

RESERVED ON 5TH JUNE 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 483 OF 2025

BETWEEN:

1. SMT. LAKSHMAMMA
AGED ABOUT 75 YEARS
W/O LATE SRI R NARAVANA REDDY
2. SRI HEMAVATHY
AGED ABOUT 55 YEARS
W/O SRI SRINIVAS REDDY
3. SRI N. VENKATESH REDDY
AGED ABOUT 53 YEARS
W/O. LATE MR. R. NARAYANA REDDY
4. SRI N. SUJATHA
AGED ABOUT 60 YEARS
W/O DR. KESHAV REDDY
5. SMT. N. SHASHIKALA
AGED ABOUT 58 YEARS
W/O DR. VISHWANATH

Digitally
signed by
VEERENDRA
KUMAR K M
Location:
High Court of
Karnataka

6. SMT. N. LAKSHMI
AGED ABOUT 40 YEARS
D/O. LATE SRI R. NARAYANA
7. SRI VENKATASWAMY REDDY
AGED ABOUT 93 YEARS
S/O LATE SRI DODDAMUNIAPPA
8. SRI V. KODANDA REDDY
AGED ABOUT 71 YEARS
S/O SRI VENKATASWAMY REDDY
9. SRI VEDAVATHY
AGED ABOUT 56 YEARS
W/O SRI V. KODANDA REDDY
10. SRI M.R. MUNI REDDY
AGED ABOUT 83 YEARS
S/O LATE SRI RAMAIAH REDDY
11. SMT. SARASWATHAMMA
AGED ABOUT 81 YEARS
W/O SRI M.R. MUNI REDDY
12. SMT. M SUDHA
AGED ABOUT 53 YEARS
W/O SRI T. ANAN
13. SMT. MANJULA
AGED ABOUT 51 YEARS
W/O SRI M. LOKESH
14. SRI RAMA REDDY
AGED ABOUT 60 YEARS
S/O SRI M.R. MUNI REDDY

15. SMT. SHOBHA
AGED ABOUT 55 YEARS
D/O SRI M.R. MUNI REDDY

16. SRI BHUVENDRA REDDY
AGED ABOUT 41 YEARS
S/O SRI M.R. MUNI REDDY

APPELLANTS No.1 TO 16 ARE
REPRESENTED BY THEIR
GENERAL POWER OF ATTORNEY HOLDER
M/S. SHYAMARAJU AND
COMPANY (INDIA) PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
DIVYASREE CHAMBERS
A WING, #11, O'SHAUGNESSY ROAD
BENGALURU - 560 025
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. RAGHAVENDRA SAANU

17. M/S. SHYAMARAJU AND
COMPANY (INDIA) PVT. LTD.
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
DIVYASREE CHAMBERS
A WING, #11, O'SHAUGNESSY ROAD
BENGALURU - 560 025
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. RAGHAVENDRA SAANU

...APPELLANTS

(BY SRI DHYAN CHINNAPPA, SENIOR ADVOCATE A/W
SMT. ANUKANKSHA KALKERI, ADVOCATE)

AND:

1. M/S HUAWEI TECHNOLOGIES INDIA PVT LTD.,
INDIA PVT LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
SY NO. 36/3 37, 45/1, 45/2, 45/3, 45/4,
47/1, 47/2, 137, KNO 1540
KUNDALAHALLI VILALGE
BENGALURU - 560 037
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. OMESH RAINA

...RESPONDENT

(BY SRI G.L. VISHWANATH, SENIOR ADVOCATE A/W
SRI SHIRISH KRISHNA, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION
13 (1-A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING
TO SET ASIDE THE IMPUGNED JUDGMENT DATED 12.06.2025
PASSED IN COM.O.S.NO.296/2020 BY THE LXXXIX ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE (COMMERCIAL COURT)
(CCH-90), BENGALURU, WHICH IS PRODUCED AT ANNEUXRE
A & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING ON FOR
PRONOUNCEMENT THIS DAY, JUDGMENT WAS
PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

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INTRODUCTION

1. The appellants have filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] impugning a judgment dated 12.06.2025 [**the impugned judgment**] passed by the LXXXIX Additional City Civil and Sessions Judge, (Commercial Court) (CCH-90), Bengaluru [**Commercial Court**] in Com.O.S.No.296/2020.

2. The respondent [hereafter '**Huawei**'] had filed the said suit, praying, *inter alia*, for a decree directing the appellants No.1 to 16

through appellant No.17 [hereafter '**the Developer**'] and the Developer to execute a sale deed in its favour in respect of the property described as "Schedule 'A' Property" in the Permanent Perpetual Lease Deed dated 21.10.2005 [hereafter '**PPL**'].

3. The said "Schedule 'A' Property" is described in the plaint as part and portion of the property bearing Survey Nos.36/3, 37, 45/1, 45/2, 45/3, 45/4, 46, 47/1, 47/2, 137 at K.No.1540 of Kundalahalli Village, Bengaluru - 560 037 measuring 15 acres and 23.31 guntas [hereafter "**Schedule 'A' Property**"]. Huawei also sought a decree for bifurcation of the khata in respect of the "Schedule 'A' Property" and to declare that the defendants have no right to utilise the Floor Area Ratio/Floor Space Index [**FAR/FSI**] available in respect of "Schedule 'A' Property". Additionally, Huawei sought a decree of permanent injunction restraining the appellants (who were arrayed as defendants) from in any manner utilizing the FAR/FSI available in respect of "Schedule 'A' Property".

4. The appellants No.1 to 16 [**the Landowners**] are the Landowners of land parcels situated in Kundalahalli Village, K.R.Puram Hobli, Bengaluru East Taluk and the Developer (appellant No.17) is a Company incorporated under the Companies

Act. The Developer is engaged in the business of real estate development across multiple cities in India. The appellants were arrayed as defendants in the aforementioned suit filed by Huawei.

5. Huawei is a company incorporated under the provisions of the Companies Act, 1956 and is a subsidiary of Huawei Technologies Co. Ltd., China, a leading Global provider of information and communications technology infrastructure and smart devices and is engaged in the business of providing telecommunication equipment and selling consumer electronics, smart phones, etc.

6. The central dispute between the parties is whether Huawei's rights in respect of the "Schedule 'A' Property" are limited to 10,56,000 sq.ft. of super built-up area, irrespective of the FAR/FSI available in respect of the "Schedule 'A' Property". Huawei claims that it is entitled to an absolute conveyance of the "Schedule 'A' Property" and is entitled to avail of FAR/FSI in excess of 10,56,000 sq.ft. as may be available in respect of "Schedule 'A' Property". It claims that it is entitled to the mutation of the said "Schedule 'A' Property" in its name as its property with all attendant rights.

7. The Developer, which is also a power of attorney holder of the Landowners (appellants No.1 to 16) disputes the same. According

to the Developer, Huawei is entitled to conveyance of the “Schedule 'A' Property”, but not the right to utilise any FAR/FSI to carry on any further construction over and above 10,56,000 sq. ft. of super built-up area. The “Schedule 'A' Property” is a part of a larger property being developed in accordance with the development plan. The said development plan comprises of various areas including commercial areas, residential areas, recreational areas and other open areas. And irrespective of the FAR/FSI that may be available in respect of the “Schedule 'A' Property”, Huawei would be entitled only to a super built-up area of 10,56,000 sq. ft.. Thus, according to the Developer, although the “Schedule 'A' Property” may be conveyed to Huawei, it cannot develop or construct floor space in excess of 10,56,000 sq. ft. of super built-up area.

8. It is common ground that the said dispute is required to be addressed in reference to the written agreements entered into between the parties. The learned Senior Counsel appearing for the parties advanced submissions solely on the basis of the written documents. Therefore, in view of the above, the dispute essentially relates to the interpretation of the agreements between the parties.

PREFATORY FACTS

9. The Developer, with the objective of developing a large-scale, mixed use integrated development project comprising of residential apartment complex along with various amenities and facilities in the Whitefield area and the Kundalahalli locality of Bengaluru, initiated negotiations with the owners of several individual land parcels, namely, Appellants No.1 to 16. The intention underlying these negotiations was to amalgamate and develop the Landowners' parcels with the Developer's own holdings under a unified master plan, which came to be known as "DivyaSree Technopark."

10. The Landowners comprise two principal groups. The first group consists of Appellants No.1 to 9. They are the absolute owners of immovable properties, out of which they offered lands measuring 25 acres 39 guntas and 22 acres 3.5 guntas [hereinafter collectively referred to as **"land parcel 1"**] for development. The second group comprising of Appellants No.10 to 16 are the absolute owners of immovable properties, out of which they offered lands measuring 9 acres 24 guntas and 10 acres 6.5 guntas [hereinafter collectively referred to as **"land parcel 2"**]. In addition, the Developer is the absolute owner of land measuring approximately 4 Acres 35 Guntas [hereinafter referred to as **"land parcel 3"**]. The

land parcels 1, 2 and 3, collectively measure approximately 72 Acres 28 Guntas (inclusive of 11 Guntas of converted and 9 Guntas of unconverted kharab land) and form a contiguous block of land [hereinafter referred to as "**the larger property**"].

11. The Landowners executed Joint Development Agreements and General Powers of Attorney in favour of the Developer, authorising it to develop the larger property as a unified integrated project and to represent and bind the Landowners in all transactions pertaining thereto.

12. The Developer and Huawei entered into negotiations regarding the development of Huawei's proposed campus on the land as part of the DivyaSree Technopark. Huawei addressed a letter of its expression of interest [**LOI**] for the land for the construction and development of Huawei's campus, confirming its interest in developing its campus on the land offered by the Developer at DivyaSree Technopark and in executing appropriate contracts on mutually agreed terms. The LOI also recorded Huawei's interest in developing about 10,56,000 sq. ft. of super built-up area on about 20 acres of land.

13. On 10.08.2005 Huawei and the Developer entered into a agreement amending the LOI (Ex. D4). It recorded that the land falling in Survey No.47/3 had not been converted for non-agricultural use and provided that, pending its conversion, the said land would be excluded from the perpetual lease deed and be covered by a separate agreement to lease.

14. Subsequently, on 21.10.2005, the parties also entered into an agreement to lease (Ex. D6) in respect of an area of 2 acres and 9 guntas (39 guntas in Survey No.47/3 and 1 acre 10 guntas in Survey No.48), which was earmarked as the Future Development Area.” In this agreement, the Developer/Landowners agreed to complete all ongoing proceedings and formalities to ensure that the Landowners have full and absolute title and all interests in the ‘Future Development Area’ and to ensure that the agricultural property is converted for non-agricultural use in terms of the provisions of the Karnataka Land Revenue Act, 1964 as well as to obtain the change of land use under the Karnataka Town and Country Planning Act, 1961 to commercial (software).

15. The Landowners, represented by the Developer, executed the PPL on 21.10.2005 in respect of the land measuring 17 acres and

31 guntas [**demised property**] on the terms and conditions set out in the PPL. In consideration, Huawei paid a total sum of ₹58,61,00,000/- (Rupees fifty eight crores sixty one lakhs only) to the Developer, comprising a premium of ₹58,50,00,000/- (Rupees fifty eight crores fifty lakhs only) and an interest-free refundable security deposit of ₹11,00,000/- (Rupees eleven lakhs only). A sum of ₹2,00,00,000/- (Rupees two crores only) was paid by cheque bearing No.574261 dated 06.06.2005, drawn on HSBC Bank, Bengaluru; ₹51,89,00,000/- (Rupees fifty one crores eighty nine lakhs only) was paid by cheque bearing No.575597 dated 26.10.2005, drawn on HSBC Bank, Bengaluru; ₹11,00,000/- (Rupees eleven lakhs only) was paid as an interest-free refundable security by cheque bearing No.575598 dated 26.10.2005; and the balance amount of ₹4,61,00,000/- (Rupees four crores sixty one lakhs only) was paid by cheque bearing No.488063 dated 28.10.2014.

16. Huawei took over possession of the “Schedule ‘A’ Property” and claims it has been paying the property tax in respect of the said “Schedule ‘A’ Property” since 2005.

17. A portion of the demised property was earmarked by the Bangalore Development Authority [**BDA**] for the construction of 24 meter wide road under the Revised Master Plan, 2015. Consequently, on 30.06.2008, the Developer executed a relinquishment deed (Ex P6) for land measuring 8870 square meters (approximately 2 acres 7.67 guntas) in favour of the BDA. The said parcel of land was a part of the land demised to Huawei under the PPL. Consequently the land demised to Huawei was reduced to approximately 15 acres and 23.31 guntas ("Schedule 'A' Property").

18. On 25.06.2009, the Developer and Huawei entered into a Memorandum of Understanding (Ex.D8), whereby the Developer agreed to assist Huawei to obtain all necessary approvals from various authorities including Bruhat Bengaluru Mahanagara Palike [**BBMP**], BDA, Karnataka State Pollution Control Board [**KSPCB**], Bharat Sanchar Nigam Limited [**BSNL**], etc.

19. On 25.01.2010, Huawei and the Developer entered into a memorandum of understanding (Ex.D10), whereby the Developer agreed to assist Huawei for obtaining the development plan for

block H1, H2, H3, H4 and H5, which form part of the Huawei's campus.

20. On 10.03.2011, Huawei and the Developer entered into a construction management contract (Ex.D12), whereby the Developer agreed to render services as a construction manager.

21. On 17.12.2014, BBMP issued a partial occupancy certificate in respect of the buildings constructed on the "Schedule 'A' Property".

22. At the material time, Huawei had constructed approximately 9,76,207 sq. ft. of super built-up area. On 30.12.2015, the Developer secured a re-modified development plan (Ex.P9/D17) from BDA in respect of the larger property including the "Schedule 'A' Property".

23. After the expiry of twelve years from the date of execution of the PPL, Huawei sought conveyance of the "Schedule 'A' Property" in its favour by calling upon the appellants to execute the sale deed and to register the same.

24. Several meetings were held between the representatives of Huawei and the Developer regarding Huawei's demand. According

to the Developer, whilst it expressed its willingness to execute a sale deed in respect of the “Schedule ‘A’ Property”, it clarified that the same would be subject to the condition that the FAR/FSI entitlement over the “Schedule ‘A’ Property” would be confined to 10,56,000 sq. ft. of super built-up area in terms of the LOI and the PPL.

25. Huawei sent a draft sale deed by an email dated 17.11.2017 demanding conveyance of the “Schedule ‘A’ Property” without any restriction. It specified that Huawei would be entitled to the entire FAR/FSI in respect of the said property. Huawei also sought the right to bifurcate the khata of the “Schedule ‘A’ Property” and exclude it from the re-modified Development Plan, 2015 (Ex D17). It also retained the right to furnish any further plans that it may desire in future for further development of the “Schedule ‘A’ Property”.

26. Given the impasse between the parties, Huawei and the Developer held discussions between November 2017 and March 2018. The Developer also shared a revised draft sale deed, which it claimed was consistent with the parties’ agreement (the LOI and the PPL).

27. On 29.05.2018, the parties met again to discuss the draft revised sale deed circulated by the Developer. However, on 30.07.2018, Huawei revised the draft sale deed as proposed by the Developer and reiterated its demand for full rights, including the right to utilise the applicable FAR/FSI in respect of the leased land without any restriction.

28. Thereafter, Huawei caused legal notice dated 17.02.2020 (Ex.P16) to be sent to the Developer calling upon it to execute the sale deed in line with the draft circulated by it. The Developer responded to the legal notice by a letter dated 12.06.2020 reiterating that Huawei's claim was contrary to the terms of the LOI and PPL.

29. Thereafter, Huawei instituted pre-institution mediation under Section 12A of the CC Act before the District Legal Services Authority, Bengaluru. However, the said mediation was unsuccessful and the said authority issued a non-starter report dated 29.09.2020, which was communicated to the parties on 13.10.2020.

30. Huawei instituted the aforementioned suit on 22.10.2020 (Com.O.S.No.296/2020), *inter alia*, praying as under:

- a) Direct Defendant Nos.1 to 16 through Defendant No.17 and Defendant No. 17 to execute a Sale Deed in favour of the Plaintiff in respect of the Suit "Schedule 'A' Property", as denoted in the Permanent Perpetual Lease dated October 21, 2005;
- b) Direct Defendant Nos.1 to 16 through Defendant No.17 and Defendant No. 17 to execute the Sale Deed in terms of the draft sale deed issued along with the Legal Notice dated February 17, 2020 and produced as Document No. 30;
- c) Direct Defendant Nos.1 to 16 through Defendant No.17 and Defendant No. 17 to bifurcate the khata in respect of the Suit "Schedule 'A' Property", as denoted in the Permanent Perpetual Lease dated October 21, 2005;
- d) Declare that the Defendant Nos.1 to 16 through Defendant No. 17 and Defendant No. 17 have no right to utilize the FAR/FSI available in the Suit "Schedule 'A' Property" as per the Permanent Perpetual lease dated October 21, 2005 in respect of the Suit "Schedule 'A' Property";
- e) Grant a permanent injunction against the Defendant Nos.1 to 16 and Defendant No.17 jointly or severally, their agents, workers, employees, assignees, representatives or any one claiming through or under any of them from acting in any manner to utilize the FAR/FSI which is available as per the Permanent Perpetual Lease dated October 21, 2005; in respect of the Suit "Schedule 'A' Property";
- f) Grant a Permanent Injunction against the Defendant Nos.1 to 16 and Defendant No.17 jointly or severally, their agents, workers, employees, assignees, representatives or anyone claiming through or under any of them from interfering with the Plaintiff's peaceful possession and enjoyment of the Suit Schedule A and B Property as per the Permanent Perpetual Lease dated October 21, 2005;
- g) Award costs of the suit;

- h) Grant such other relief/s as this Hon'ble Court deems fit in the facts and aforementioned circumstances, in interests of justice and equity.

31. The parties led their respective evidence and the suit was disposed of by the impugned judgment.

IMPUGNED JUDGMENT

32. The learned Commercial Court framed the following issues for consideration:

1. "Whether the Plaintiff proves that the Defendant No:1 to 16 through Defendant No:17 and defendant No:17 have deliberately failed to execute and register the sale deed as per the terms and condition of the Permanent Perpetual Lease deed dated:21.10.2005?
2. Whether the Plaintiff proves that the defendants No:1 to 16 through Defendant No:17; and Defendant No:17 are liable to execute and register the Sale deed in respect of Suit "Schedule 'A' Property" in terms of the draft sale deed issued along with Legal Notice dated:17.02.2020?
3. Whether the Plaintiff proves that the defendants No:1 to 16 through Defendant No:17; and Defendant No:17 are liable to bifurcate the Khata in respect of Suit "Schedule 'A' Property" as contemplated under Permanent Perpetual Lease dated:21.10.2005?
4. Whether the plaintiff proves that the defendants No:1 to 16 through Defendant No:17 have no right to utilize the FAR/FSI available in the Suit "Schedule 'A' Property" as per the Permanent Perpetual Lease dated:21.10.2005 in respect of Suit "Schedule 'A' Property"?

5. Whether the defendants No:1 to 16 through Defendant No:17 proves that the defendant No:17 is absolutely entitled to use and utilize and has already used and utilized all balance FAR/FSI exceeding 10,56,000 Sq.ft. of super built-up area available in suit Schedule A Project for its project DivyaSree techno park forming part of the larger property?

6. Whether the defendants No:1 to 16 through Defendant No:17 proves that the plaintiff is not entitled to have any right/interest in respect FAR/FSI exceeding 10,56,000 Sq.ft. of super built-up area available in suit "Schedule 'A' Property"?

7. Whether the Plaintiff proves that it has been and always ready and willing and in fact has complied with its obligations under the Permanent Perpetual Lease deed dated:21.10.2005?

8. Whether the Plaintiff is entitled to have specific performance of Permanent Perpetual Lease deed dated:21.10.2005 to have the sale deed executed and registered in its favor in respect of Suit "Schedule 'A' Property"?

9. Whether the Plaintiff is entitled for the relief of Permanent Injunction to restrain the defendants No.1 to 16 through Defendant No:17 and Defendant No:17 jointly or severally or through their agents, workers employees, assignees, representatives or anyone claiming through or under them from utilizing the FAR/FSI which is available as per the Permanent Perpetual Lease deed dated:21.10.2005 in respect of Suit "Schedule 'A' Property"?

10. Whether the Plaintiff is entitled for the relief of Permanent Injunction to restrain the defendants No.1 to 16 through Defendant No:17 and Defendant No:17 jointly or severally or through their agents, workers employees, assignees, representatives or anyone claiming through or under them from interfering with plaintiff's peaceful possession and enjoyment of Suit "Schedule 'A' Property"?

Property” as per Permanent Perpetual Lease deed dated:21.10.2005?

11. What Order/decreet?”

33. The learned Commercial Court found merit in Huawei's claim that it was entitled to conveyance of the leased property in terms of the draft sale deed furnished by it.

34. A plain reading of the impugned judgment indicates that the learned Commercial Court based its conclusion on the interpretation of clause 9 of the PPL (Ex.P24).

35. The Learned Commercial Court held that clause 9 of the PPL contains a *non obstante* clause which would override other clauses of PPL. The said clause, *inter alia*, provided that Huawei would acquire absolute ownership of the “Schedule ‘A’ Property” after 12 years from the date of the PPL.

36. The learned Commercial Court also referred to the minutes of the meeting held on 02.11.2017 (Ex.P34) and noted that the said minutes evidence that the Developer had not raised any query regarding transferring absolute rights to the “Schedule ‘A’ Property” by executing the necessary deeds.

37. The learned Commercial Court noted that the LOI and documents executed prior to the PPL could not be looked into in view of clause 15 of the PPL, which expressly provided that it superseded earlier documents.

38. The learned Commercial Court on the basis of the evidence concluded that the Developer had failed to establish that it had utilised the entire FAR/FSI over the larger property.

39. In view of the aforesaid findings, the learned Commercial Court decreed the suit and directed the Landowners acting through the Developer and the Developer to execute a sale deed in favour of Huawei in respect of the "Schedule 'A' Property" as detailed in the PPL and in terms of the draft sale deed sent by Huawei along with its legal notice dated 17.02.2020. The learned Commercial Court also declared that the defendants have no right to utilise the balance FAR/FSI in excess of 10,56,000 sq. ft. available in the Schedule A Property; directed bifurcation of the khata within ninety days; restrained the defendants by permanent injunction from utilising the said balance FAR/FSI and from interfering with Huawei's possession of the Schedule A and B properties; and provided that, in default of execution, Huawei would be at liberty to have the sale

deed executed through a Court Commissioner. The suit was decreed with costs.

SUBMISSIONS

40. Sri. Dhyan Chinappa, the learned Senior Counsel appearing for the appellants (Landowners and the Developer) contended that a plain reading of the documents clearly evidences that the parties always intended that Huawei would have the right to construct its own buildings only to an extent of 10,56,000 sq. ft. of super built up area and not exceeding the same. And, the Developer had the absolute right to utilise any FAR/FSI exceeding the said area. He contended that Huawei wanted a built-up area of 10,56,000 sq. ft. and the said area was accommodated as a part of a larger development plan. He contended that even if the FAR/FSI available on "Schedule 'A' Property" was less than 10,56,000 sq. ft., Huawei would be entitled to the said area, which would necessarily have to be accommodated by utilisation of FAR/FSI of the remaining area in the larger property.

41. He referred to the Joint Development Agreement dated 21.03.2005 and submitted that the project envisaged was an

integrated project/complex over a larger property of which the “Schedule ‘A’ Property” was a part.

42. He then referred to the LOI and submitted that the said LOI expressly recorded Huawei’s interest to develop a proposed campus on the land as a part of the DivyaSree Technopark, and it was not Huawei’s intention to acquire any property in excess of 10,56,000 sq. ft. super built-up area.

43. He contended that the terms of the PPL must be read in context of the agreement between the parties as recorded in the LOI and the PPL. He referred to clause 6 of the PPL, which restricted Huawei’s right to construct to 10,56,000 sq. ft. super built-up area. He also referred to clause 7 of the PPL and contended that the same clearly sets out the understanding between the parties.

44. He submitted that clause 9 of the PPL had been erroneously interpreted to completely obliterate other clauses of the PPL. He contended that it is well settled that although a *non obstante* clause would override other clauses, it would be necessary to ascertain the extent to which the *non obstante* clause would operate.

45. Sri. G.L. Vishwanath, the learned Senior Counsel appearing for Huawei contended that the terms of clause 9 were clear and entitled Huawei to all residuary and reversionary rights. He submitted that the same implied that the Developer and the Landowners could not hold any right in respect of the “Schedule ‘A’ Property” on its conveyance.

REASONS AND CONCLUSION

46. As is apparent from the above, the dispute largely centres on the interpretation of the PPL and on ascertaining the agreement between the parties. The learned Commercial Court had framed several issues. However, it identified that the main issues which fell for consideration were whether both the parties had agreed that Huawei's entitlement to own, possess, develop and construct on the subject property is restricted to 10,56,000 sq. ft and the parties had agreed that the FAR/FSI generated from subject property could be utilised by the Developer for development of DivyaSree Technopark; or whether in terms of clause 9 of the PPL, Huawei was entitled to utilise the balance FAR/FSI over and above 10,56,000 sq. ft applicable to the subject property.

47. The learned Commercial Court found in favour of Huawei. The court's conclusion was based on the *non obstante* clause in Clause 9 of the PPL and its literal interpretation. The same was dispositive of the disputes between the parties.

48. Huawei's case is that no other documents or agreements are required to be considered alongside the PPL, as it overrides prior agreements. However, in our view, it would be necessary to examine the various documents to understand the context in which the parties executed the PPL. Whilst the dispute essentially relates to the interpretation of the PPL, the context in which it was executed cannot be disregarded when determining the commercial understanding between the parties.

49. Huawei desired to construct a campus for software development and, in that context, had engaged in discussions with the Developer. As noted above, the Developer had entered into Joint Development Agreements with the Landowners (Exhibit P1 and Exhibit P2) to aggregate land and develop an Integrated Complex. Under the Joint Development Agreements, the Landowners appointed the Developer exclusively as a designated contractor with the right to attend to and complete, in all respects,

the construction of an Integrated Complex in phases on the larger property on a turnkey basis and to transfer the same.

50. The Landowners had agreed that in consideration of the Developer constructing and delivering the agreed built-up space free from all encumbrances, they would transfer and convey the Developer's share of the larger property to the Developer.

51. We may for the present purposes refer to some of the relevant clauses of the Joint Development Agreement (Exhibit P1) dated 21.03.2005, which are set out below:

**"1. APPOINTMENT AS CONTRACTOR
/DEVELOPER**

The Owners hereby appoint the Developer exclusively as the designated Contractors and authorize the Developers for the purpose of and having the right to attend to and complete In all respects and secure the construction and put up the said Integrated Complex In phases on the Schedule Property on a turnkey basis and market and transfer the same.

**** ** ****

**4. SANCTIONED PLANS AND CHANGE OF
LAND USE / CONVERSION**

The Developer at its sole discretion, depending on the market conditions and Its requirements, shall be responsible for the preparation of all plans for development and the design of the integrated complex to be constructed on the Schedule Property and for securing all necessary approvals, permissions, sanctions, consents from all authorities having jurisdiction, Including necessary change of land use and sanction of building plans

for the construction of the said Integrated Complex. The entire cost and expenditure Incurred for change of land use and sanction for construction and development shall be borne by the Developer. The Owners hereby permit the Developer to secure, Inter alia, sanction and permission for development of the said Integrated Complex from statutory and other authorities.

The Owners shall use their best endeavors to co-operate with and assist the Developer in procuring such approvals and sanctions as and when required by the Developer.

5. CONSTRUCTION OF INTEGRATED COMPLEX

The Developer is entitled to design and build the maximum feasible Floor Area Ratio (FAR) permissible under the Building regulations and construct such number of Buildings on the Schedule Property as the Developer may decide considering the market conditions and requirements and for proper development of the Integrated Complex. The Developer will be entitled to take up the development in various phases and structure the same in one or more parcels, which may share some common resources and facilities and may have certain exclusive resources and facilities earmarked for use by buildings located within an identified area and or for exclusive use of certain Identified occupiers or users and may transfer certain demarcated areas absolutely or with specified Interest to certain occupiers. The Owners have also agreed that the Developer will be entitled to acquire Transferable Development Rights (TDR) pursuant to which a higher FAR would be available or club the Schedule Property with other adjacent properties, whether owned or acquired in future by the Developer themselves or owned by third parties who have also agreed to provide their respective properties for development to the Developer and develop the entire property as a larger mixed development with shared Infrastructure roads and facilities to take advantage of the FAR of the entire clubbed properties as a whole with flexibility of using the FAR of a parcel of

land in any other area of the clubbed property and/or leaving open areas or roads for common or exclusive use on certain parcel of land and constructing denser construction on other parcels of lands, so long as the Owners receive the consideration provided in this agreement by the Developer and the Owners are allocated a proportionate and variable un-divided Interest in the total clubbed property to allow full and proper use and enjoyment of the total built up area agreed to be allocated to the Owners in terms of this agreement and Irrespective of the total built up area to be constructed on the clubbed property (hereinafter called the "Clubbed Properties") from time to time as determined in accordance with the formula set out hereunder and such proportionate variable un-divided Interest as determined by the formula is called Un-Divided Interest elsewhere in this agreement;

The Developer shall develop the Schedule Property and any Clubbed Properties, if any and put up the Integrated Complex in Phases. The Developer shall be entitled to progressively expand within the Schedule Property and the Clubbed Properties, if any. Similarly if any exclusive areas are allocated to any person exclusively, with such person utilizing any specified portions of the common areas, then the Total Built-up Space will reduce and The UDI percentage may Increase accordingly. The details of the phased take-up shall be determined by the Developer from time to time so long as the Owners are provided the Owners' Built-up Space and related undivided Interest in the Schedule Property within the agreed deadlines as stated in this agreement. During such period the Owners agree not to offer the property to any third party or encumber the same in any manner whatsoever.

**6. PAYMENT OF REFUNDABLE DEPOSIT /
CONSIDERATION / TRANSFER OF
DEVELOPERS SHARE OF UNDIVIDED
INTEREST**

The Developer has already paid an aggregate sum of Rs. 12,74,578.64/- (Rupees twelve lakhs seventy four thousand five hundred seventy eight and paise sixty four only) to the Owners on account of Interest free refundable Deposit, which sum will be refunded by the Owners to the Developer upon completion of the development by the Developer and at the time of hand over of the Owners' Built-up Space (along with the Un-Divided Interest in the Schedule Property to the Owners or any of their nominees and/or authorized representatives.

In consideration of the Developer agreeing to develop, construct and deliver the Owner's Built-up Space free from all encumbrances and to provide all the services in order to put up construction from the stage of planning, approvals, payment of fee to Consultants, Architect or any other person or service provider required for completion of the said Integrated Complex on the Schedule Property, the Owners shall be bound to transfer and convey the Developers' share of the Schedule Property In favour of the Developer or its nominees pursuant to the terms of this agreement. As the Integrated Complex is proposed to be developed in stages, and In various blocks, the Parties have agreed that the Developer is entitled to cause completion of the Owners' Built-up Space in one or more stages, and also deliver the Owners' Built-up Space In stages and consequently the Developer shall be entitled to transfer and convey the Developers' Share of the Schedule Property in the same proportion as the delivered portion of the Owner's Built-up Space has to the total agreed Owners' Built-up Space. The Developer shall be entitled to utilize the power granted to the Developer to transfer Interest in the Schedule Property In terms of this Agreement to transfer and convey the Developers' share of the Schedule Property to third parties without any further reference to the Owners."

52. It is apparent from the above that the understanding between the Landowners and the Developer was that the parcels of land

would be clubbed, and an Integrated Complex would be developed on the entire land. Huawei was fully aware of the said Joint Development Agreements and the intent to develop an Integrated Complex on the larger property. It thus follows that the discussions between the Developer and Huawei were in the aforesaid backdrop. Pursuant to the discussions, Huawei issued the LOI¹ dated 31.05.2005. It is important to examine the contents of the said LOI as it sets out the broad parameters on which Huawei had proceeded to engage with the Developer. The opening paragraphs of the said LOI reads as under:

"Further to our various discussions with regard to the development of the proposed campus for Huawei (the "Campus"), **we are happy to confirm our interest in developing the Campus on the land offered by you at 'DivyaSree Technopark',** subject to execution of appropriate contracts on mutually agreed terms, based on the broad terms and conditions contained in this LOI.

Our interest is in the development of about 10,56,000 sq. ft. of super built up area as per the designs to be provided by us, in an extent of about 20 (Twenty) acres of land in parts of Survey 36/3, 37, 45/1, 45/2, 45/3, 45/4, 46, 47/1, 47/2, 47/3, 48 and 137 of Kundalahalli Village, coming under the Mahadevapura CMC Limits in Bangalore and forming part of your project DivyaSree Technopark. You have represented to us, that the said lands are the absolute property, free of encumbrances, of the persons mentioned in

¹ Ex D3

Annexure A to this LOI (hereinafter the "Owners"), who are also in sole and exclusive possession thereof and have entered into a Joint Development Agreement with you." [emphasis added]

53. It is clear from the above that Huawei was interested in developing its campus on lands that were part of the 'DivyaSree Technopark'. Admittedly, the 'DivyaSree Technopark' is an Integrated Complex on the larger property. Huawei had unequivocally expressed that its interest was to develop about 10,56,000 sq. ft. of super built-up area as per its design over an extent of about 20 acres of land which formed a part of the mixed development project –'DivyaSree Technopark'. The LOI also set out the representations made to Huawei.

54. Paragraphs 1 to 6 of the said LOI are relevant and are set out below:

"1. That you have entered into a Joint Development Agreement with the Owners and certain others, for the development, inter alia, of an area of totally about 70 (Seventy) acres, (which includes the aforesaid area required for our Campus) for commercial purposes, namely, as a Software Development Park to be called "DivyaSree Technopark" (copy whereof is annexed to this LOI as Annexure D) and that the owners and others concerned will be executing irrevocable Powers of Attorneys for the purpose in your favour or in favour of your nominees and all other documentation, as may be required, sufficient to enable you to comply with the terms and conditions of this LOI.

2. That from out of the overall area aforesaid of the proposed DivyaSree Technopark, you have already got change of land use for commercial purpose, in respect of an area of about 23 (Twenty three) acres to make it suitable for use for the aforesaid purpose. The overall area proposed for the DivyaSree Technopark project is shown in the Master Plan attached to this LOI as Plan A.

3. That you are in a position to arrange and make available for our use for the Huawei Campus, the area required by us, being the area more particularly described in Annexure B annexed hereto and delineated in red in Plan B (hereinafter the "Said Lands").

4. **That based on the relevant applicable legal provisions you have assured us that you are in a position to arrange for the construction of the 10,56,000 sq. ft. of super built up area required for our Campus on the Said Lands and that you are entitled to utilize the remaining FSI / FAR in the adjoining lands of the DivyaSree Technopark.**

5. **That in order to achieve the foregoing, the Said Lands will be demised to us as and by way of permanent perpetual lease, with full and exclusive occupation and enjoyment rights and with full heritable and alienable rights (save and except only, that Huawei will not be entitled to construct more than the 10,56,000 sq. ft. of super built up area proposed for the Huawei campus) and with the option of purchasing the absolute title to the Said Lands as hereinafter provided. You have also assured us, that notwithstanding the arrangements you have with the Owners with respect of the rest of the DivyaSree Technopark areas, with respect to the Said Lands to be leased to us as aforesaid, absolute title thereto will be held by the current Owners or yourselves, with no undivided interest or other rights for any others, save and except only your right aforesaid to utilize the excess FSI/FAR within the DivyaSree**

Technopark either by yourselves or any of your group companies.

6. That you will arrange to satisfy us fully about the title of the Said Lands and your right to contract and make available to us the Said Lands as and by way of permanent perpetual lease and its suitability for construction of the 10,56,000 Sq.ft. of our campus and that you will also arrange, within 60 (Sixty) days of the date of this LOI, for the execution and registration in our favour of all documentation and papers required by us to effectively demise the Said Lands to us as and by way of permanent perpetual lease on the terms contained in this letter and other terms mutually agreed, by the Owners and others concerned, or on their respective behalf by duly authorized persons and also simultaneously put us in vacant unencumbered possession of the Said Lands."

55. The LOI also recorded the details of the proposed transaction.

Some of the relevant clauses of the LOI are reproduced below:

"16. Further details of the proposed transaction are as follows:

a) Type of Documents to be executed.

Permanent Perpetual Lease with full heritable and alienable rights, for the Said Lands, with an option on the part of Huawei to get residuary reversionary rights as well and full and absolute title to the Said Lands through a Sale Agreement and Sale Deed when Huawei exercise the option to buy the Said Lands, at the earliest of:

- (i) Completion of the DivyaSree Technopark project or
- (ii) 12 (Twelve) years from the date of this LOI, or
- (iii) in the event that transfer of the Development Rights (TDR) has been made available by the concerned Government Authority and Huawei has transferred its rights with respect to the excess FSI/FAR (beyond 10,56,000 sq. ft.) in respect of the

Said Lands to SRIPL. Construction/Development Agreement.

Any other Document as may be specified by us or our Legal Consultants, subject to mutual agreement of the terms thereof.

b) Area: Extent of Land. The total extent of the Said Lands will be 20 (Twenty) acres, for the construction by us of 10,56,000 sq ft of super built up area, including separate and independent direct access from the Said Lands to the public road as indicated in Plan B attached to this LOI, you have assured us that 14.6 acres of this area has been duly approved by BDA for use for commercial (Software Park) purposes. The remaining 5.4 acres is currently approved for use for residential purpose and SRIPL undertakes, at its own risk and cost, to obtain the approval from BDA and other concerned authorities for Change of Land use to commercial (Software Park) use, as and when so required by Huawei and within an agreed time line. You have also specifically represented to and assured us, that it is possible to legitimately construct the 10,56,000 sq. ft. of super built up area required by us, on the Said Lands. Based on these specific representations and assurances, Huawei is agreeable to the following mode of transfer, which SRIPL undertakes to arrange and facilitate:

(i) The Said Lands will be transferred to Huawei through a duly stamped and registered permanent perpetual Lease Deed executed by the Owners or, if Huawei so agrees, by their duly authorized attorneys, accompanied with vacant and unhindered possession, ***with irrevocable heritable and alienable rights and full and unhindered right to develop and improve the Said Lands by construction and absolute ownership of 10,56,000 sq. ft. of super built up area constructed to house our Campus in accordance with the approved plans and sanctions. It is agreed and understood between both the parties, that the overall construction right of Huawei in the Said Lands is not to exceed 10,56,000 sq. ft. of super built up area.***

The said lease deed will also specifically provide for an option on the part of Huawei, to get absolute and unencumbered rights and title to the Said Lands, at the earliest of: (i) completion of the DivyaSree Technopark project, or (ii) 12 (Twelve) years from the date of this LOI, or (iii) in the event that transfer of the Development Rights (TDR) has been made available by the concerned Government Authority and Huawei has transferred its rights with respect to the excess FSI/FAR to SRIPL

The right of Huawei as aforesaid to obtain full and absolute unencumbered title and rights to the Said Lands is a condition of the contract between the parties and, in the event of any failure or default by SRIPL to execute or cause to be executed by the Owners the required sale deed(s) and other documents for the purpose, Huawei shall be entitled to Specific Performance of the aforesaid obligation under taken by Developer, by specifically enforcing the same through a court of law, irrespective of, and notwithstanding, any of the clauses and understanding covered in the Development Agreement or any other contract, between SRIPL and the land Owners or any others whomsoever.

(ii) Other appropriate documents as required will also be executed / registered and actions taken by SRIPL / Owners, to ensure, that we have the full rights for the construction, ownership and use of 10,56,000 sq. ft. of super built up area for the Campus. All Documents will be on terms acceptable to both of us and with a view to fulfill the intent and purpose of this LOI.

c) *** *** ***

d) Development Agreement. Huawei intends to construct super built up area of 6,00,000 sq ft facility in Phase I and super built up area of 3,00,000 sq ft in Phase II on the Said Lands, as more clearly outlined in Annexure C of this LOI, subject to Huawei complying with item e) below.

The remaining 1,56,000 sq ft of construction will be taken up by Huawei at any time and at their sole discretion.

The Campus also includes a residential apartment for use by the staff of Huawei. The apartment will also be built as part of the Phase I and, wherever required, SRIPL will assist and undertake the suitable construction model viz - Residential or Commercial. The scope of construction and development covers all the civil, services, fit-out and exterior development for the facilities through SRIPL as general contractor on the following commercial terms.

The scope of development work and the specific services to be provided by SRIPL, the schedule for work and services, and the payment terms, as well as all other general and specific information, shall be covered under the Construction and Development Agreement.

e) *** *** ***

f) Un-utilized FSI. Huawei intends to construct the total super built up area of 10,56,000 sq ft (6,00,000 sq ft in Phase I, 3,00,000 sq ft in Phase II and 1,56,000 sq ft at any time thereafter) in the Said Lands. Any permissible super built up area beyond 10,56,000 sq ft in the Said Lands will be available to SRIPL, but only for use in adjoining areas of the DivyaSree Technopark. It is clarified that on no account will any constructions be permitted on the Said Lands, other than the 10,56,000 sq. ft. proposed for the Huawei Campus.

g) CM Fee for final 1,56,000 Sq ft building

As and when Huawei intends to construct building of the balance 1,56,000 sq. ft. SRIPL will be given a first right of refusal for the construction management thereof on terms decided by Huawei. The fee for providing the said construction management services will be between 9 to 11% of the project development cost, negotiable at the time.

In the event SRIPL is not willing/able to take up the CM, alternate CM Consultant will be engaged by Huawei in consultation with SRIPL.”

56. It is material to note that paragraph 16 (a) of the LOI records the understanding, which is also reflected in clause 9 of the PPL.

57. The LOI was subsequently amended by an agreement (Ex.D4) dated 10.08.2005, as the land falling under Survey No.47/3 had not been converted for non-agricultural use. Therefore, the said land was required to be excluded pending its conversion.

58. On 21.10.2005, Huawei and the Developer also entered into an agreement (Ex. D5) in furtherance of the LOI, as amended by the agreement dated 10.08.2005 (Ex. D4), and the PPL. As noted above, the area of 2 acres and 9 guntas falling in Survey No.47/3 (39 guntas) and Survey No.48 (1 acre and 10 guntas) had been excluded from the demised property pending its conversion and was earmarked as the Future Development Area. The said agreement (Ex D5) also recorded Huawei's intention to construct 6,00,000 sq. ft. of super built-up area in Phase I and 3,00,000 sq. ft. in Phase II as outlined in the Design Brief annexed to the said agreement. The construction of the remaining 1,56,000 sq. ft. would be taken up subsequently at Huawei's discretion.

59. Sub-para (i) of paragraph 3 of the said agreement is set out below:

(i) Huawei intends to construct at its own cost, a facility, having a super built up area of 600,000 sq ft in Phase I and a super built up area of 300,000 sq ft in Phase II, as more clearly outlined in the Design Brief annexed hereto as Annexure G. The remaining 1,56,000 sq ft of construction will be taken up by Huawei at any time and at their sole discretion."

60. The parties had also entered into other agreements and deeds regarding consultancy and management. However, the same may not be relevant for the purpose of addressing the present dispute.

61. The parties entered into the PPL (Ex P24) on 21.10.2005. Under the said PPL, the Landowners agreed and confirmed that the Demised Property² as well as the Future Development Area (2 acres and 9 guntas in Survey Nos.47/3 and 48) would fall to the share of the Developer under the Joint Development Agreements (Ex.P1 & Ex.P2). The Landowners thereby confirmed that the Developer had the right to deal with the same in terms of the Joint Development Agreements. Huawei agreed to pay an amount of

² Land measuring 17 acres and 31 guntas falling in Sy no 36/3,37,45/1,45/2 & 45/3, 45/4, 46, 47/1, 47/2 and 137 of Kundalahalli Village

₹58,50,00,000/- by way of a premium and a further sum of ₹11,00,000/- as interest free refundable security deposit in consideration for entering into the PPL. It was agreed that the balance premium of ₹4,61,00,000/- (Rupees Four crores and sixty one lakhs only) shall be paid at the earlier of:

- “(a) execution and registration of the deed of permanent perpetual lease in respect of the Future Development Area in favour of the Lessee, in terms of the separate agreement being executed amongst Lessors No. 1 to 9, the Developer and the Lessee; or
- (b) expiry of one month from the date on which, in terms of the said agreement, the Lessors/Developer are able and willing to execute and register the said deed of permanent perpetual lease in respect of the Future Development Area in favour of the Lessee; or
- (c) expiry of eighteen (18) months from commencement of construction of the Lessee's campus on the Schedule Property.”

62. The relevant clauses of the said agreement are set out below:

"6. The Lessee doth hereby covenant with the Lessors/Developer as follows:

- a) to construct and erect and own, not more than an aggregate super built up area of 10,56,000 sq. ft. on the entire Schedule Property and/or Future Development Area, at its own cost in terms of designs and specifications as deemed fit by the Lessee and to permit the Lessors/Developer, to utilize any balance FAR / FSI available in respect of the Schedule Property (over and above 10,56,000 sq. ft.) on the properties of the Lessors/Developer adjoining the Schedule Property, and to build on such adjoining properties any corresponding further super built up area (over and above the said

10,56,000 sq. ft.) now permissible, or made available in the future, In respect of the Schedule Property and Future Development Area, as per the laws, rules and building regulations and the amendments thereof, if any, applicable from time to time. For the removal of doubt it is agreed and recorded, that there shall be no reduction of the Lessee's right and entitlement to construct and own 10,56,000 sq. ft. of super built up space as aforesaid on account of the Lessee not taking or getting perpetual leasehold rights and/or absolute ownership of the Future Development Area. Accordingly, in the event that, for any reason whatsoever, the Lessee does not get such perpetual leasehold rights of the Future Development Area before January 31, 2006, the Lessee shall have the right to utilize, construct and own its said entitlement of 10,56,000 sq. ft. of super built up space on the Schedule Property subject to clause 13 below. This right shall, however, be without prejudice to the continued right of the Lessee to get the permanent perpetual lease of the Future Development Area, under and in accordance with the separate agreement between the Lessee and the Lessors/Developer in respect of Future Development Area. It is agreed and acknowledged, that the measurement and computation of the super built up area of 10,56,000 sq. ft. aforesaid will, for all purposes, be made as per the prevailing regulations and practices of the concerned governmental authority.

b) In order to facilitate the foregoing and subject to Clause 7 hereinafter provided, not to seek or be entitled to bifurcation/partition of the khata of the Schedule Property from its existing khata until the earliest of the events specified in Clause 9 hereinafter provided; Provided that the Lessee will be entitled to apply for a leasehold Khata in respect of the Schedule Property without affecting the rights of the Lessors/Developer to use any additional/balance FAR / FSI as provided in Clause 6(a) above.

c) To pay to the concerned authorities or, as the case may be, re-imburse to the Lessors/Developer,

all taxes, rates, assessments and other levies whatsoever in respect of the Schedule Property and all constructions and improvements thereon, for any periods falling after the date of this Deed of Permanent Perpetual Lease and comply with all notices that may be issued by any Jurisdictional authority, without prejudice to any of the Lessee's rights to take recourse to all available legal remedies, appeals and other proceedings against such notices; In the absence of the Municipal Authorities determining the amount payable in respect of the Schedule Property separately without bifurcation of the Khata, the Lessee shall be liable to so pay or reimburse, as the case may be, such proportionate amount as may be determined by the Parties as relateable to the Schedule Property, having regard to the total assessment made in respect of the entire Khata and the nature of use and areas covered under the Schedule Property as prevailing at the time of payment of such taxes.

d) To comply with all applicable laws, rules and regulations with respect to the excavation of any stones, sand, gravel, clay or earth from the Schedule Property for execution of construction of the Huawei campus and the buildings, structures and adjuncts thereto.

e) to maintain the Schedule Property and all constructions and improvements thereon in good order and condition at its cost and expenses.

f) not to do or permit to be done in the Schedule Property or any constructions therein, any act, deed, matter or thing which may cause nuisance, annoyance or disturbance to any others in the vicinity or which may affect the rights of the Lessors/Developer with respect to the balance FAR / FSI (ie., over and above the Lessee's right to construct and own 10,56,000 sq. ft. of super built up space), as provided in Clause 6(a) above, and/or against the rules, regulations and laws of the local authorities or any state or central laws.

g) To keep indemnified the Lessors and the Developer from and against any and all actions,

suits, proceedings, claims, demands, fines, penalties, costs, expenses and other liabilities, consequences and obligations whatsoever, that may be made or suffered by or brought against or incurred by the Lessors and/or the Developer by reason or by virtue of, any default or violation of the Lessee, (other than acts of God or force majeure not within the control of the Lessee) or the non-observance or breach by the Lessee, of its obligations, covenants or assurances herein contained or of any law, rule, regulation, bye law or other legal requirement, in respect of the Schedule Property, which may arise after this perpetual lease deed is duly signed and registered.

h) Not to object to the Developer assigning its development rights in respect of any balance FAR / FSI available in respect of the Schedule Property (over and above 10,56,000 sq. ft.), wholly or in part, to any nominee, provided that the Lessee's rights and interest over the Schedule Property as vested in the Lessee under this Deed of Permanent Perpetual Lease are fully protected by the Lessors/Developer and no rights or interest adverse to the Lessee's rights herein are purported to be set up or created or assigned by the Lessors/Developer or their nominees or assignees in any manner whatsoever. It is made clear that by virtue of use or transfer of any balance FAR / FSI no undivided interest shall be created in favour of any user or transferee, in the Schedule Property.

i) To execute and admit the execution of such documents/deeds as may be required, and to comply with all requirements, for transfer of Lessors/Developer's right with regard to the excess FSI/FAR as aforesaid (over and above 10,56,000 sq. ft. of built up area on the Schedule Property and Future Development Area) in favour of Lessors/Developer or any of their nominee/s, at the request and cost of the Lessors/Developer.

j) To pay for the maintenance of the common areas of the DivyaSree Technopark on a proportionate basis, along with all other occupants of the

DivyaSree Technopark, as may be agreed by execution of a separate agreement.

7. The Lessors and the Developer do hereby jointly and severally covenant with the Lessee as follows:

(f) that the Lessee will have full, proper, unhindered and permanent perpetual leasehold rights and interest over the Schedule Property and every part and portion thereof on the terms herein provided (Including without limitation the right and authority to sub lease the whole or any portion of the Schedule Property and to alienate, lease or part with possession of any constructions or improvements made by the Lessee thereon) and may hold and enjoy the same in perpetuity without any let or hindrance from the Lessors or any of them or the Developer or any persons claiming through, under or in trust for any of the Lessors/Developer.

(g) ***

(h) ***

(i) that the rights of the Lessee shall also extend to the use and exploitation of the earth, subsoil, minerals, trees, plants and all else in or on the Schedule Property and the right to construct and own such buildings and structures and make such other improvements thereon at its own cost as the Lessee shall think fit (not exceeding, however, an aggregate super built up area of 10,56,000 sq. ft. on the entire Schedule Property and Future Development Area, which can be utilized by the Lessee at any time), all of which buildings, structures and improvements shall belong absolutely to the Lessee, may be sold, mortgaged, charged, leased or in any other manner transferred or alienated by the Lessee at its sole discretion and on such terms as it may think fit, and with respect to which buildings, structures and Improvements or any transfer or alienation thereof, neither the Lessors nor the Developer nor any others claiming

under through or in trust for any of the Lessors/Developer, will have or make or assert or permit to be made or asserted, any rights, interest, claims or demands whatsoever.

(j) *** *** *** ***

(k) that in view of the permanent perpetual nature of the lease granted hereby and the sole right and option of the Lessee to purchase all balance residuary or reversionary rights in or to the Schedule Property so as to acquire full and absolute title and ownership to the Schedule Property and every portion thereof, the Lessors/Developer shall not be entitled to sell, mortgage, lease or otherwise alienate in any manner, their ownership or any other rights over the Schedule Property or any part or portion thereof to any others whomsoever, or attempt or negotiate to do so;

(l) *** *** *** ***
(m) *** *** *** ***
(n) *** *** *** ***
(o) *** *** *** ***
(p) *** *** *** ***
(q) *** *** *** ***
(r) *** *** *** ***

8. *** *** *** ***

9. Notwithstanding anything contained in this Deed of Permanent Lease or in any other contract or agreement or arrangement entered into by the Lessors and/or the Developer, whether amongst themselves or with any others whomsoever, it is irrevocably agreed by the Lessors and the Developer, that the Lessee shall have the right and option, without obligation to pay any other or further amounts whatsoever (save and except only for adjustment of the Security Deposit in full and final settlement towards the balance price as provided in Clause 3 above and payment by the Lessee of the stamp duty and registration charges and all related expenses as applicable on all required deeds and documents), to get transferred to itself all the

residuary and/or reversionary rights in respect of the Schedule Property, so as to obtain the full and absolute title and all rights to and in respect of the Schedule Property and every part or portion thereof, through appropriate sale agreements and sale deeds / conveyances duly executed and registered by the Lessors and Developer in favour of the Lessee. Such right and option of the Lessee to acquire absolute ownership title and rights to the Schedule Property may be exercised, in its sole discretion, at any time after the earliest of:

- a. completion of the DivyaSree Technopark project by the Developer; or
- b. transfer by the Lessee, at the cost of the Developer, after obtaining all required consents and approvals, of its rights with respect to the excess FSI/FAR (beyond 10,56,000 sq. ft.) in respect of the Schedule Property and Future Development Area to the Lessors/Developer and/or to their nominee(s); or
- c. 12 (Twelve) years from the date of this Deed of Permanent Perpetual Lease.

It is also agreed by the parties hereto that notwithstanding anything stated anywhere the Lessors/Developer shall not be entitled to transfer ownership in respect of the Schedule Property to any person other than the Lessee for any reason whatsoever.

10. At any time after the happening of any of the events mentioned in Clause 9 above, the Lessee shall be entitled to call upon the Lessors/Developer to transfer all the residuary and/or reversionary rights and interest in respect of the Schedule Property to the Lessee or its nominee/s and the Lessors/Developer shall, forthwith upon being so called upon and in any event within one month thereof, at the cost and expense of the Lessee, execute and register the appropriate deeds of sale or conveyance as may in the opinion of the Lessee be necessary, so as to vest in the Lessee the full and absolute ownership and all rights and title to

the Schedule Property. The stamp duty and registration charges and all related expenses in respect of the said deeds of sale or conveyance shall be borne by the Lessee.

11. The lease of the Schedule Property hereunder is permanent and perpetual with full and complete heritable and alienable rights on the part of the Lessee and such lease shall not accordingly be terminable on any account by the Lessors or the Developer or any others claiming through, under or in trust for any of the Lessors/Developer.

12. The parties hereto acknowledge that the covenants of the Lessee in Clause 6(a) and (b) of this Deed of Perpetual Lease are essential terms, violation whereof, will cause loss and damage to the Lessors/Developer. It is accordingly agreed, that in the event of any violation by the Lessee of the said provisions, the Lessors/Developer shall be entitled for liquidated damages from the Lessee as may be mutually agreed upon in due course.”

63. Huawei argues that by virtue of the *non obstante* provision in Clause 9 of the PPL, it overrides all other clauses of the PPL. Thus, notwithstanding anything contained in the PPL, Clause 9 of the PPL must be enforced on its own terms. It argues that in terms of Clause 9 of the PPL, it is entitled to absolute ownership of the schedule ‘A’ property along with all attendant rights, including the right to carry on further construction on the basis of the FAR/FSI as applicable to the “Schedule ‘A’ Property” on a standalone basis.

64. Sri G.L. Vishwanath, the learned Senior Counsel appearing for Huawei also referred to the decisions in the cases of **Union of**

India and another vs. G.M Kokil and others³ and **Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram⁴** for explaining the effect of a *non obstante* provision. Additionally, learned Senior Counsel referred to decisions supporting the contention that a textual interpretation of Clause 9 should be adopted. According to him, the language of Clause 9 of the PPL is unambiguous, and it should be construed in accordance with its ordinary meaning. He submitted that in terms of Clause 10, Huawei was entitled to call upon the Lessor/Developer to transfer all residuary and/or reversionary rights in respect of the “Schedule ‘A’ Property”. According to him, this would denude the Developer of any right whatsoever in respect of the “Schedule ‘A’ Property”, including the right to raise any construction on the adjoining lands that could be raised on the basis of FAR/FSI as applicable to the “Schedule ‘A’ Property” on a standalone basis.

65. It is a well-settled principle of the interpretation of deeds that a deed must be understood in reference to the context in which it is

³ 1984 (Supp) SCC 196

⁴ (1986) 4 SCC 447

executed. In **Westminster City Council vs. National Asylum Support Service**⁵, Lord Steyn observed as follows:

“5. ... The starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used. It follows that the context must always be identified and considered before the process of construction or during it. It is, therefore, wrong to say that the court may only resort to evidence of the contextual scene when an ambiguity has arisen.”

66. The importance of referring to the context was also highlighted by the Supreme Court in **Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. and others**⁶. In this decision, the Supreme Court had explained, albeit in the context of interpretation of statutes, that the best results of interpretation are obtained by matching the textual interpretation with the contextual one. It is apposite to refer to the following extract from the said decision:

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then

⁵ (2002) 4 All ER 654 (HL)

⁶ 1987 (1) SCC 424

section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

67. Although Chinnappa Reddy J had made the above observations in the context of interpretation of statutes, the principle enunciated would be equally applicable when interpreting an agreement.

68. It would not be apposite to interpret any clause of the PPL in complete disregard of the context of the commercial understanding reflected in the other clauses of the PPL. The context in which the parties came to execute the PPL is equally important in interpreting its terms.

69. In **Provash Chandra Dalui and another vs. Biswanath Banerjee and another**⁷ the Supreme Court underscored the importance of interpreting a contract as a whole with reference to its object and had observed as under:

10. 'Ex praecedentibus et consequentibus optima fit interpretatio.' The best interpretation is made from the context. *Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties.* It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected 'ex antecedentibus et consequentibus;' *every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible."*

70. In **Bihar State Electricity Board, Patna and others vs. M/s. Green Rubber Industries and others**⁸, the Supreme Court reiterated the said principle as under:

"23. ... Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause."

71. In **Union of India vs. G.M.Kokil and others** (*supra*) which was referred to on behalf of Huawei, the Supreme Court had explained the meaning of *non obstante* clause as under:

⁷ 1989 SCC (SUPP) 1 487

⁸ (1990) 1 SCC 731

"11. It is well known that a non obstante clause is legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

72. There is no cavil as to the meaning of the *non obstante* provision. It is well understood that the same is used to give overriding effect to the provision over any contrary or inconsistent provisions in the statute or a deed. Having said that, it is also necessary to bear in mind that the *non obstante* clause cannot be read to mean that it has to be read on a standalone basis in complete disregard of the other provisions of either the statute or an agreement. It is important to ascertain the extent to which the *non obstante* clause is to be applied to override the other clauses of an agreement or the provisions of a statute, as the case may be. In this regard, it is necessary to bear in mind the principle that a *non obstante* clause must be applied to override other provisions only to the extent it is necessary. In other words, it must be first ascertained that whether there is any inconsistency in the language of the provisions, which cannot be reconciled. If it is found that giving effect to one provision would necessarily be destructive of the other provision, the *non obstante* clause will be pressed into service.

However, if it is found that the provisions of a statute or the clauses of an agreement can be harmoniously construed, it would be unnecessary and inapposite to construe a provision or clause as overriding the other provisions/clauses.

73. In **A.G Varadarajulu and another vs. State of Tamil Nadu and others**⁹, the Supreme Court had observed as under:

“16. It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision.”

74. In **Central Bank of India vs. State of Kerala and others**¹⁰, the Supreme Court had set out the said principle in the following words:

"103. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions."

⁹ (1998) 4 SCC 231

¹⁰ (2009) 4 SCC 94

75. It is also well settled that a contract must be read as a whole. It would be inapposite to examine any clause of the contract in isolation of the other terms.

76. In **Investors Compensation Scheme Ltd. vs. West Bromwich Building Society**¹¹, Lord Hoffmann, while speaking for the majority, had summarised the principles for interpretation of contracts as under:

“(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the “matrix of fact”, but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception

¹¹ (1998) 1 WLR 896

are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [*Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.*, 1997 AC 749 : (1997) 2 WLR 945 (HL)]

(5) The “rule” that words should be given their “natural and ordinary meaning” reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require Judges to attribute to the parties an intention which they plainly could not have had.”

77. The aforesaid principles were also noted by the Supreme Court in **Nabha Power Limited (NPL) v. Punjab State Power Corporation Limited (PSPCL) and another**¹².

¹² (2018) 11 SCC 508

78. We also consider it apposite to refer to the following observation of the Supreme Court in **DLF Universal Ltd. and Another v. Director, Town & Country Planning Department, Haryana and Others**¹³.

“13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.”

79. In **Naramadaben Maganlal Thakker vs. Pranjivandas Maganlal Thakker and others**¹⁴, the Supreme Court reiterated the requirement for reading a document harmoniously as under:

“3. It is now well-settled legal position that a document has to be read harmoniously as a whole giving effect to all the clauses contained in the document which manifest the intention of the persons who execute the document.”

¹³ (2010) 14 SCC 1

¹⁴ (1997) 2 SCC 255

80. Bearing the aforesaid principles in mind, we may now ascertain the commercial understanding between the parties. As noted earlier, Huawei and the Developer engaged in negotiations and discussions in the context of Huawei's requirement to develop a campus on 20 acres of land. Huawei expressed its interest in developing 10,56,000 sq. ft. of super built-up area for its campus on 20 acres of land. It was understood by Huawei and the Developer that the said campus would be a part of the DivyaSree Technopark, an integrated complex on the larger property. The integrated DivyaSree Technopark is being developed as a mixed development, comprising residential units, commercial buildings, recreational areas, open areas, amongst others. DivyaSree Technopark was not contemplated as comprising isolated pockets but as an integrated complex.

81. The LOI dated 31.05.2005 had expressly set out that Huawei was interested in *"the development of about 10,56,000 sq. ft. of super built up area.... in an extent of about 20 (Twenty) acres of land forming part of your project DivyaSree Technopark"*. Huawei now seeks to separate its campus from DivyaSree Technopark, inasmuch as it seeks absolute rights over the land, including the right to raise additional construction unconnected with

the other developments of DivyaSree Technopark, with a separate khata.

82. The LOI also expressly recorded the Developer's representation that it was in a position to arrange the construction of 10,56,000 sq. ft. of super built-up area required for Huawei's campus, and that it was entitled to utilise the remaining FAR/FSI in the adjoining lands of DivyaSree Technopark. Paragraph 5 of the LOI expressly records that in order to achieve the same, the lands would be demised to Huawei by way of PPL with full and exclusive occupation and enjoyment rights. The LOI also recorded that the lease would specifically provide for option to acquire the said land on completion of the DivyaSree Technopark Project, or 12 years from the date of the LOI, or in the event that Transfer of the Development Rights (TDR) has been made available by the concerned Government Authority and Huawei has transferred its rights with respect to the excess FAR/FSI to the Developer, whichever is the earliest.

83. The LOI also includes negative covenants to the effect that, under no circumstances, construction would be raised on the

“Schedule ‘A’ Property” other than 10,56,000 sq. ft., as proposed by Huawei for its campus.

84. It is important to note that the LOI also specifically provided that any permissible super built up area over and above 10,56,000 sq. ft. in the said lands would be available to the Developer only for use in the adjoining areas of DivyaSree Technopark. It was not open for the Developer to freely deal with the additional development rights over and above 10,56,000 sq. ft. of super built up area; the excess permissible area could only be used for development within the DivyaSree Technopark.

85. The commercial understanding between the parties is also evident from the fact that although the extent of the land over which Huawei’s campus was to be built under the LOI was subsequently reduced, the essential element of the understanding that Huawei would be entitled to construct 10,56,000 sq. ft. of super built-up area remained operative. This was the cornerstone of the commercial understanding between Huawei and the Developer.

86. Huawei had also expressed its intention to raise construction in two phases. Phase I would comprise 6 lakhs sq. ft of super built-up area, and Phase II would comprise 3 lakhs sq. ft. of area.

Huawei could take up construction of the remaining 1,56,000 sq. ft. subsequently at its discretion.

87. It is not disputed that as per the understanding between the parties, even if 10,56,000 sq. ft. of super built up area exceeded the extent of construction permissible on the basis of the applicable FAR/FSI, Huawei was assured that it would be entitled to raise construction to the extent of 10,56,000 sq. ft. if necessary, by drawing from the other areas of DivyaSree Technopark.

88. Huawei's campus, being a part of an Integrated Complex - the DivyaSree Technopark, was an integral part of the approved development plan of the larger property. The Developer examined its Chief Architect (DW2), who was involved in drawing up the development plans (exhibited as Exs. P7, 8 and 9). He had deposed that the re-modified development plan (Ex.P9) of the DivyaSree Technopark covered an area of 67 acres 12 guntas, which comprises the land owned by the Developer (4.875 acres) as well as the lands owned by the Landowners who had entered into the Joint Development Agreements with the Developer (60.950 acres) and 1.475 acres of private properties of the Landowners (appellants No.1 to 9) brought into the Development Plan. He

affirmed that the “Schedule ‘A’ Property”, which was leased under the PPL, was allocated from the Developer’s share of the project. He also deposed that building plans could be approved by BBMP within the parameters of the approved development plan and BBMP was required to adhere to the development plan to determine the extent of FAR/FSI available for any particular block. We consider it apposite to refer to the following extract from his affidavit:

"5. I submit that the Development Plan has undergone several changes over the years in order to accommodate the permissible FAR/FSI which was available for allocation and utilization under the Development Plan at the relevant time. Exhibits P7 — P9 show the changes that the Development Plan underwent. The relevant Development Plan is the Remodified Development Plan. The Remodified Development Plan comprises of IT/ITES SEZ buildings, commercial IT/BT buildings (non SEZ) and large-scale residential buildings in various blocks that are spread across the entire extent of land with areas demarcated for parks, open spaces, civic amenities, driveways, and CDP/Master Plan roads. The Remodified Development Plan comprises of blocks A1-A8, A9 - Multi-Level Car Park (MLCP) and Service Apartments, B4-B5, C1 and C3, blocks H1-H5 and residential ancillary blocks R1-R4. The available FAR/FSI has been distributed across all these blocks which are proposed for development. In other words, each block has been allocated a specific FAR/FSI and construction is to be carried out to that extent in each of the allocated blocks. Once the Development Plan is approved by the BDA, the sanction for putting up construction, namely the building plans, are obtained by the Defendant No.17 from the Bruhat Bengaluru Mahanagara Palike (“BBMP”) and the said sanction

is accorded only within the parameters already approved in the Development Plan.

6. I submit that while evaluating a development plan, the BDA is required to examine the same from the context of the Zonal Regulations. The BDA is required to ensure that the parks/civic amenities are in line with the Zonal Regulations and planning norms. In addition, the CDP/Master Plan provides for various roads and open spaces which the development plan must also comply with. In addition, it is essential that the Development Plan provides for the type (commercial/residential/hotel etc), and format (number of floor) of the buildings that are to come up in the areas designated for development. The shape of the building has to be earmarked which has a direct bearing on ground coverage. Similarly, the height of the building determines the setback for the complete development plan and distances in between. I submit that once the type, format, shape and height of the building are approved as part of the development plan, no change is allowed by building approving entities such as the BBMP. In addition, the BDA checks and approves the cumulative floor area ratio and built-up areas to determine the total construction that is permissible in that entire area. Car parking, ground coverage for the development are checked, verified and approved.

7. While giving building plan approval, the BBMP is required to examine and adhere to the Development Plan to determine the extent of FAR/FSI available in the Development Plan for any particular block, and then alone can the BBMP approve the building plan to the extent provided for in the Development Plan. The BBMP does not approve any deviation from the Development Plan. I state that the BDA approved Development Plan is a very important document as once it is approved, the same becomes the blueprint and directive for all construction to be carried out at the project site. I state that without the BDA approved Development Plan, the BBMP will not accept any application process for further approval for plan sanctions and commencement certificates, or any other

application process relating to construction at the project site. I state that once approved, the Development Plan has no validity period/expiry date.

8. I submit that as there existed CDP roads in the Comprehensive Development Plan of the BDA, a certain extent measuring 2 acre 31 guntas, was relinquished in favor of the BDA free of cost. I further submit that in the southern portion of the Remodified Development Plan in an extent approximately measuring 11 acre 31.5 guntas, a residential development was carried out and in respect of which certain extent of land had to be relinquished in favor of the BDA towards civic amenities, parks and open spaces. I submit that this issue is relevant because the area demarcated as - residential is part of the Remodified Development Plan and it is out of the area allocated towards residential that the land is relinquished. In other words, the overall structure of the Remodified Development Plan cannot be altered in view of various obligations that are undertaken in the Remodified Development Plan."

89. DW2, in his cross-examination, candidly stated that he had not participated in the negotiations and had not gone through the agreements, including the PPL, in detail. He clarified that he was only concerned with the technical aspects of the area allocations. He was confronted with certain photographs of areas of the DivyaSree Technopark and he admitted that certain areas were vacant.

90. The learned Commercial Court concluded that the FAR/ FSI applicable to the "Schedule 'A' Property" had not been utilised by

raising construction on the adjoining land forming part of the DivyaSree Technopark. However, we do not find this to be of much relevance in interpreting the terms of the PPL. It is important to note that DW2 had also clearly stated that the FAR/ FSI achieved under the remodified development plan (Ex.P9) was 2.45. Paragraph 10 of his affidavit reads as under:

"I submit that the Remodified Development Plan has achieved a total FAR/FSI of 2.45 out of a permissible 2.5. In other words, out of a total permissible FSI/FAR of 6,06,814.75 square meters, an extent of 5,94,872.55 square meters of FSI/FAR has been allocated and consumed and a balance FSI/FAR of 11,942.20 square meters is available in the overall larger developable land of 67 acres 12 guntas. The Plaintiff is entitled in terms of the PPL to a further extent of 5,218 square meters of FAR/FSI, which is 56,166.55 sq. ft. (69,056.34 - 63,838.34 square meters / 7,43,322.44 - 6,87,155.89 sq. ft.), The balance built-up area that the Plaintiff is entitled to amounts to 7,412.94 square meters, which is 79,793 sq. ft. (98,104.79 - 90,691.85 square meters / 10,56,000 - 9,76,207 Sq. ft.). This balance extent is reserved in the Remodified Development Plan for the Plaintiff to exploit if it so chooses out of the Defendant No.17's share of FAR/FSI under the Joint Development Agreements."

91. It is clear from the above that Huawei's campus is a part of the remodified development plan. It is also not seriously disputed that the construction plans must conform to the remodified development plan of the larger property.

92. All the agreements entered into between the parties, including the PPL, are based on the fundamental premise that the “Schedule ‘A’ Property” would be a part of the DivyaSree Technopark and that Huawei’s campus was never considered as a standalone campus outside the Integrated Complex. Huawei’s interest, in all agreements including the PPL, was expressly confined to developing 10,56,000 sq. ft built up area on its campus.

93. In this context, we may examine the relevant clauses of the PPL. Clause 6(a) of the PPL expressly provides that Huawei can construct and erect on its own, "not more than an aggregate super built-up area of 10,56,000 sq. ft." on the “Schedule ‘A’ Property” and the Future Development Area. It also expressly provides that the Lessors/Developer can utilise the balance FAR/ FSI available in respect of the “Schedule ‘A’ Property” over and above 10,56,000 sq. ft. and to build on such adjoining properties corresponding super built up area over 10,56,000 sq. ft which may be “*now permissible, or made available in the future*”. Huawei was expressly assured that there would be no reduction in Huawei’s right and entitlement to construct 10,56,000 sq. ft. of built-up space even if it did not get the rights in respect of the Future Development Area. Thus, Huawei’s right to build to the extent of 10,56,000 sq ft was sacrosanct and

would remain unaffected by the reduction in the available land. Huawei also agreed to execute such documents as may be required to comply with the requirement for the transfer of lessors'/developer's right in regard to FAR/FSI in excess of 10,56,000 sq. ft.

94. Clause 7 of the PPL, *inter alia*, set out that the rights of Huawei would extend to the use and exploitation of the earth, subsoil, minerals, trees, plants and all else in or on the "Schedule 'A' Property" and make such other improvements thereon on its own cost. However, the aggregate super built up area would not exceed 10,56,000 sq. ft.

95. Clause 12 of the PPL also expressly recorded that the covenants of the Lessee in Clause 6(a) and (b) "*are essential terms, violation whereof, will cause loss and damage to the Lessors/Developer*" and that in the event of any violation, the Lessors/Developer shall be entitled for liquidated damages from the Lessee as may be mutually agreed upon in due course.

96. Clause 9 of the PPL must be considered in the light of the other clauses mentioned above and in particular, clauses 6, 7 and 12 of the PPL.

97. Clause 10 of the PPL entitles Huawei, at any time after the happening of any of the events mentioned in Clause 9, to call upon the Lessors/Developer to transfer all the residuary and/or reversionary rights and interest in the “Schedule ‘A’ Property” so as to vest in it the full and absolute ownership thereof. The events specified in Clause 9 are:

(a) completion of the DivyaSree Technopark project by the Developer; or

(b) transfer by Huawei of its rights in respect of the excess FAR/FSI (beyond 10,56,000 sq.ft.) to the Lessors/Developer; or

(c) expiry of twelve years from the date of the PPL.

98. There is no cavil that Huawei would be entitled to obtain the absolute rights on a free hold basis of the “Schedule ‘A’ Property”. As noted hereinbefore, the issue is only whether the clauses, which confined the development to be raised on the “Schedule ‘A’ Property” to 10,56,000 sq. ft of super built-up area, would cease to be operative.

99. We may at this stage note that no agreement or contemporaneous communication was brought to our notice which

would record an understanding that the restriction to build not more than 10,56,000 sq. ft would cease to be operative on transfer of the freehold rights over the “Schedule ‘A’ Property” in favour of Huawei. Huawei rests its case solely on Clause 9 of the PPL. As noted above, a similar provision is also contained in the LOI. However, Clause 9 of the PPL does not expressly provide that the restrictions on raising construction beyond 10,56,000 sq. ft. would cease to be operative. Huawei's case rests on the interpretation of the words residuary or reversionary rights as used in Clause 9, which, according to it, would also obliterate the restriction confining construction on the “Schedule ‘A’ Property” to 10,56,000 sq. ft.

100. Huawei relied on the dictionary meaning of the said expression to canvass that the Developer or the Landowners would be left with no right whatsoever, including rights flowing from the restriction on raising construction beyond 10,56,000 sq ft on the “Schedule ‘A’ Property” being conveyed to Huawei. We are not persuaded to accept the said contention mainly for the reason that such an interpretation runs contrary to the commercial understanding as is reflected under various other clauses of the PPL and prior agreements.

101. The contention that the *non obstante* provision of Clause 9 would compel us to read the expression “reversionary” or “residuary rights” in an expansive manner is equally unpersuasive. The *non obstante* provision applies only if we find a clear conflict between the terms of Clause 9 and other terms of the PPL that cannot be reconciled. However, a harmonious construction of the clauses indicates that there is no conflict between Clause 9 and the other clauses of the PPL. Under the PPL, Huawei had the leasehold rights, and the residuary rights were vested with the Landowners or the Developer. The import of Clause 9 is that such residuary rights would also vest with Huawei on the “Schedule ‘A’ Property” being conveyed to it. The words residuary and reversionary rights, in our view, are required to be read to mean, all rights that remain with the Developer or Landowners in respect of the “Schedule ‘A’ Property”. However, the contractual agreement that the construction on the “Schedule ‘A’ Property” would not exceed 10,56,000 sq. ft. of super built up area would continue to be operative.

102. The agreement that Huawei would not raise construction beyond 10,56,000 sq. ft. is embodied in several clauses of the PPL, the LOI and some other agreements. The said covenant is repeated many times. However, there is no clause which expressly

provides that on the residuary rights or the reversionary rights being conveyed to Huawei, the said restriction would no longer be operative.

103. Considering the detailed documentation and reiterations in the agreements that Huawei will confine the construction to 10,56,000 sq. ft. of super built up area; it is apparent that if the parties intended the restriction to be inoperative on the conveyance of the “Schedule ‘A’ Property”, they would have expressly stated so in the PPL.

104. There has been some debate as to whether the Developer has fully utilised the FAR/FSI applicable to the “Schedule ‘A’ Property”. As noted above, DW2 unambiguously stated that the remodified development plan had achieved a total FAR/FSI of 2.45 out of a permissible 2.5. In other words, he affirmed in the affidavit that, out of the total permissible FAR/FSI of 6,06,814.75 sq. mts., an extent of 5,94,872.55 sq. mts. of FAR/FSI had been allocated and consumed. The balance 11,942.20 sq. mts. was available in the overall larger developable land. It is stated that Huawei had raised a construction of 9,76,207 sq. ft. as against an upper limit of 10,56,000 sq. ft. of super built up area. Thus, the balance built up

area available was 79,793 sq. ft. Thus, it was permissible for Huawei to further raise 79,793 sq. ft. (which translates to 7,412.94 sq. mt.) super built up area. Thus, there would be no additional FAR/FSI available for further construction on the “Schedule ‘A’ Property”. However, according to Huawei, it is entitled to the full extent of FAR/FSI as applicable to the “Schedule ‘A’ Property”, without any restriction limiting the construction to only 10,56,000 sq. ft. of built up area. Huawei's contention is also premised on the basis that such FAR/FSI would be available, as it is not consumed.

105. The logical sequitur of this argument is that if the Developer had raised construction on the adjoining lands of the DivyaSree Technopark by using the FAR/FSI as applicable to the “Schedule ‘A’ Property” to the extent of over and above 10,56,000 sq. ft. of super built-up area – as it was entitled to do under the PPL – the Developer would have to demolish the same to restore the full FAR/FSI on the “Schedule ‘A’ Property”. Plainly, this was not the agreement between the parties. Huawei also claims that under the PPL, the Developer is obliged to restore the full FAR/FSI of the “Schedule ‘A’ Property” by ensuring that the construction raised on the adjoining lands is confined to as permissible on the basis of the FAR/FSI as applied to the extent of those lands.

106. Concededly, if the Developer had secured the sanction of plans to raise construction on the lands, other than the “Schedule ‘A’ Property”, forming a part of the larger property by loading the FAR/FSI of the “Schedule ‘A’ Property” over and above 10,56,000 Sq ft – as claimed by it – Huawei could have no claim over it. Clearly, it could never be the understanding between the parties that, on the “Schedule ‘A’ Property” being conveyed to Huawei, the Developer would have to make good the FAR/FSI in respect of the “Schedule ‘A’ Property” that it had already utilised in construction. It follows that Huawei's case for the right to construct beyond 10,56,000 sq. ft. is contingent on whether the Developer had utilised the same by securing the necessary approvals. However, neither the PPL nor any other agreement expressly records any such understanding.

107. A plain and harmonious reading of the PPL compels us to hold that Huawei would be bound by the restriction not to construct beyond 10,56,000 sq. ft. of super built up area on the “Schedule ‘A’ Property”.

108. In view of the above, the impugned judgment and decree are modified. The appellants No.1 to 16, acting through the Developer,

and the Developer are directed to execute and register a sale deed in favour of Huawei in respect of the "Schedule 'A' Property", as specified in the PPL, subject to a condition that Huawei shall not be entitled to raise construction beyond 10,56,000 sq. ft. of super built-up area on the said property. Huawei shall also be entitled to have its ownership right over the "Schedule 'A' Property" recorded in the land records. The other prayers as sought for by Huawei stand rejected.

109. The modified decree shall be prepared according to the aforesaid terms.

110. Accordingly, the appeal is allowed.

111. In view of the disposal of the appeal, the pending interlocutory application stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

KMV/AHB/KPS