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on, such property. Besides, Transfer of Property Act, legislation like Income-Tax Act, FEMA, Urban Land Ceiling Act and some other laws affect the free transfer of immovable property.

Essential Requirements of Sale of Immovable Property

The following are the essential requirements of sale of an immovable property:

- (1) Transfer of ownership in exchange of price paid or promised or part paid or part promised.
- (2) Parties to transaction of sale are known as seller and buyer.
- (3) Subject-matter of sale is immovable property which is sold by seller and purchased by buyer.
- (4) Delivery of possession of property to the buyer by seller may be made as under:
 - (i) Property of the value of less than Rs. 100/- may be transferred merely by delivery of physical possession;
 - (ii) Property of the value exceeding Rs. 100/- may be transferred under a written instrument known as ‘Sale Deed’ which should be registered under the Registration Act, 1908.
- (5) Sale of immovable property attracts stamp duty under the Indian Stamp Act.
- (6)
 - (i) Clearance certificate from the Income-tax Officer
 - (ii) General permission of RBI is available if the property acquired is owned by Non-resident as per the Provisions of FEMA.
 - (iii) It may also be borne in mind by the draftsman to recite for all the above permissions, approvals, or exemptions obtained under different acts in the document.
- (7) The rights and obligations of the buyer and seller in the transaction of sale emerge as provided under Section 55 of the Transfer of Property Act.

Rights and Liabilities of Buyer and Seller

Section 55 of the Act prescribes the rights and liabilities of buyer and seller which can be modified by the parties to a contract by mutual consent and contract to the contrary of these provisions. The seller under Sub-section (1) is bound to (a) disclose to the buyer any material defect in the property or in his title to such property, (b) to give title documents to buyer for investigation of seller's titles to the property under transaction of sale, (c) to answer the question put to him by the buyer and provide all necessary information to him in regard to the property, (d) to execute the conveyance document on payment of consideration money in favour of the buyer, (e) pay all public dues on the property till the date of conveyance and take due care as a man of ordinary prudence to protect the title of the property till it is passed on to the genuine buyer. The buyer is also duty bound under the provisions of the Act to do the following things (a) to disclose to seller the interest of the seller in the property of which he is aware and believes that the seller is not aware and this information is likely to affect the price of the property, (b) to pay or tender the purchase money to the seller or such person as he directs, (c) where the ownership of property has passed to buyer he has to bear the full responsibility including any loss to the property etc., (d) to pay public dues from the date of transfer of ownership of the property.

Besides the above noted duties or obligations of the buyer and seller as covered under the provisions of the Act, there are certain rights and entitlements also. For example, the seller is entitled to following benefits:

- (a) to the rents and profits of the property till the ownership thereof passes to the buyer;
- (b) where the property has passed to the buyer before payment of the whole of the purchase moneys the seller is entitled to a charge upon the property in the hands of the buyer. He is also entitled for the interest on the amount of unpaid consideration money for the property.

Similarly, the buyer is also entitled to the following benefits viz., (a) where the ownership of the property has passed to him, to the benefit of any improvement in it which may be in any shape of increase in value of the property or its rent or profit; (b) he is entitled to charge upon the property to the extent of entitlement etc.

Documentation

Usually a transaction of a sale of immovable property involves two documents, e.g., Agreement to sell and the Conveyance Deed i.e. sale deed. But with only a Sale Deed the transaction of sale can be completed.

In *Suraj Lamp & Industries Pvt Ltd. v. State of Haryana* the Supreme Court of India observed that it has become common practice to effect transfers of immovable property by way of either general power of attorney (GPA) sales or sale agreement, GPA or will transfers in order to evade, inter-alia, the payment of duties, taxes and other fees payable on transfer and registration (eg, stamp duty or registration fees).

The Apex Court held that such transactions are illegal and cannot be recognized as valid under law. Hon'ble Court further sought to distinguish these illegal transactions from genuine transactions entered into by parties in good faith. While referring to Sections 53A and 54 of the Transfer of Property Act and its decisions in earlier cases, it further observed that a transfer of immovable property by way of sale can be effected only by a deed of conveyance. In the absence of a deed of conveyance, duly stamped and registered, no right, title or interest in an immovable property can be transferred.

Drafting of Deed of Sale of Immovable Property

Before drafting the conveyance or Sale Deed for the immovable property, it is necessary that the title of the property be investigated and it should be ensured that the title to the property is proved as good and marketable. Investigation of title should be done by an experienced person, solicitor or advocate or professional consultant who should certify having carried out searches in the concerned office that the property is free from any encumbrance i.e. charges, etc.

Acquisition of Immovable Property by a Company

A company can validly acquire or dispose of an immovable property if its Memorandum and Articles of Association so provide and its Board of Directors pass the requisite resolution in conformity with the provisions of the Companies Act.

A company may acquire any immovable property by having it sold out by any other person in its favour under a document known as 'Sale Deed' executed by the vendor in its favour. A Sale Deed must be properly drafted adhering to all the principal conditions prescribed under the Transfer of Property Act to acquire a perfect title to the property being purchased by the company.

Some of the important conditions as contained in the said Act which a draftsman should bear in mind while drafting a Sale Deed are very precisely noted below:

(a) Lawful Consideration and Object

The property must be purchased as a part of legal transaction having paid the consideration as required under the provisions of the Indian Contract Act, 1872 for a valid contract. Besides, the objectives for which the property is being purchased by the buyer should be lawful i.e., not forbidden by law, not to defeat the provisions of any law, not to be fraudulent, not to involve or impart injury to the person or property of another and should not be regarded by the court of law as immoral or opposed to public policy.

(b) Competence of Person to Transfer

For a company, the test of competence to enter into a transaction of sale or purchase is that its Board of Directors should authorise a person under the resolution passed in their meeting held in conformity with the Articles of Association and having object clause to sell or purchase immovable property under its Memorandum of Association. In case the other party is an individual who is either selling to the company or purchasing from the company any land or immovable property such individual should be considered competent to transfer if it fulfils the necessary conditions prescribed under the Indian Contract Act, 1872 viz. (i) should be of the age of majority, (ii) be of sound mind; (iii) not be disqualified from contracting by any law to which such individual is subjected. Further, the draftsman should ensure that where a transaction is being made involves a person whose competence is derived in pursuance of following or adhering a prescribed procedure under any special or general law, such procedure should be followed invariably. For example, a minor though incompetent to enter into a transaction under the Law of Contract but becomes competent if the procedure laid down under the Law of Minority and Guardianship is followed i.e. through the natural guardian or ward the minor can lawfully enter into the transaction of transfer of immovable property with the company.

(c) Transfer of All Interest - in the Property

All interests which a transferor is capable of passing in the property as legal incident of the transfer should be explained in the document, for example, if it is transfer of land, the easements annexed thereto, the rents of profits thereof, things attached thereto etc.

(d) Absolute Transfer

The transfer should be free of any conditions or limitations which may inhibit the other party to make full use of the property in exercise of legal rights.

(e) Absolute Interest in the Property

The interest being transferred in the property should not be conditional which may restricted full enjoyment of the property by the transferee.

(f) Justification for Transfer

Cogent reasons for the transfer be given so as to establish *bona fide* base for the transaction and to avoid eventualities of fraud and multiple litigation therefrom.

(g) Protection of Creditors' Interest

Law protects creditors' interest in the transferred property.

(h) Enforcement of Rights Attached to Property on Valid Transfer

If a transferee is aware of such rights attached to the property and the transfer is gratuitous then the person can enforce such rights against transferee. But this could be avoided if the transferee has no notice about such rights attached to property and also has paid full consideration for the transaction.

(i) Property to be Free from Conditions

The property being transferred should be free from any rights or obligations which a third person can enforce legally against transferee for enjoying any benefits.

(j) Transfer in Good Faith and with Full Authority

Where the property is transferred by a person not to be the real owner, it is necessary to make such transfer valid for the transferor should have the authority to transfer and he must exercise this authority in good faith.

(k) Protection for Defective Title

Law protects the transferee who acquires the immovable property under good faith and for *bona fide* consideration but by any circumstance unknown to him is rendered to have defective title, Section 51 of the Transfer of Property Act, provides such protection to *bona fide* transferees acquiring properties in good faith.

(l) Precautions

The draftsman should know beforehand that the property under transfer is free from encumbrances and no litigation questioning such property or rights or interest connected therewith is pending in any court. To avoid fraudulent transfers, the draftsman should ensure that the title to such property has been investigated by competent advocate and he has certified the title free from any encumbrance whatsoever.

In the case of a company, it must be ensured that the Board of Directors have requisite powers under Companies Act, 2013 to sell, lease or otherwise dispose of the property of company.

Specimen Forms for Deeds of Sale of Immovable Property

Some specimen forms for sale deeds of immovable properties are given below representing different situations. These forms can be adopted in different situations by making suitable modifications.

(1) Simple Deed of Sale of a House, without Recitals

THIS DEED OF SALE is made at Delhi on this the..... day of.....2018....

BY AND BETWEEN AB, etc., (hereinafter called "the seller") which expression shall unless repugnant to the context shall include its successors, legal representatives, assigns of the ONE PART

AND

CD, etc, (hereinafter called "the buyer") which expression shall unless repugnant to the context shall include its successors, legal representatives, assigns of the OTHER PART .

NOW THEREFORE IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. In consideration of the sum of Rs..... paid by the buyer to the seller on the..... day of..... (the receipt of which the seller hereby acknowledges) the seller as owner hereby transfers to the buyer by way of sale ALL that pucca house standing on the land measuring 27 metres by 10 metres fully described in the schedule hereto annexed and thereon shown with its boundaries coloured red (hereinafter referred to as "Premises") TO HOLD the same to the buyer as absolute owner.
2. The seller hereby covenants with the buyer as follows:
 - (a) The said Premises shall be quietly entered into and upon and held and enjoyed and the rents and profits received therefrom by the buyer without any interruption or disturbance by the seller or any person claiming through or under him and without any lawful disturbance or interruption by any other person whomsoever;
 - (b) The seller will at the cost of the person requiring the same, execute and do every such assurance or thing necessary for further more perfectly assuring the said premises to the buyer, as may reasonably be required;
 - [(c) The interest hereby transferred subsists and the seller has power to sell the same;
 - (d) The property hereby sold is free from all encumbrances, charges, mortgages, liens, prior agreement to sell, court proceedings, gifts, of any nature whatsoever..
- (e) That the construction existing on the said Premises is in accordance with the sanctioned plan.
3. If any of the foregoing including the representations and warranties are found to be false in any manner and/or if the buyer is deprived of the said Premises at any time, in future after execution of this Sale Deed in full or in part thereof, owing to the above reason or reasons whatsoever in respect of the said Premises, the Seller hereby undertakes that he will entirely remain liable and responsible to indemnify the buyer for the same in all manners, including but not limited by all his moveable and immoveable properties and all other assets.
4. That the Seller has delivered the peaceful physical vacant possession of the said Premises under sale alongwith all its rights of ownership and also delivered all the previous original documents of the said Premises to the buyer at the time of execution and registration of this Sale Deed.
5. That the buyer can get the said Premises under sale mutated in its own name in the record of M.C.D. and/or any other concerned authority by presenting this Sale Deed or its true copy.
6. That from the date of execution of this Sale Deed the buyer becomes the sole and absolute owner of the said Premises under sale and shall be at full liberty to use, enjoy and utilize the said Premises under sale and also have right, power, absolute authority and be fully competent to sell or dispose off the same to anyone in any manner as he may like.
7. That after the execution of this Sale Deed neither the buyer nor his legal heirs, may raise any objection or create any charge or demand any share in the said Premises under sale here-after.

IN WITNESS WHEREOF the parties hereto have signed this Deed of Sale on the date mentioned against their respective signatures.

Witness

Vendor

Witness

Purchaser

The schedule herein referred to
(Description of the property)

(2) An Agreement of Sale of Immovable Property

THIS AGREEMENT OF SALE executed on this the..... day of..... 2018 between S son of SF, resident of....., hereinafter called vendor of the ONE PART and P son of PF, resident of..... hereinafter called the purchaser of the other part. (The expression “Vendor” and “Purchaser” wherever they occur in these presents, shall also mean and include their respective heirs, executors, administrator, legal representatives and assigns).

WHEREAS the vendor is the sole and absolute owner of the property more fully set out in the Schedule hereunder:

AND WHEREAS it is agreed that the vendor shall sell and the purchaser shall purchase the said property for the sum of Rs..... (Rupees in words) free of all encumbrances.

NOW THIS AGREEMENT OF SALE WITNESSES AS FOLLOWS:

1. The price of the property more fully set out in the Schedule is fixed at Rs..... (Rupees.....) free of all encumbrances.
2. The purchaser has paid to the vendor this day the sum of Rs..... (Rupees.....) by way of earnest money for the due performance of the agreement, the receipt of which the vendor doth hereby admit and acknowledge.
3. The time for performance of the agreement shall be..... months from this date, and it is agreed that time fixed herein for performance shall be the essence of this contract.
4. The purchaser shall pay to the vendor the balance sale price of Rs. (Rupees.....) before registration of the sale deed.
5. The vendor agrees that he will deliver vacant possession of the property to the purchaser before registration of the sale deed.

Alternatively

The vendor agrees that he will put the purchaser in constructive possession (if vacant possession is not possible) of the property by causing the tenant in occupation of it to attorn their tenancy to the purchaser.

6. The vendor shall execute the sale deed in favour of the purchaser or his nominee or nominees as purchaser may require.
7. The vendor shall hand over all the title deeds of the property to the purchaser or his advocate nominated by him within..... days from the date of this Agreement for scrutiny of title and the opinion of the vendor’s Advocate regarding title of the property shall be final and conclusive. The purchaser shall duly intimate the vendor about the approval of the title within..... days after delivering the title deeds to him or his Advocate.
8. If the vendor’s title to the property is not approved by the purchaser, the vendor shall refund to the purchaser the earnest money received by him under this Agreement and on failure of the vendor to refund the earnest money within..... days he shall be liable to repay the same with interest thereon at..... per cent per annum.
9. If the purchaser commits a breach of the Agreement, he shall forfeit the earnest amount of Rs..... (Rupees.....) paid by him to the vendor.
10. If the vendor commits a breach of the Agreement, the vendor shall not only refund to the purchaser the sum of Rs..... (Rupees.....) received by him as earnest money, but shall also pay to the purchaser an equal sum by way of liquidated damages.

- 11. Nothing contained in paras 9 and 10 supra shall prejudice the rights of the parties hereto, to specific performance of this Agreement of sale.

(Schedule of Property)

IN WITNESS W HEREOF the vendor and the purchaser have set their hands to the Agreement of sale the..... of..... 2018 in the presence of the witnesses:

Witness: Vendor

Witness: Purchaser

(2A) Specimen Schedule of the Property

- 1. Municipal No./Ward No./Plot No./Khasra No.:
- 2. Location: Street No.:
Street Name:
- 3. Place/Area North:
South:
East:
West:
- 4. Sub-District Hqrs./Tehsil/Taluka:
- 5. Police Station:
- 6. District/State:
- 7. Exact Measurement:
Total Area: Measurement of all sides:
Plinth area/floor area: Sketch/plan:
Carpet area:
- 8. Fixtures & Fittings:
- 9. Any other items to be covered in sale deed.
- 10. Permitted use of the land/building:

In case of agricultural land, the schedule may be modified to include the Khasra Nos./Plot Nos. with area and location as per the revenue records supplied by the Patwari or revenue office of the Sub-District/Tehsil/Taluka.

It is also a requirement that a survey is done as to ascertain the exact measurement of area and compare it with what is mentioned in the title deed. Buyer can make sure that he is buying a property of a particular measurement.

(3) Deed of Sale by a Certificated Guardian of a Hindu Minor

THE DEED OF SALE is made on this..... day of..... BETWEEN AB of, etc. (vendor) of one part and CD of, etc. (purchaser) of the other part.

WHEREAS by an order made by the District Judge of..... in Case No..... of under Act VIII of 1890 (cause title) the said AB was appointed certificated guardian of XY who was then and is still now a minor under the age of 21 years.

AND WHEREAS by an order dated..... the..... day of..... made by the District Judge of..... in Misc. Judicial Case No. ... of..... the said AB was authorised to sell the lands, hereditament and tenement belonging solely and exclusively to the said minor on terms thereunder contained which property is fully mentioned and described in the Schedule hereto.

AND WHEREAS the said order is still in full force and virtue.

AND WHEREAS in pursuance of the said order the said AB as such certificated guardian has contracted with the said CD for absolute sale of the said property at and for the sum of Rs.....

NOW THE INDENTURE WITNESSETH that for the consideration as aforesaid and in exercise of the powers, authorities and liberties conferred upon and vested under and by virtue of the hereinbefore recited order dated..... and all other powers and authorities enabling him in that behalf the said AB do hereby grant, convey, sell, transfer, assign and assure as certificated guardian of the said minor the said property and every part whereof unto and to the use of the said CD, To Have and To Hold the same absolutely and for ever.

AND THIS INDENTURE FURTHER WITNESSETH that the said AB do hereby covenant with the said CD that the said AB has not heretobefore done, executed, performed or knowingly suffered to the contrary any act, deed or thing whereby or by reason or means whereof the said property or any part thereof may in any way be encumbered or prejudiced in title or estate or the said AB may be hindered or prevented from granting, transferring, conveying, selling, assigning or assuring the same in the manner hereinbefore indicated.

The Schedule above referred to

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

.....AB

.....CD

(4) Sale Deed of Agricultural Land

THIS DEED OF SALE is made on this..... day of..... Two Thousand..... BETWEEN..... hereinafter called the vendor of the one part AND..... hereinafter called the vendee of the OTHER PART.

AND WHEREAS the vendor is lawfully seized and possessed of or otherwise sufficiently entitled to the property described fully in the Schedule below.

AND WHEREAS the vendor (or vendor's) predecessor-in-interest exercised his option to retain the said property in terms of local land laws having effect on such land or whereas the property described in the schedule below stands retained by reason of the then raiyat not having agricultural lands beyond the ceiling of the predecessor-in-interest as the case may be.

AND WHEREAS the land described in the Schedule below has been recorded in the finally published Khandakhatian of the vendor or vendor's predecessor-in-interest as the case may be.

AND WHEREAS the land fully described in the Schedule below stands retained by the vendor through operation of family ceiling as envisaged in Chapter II-B, W.B., Land Reforms Act.

AND WHEREAS the vendor has obtained previous permission in writing.

NOW THIS DEED WITNESSES THAT in consideration of a sum of Rs..... paid by the vendee or promised to be paid by the vendee or a sum of Rs..... paid by the vendee out of the total agreed sum of Rs..... being agreed as the price of the property, and the receipt whereof being acknowledged by the vendor do hereby and hereunder grant, convey, sell, transfer, assign and assure all his estate and

interest in the schedule property with all appurtenances, together with all homestead, trees, tanks, hedges, ditches, ways, waters, watercourse, lights, liberties, privileges easements whatever to the land described in the Schedule.

AND ALL the estates, right, title, interest, claim and demand whatsoever of the vendor into or upon the same and every part thereof: TO HAVE AND TO HOLD the same unto and to the use of the purchaser, his heirs, executors, administrators, assigns absolutely and forever together with title deeds, writings, muniment and other evidences of title AND THE VENDOR do hereby covenant with the purchaser, his heirs, executors, administrators representatives and assigns that notwithstanding any acts, deed or things hereto before done, executed or knowingly suffered to the contrary the vendor is now lawfully seized and possessed of the said property free from any encumbrances, attachments or defect-in title whatsoever and that the vendor has full power and absolute authority to sell the said property in the manner aforesaid AND the purchaser shall hereafter peaceably and quietly hold, possess and enjoy the said property in khas without any claim or demand whatsoever from the vendor or any person claiming through or under him. AND FURTHER THAT the vendor, his heirs, executors, administrators or assigns, covenant with the purchasers, his heirs, executors, administrators and assigns to save harmless indemnify and keep indemnified the purchaser, his heirs, administrators or assigns from or against all encumbrances, charges and equities whatsoever. AND the vendor, his heirs, administrators or assigns further covenant that he or they shall at the request and cost of the purchaser, his heirs, executors, administrators or assigns do or execute or cause to be done or executed all such lawful acts, deeds and things whatsoever for further and more perfectly conveying and assuring the said property and every part thereof in manner aforesaid according to the true intent and meaning of this deed.

Schedule of Property

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

by the vendor in the presence of:

(5) Deed of Sale of Property, Mortgagee - Joining

THIS INDENTURE IS MADE on this..... day of....., 2018 BETWEEN AB of etc. (vendor and mortgagor), of the first part, CD of..... etc. (mortgagees), of the second part, and MN of, etc., etc., (purchaser) of the third part.

WHEREAS by Deed of Mortgage dated..... day of..... made between the said AB described therein as mortgagor of the one part and the said CD described therein as mortgagee of the other part and registered in Book I, Vol..... Pages..... to..... in the office of..... it was witnessed that the said AB did for the consideration mentioned therein grant, convey, sell, transfer, assign and assure unto and to the use of the said CD the property fully mentioned and described in the Schedule thereto and also particularly written in the Schedule below subject to the proviso for redemption as therein contained.

AND WHEREAS there is now due and payable to the said CD by the said AB a sum of Rs..... as principal and a further sum of Rs..... as interest making thus an aggregate of Rs..... which sum the said AB has no resources to repay except by sale of the said property as hereunder mentioned.

AND WHEREAS in the circumstances aforesaid the said AB has agreed with the said MN for sale of the said property at and for the sum of Rs.....

AND WHEREAS the said CD has agreed to join with the said AB in effecting such sale and assuring the same so as to pass an absolute title in the said property unto the said MN free from encumbrances.

NOW THIS INDENTURE WITNESSETH that in consideration of the said sum of Rs..... out of which a sum of Rs..... has been paid to the said CD in satisfaction and discharge of the mortgage debt and the balance retained by the said AB the receipts whereof they, viz., the said AB and CD do hereby and hereunder respectively admit, acknowledge and confirm he, the said AB, doth hereby and hereunder grant, convey, sell, transfer, assign and assure and the said CD join with the said AB and convey, sell, transfer and release unto and to the use of the said MN the said property and every part thereof TO HAVE HOLD AND POSSESS the same absolutely and forever freed and released from the said mortgage and all moneys due and payable thereunder together with buildings etc. (as usual in the conveyance) (usual covenants on the part of the vendor e.g., covenant as to good title, peaceful possession, non-encumbrances except the mortgage, further assurance and indemnity).

AND that the said CD do hereby covenant with the said MN that he has not done any act, deed or thing, nor suffered anything to the contrary whereof or by reason or means whereof the said property or any part thereof may be in any way affected or prejudiced in title or estate. And that he has full power and absolute authority to grant, convey, sell, transfer, assign and release the same in the manner hereinbefore indicated.

Schedule above referred to

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

.....AB

.....CD

.....MN

(6) Deed of Sale by Co-owners of Undivided Property

THIS DEED OF SALE is made on the..... day of....., 2018 BETWEEN AB of, etc. and CD of, etc. (vendors), of the one part, and EF of, etc. (purchaser), of the other part.

WHEREAS one PQ late of, etc. who was a Hindu governed by the Dayabhaga or Bengal School of Hindu Law died on the..... day of..... intestate, leaving his surviving only two sons viz., the said AB and CD as his heirs and legal representatives under the said school.

AND WHEREAS the said PQ left *inter alia* the following property as part of his estate. AND WHEREAS the estate of the said PQ has been fully administered.

AND WHEREAS the said AB and CD are in joint possession and enjoyment of the property hereinafter described as co-owners in equal shares without effecting any partition or division thereof.

AND WHEREAS the said AB and CD have agreed to sell the said properties free from encumbrances, to the said EF for the sum of Rs.....

NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rupees....., paid to the said AB and CD by the said EF at or immediately before execution of these presents the receipts whereof the said AB and CD hereby admit, acknowledge and confirm, they, the said AB and CD and each as beneficial owner of one equal undivided moiety thereof, do hereby and hereunder grant, convey, sell, transfer, assign and assure unto and to the use the said EF ALL THAT, etc. (parcel, etc., as in a conveyance); TO HAVE and TO HOLD the same unto and to the use of the said EF, his heirs, executors, administrators, representatives and assigns absolutely and for ever.

(Vendor's usual covenants as in a conveyance)

Schedule of the Property

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

.....AB

.....CD

.....EF

(7) Deed of Sale of Joint Family Property for Legal Necessity

THIS DEED OF SALE made on this..... day of..... BETWEEN AB for self and as Karta of and representing all other coparceners, viz., his sons named..... all constituting a Hindu Mitkshara undivided family of, etc., (hereinafter called "the vendor") which expression shall, where the subject or context allows, be deemed to include at all times hereafter all persons being from time to time the coparceners of the said family of the one part and CD of etc. (hereinafter called "the purchaser") of the other part.

WHEREAS the said joint family for several years past owned and still owns and possess *inter alia* the lands, hereditaments and premises described in Schedule A hereto as part of its estate.

AND WHEREAS the said joint family also carried on and still carries on business as dealers and suppliers of..... at No..... under the name and style of..... which suffered a heavy loss of its capital and reserves estimated at Rs..... in the year..... owing to out-break of fire..... at its godown at No..... on the day of.....

AND WHEREAS the joint family could not also pay its income-tax and other capital and revenue liabilities of the said business aggregating to Rs..... for the years..... and also its business debts estimated at Rs.....

AND WHEREAS the said joint family has at present no funds nor any other means or resources to make up the deficit as regards capital loss and to pay the liability of the family as regards the said income-tax except by sale of one of its properties.

AND WHEREAS in the circumstances aforesaid the said AB for self and as Karta of the said joint family has by an agreement in writing dated..... agreed with the said CD for sale of the property fully mentioned and described in the Schedule hereto at and for the sum of Rs.....

AND WHEREAS such sale is to the interest and for the benefit of the said joint family and its estate.

AND WHEREAS the said CD after *bona fide* and independent enquiry is satisfied about the present financial condition of the family and in particular the debts and liabilities as aforesaid and the reasons for, circumstances behind, and the necessity for the sale.

NOW THIS, INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Rs..... paid by the said CD to the said AB simultaneously with the execution of these presents he, the said AB doth hereby and hereunder for self and as Karta for and representing all other coparceners of the said joint family do hereby grant, sell, convey, transfer, assign and assure the said property together with all houses, buildings, fixtures etc. (as usual in a conveyance) unto and to the use of the said CD absolutely and for ever.

Usual covenants on the part of a vendor as in a conveyance.

Schedule above referred to

IN WITNESS ETC.

Signed, sealed and delivered

.....AB

.....CD

Sale by Liquidator of a Company in Voluntary Liquidation

Liquidation means winding of the company and Liquidator is the officer appointed to conduct the winding up of a company. Winding up is a proceeding by means of which the dissolution of a company is brought about and in the course of which its assets are collected and realised and applied in payment of its debts and when these are satisfied, returning to its members the sums which they have contributed to the company or paying them other moneys due to them in their character of members.

Voluntary winding up is one of the following modes of winding up recognised under Section 270 of Companies Act, 2013, which includes liquidation by Tribunal or voluntary.

Sale Deed to be drafted for being executed by the Liquidator of a company in voluntary liquidation assumes the following form:

A Specimen of Deed of Sale by Liquidator of a Company in Voluntary Liquidation

THIS SALE DEED is made on this..... day of..... by voluntary liquidator of..... Co. Ltd., (in voluntary liquidation) (hereinafter called “the vendor”) of the one part, in favour of Shri....., son of Shri....., Occupation....., resident of..... (hereinafter called “the purchaser”) of the other part, under the terms and conditions mentioned below:

WHEREAS by a special resolution passed by the shareholders of..... Co. Ltd., at an Extraordinary General Meeting held on the..... day of....., of which notice as prescribed by law had been duly given, and it was resolved that the company be wound up voluntarily;

WHEREAS the said vendor was appointed its voluntary liquidator on..... the notice whereof was duly submitted to the Registrar of Companies..... as prescribed by law, on the..... day of.....;

AND WHEREAS in a meeting of the shareholders of the said company held in accordance with the provisions of the Companies Act, it was resolved that the properties mentioned in the Schedule annexed hereto be sold by the vendor after publishing a notice for sale in..... and....., daily newspapers twice within a period of a fortnight, and pursuant to such resolution, the vendor had duly advertised the sale of the said properties in the issues of..... dated respectively and issues of dated respectively and pursuant thereto have received offers, the highest whereof was that of the said purchaser;

AND WHEREAS the said vendor agreed to sell and the said purchaser agreed to purchase the said properties on the terms and conditions mentioned herein and incorporated in an agreement to sell dated..... between the said vendor and the said purchaser.

NOW THIS DEED OF SALE WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

That pursuant to the agreement dated..... aforementioned and in consideration of the sum of Rs..... (Rupees.....) paid by the purchaser before the Sub-Registrar, on presentation of this Deed of sale for registration thereof (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers by way of sale and conveys on behalf of the said company all those items of the property mentioned more particularly in the Schedule attached hereto, unto the said purchaser, his heirs and assigns to have and to hold the same absolutely and forever.

IN WITNESS WHEREOF the parties aforementioned have signed this Deed of Sale on the date, month and the year aforementioned.

Witness: 1.

Vendor

Witness: 2.

Purchaser

Schedule

Item Nos.	1.	2.
	3.	4.

A Specimen of Deed of Sale by an Administrator under Orders of the Court

Administrator is appointed by the Court for the administration of the properties of a deceased person who has made a will and probate is granted by the Court in favour of a person who claims the right to succession to the properties of the deceased.

Form of the Sale Deed to be executed by Administrator is given below:

THIS DEED OF SALE is made on the..... day of..... by the Administrator/appointed Administrator in Administration Suit No. of..... in the Court of..... (hereinafter called "the vendor") of the first part in favour of Shri....., son of..... Occupation....., resident of..... (hereinafter called "the purchaser") of the second part.

WHEREAS D, son of Shri....., of..... died on..... having an estate comprising movable and immovable properties but without appointing a successor under his will dated.....

AND WHEREAS in Administration Suit No..... of..... decided by the Court of....., the vendor was appointed as Administrator to administer the estate of the said D in accordance with the terms of the will aforementioned;

AND WHEREAS the said vendor as such Administrator obtained sanction for the sale of the properties more particularly described in the Schedule I annexed hereto, in an Order dated....., a copy whereof is also attached as Schedule II hereto;

AND WHEREAS the vendor advertised for receipt of tenders for the purchase of the said properties;

AND WHEREAS the said vendor has, pursuant to such tenders agreed to sell and purchaser as one of the tenders to the property mentioned in the Schedule I, agreed to purchase the Items Nos..... of the properties mentioned in Schedule I on the terms and conditions mentioned in the advertisement for sale agreed to be embodied in this Deed.

NOW THIS DEED OF SALE W ITNESSES AND IT IS HEREBY AGREED BETW EEN THE PARTIES AFOREMENTIONED AND DECLARED AS UNDER:

That in consideration of the receipt of Rs..... (Rupees.....) paid by the purchaser to the vendor along with the tender dated..... (the receipt whereof the vendor hereby acknowledges) and on payment by the purchaser to the vendor of the sum of Rs..... (Rupees.....) before the Sub-Registrar,at the time of presentation of this Deed of Sale for registration (the receipt whereof the vendor hereby acknowledges), the vendor hereby transfers by way of sale and conveys unto the said purchaser, all that property originally belonging to the said..... mentioned in the item No..... in the Schedule I attached hereto unto the purchaser, his heirs and assigns to have and to hold the same as an absolute owner thereof for ever.

The possession of the said property conveyed under this Deed has been delivered to the purchaser on the date of the presentation of this Deed for registration before the Sub-Registrar,together with title-deed relating to the said item No..... with a stipulation that the vendor shall at all reasonable times allow inspection of the other documents of title, viz., partition deed between....., father of D, and..... dated..... along with the deed of reconveyance by the mortgage dated..... relating to the item No..... mentioned in the Schedule I attached hereto as well as item Nos. 2, 4 and 7 mentioned in the Schedule and to produce the said documents of title so retained by the vendor when required by the purchaser at his expense before any Court or arbitrator or authorities.

(Any other agreed terms may be added here)

IN WITNESS WHEREOF the parties aforementioned have signed this Deed of Sale on the date, month and the year first above mentioned.

Witness: Vendor

Witness: Purchaser

Schedule

Item Nos.	1.	2.
	3.	4.

Sale of Business and Assignment of Goodwill

Wharton's Law lexicon defines goodwill as the advantage or benefit which is required by a business, beyond mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers.

Supreme Court of India in *Khushall Khengar Shah v. Khorshedbanu*, AIR 1970 SC 1147, had opined goodwill of a business as an intangible asset being the whole advantage of the reputation and connections formed with the customers together with the circumstances which make the connections durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years because of its reputation, location and other features.

Specimen Form of the Sale Deed for sale of a business and assignment of goodwill is given below* :

A Specimen of Deed of Sale of a Business and Assignment of Goodwill

THIS INDENTURE made the..... day of..... BETWEEN AB of, etc. (vendor), of the one part, and CD of, etc. (purchaser) of the other part.

WHEREAS the said AB has been carrying on the trade and business of, etc. etc., at premises No..... under the name and style of.....

AND WHEREAS the said AB has contracted with the said CD for the sale to him of all his stock-in-trade and other assets and goodwill of the said trade of and the business in entirety as a going concern together with all book debts and other debts and all rights and benefits of all pending contracts, orders, securities, etc., full particulars whereof are contained in the books of the said business and all money due and payable to the said AB on account therefor whether adjusted or unadjusted subject however to all contracts, orders and engagements which are still to be executed or for which the said AB is otherwise liable; at and for the sum of Rs..... upon the terms hereinafter mentioned;

AND WHEREAS the said AB has delivered to the said CD the books of account and other books relating to the said business containing full particulars of the debts, respectively due and owing to and from the said

AB and also the particulars of the contracts and engagements to which he is liable in respect of the said business.

NOW THIS DEED OF SALE WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rupees..... paid by the said CD to the said AB (the receipt whereof the said AB hereby admits and acknowledges), and also in consideration of the covenants and conditions thereunder contained to be observed and performed on the part of the said CD the said AB do hereby and hereunder grant, convey, sell, transfer, assign and assure unto and to the use of the said CD all that the trade or business carried under the name and style of..... at premises No..... with ALL beneficial interest and goodwill of the said AB, in the said trade and business of, etc., so carried on by him as aforesaid, and also all the books and other debts now due and owing to him on account of the said trade and the business and all securities for the same, and also all contracts and engagements and benefits and advantages thereof which have been entered into with the said AB and also all the stock-in-trade goods, fixtures, articles and things which, at the date of this deed, belong to the said AB on account of the said trade and business, and all the rights, title and interest of the said AB to and in the said premises; TO HAVE AND TO HOLD the same to the said CD absolutely.

AND THAT THE SAID AB does hereby covenant with the said CD that he, the said AB, will not at any time hereafter, either by himself or in collaboration with any other person or persons, or as a partner or as a director of any limited company carry on the said trade and business of, etc., within a radius of..... miles of, etc.

AND that the amount and particulars of the debts respectively due and owing to and from the said AB on account of the said trade and business and the particulars of the contracts and engagements to which he is liable with respect to the said trade and business, are correctly stated in the books of account and other books delivered by the said AB to the said CD.

AND further that the said AB will pay or cause to be paid all and every sum to the said trade and business in excess of the amount or amounts which by the said books appear to be so due and owing.

AND furthermore that the said AB has good right, full power, absolute authority and title to grant, convey, sell, transfer, assign and assure the trade or business of "....." unto and to the use of the said CD in the manner hereunder indicated together with the benefit of the tenancy according to the nature and tenure of the contract.

AND THIS INDENTURE ALSO WITNESSES that in pursuance of the said agreement in this behalf and in consideration of the premises, the said CD do hereby agree with the said AB that he, the said CD, shall and will from time to time and at all times hereafter execute and perform all outstanding contracts and orders and engagements and/or otherwise save harmless, indemnify and keep indemnified the said AB and his estate and effects against all losses, claims, demands, costs, charges and expenses as against the several sums of money which by the said books appear to be due and owing from the said AB in respect or the said trade and business, and also from and against the contracts and engagements to which by the said books the said AB appears to be now liable and or performance or non-performance thereof.

AND THIS INDENTURE ALSO WITNESSES that the said AB do hereby irrevocably nominate, appoint and constitute the said CD as his attorney for him and in his name to do, execute and perform all acts, deeds, and things as shall be necessary or requisite to carry on the said business as his successor and for that purpose to represent him before all appropriate authorities and in all courts of law and to sue for, recover, realise and to give good valid discharges for all moneys due and payable to him on account of or in connection with the said trade or business hereby assigned and appropriate the same for his use and purposes.

IT IS FURTHER AGREED that the names of the parties hereto shall, unless inconsistent with the context, include as well the heirs, administrators or assigns of the respective parties as the parties themselves.

IN WITNESS, etc.

Signed, sealed and delivered

.....AB

.....CD

MORTGAGE AND ITS TYPES

Mortgage

A mortgage is a transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of a loan, existing or future debt or the performance of an acknowledgement, which may give rise to pecuniary liabilities (Section 58 of the Transfer of Property Act, 1882).

The Transfer of Property Act, 1882 deals with the mortgage of immovable property alone. It does not deal with movable at all. Therefore, it cannot be regarded as forbidding the mortgage of movable property. A mortgage of movables, such as plant and machinery, stock in trade, policy is perfectly a valid transaction even though the possession is not delivered and the mortgage is only a hypothecation. The hypothecation of movables is increasingly resorted to in the case of borrowings by companies for financing and implementation of its various investment proposals.

The transferor in the case of a mortgage is called a 'mortgagor' and the transferee as 'mortgagee', the principal money and interest of which payment is secured for the time being are called the 'mortgage money' and the instrument, if any, by which a transfer is effected is called a "mortgage deed".

Types of the Mortgages

The following are different kinds of mortgages in effect in India:

(a) Simple Mortgage

In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property will be sold and the proceeds applied in payment of the mortgaged money.

(b) Mortgage by Conditional Sale

In a mortgage by conditional sale, the property is sold subject to the condition that on default in payment of the mortgaged money on a certain date the sale shall become absolute or that on such payment the sale shall become void or on such payment the buyer shall transfer the property to the seller. Possession of the property shall be with the mortgagee.

(c) Usufructuary Mortgage

In this mortgage, the mortgagor delivers possession of the mortgaged property to the mortgagee who retains the possession until the satisfaction of the debt. The mortgagee will take the usufruct in lieu of the interest or part payment of the principal or partly in payment of interest or partly in part payment of the principal. The mortgagor is not personally liable to pay the debt and the mortgagee is not entitled during the term of the mortgage to demand his mortgage money.

(d) English Mortgage

In an English mortgage, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed.

(e) Mortgage by Deposit of Title Deeds

Mortgage by deposit of title deeds is called in English law as *equitable mortgage*. It is an oral transaction and no documents like Deed of Mortgage is required to be executed. No written acknowledgement is required for creating this mortgage. It is however, prudent to have a record of transaction to avoid difficulties to establish the creation of the mortgage. In this case, a *Memorandum of Mortgage* by deposit of title deeds is prepared by the mortgagee to secure the specific mortgage money. The main characteristics of this type of mortgage are as under:

1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered.
2. Delivery of title deeds is required to be made in Bombay, Madras and Calcutta and other specified towns to which the facility is extended by State Government from time to time through Gazette notification.
It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town.
3. This deposit can be made by the company through its nominee or agent duly authorised.
4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor.
5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.

Equitable mortgage is preferred by the lenders/banks/creditors as well as the commercial enterprises because of the inherent advantages viz. (a) to save time and avoid inconvenience of documentation, and registration; (b) to minimise cost of creating mortgage and cost of borrowed funds by saving stamp duty; (c) to maintain secrecy of the debt transaction; (d) section 180 of the Companies Act, 2013.

(f) Anomalous Mortgage

Anomalous Mortgage is a combination of any of the above forms of mortgage or any mortgage other than those set out above.

Who can be Mortgagor and Mortgagee?

Any living person, company, or association or body of individuals, who has an interest on immovable property can mortgage that interest. In the case of a company mortgage of the property should be duly authorised by 'Object Clause' of the Memorandum of Association and approved by a resolution of the Board of directors.

Further, for creation of a mortgage, the Financial Institutions usually insist on a resolution of the shareholders under Section 180 of the Companies Act, 2013.

Any person capable of holding property may take a mortgage unless he is dis-qualified by any special law from doing so. A minor may be a mortgagee but as he cannot enter into a contract, the mortgage should not involve any covenants by him.

Thus, as we have seen above, any interest in any property which is capable of being transferred may be a subject of mortgage.

Generally the mortgage is associated with immovable property; immovable property includes lands, benefits arising out of the land and things attached to it and does not include standing timber, growing crops or grass. When the principal money secured is Rs.100/- or more a mortgage other than a mortgage by deposit of title deeds, can be effected only by a Registered instrument signed by the mortgagor and attested by at least two witnesses.

Rights of Mortgagee

- Right to Sell

If borrower fails to return the loan in time then the mortgagee has the right to sell the property of the mortgagor, but the same can only be sold through auction subject to approval from the Court.

- Right to Recover Shortfall

In case the amount to be recovered falls short after selling the property, mortgagee shall have the right to recover the balance due.

- Refusal of Debt

Mortgagee shall have the right to get a foreclosure decree from the court.

Liabilities of Mortgagee

- Property should be protected to the best possible extent.
- No alteration to the property.
- Proper Insurance Cover against the Property.
- All taxes, revenues levied by government should be paid.

Rights and Liabilities of Mortgagor

- Right to redeem the Property on payment of dues.
- Right to Claim Damages in case the Property is damaged in the custody of Mortgagee.
- Right to lease the property in case the property is in possession of Mortgagor.
- Liability to pay taxes, revenues levied by government in case the property is in custody of Mortgagor.

Drafting of Deed of Mortgage

A deed of mortgage may be drafted either as a name change deed or Deed Poll on behalf of the mortgagor in favour of the mortgagee or as a deed between the mortgagor and mortgagee as parties. In the case of an equitable mortgage, as we have seen earlier, it is prudent to execute a memorandum referred to the deposit of title deeds to secure a specific mortgage money.

The following points should be borne in mind while drafting a Deed of Mortgage:

- Parties:* There should be two parties, the mortgagor and the mortgagee. The former is usually defined as the borrower. The Indian practice of having a deed of mortgage executed by the mortgagor only is unscientific, because the mortgage deed usually contains covenants by both the parties.
- Recitals:* These are of two kinds. Firstly, recital as to the title of the mortgagor, such as “Whereas the borrower is the absolute owner of the property hereby mortgaged free from encumbrances”. The second form of recital is as to the agreement for loan, such as: “And Whereas the mortgagee has agreed with the borrower to lend him the sum of Rs. upon having the re-payment thereof with interest hereinafter mentioned secured in manner hereinafter appearing”.
- Covenant for re-payment:* This clause usually recites that in pursuance of the said agreement and in consideration of the receipt of the mortgage money the mortgagor covenants to pay the mortgage money with interest at the stipulated rate in the manner agreed upon.

- (d) *Mortgage clause*: This clause describes the property mortgaged. In case of simple mortgage, the property is charged and assured as security for re-payment of mortgage debt. In an English mortgage it is absolutely sold to the mortgagee, subject to the covenants as to re-conveyance upon repayment of debt with interest. A through investigation of the titles upto 60 years and preparation of an abstract of title to ensure that mortgagor has an absolute right over the property is recommended.
- (e) (i) *Covenants by the mortgagor*: To repair the mortgaged property, in default the mortgagee is given power to enter into possession without being liable as a mortgagee in possession, with a view to effect repairs. Mortgagee's expenses for this purpose are considered properly incurred.
- (ii) *Covenant to insure*: The mortgagor covenants to insure the mortgage property in the name of the mortgagee of an insurance office approved by the mortgagee. In default the mortgagee is entitled to insure and the costs incurred are to be charged to the mortgagor.
- (iii) *Covenant not to grant leases or accept surrender thereof*: It often happens that the mortgagor while in possession grants long term leases to the detriment of the mortgagee. To guard against such a contingency, it is agreed that the mortgagor shall not grant leases of mortgaged property for a period exceeding one year without the written permission of the mortgagee or accept surrender of existing leases without like permission. (See Section 65A of the Transfer of Property Act)
- (iv) *Covenant to pay outgoings*: The borrower undertakes to pay and discharge and indemnify the mortgagee against all rates, taxes, duties, charges, assessments, outgoings, whatever.
- (f) *Period fixed for the mortgage*: Under this clause, the parties enter into a covenant by which mortgagor is debarred from redeeming the security before lapse of a certain period. This should not be unnecessarily a long period, as otherwise the Court might hold it as clogging equity of redemption and unenforceable. The mortgagee may also enter into a covenant not to call in his money before the lapse of certain period provided that:
- (i) If the mortgagor is declared insolvent;
- (ii) If he alienates the mortgage property or creates a subsequent mortgage in favour of a third person without consent of mortgagee,
- the mortgagee may call in his dues even before the expiry of the term agreed upon.
- (g) *Power of sale*: Under this clause, the mortgagee is entitled to recover his dues by sale of the mortgaged property, and if the sale proceeds are insufficient, to recover the balance from the person and other property of the mortgagor.
- (h) *Power to appoint Receiver*: Under this clause, the mortgagee is given power to appoint a Receiver of the mortgaged property in case the payment of interest for two or more instalments is in arrear under Section 69A of Transfer of Property Act.
- (i) *Power to sell given to mortgagor with the consent of the mortgagee*: The mortgagor is authorised to sell the whole or part of the mortgaged property with the consent of the mortgagee provided the sale proceeds are paid to the credit of the mortgage account.
- (j) *Proviso for redemption*: Under this clause, the mortgagee covenants and declares that on payment of his dues, he shall re-transfer the mortgaged property to the mortgagor or his nominee at his expense. (See Section 60A of the Transfer of Property Act)
- (k) *Possession*: In English mortgage, the mortgagee has a right to take possession of the property. In usufructuary mortgage, the possession of the property is given to the mortgagee.

- (l) *Attestation & Execution*: Attestation is compulsory in every mortgage. In case where the mortgagor does not know the language, deed must be explained to him by some competent person.
- (m) Registration & Stamp duty is compulsory in case of mortgage value of Rs.100/- and above.
- (n) Mortgagee is entitled to all the title deeds of the mortgaged property. If for any reason they are left with the mortgagor through inadvertance or negligence he can manipulate a prior equitable mortgage by depositing the same elsewhere.
- (o) The application of any other law either to the mortgage or to the property under mortgage has to be ascertained. For example: Urban Land Ceiling Regulation Act.

In Drafting of Memorandum of Mortgage by deposit of title deeds, the following information is invariably included:

I. *Preliminary information*:

- (1) Caption
- (2) Name and address of the borrower/mortgagor Company
- (3) Name and address of Mortgagee
- (4) Amount of loans made available/sanctioned
- (5) Date of creation of mortgage by deposit of title deeds.

II. Memorandum record note to contain brief information covering creation of deposit, date of deposit, name and authorisation of person who created deposit, name of the lender in whose favour deposit was made, description of title deeds is to be given in the Schedule to be appended thereto, and reference of property with situation and location briefly described thereto.

III. Consideration for creation of equitable mortgage i.e. the description of the property offered with title deeds with full description in a different schedule, the amount of loans against and for which the security is created, this..... by coverage of other cash charges, expenses, interests, liquidated damages, etc.

IV. Description of Board Resolution to create equitable mortgage by the person authorised therein. V. Declaration of clear and marketable title to the property.

VI. Witnessing clause - Mention of the name of the person in whose presence the deposit of title was made. VII. (Schedule I - List of document of title and evidence)

(Schedule II - Details of property).

VIII. Date and Signature.

Further Charge

Sometimes the mortgagee advances further sums of money to the mortgagor on the same security and on the same condition. The deed executed to secure the advance of further sums of money is called "Deed of Further Charge". The deed so executed would make a reference to the first mortgage and would also set out the new loan/s, terms of its/their repayment and would make the principal and interest further charged on the same security to be endorsed in the same manner as per the original mortgage.

Appointment of Receiver under Mortgage

Under Section 69A of the Transfer of Property Act, a mortgagee having the right to exercise the power to sell is entitled to appoint by writing signed by him or on his behalf a Receiver of the income of the mortgaged property or any part thereof. Any person who has been named in the mortgage deed and is willing and able to act as a Receiver may be appointed by a mortgagee. If any person has been so named or if the person or

persons are not capable and unwilling to act or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees. Failing such an agreement the mortgagee shall be entitled to apply to the Court for appointment of a Receiver and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

The powers and functions of the Receiver have been set out in the Section and the Receiver is required to apply all money received by him as follows:

- (i) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;
- (ii) in keeping down all annual sums or other payments, and the interest on all principals sums, having priority to the mortgage in right whereof he is Receiver;
- (iii) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;
- (iv) in payment of the interest falling due under the mortgage;
- (v) in or towards discharge of the principal money, if so directed in writing by the mortgagee.

Release and Reconveyance of Mortgaged Assets

Release of any of the mortgaged assets or reconveyance of the mortgaged property could be done by a registered document in case the mortgage has been created in the form other than equitable mortgage by deposit of title deeds by a registered deed of mortgage.

In those cases where release or reconveyance of mortgaged property covered under equitable mortgage is sought by the mortgagor, the same could be done by releasing the relevant title documents and repositing the remaining title deeds by rewriting the memorandum for creation of equitable mortgage. On redemption of equitable mortgage all the title deeds could be released by the mortgagee to the mortgagor by personal hand delivery and against accountable receipts from the mortgagor.

Forms of various Deeds hereinbefore discussed are as follows:

Deed of Simple Mortgage

THIS DEED of Mortgage is made on the..... day of 2018, BETWEEN 'AB' of..... etc. (hereinafter called "the Mortgagor"), of the One Part and 'CD' of, etc. (hereinafter called the "Mortgagee"), of the Other Part.

WHEREAS the Mortgagor is absolutely seized and possessed of or otherwise is well and sufficiently entitled the property intended to be hereby mortgaged which is free from all encumbrances and attachments.

AND WHEREAS the Mortgagee has agreed to lend and advance a sum of Rs..... to the Mortgagor at his request upon having the repayment thereof, with interest at the rate hereunder stated and secured in the manner hereinafter expressed.

NOW THIS DEED WITNESSES, that in pursuance of the said agreement and in consideration of the sum of Rs. paid to the Mortgagor by the Mortgagee simultaneously with the execution of these presents the receipt whereof the Mortgagor do hereby admit, acknowledge and confirm, the Mortgagor do hereby agree with the Mortgagee that the Mortgagor will on or before the day of 2018, pay or cause to be paid to the Mortgagee the sum of Rs..... with interest for the same in the meantime at the rate of Rs..... per cent, per annum, such interest to be paid monthly and every month on the 7th of each following month without any delay or default.

AND THIS DEED FURTHER WITNESSETH that as a security for the repayment of the said loan with interest, the said 'AB' do hereby charge, assure and mortgage, by way of simple mortgage, upto and in favour of the said 'CD' all property specifically described in the Schedule hereto annexed, and charge and assure the same by way of security for the repayment of the said sum of Rs. together with interest thereon at the rate of..... per cent, per annum;

AND THE Mortgagor does hereby agree and covenant with the Mortgagee that he will pay or cause to be paid to the

Mortgagor the principal sum aforesaid, together with the interest then due, on or before the day of..... 2018, without delay or default;

AND THE INDENTURE FURTHER WITNESSETH and it is hereby agreed and declared by and between the parties that in case the said sum of Rs..... with interest thereon at the stipulated rate is not paid within the time and in the manner as aforesaid, it shall be lawful for the Mortgagee to enforce this mortgage and to cause the property or any portion sold and appropriate the proceeds towards satisfaction of the mortgage debt provided, however, that in the event of any short-fall or deficiency, i.e. should the claim be not then satisfied, the Mortgagee shall be entitled

to recover the balance personally as against the Mortgagor who shall be entitled to redeem the said mortgage at his option by payment of the amount of mortgage debt inclusive of interest at any time before the..... day of..... 2018.

AND THIS INDENTURE FURTHER WITNESSETH that the Mortgagor do hereby covenant with the Mortgagee that notwithstanding any act, deed or thing herebefore done, executed, performed or suffered to the contrary, the Mortgagor has good title, full power and absolute authority to charge, assure and mortgage the said property in the manner hereunder effected and that the same is free from all encumbrances and attachments.

The Schedule above referred to

IN WITNESS WHEREOF the parties herein under have set their hands on the day and year hereinabove mentioned. Witnesses:

1. MORTGAGOR
2. MORTGAGEE

Deed of Mortgage by Conditional Sale

THIS DEED of Mortgage made the..... day of..... 2018, BETWEEN 'AB' of..... etc. (hereinafter called "the Mortgagor"), of the One Part and 'CD' of..... etc. (hereinafter called "the Mortgagee"), of the Other part WITNESSES that in consideration of the sum of Rs..... paid to the Mortgagor by the Mortgagee (the receipt whereof the Mortgagor hereby acknowledges) the Mortgagor do hereby grant, transfer, convey, assign and assure to the Mortgagee ALL that etc. To Have and To Hold the same absolutely and for ever subject to the condition hereby expressly declared, namely, that if and when the Mortgagor shall repay or cause to be repaid the said sum of Rs..... with interest thereon at the rate of..... per cent per annum on or before..... day of..... 2018, time for which purpose shall be deemed as essence of contract then and in such an event the sale hereby effected shall stand void and shall be of no effect to all intents and purposes and the Mortgagee shall at the costs of the Mortgagor reconvey and retransfer the said property and every part thereof as then existing to the Mortgagor provided, however, that if the Mortgagor shall fail and/or neglect to repay the said sum with interest at the said rate on or before the said date, or any portion thereof the sale hereby effected shall become absolute and the Mortgagee shall be entitled to foreclose the mortgage when and in such an event the Mortgagee shall be the absolute owner of the property free and discharged from all the right of equity of redemption of the Mortgagor.

AND IT IS HEREBY FURTHER AGREED AND DECLARED that notwithstanding anything hereinbefore contained the Mortgagor shall remain in possession of the said property and pay all rents, cess, taxes, rates and other impositions which are now or may hereafter be imposed on the said property and in case the Mortgagor fails and/or neglects to make such payments on or before the due date of payments therefor, the Mortgagee shall be at liberty to pay the same and add such sum or sums to the principal money hereby secured which shall carry interest at the aforesaid rate. And that the Mortgagor do hereby covenant with the Mortgagee that he has good title to the property and absolute authority and power to transfer the same in the manner hereinbefore indicated and that the property is free from all encumbrances and attachments whatsoever.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned.

Witnesses:

Signed, sealed and delivered

- 1. MORTGAGOR 'AB'
- 2. MORTGAGEE 'CD'

The Schedule above referred to

Deed of Usufructuary Mortgage

THIS MORTGAGE, made..... day of..... 2018, BETWEEN 'AB' of etc. (hereinafter called "the Mortgagor") of the One Part, and 'CD' of etc. (hereinafter called "the Mortgagee") of the Other Part, WITNESSES that on consideration of the sum of Rs..... now paid to the Mortgagor by the Mortgagee (the receipt whereof the Mortgagor does hereby acknowledge), the said 'AB' hereby conveys to the said 'CD'. All that etc. (describe the property): from this day AND THAT the Mortgagee shall be in possession of the mortgaged property under the terms of the deed for securing payment on the..... day of..... 2018, of the principal sum secured, with the interest thereon at Rs..... per cent per annum, which mortgage money will be set off against the usufruct of the mortgaged property, and the Mortgagee does hereby promise to keep clear accounts thereof.

THE MORTGAGOR hereby agrees that the Mortgagee shall retain possession of the mortgaged property until the principal sum together with the interest due be paid off out of the proceeds of the property and on payment of the aforesaid sum, the Mortgagee shall execute and register a release of the mortgaged property in favour of the Mortgagor, AND THAT the Mortgagee also shall not to, execute, perform nor suffer to the contrary any act deed or thing whereby or by reason or means whereof the value of the said property in his possession may be diminished or the same may otherwise be prejudiced in title or estate.

THE MORTGAGOR does also agree to pay the Government revenue and the municipal tax of the said property regularly and in case he fails to make such payment, the Mortgagee shall be at liberty to pay such revenue and taxes, and such sum paid shall be considered an additional principal sum advanced to the Mortgagor, and shall carry interest at the rate stipulated above.

AND LASTLY, the Mortgagor also agrees that if he, the Mortgagor, does not pay the principal sum with the interest then due on the stipulated date, this conveyance will become absolute and the Mortgagee will be entitled to foreclose the mortgaged property, and thereafter the Mortgagor, his heirs, executors, administrators or assigns shall be absolutely debarred of all the rights to redeem the same.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned in the presence of:

Witnesses:

1. 'AB'
 2. 'CD'

The Schedule above referred to

Deed of English Mortgage

THIS MORTGAGE made the..... day of, 2018, BETWEEN 'AB' of, etc. (hereinafter called the "Mortgagor") of the One Part, and 'CD' of, etc. (hereinafter called the "Mortgagee") of the Other Part. WITNESSES WHEREAS the Mortgagor is absolutely seized and possessed or is otherwise well and sufficiently entitled to an absolute estate of inheritance or an estate equivalent thereto free from encumbrances to the lands, hereditaments..... fully mentioned and described in the Schedule hereto AND whereas the Mortgagor having occasion to borrow a sum of Rs. approached the Mortgagee which the Mortgagee has agreed to lend and advance on having repayment thereof with interest at..... per cent per annum and secured by a conveyance by way of mortgage of the said property.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Rs..... this day paid to the said 'AB' by the said 'CD' (the receipt whereof the said 'AB' hereby acknowledges), the Mortgagor here by agrees with the covenant to pay to the Mortgagee on the day of..... the sum of Rs..... with interest thereon in the meantime at the rate of Rs..... per cent per annum computed from the date of this deed such interest to be paid monthly and every month on the 15th of every current month.

NOW THIS INDENTURE also witnesses that for the consideration aforesaid the said 'AB' as the beneficial owner, do hereby grant, transfer convey unto and to the use of the said 'CD' all that etc. (describe the property): TO HAVE AND TO HOLD the same absolutely and for ever PROVIDED ALWAYS that if the Mortgagor shall pay or cause to be paid the sum of Rs..... with interest thereon, on the..... day of....., according to the foregoing agreement in that behalf, the Mortgagee, his heirs, representatives or assigns shall, at the request and costs of the Mortgagor, his heirs, representatives or assigns, reconvey to him or them as he or they shall direct, the said property. AND THAT the Mortgagor do hereby covenant unto the Mortgagee that the Mortgagor has absolute title to the land, hereditaments, messuages and premises hereby granted and conveyed and that the Mortgagor has good right, full power, absolute authority and indefeasible title to grant, convey, transfer, assign and assure the same unto and to the use of the Mortgagee in the manner hereinbefore indicated and further the Mortgagor and all persons having lawfully or equitably any estate or interest in the same shall at all time hereafter during the continuance of the security do execute or perform or cause to be done, executed and performed all such further or other acts, deeds and things as may be reasonably required for further and more perfectly assuring the same unto and in favour of the Mortgagee.

Provided, however, and it is further agreed by and between the parties that if the Mortgagor commits any default in payment of the principal amount on the due date or any three instalments of interest, whether they have been demanded or not it shall be lawful for the Mortgagee to institute a suit for sale and to have a Receiver appointed over the mortgaged property.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned in the presence of:

Witnesses:

1. 'AB'
 2. 'CD'

The Schedule above referred to

Signed, sealed and delivered

Memo of consideration.

Deed of Further Charge

This Further Charge made the..... day of..... 2018, Between 'A' of..... etc. (hereinafter called "the borrower" which expression shall also, where the context so admits, include persons entitled to redeem the security) of the One Part and 'B' of..... etc. (hereinafter called "the mortgagee") of the Other Part.

WHEREAS by a mortgage deed dated..... the property mentioned therein and described in the Schedule attached hereto was mortgaged by the borrower with the mortgagee and the sum of Rs..... remains to the mortgagee on the security of the said mortgage but all interest for the same has been paid upto the date of this Deed.

AND WHEREAS the mortgagee has agreed to advance to the borrower the further sum of Rs..... upon terms and conditions and secured in the manner hereinafter appearing.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Rs..... now paid by the mortgagee to the borrower the receipt whereof the borrower hereby acknowledges:

1. The borrower hereby covenants with the mortgagee to pay to the mortgagee on the..... day of..... 2017 next the sum of..... principal amount with interest at the rate of..... per cent per annum, and if the said moneys are not paid on the aforesaid date, to pay interest at the said rate until payment.
2. The borrower as beneficial owner hereby declares that all and singular the property mortgaged under the aforesaid deed dated..... and more particularly described in the schedule attached hereto shall be security, and stand charged with the payment to the mortgagee of the sum of Rs..... the present advance with interest at the rate of..... per cent per annum, from the date of execution of these presents as well as the sum of Rs..... due on the recited mortgage together with interest thereon and shall not be redeemable until on payment to the mortgage deed dated..... and the present deed.
3. It is further agreed and declared that the provisions contained in the mortgage deed dated..... shall operate and take effect in like manner for securing payment or the money hereby secured as if the same had formed part of the money secured by the said recited mortgage.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned.

Witnesses:

1. MORTGAGOR
2. MORTGAGEE

Schedule referred to containing description of the mortgaged property.

Note: Stamp duty chargeable on a deed of further charge is provided for by Article 31 of the Indian Stamp Act.

Memorandum of Mortgage by Deposit of Title Deeds

Memorandum that this..... day of..... 2018, 'AB' of, etc. (the mortgagor), as beneficial owner, has deposited with 'CD' of, etc. (the mortgagee), the original title deeds comprised in the Schedule A hereto, relating to the premises belonging to the said 'AB' and situate at..... etc., described in Schedule B with intent to create a charge thereon for securing repayment to the said 'CD' of the sum of Rs..... this day lent and advanced

by the said 'CD' to the said 'AB' on demand with interest for the same from this date at the rate of Rs..... per cent per annum.

The said 'AB' do hereby undertake as and when required by the said 'CD' to execute and register at the costs of the said 'AB' a legal mortgage in such form and containing such covenants and provisions as he may reasonably require.

Dated this..... day of..... 2018.

The Schedule A above referred to

Description of the Title Deeds deposited.

The Schedule B above referred to

Description of the Property.

Signature of the Mortgagor.

Mortgage by a Limited Company in favour of a Bank for Securing the Amount due on Cash Credit Account

THIS MORTGAGE made the..... day of..... 2018, Between 'AB' a Limited Company, having its Head Office at..... (hereinafter called "the borrower") of the One Part and the..... Bank Limited, having its Head Office at..... (hereinafter called "the Mortgagees") of the Other Part.

WHEREAS the borrowers are a Limited Company having their Head Office at..... and are carrying on the business of Sugar Manufacturers at their factory known as..... and situate at..... in the State of.....

AND WHEREAS the borrowers are absolute owners of the said factory free from encumbrances.

AND WHEREAS the borrowers have a cash credit account with the mortgagees for the purposes of their business. AND WHEREAS the mortgagees have already granted and may hereinafter grant accommodation to the borrowers, and it has been agreed that all moneys now owing and which shall hereafter become owing on the said cash credit account or otherwise from the borrowers to the mortgagees should be secured in the manner hereinafter appearing.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the mortgagees granting the aforesaid accommodation to the borrowers.

1. The borrowers hereby covenant with the mortgagees that the borrowers will on demand pay to the mortgagees the balance which shall be owing on the said cash credit account or any other account or for bills or drafts accepted, paid or discounted or advances made for the accommodation of the borrowers upto the limit of Rs..... together with interest at the rate of..... per cent per annum from the date of the said loan or advance until payment.
2. The borrowers as beneficial owners hereby mortgage their property known as..... Sugar Mill, situate at..... together with all the machinery, engine, boiler etc., and buildings, land attached and appurtenant thereto, and more particularly described in the schedule attached hereto as security for payment of the mortgagees of all principal moneys and interest at the aforesaid rate and other moneys hereby secured.
3. The borrowers further covenant with the mortgagees that all accessories to the mortgaged property shall be liable for the amount due under this Deed from the borrowers to the mortgagees.
4. The borrowers hereby further covenant with the mortgagees that the borrowers will during the continuance of this security keep the mortgaged property in good and substantial repairs and insured against loss or damage by fire for Rs..... in General Insurance Corporation of India in the

name of the mortgagees, and will duly and punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance. And if default shall be made by the borrowers in keeping the mortgaged property in good and substantial repairs or in effecting or keeping up such insurance, the mortgagees may repair (with power to enter upon the mortgaged premises for that purpose and without becoming liable as mortgage in possession) or may insure and keep the same insured in any sum not exceeding Rs..... and that all moneys expended by the mortgagees under this provision shall be deemed to be properly paid by them.

- 5. The borrowers further covenant with the mortgagees that the borrowers shall not lease the mortgaged property for any term exceeding one year or accept, surrender of any existing lease without the previous consent in writing of the mortgagees.
- 6. And it is hereby further agreed and declared that if the borrowers fail to pay the mortgage money with interest as agreed upon, the mortgagees shall be entitled to realise their dues by sale of the mortgaged property and, if the sale proceeds thereof are insufficient to satisfy the mortgagees' dues, to recover the balance from the person and other property of the mortgagors.
- 7. It is hereby further agreed and declared that if interest for any two instalments remains in arrears, the mortgagees shall be entitled to have a Receiver appointed of the mortgaged property.
- 8. Provided always that if the borrowers shall pay to the mortgagees the sum of Rs..... or the amount due on said account with interest thereon from the date hereof at the stipulate rate, the mortgagees will at any time thereafter at the request and cost of the borrowers execute a receipt of the mortgage amount or a deed of redemption and surrender the premises before mortgaged to the borrowers.
- 9. By a Resolution of the Board of Directors of the 'AB' Company Limited dated..... Mr..... one of the Directors has been authorised to execute this Deed on behalf of the Company.

IN WITNESS WHEREOF the parties hereunder have set their hands on the date and year hereinabove mentioned.

The Schedule above referred to containing description of the machinery and plant, and all buildings and land appertaining thereto.

For and on Behalf of 'AB Co. Ltd.',

Director

For and on Behalf of the..... Bank Ltd.,

Secretary

Deed of Redemption or Reconveyance of Mortgaged Property by the Mortgagee in favour of the Mortgagor

THIS DEED is made the..... day of..... 2018 between 'A' of etc. (hereinafter called "the mortgagee") of the One Part and 'B' of etc. (hereinafter called "the mortgagor") of the Other Part.

WHEREBY by a mortgage deed dated..... the property mentioned in that deed was mortgaged by the said 'B' in favour of the said 'A' to secure payment of the amount of Rs..... with interest @..... per cent per annum.

NOW THIS DEED OF RECONVEYANCE WITNESSETH:

That in consideration of all principal moneys and interest secured by the said mortgage deed dated..... having been paid, the receipt whereof the said 'A' hereby acknowledges. The said 'A' as mortgagee hereby