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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5869 2023

The Bombay Xevierium Corporation ...Petitioner
Pvt. Ltd.

V/s.

Shri. Nidhi Concept Realtors ...Respondents
Pvt. Ltd. & Anr.

**WITH
WRIT PETITION NO.5889 2023**

The Bombay Xevierium Corporation ...Petitioner
Pvt. Ltd.

V/s.

Navkiran CHS (Proposed) & Ors. ...Respondents

**WITH
WRIT PETITION NO.5943 2023**

The Bombay Xevierium Corporation ...Petitioner
Pvt. Ltd.

V/s.

Navkiran CHS (Proposed) & Ors. ...Respondents

Mr. Girish Godbole, Senior Counsel a/w Ms. Savita
Ganoo, Mr. Sachin Mahagavkar, Mr. Darshit Shah i/
by DMS Legal for Petitioner.

Mr. Shakeeb Shaikh with Mr. Noorain Patel, Mr. Pradeep Jain i/by Diamondwala & Co. for Respondent No.1 in WP No. 5869 of 2023.

Mr. Bhushan Deshmukh, Mr. Jayesh R. Vyas a/w Kinjal Upadhyay, Kinjal Kakkad, Mr. Sandeep for Respondent Nos. 1 to 3 in WPs 5889 and 5943 of 2023.

Mr. S.H. Kankal, AGP for Respondent -State.

CORAM: MADHAV J. JAMDAR, J.
DATE: 12th December 2023

P.C.:

1. Heard Mr. Godbole, learned Senior Counsel appearing for the Petitioner in all Writ Petitions, Mr. Shaikh, learned Counsel appearing for Respondent No.1 in Civil Writ Petition No. 5869 of 2023, Mr. Deshmukh, learned Counsel appearing for Respondent Nos. 1 to 3 in Writ Petition No.5889 of 2023 and Writ Petition No. 5943 of 2023.

2. Mr. Godbole, learned Senior Counsel appearing for the Petitioner and Mr. Shakeeb Shaikh and Mr. Bhushan Deshmukh, learned Counsels appearing for the respective Respondents i.e. private parties state that the dispute between them is settled as per the Consent Terms.

3. The Consent Terms are signed by Father Dr. John Rose, the Director of the Petitioner-Company. The Board Resolution of the Company by which he has been authorised to sign the

Consent Terms on behalf of the Company is annexed to the Consent Terms (page 55). The Consent Terms are also signed on behalf of Respondent No. 1, Shree Nidhi Concept Realtors Private Limited in Writ Petition No. 5869 of 2023 by Mr. Sachin Kasawe, the authorised signatory as per Board Resolution dated 17th November 2023 (pages 53 and 54). The Consent Terms are also signed by following authorised representatives of Respondent Nos. 1 to 3 i.e. Societies in Writ Petition Nos.5889 of 2023 and 5943 of 2023.

(i) Mehmood Iqrar Shaikh, Chairman of Nav Kiran Co-operative Housing Society Limited. (Resolution of the said Society on pages 47 to 49)

(ii) Ashok Ananda Gangawane, Secretary of New Janata Co-operative Society Limited. (Resolution of the said Society on pages 50 to 52).

(iii) Mehrunnisa Salim Shaikh, Secretary of Hind Ekta Co-operative Housing Society Limited. (Resolution of the said Society on pages 44 to 46).

4. The signatories to the Consent Terms i.e. Father Dr. John Rose, Mr. Sachin Kasawe, Mehmood Iqrar Shaikh, Ashok Ananda Gangawane and Mehrunnisa Salim Shaikh are present

in Court. Their signatures are identified by the respective learned Advocates. All these persons who are signatories to the Consent Terms state that the dispute between them has been settled as per the Consent Terms. Accordingly, the Consent Terms are taken on record and marked 'X' for identification. The Consent Terms (excluding annexures) reads as under:

"CONSENT TERMS BETWEEN THE PETITIONER AND SHREE NIDHI CONCEPT REALTORS PRIVATE LIMITED (RESPONDENT NO. 1 IN CIVIL WRIT PETITION NO. 5889 OF 2023) AND NAVKIRAN CHS LIMITED, NEW JANTA CHS LIMITED AND HIND EKTA CHS LIMITED (RESPONDENTS NO.1 TO 3 IN CIVIL WRIT PETITION NO. 5869 OF 2023 AND 5943 OF 2023) ABOVENAMED:-

(1) Government of Maharashtra was the original owner of property being all that piece and parcel of Land admeasuring 44,272.54 sq. meters bearing C.S. No. 2116 of Village Mahim, lying being and situated at Mahim Causeway, Mahim (West), Mumbai - 400 016 (hereinafter referred to as the **"larger property"**).

(2) Lease Deed dated 25th May, 1963 was executed between Government of Maharashtra and the Petitioner, wherein the Petitioner was granted leasehold rights in respect of said larger property for a period of 50 years. From time-to-time portions of the said larger property i.e. area admeasuring

12,196.68 sq. meters was acquired by various public bodies for various public projects like road widening, construction of flyover etc. Therefore, the area left after the acquisition was about 32,075.86 sq. meters out of the said larger property.

(3) Since, the tenure of the Lease was expiring in the year 2013, the Petitioner had submitted an application dated 9th March, 2012 for renewal of lease and thereafter also applied for grant of Class II Occupancy Rights under the relevant policy of the Government of Maharashtra under the Maharashtra Land Revenue Code, 1966 and the Rules in respect of an area admeasuring about 20,664.49 square meters bearing C.S. No. 2116 of Village Mahim, lying being and situated at Mahim Causeway, Mahim (West), Mumbai - 400 016 (hereinafter referred to as "**said property**") out of the said area admeasuring 32,075.86 sq. meters. The Petitioner is accordingly been granted Class II occupancy rights in respect of said property vide Order dated 14th May, 2021 passed by the Hon'ble Collector, Mumbai City.

(4) During the pendency of the said Application dated 9th March, 2012 before Hon'ble Collector, Mumbai City, Shree Nidhi Concept Realtors Private Ltd (**SNCRPL**) on 2nd June, 2014 submitted a Slum Rehabilitation Scheme for Plot of Land bearing C.S. No. 1500 (Pt), 2116 (Pt) and 2124 (Pt) of Village Mahim, Mahim Causeway, Mahim (West), Mumbai - 400016 before the Slum Rehabilitation Authority (**SRA**) under Regulation 33(10) read with Appendix

IV of D. C. Regulation, 1991, wherein an area admeasuring about 3822.37 sq. meters, of C.S. No. 2116 (Pt) of Village Mahim, lying being and situated at Mahim Causeway, Mahim (West), Mumbai - 400 016 (hereinafter referred to as "**subject property**") of the said property admeasuring about 20,664.49 square meters was included in the Slum Rehabilitation Scheme.

(5) The subject property admeasuring about 3822.37 sq. meters was forming a part of the Class II Occupancy granted by an Order dated 14th May, 2021 passed by the Hon'ble Collector, Mumbai City in favor of the Petitioner, and also forming a part of the Slum Rehabilitation Scheme submitted by SNCRPL and sanctioned by SRA under the Letter of Intent bearing No. SRA/ENG/2025/GN/STGL/LOI dated 5th February 2016, Revised Letter of Intent dated 08th March, 2017 bearing no. SRA/ENG/2025/GN/STGL/LOI and Revised LOI dated 18th December, 2020 in favour of the SNCRPL and societies namely, (1) Navkiran Welfare SRA CHS (Limited) (6) New Janta SRA CHS (Limited) and (3) Hind Ekta Welfare SRA CHS (Limited) (hereinafter referred to as "**said societies**") and thus the disputes arose between the Petitioner, SNCRPL and the said societies as a result of which several proceedings were filed by the parties against each other before various Competent Authorities/Tribunal/Court and the present proceedings is an outcome of the proceedings filed by the parties against each other.

(7) Thus, the subject matter of all the three Civil Writ Petitions is all that piece and parcel of land admeasuring 3822.37 sq. meters, of C.S. No. 2116 (Pt) of Village Mahim, lying being and situated at Mahim Causeway, Mahim (West), Mumbai - 400 016. The subject property is more particularly demarcated and shown on the Plan in red colour boundary line and the same is annexed hereto as **Annexure - "I"**.

(7) Considering the interest of public at large and rehabilitation of 217 slum dwellers of said societies, the parties herein i.e. the Petitioner, Shree Nidhi Concept Realtors Private Ltd (**SNCRPL**) and said societies namely (1) Navkiran Welfare SRA CHS (Limited) (2) New Janta SRA CHS (Limited) and (3) Hind Ekta Welfare SRA CHS (Limited) have amicably settled the disputes and differences against each other which is subject matter of the above mentioned Civil Writ Petitions on the terms and conditions as set out hereinafter.

(8) The Petitioner hereby confirms and acknowledges that the subject property is included in the Slum Rehabilitation Scheme implemented by SNCRPL for an area admeasuring 20,465.72 sq. meters (hereinafter referred to as "**Slum Rehabilitation Scheme Area**") in pursuant to Letter of Intent bearing No. SRA/ENG/2025/GN/STGL/LOI dated 5th February, 2016, Revised Letter of Intent dated 08th March, 2017 bearing no. SRA/ENG/2025/GN/STGL/LOI and Revised LOI dated 18th December, 2020 issued by SRA in respect of

property bearing C.S. Nos. 1500 (Part), 2116 (Part) and 2124 (Part) of Village Mahim, lying being and situated at Mahim Causeway, Mahim (West), Mumbai - 400 016.

(9) The Petitioner hereby releases, relinquishes and surrenders its claim, rights of Occupant Class II and entitlement to the subject property in favour of the Government of Maharashtra, leaving apart an area admeasuring 500 sq. mtrs. (hereinafter referred to as said "**Retained Area**") out of the subject property which is required by the Petitioner for constructing a Girls Hostel. Thus, the balance area of the subject property admeasuring 3,322.37 sq. mtrs (hereinafter referred to as said "**Net Plot Area**") shall be released, relinquished and surrendered by the Petitioner in favour of the Government of Maharashtra for implementation of the Slum Rehabilitation Scheme. The Retained Area is more particularly demarcated and shown on the Plan annexed as Annexure - "I" hereinabove in Green colour and the Net Plot Area is more particularly demarcated and shown on the Plan annexed as Annexure - "I" hereinabove in blue colour.

(10) The Petitioner hereby agrees to grant No objection Certificate (**NOC**) to SNCRPL for inclusion of the Retained Area admeasuring 500 sq. meters in the Slum Rehabilitation Scheme implemented by SNCRPL. In lieu of Petitioner granting NOC to SNCRPL for inclusion of the Retained Area in the Slum

Rehabilitation Scheme and also the Petitioner releasing, relinquishing, and surrendering their rights, title and interest as Class II Occupant in respect of the said Net Plot Area, in favor of the Government of Maharashtra, SNCRPL has agreed and confirmed to construct at its own cost and expenses, a Girls Hostel Building admeasuring about 14,344 sq. ft. RERA carpet area (hereinafter referred to as said "**Girls Hostel Building**") on the said Retained Area for the exclusive use, occupation and possession of the Petitioner and after obtaining the Occupancy Certificate from the Competent Authority in respect of the said Girls Hostel Building, handover the possession of the said Girls Hostel Building to the Petitioner. It is agreed herein that the Petitioner and SNCRPL shall within a period of 60 days from the execution of the present Consent Terms execute and register Development Agreement in respect of the Retained Area, wherein the Petitioner shall grant Development rights in favor of SNCRPL to construct the said Girls Hostel Building on the Retained Area, within a period of 33 months from the date of obtaining the Commencement Certificate from Competent Authority and as per the plans and specification to be sanctioned by Competent Authority and on various other terms and conditions as mentioned hereinafter.

(11) It is agreed between the Petitioner and SNCRPL that in terms of the forgoing paragraphs as mentioned hereinabove, the Ownership and

possession of the subject property to the extent of 500 sq. meters i.e. the Retained Area and the use, occupation and possession thereof, shall exclusively remain with the Petitioner, without any interference of whatsoever in nature by the SNCRPL and/or the said societies and the balance part of the subject property i.e. area admeasuring 3,322.37 sq. meters i.e. said Net Plot Area shall be released, relinquished and surrendered by the Petitioner to the Government of Maharashtra for the implementation of the Slum Rehabilitation Scheme. For the sake of clarity and as agreed and confirmed by the parties herein, it is hereby clarified that subject property comprising of Retained Area and Net Plot Area shall form part of the Slum Rehabilitation Scheme being implemented by the SNCRPL. It is made clear that the physical possession, use and occupation of the Retained Area shall always remain exclusively with Petitioner and the SNCRPL shall at its own cost construct the boundary wall dividing the said Retained Area and the Net Plot Area.

(12) The Plan of the subject property is annexed as Annexure - I to the present Consent Terms. In the said Plan it is shown that a D. P. Road of 13.40 meter width is proposed. The Petitioner and SNCRPL agree and confirm that in the event the proposed D. P. Road of 13.40 meter width as shown in the Plan is approved by the Government of Maharashtra then Hatched Blue color portion of the land as shown in the Plan other than the Retained Area shall be used

by SNCRPL with abundant caution to see that safety of the Girls Hostel Building and the students of Xavier Institute of Engineering and St. Xaviers Technical Institute is not compromised and affected and for this purpose SNCRPL shall put up the compound wall dividing the said Retained Area and the Net Plot Area for the safety and protection of Girls Hostel Building, students of Xavier Institute of Engineering and St. Xaviers Technical Institute.

(13) As the Petitioner is releasing, relinquishing and surrendering Net Plot Area (for which the Petitioner is Class II Occupant) in favor of the Government of Maharashtra, the Petitioner has agreed to file an application before Hon'ble Collector, Mumbai City and/or any appropriate Competent Authority for deletion of said Net Plot Area admeasuring about 3,322.37 sq. meters from the said property as well as for the refund of the amount paid by the Petitioner for acquiring Class II Occupancy rights in respect of the said Net Plot Area, and has accordingly signed the said Application which is annexed as **Annexure - "II"** hereto. The Petitioner hereby authorize SNCRPL to follow up before Hon'ble Collector, Mumbai City and/or any appropriate Competent Authority for deletion of said Net Plot Area from the said property as well as for the refund of the amount paid by the Petitioner for acquiring Class II Occupancy rights in respect of the said Net Plot Area.

(14) SNCRPL admits, acknowledges that the Petitioner has already paid premium to the Government of Maharashtra for conversion of the said property including the subject property into Class II Occupancy in the manner as more particularly set out in the Order dated 14th May, 2021 passed by the Hon'ble Collector, Mumbai City. As the Petitioner has now agreed to release, relinquish and surrender the Net Plot Area in favor of the Government of Maharashtra, the Petitioner shall file an application before Hon'ble Collector, Mumbai City and/or any appropriate Competent Authority for refund of the said amount paid as premium for conversion of Class II Occupancy in respect of the Net Plot Area and the Petitioner hereby authorize SNCRPL to follow up before Hon'ble Collector, Mumbai City and/or any appropriate Competent Authority for refund of the said amount. The Petitioner shall provide all the assistance to SNCRPL for refund of the said amount.

(15) It is agreed and confirmed that all the benefits after surrendering the said Net Plot Area such as refund of the premium amount paid towards conversion of Class II Occupancy and all other monetary benefits which may be accrued after surrendering Class II Occupancy rights with respect to the said Net Plot Area shall belong to the Petitioner.

(16) On the basis of the understanding arrived between the parties in the present Consent Terms, the Petitioner hereby agrees to give its No Objection to SRA to delete and/or withdraw Condition No. 62 from Revised Letter of Intent dated 18th December, 2020 and to issue further permissions and approvals as may be required for the purpose of implementing Slum Rehabilitation Scheme with respect to the subject property. A copy of said Letter duly signed by Petitioner addressed to Slum Rehabilitation Authority is annexed hereto as **Annexure - "III"**.

(17) The Petitioner hereby agree and confirm to withdraw all their objections with respect to inclusion of the subject property in Letter of Intent bearing no. SRA/ENG/2025/GN/STGL/LOI dated 5th February 2016, Revised Letter of Intent dated 08th March, 2017 bearing no. SRA/ENG/2025/GN/STGL/LOI and Revised LOI dated 18th December, 2020 issued by SRA in favour of SNCRPL.

(18) In lieu of Petitioner granting NOC to SNCRPL for inclusion of the Retained Area in the Slum Rehabilitation Scheme and also the Petitioner releasing, relinquishing, and surrendering their rights, title and interest as Class II Occupant in the said Net Plot Area, in favor of the Government of Maharashtra, the SNCRPL has agreed and confirmed to construct at its own cost and expenses, a Girls Hostel Building admeasuring about 14,344 sq. ft. RERA carpet area (hereinafter referred to as said

"Girls Hostel Building") on the said Retained Area for the exclusive use, occupation and possession of the Petitioner.

(19) In lieu of the Petitioner releasing, relinquishing, and surrendering their right, title and interest as Class II Occupant in respect of the said Net Plot Area, in favor of the Government of Maharashtra and acceptance of the inclusion of the subject property under the Slum Rehabilitation Scheme sanctioned by the SRA and subject to compliance of the undertaking given by SNCRPL, and the obligations, terms and conditions agreed between the parties herein, SNCRPL hereby agrees to construct a Girls Hostel Building on the said Retained Area for the exclusive use, occupation and possession of the Petitioner in the manner as set out herein:-

(a) SNCRPL to construct at its own cost and expenses, a separate Girls Hostel Building admeasuring about 14,344 sq. ft. RERA carpet area on the Retained Area for the exclusive use, occupation and possession of the Petitioner as shown on the Plan annexed as Annexure - "I". The tentative Plan of the said Girls Hostel Building duly approved by the Petitioner is annexed as **Annexure - "IV"** and the Area Statement of the said Girls Hostel Building is set out in **Annexure - "V"** annexed hereto.

(b) The said Girls Hostel Building will be constructed by SNCRPL to accommodate approx. 120 beds (One Hundred and Twenty) comfortable along

with self - attached toilets or any other configuration and amenities as mutually agreed between the parties as long as it does not exceed total RERA carpet area of 14,344 sq. ft.

(c) The entire cost for seeking approvals and permissions and construction cost of the said Girls Hostel Building including but not limited to the payment of premium, payment of permissible FSI shall be borne and paid by SNCRPL. The Petitioner shall not be liable to incur any cost for construction of the said Girls Hostel Building in any manner.

(d) In the circumstances, the said Girls Hostel Building Plan (Annexure "IV") above is required to be amended for whatsoever reasons, the area agreed to be allotted to the Petitioner i.e. 14,344 sq. ft. RERA Carpet area as agreed under this Consent Terms for the said Girls Hostel building will not be changed.

(e) The SNCRPL while constructing the foundation for said Girls Hostel Building make provision to bear the load of additional 4 floors for future expansion of said Girls Hostel Building, however SNCRPL would not be responsible for additional construction or related approvals once the building with RERA carpet area of 14,344 sq. ft. is handed over to the Petitioner.

(20) In addition to the construction of said Girls Hostel Building, as more particularly set out in

paragraph No. 19 hereinabove, the SNCRPL shall also construct a building of an area admeasuring 45,000 sq. ft. (built up area) on the said property of the Petitioner and/or the property bearing C.T.S. No. 238/18, 238/18A admeasuring in aggregate 19,203.2 sq. meters of Village Gundavali, Taluka Andheri, lying being and situated at Mahakali Road, Chakala, Andheri (East), Mumbai 400 093 (owned by the Petitioner) at its own cost. The entire Cost of Construction of the said 45,000 sq. ft. (built up area) shall be borne and paid by SNCRPL. However the cost of FSI and permissions thereof shall be borne and paid by the Petitioner. The necessary documents as required for construction of the building admeasuring about 45,000 sq. ft. (built up area) shall be executed by the Petitioner in favor of SNCRPL.

(21) In order to secure the Petitioner with respect to timely completion of the said Girls Hostel Building for the Petitioner as per the agreed specification and plans as mentioned in paragraph no. 19 hereinabove and construction of building of an area admeasuring 45,000 sq. ft. (built up area) as mentioned in paragraph No. 20 hereinabove, the SNCRPL shall keep an equivalent area admeasuring 14,344 sq. ft. RERA Carpet in the sale component of the Slum Rehabilitation Area as unsold, (hereinafter referred to as "**Unsold Security Area**"). The said Unsold Security Area shall be released for sale in proportion to completion of the Girls Hostel Building and

construction of building of an area admeasuring 45,000 sq. ft. (built up area) by SNCRPL.

(22) SNCRPL hereby agrees, declares and confirms that undertaking and declaration given by the Directors of SNCRPL in the present Consent Terms shall be deemed to be binding on new director successors, assignees, nominees and Holding Company of the SNCRPL without executing any further documents.

(23) SNCRPL hereby agrees, declares and confirms that it has not created any right, title, interest, encumbrances, lien, mortgage of any nature whatsoever in respect of Slum Rehabilitation Area. In the event SNCRPL intent to grant Development Rights, and/ or enter into Joint Venture Agreement with any third party and/ or assigns or transfers its right, title, interest and claim in respect of the Slum Rehabilitation Area either by way of charge, lien, mortgage etc. then in such event SNCRPL shall bring to the Notice of the party/parties in whose favor the rights are created and disclose to them the undertaking and declaration given by the parties in the present Consent Terms before executing any such documents in their favor and ensure that the terms of the present Consent Terms shall be fulfilled and the same shall be binding on them and their successors, assignees and nominees. SNCRPL shall also be obligated to ensure that undertaking and declaration in respect of the terms of the present

Consent Terms is obtained from those third party/ parties before handing over the said project to them and/or creating any rights in favor of such third party and a copy of the same shall be provided to the Petitioner within a period of 15 days from the execution and/or registration of such document.

(24) The said societies hereby agrees, declares and confirms that in the event the said societies terminate the Development rights granted in favor of SNCRPL and interested to appoint new developers then in such event the terms of the present consent terms shall be disclosed to the new developers appointed by said societies and the undertaking and declaration given by the SNCRPL in the present Consent Terms shall be deemed to be binding on new developers, successors, assignees, nominees without executing any further documents.

(25) The Petitioner agrees to withdraw the Application No. 186 of 2021 filed before Apex Grievance Redressal Committee (**AGRC**) within a period of 15 days from the execution of the present Consent Terms. A copy of duly signed and affirmed withdrawal Application is annexed hereto as **Annexure "VI"**. The Petitioner hereby authorize SNCRPL to take appropriate steps for filing of the said Application to withdraw Application No. 186 of 2021 before Apex Grievance Redressal Committee.

(26) The said societies agrees to withdraw the Appeal bearing No. 13 of 2023 filed by said societies

before Hon'ble Maharashtra Revenue Tribunal, Mumbai against the Petitioner within a period of 15 days from the execution of the present Consent Terms. A copy of duly signed and affirmed withdrawal Application is annexed hereto as **Annexure "VII"**.

(27) The Petitioner agrees to withdraw Suit bearing No. 269 of 2023 filed by the Petitioner before this Hon'ble Court against SNCRPL and said societies within a period of 30 days from the execution of the present Consent Terms.

(28) The Petitioner, SNCRPL and the said societies hereby agrees and undertake to this Hon'ble Court to withdraw all the complaints civil as well as criminal filed against each other before Slum Rehabilitation Authority, judicial and quasi-judicial Authorities and/or before any Competent Authority, police station, Court etc., within a period of 30 days from filing of the present Consent Terms.

(29) The Petitioner hereby agrees and confirms to render full support and co-operation to SNCRPL in implementation of the Slum Rehabilitation Scheme especially on the Net Plot Area and will do all such acts, deeds and matters as may be required by the SNCRPL for implementation of Slum Rehabilitation Scheme and permissions for construction of the said Girls Hostel Building etc.

(30) The Parties hereto agree and confirm that the understanding as reflected in the present Consent

Terms shall be binding on the successors, assignees and nominees of the Petitioner, SNCRPL and said societies.

(31) The terms of these Consent Terms are to be treated as an undertaking given to this Hon'ble Court.

(32) The Petitioner, SNCRPL and said societies unconditionally withdraws allegations made against each other.

(33) The Civil Writ Petition No. 5869 of 2023, Civil Writ Petition No. 5889 of 2023 and Civil Writ Petition No. 5943 of 2023 be disposed of in terms of this Consent Terms.

5. The above agreed terms by respective parties in the Consent Terms are accepted as undertakings given to this Court.

6. The Writ Petitions are disposed of in above terms with no order as to costs.

7. In view of disposal of the Writ Petitions, ad-interim orders, if any, are vacated forthwith.

BHALCHANDRA
GOPAL DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.12.16
13:10:05 +0530

(MADHAV J. JAMDAR, J.)