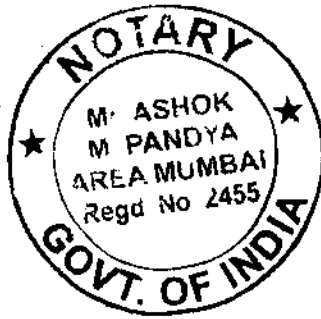
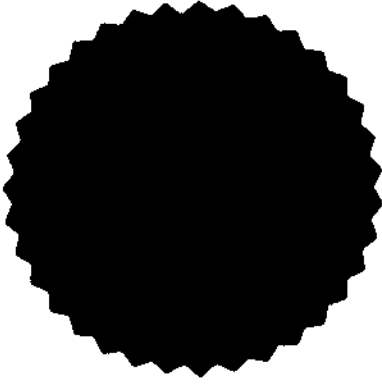


IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2018

DISTRICT THANE:

In the matter of Article 226 of the
Constitution of India;

And

In the matter of Article 14, 19(1)(g)
and 300A of Constitution of India;

And

In the matter of provisions of
Maharashtra Regional and Town
Planning Act, 1966 ("MRTP Act");

And



In the matter of Petitioners having applied for sanction of a layout to Mira Bhayander Municipal Corporation;

And

In the matter of Development Control Regulations framed by Mira Bhayander Municipal Corporation and sanctioned by State Government under Section 31 of MRTP Act;

And

In the matter of Petitioners proposal for planning permission under Section 44 having been approved by the

Municipal Commissioner of Mira
Bhayander Municipal Corporation;

And

In the matter of Petitioners planning
proposal submitted on 13th January
2016 and 30th March 2016 deemed to
have been approved on expiry of 60
days under Section 44 of MRTP Act;

And

In the matter of Petitioners having
informed about the deemed approval
to Mira Bhayander Municipal
Corporation by their letter dated 25th
July 2017;

And

In the matter of arbitrary,
unreasonable, ultra vires
communication dated 29th July 2017
issued by the Town Planning Officer
of Mira Bhayander Municipal
Corporation rejecting the planning
permission of the Petitioner on flimsy
grounds beyond the scope of MRTP
Act;

- 1] Ravi Developments,)
A partnership firm registered under the)



provisions of Indian Partnership Act, 1932)
 Having its registered office at)
 Laxmi Palace, 76, Mathuradas Road,)
 Kandivali (West), Mumbai 400 067.)

2] Jayesh T. Shah)
 Partner of Petitioner No.1.)
 Having its registered office at)
 Laxmi Palace, 76, Mathuradas Road,)
 Kandivali West), Mumbai 400 067.).. Petitioners

Versus

1] Municipal Commissioner,)
 Mira Bhayander Municipal Corporation)
 having his office at Indira Gandhi Bhavan,)
 Chhatrapati Shivaji Maharaj Marg,)
 Bhayander (West), Thane 401 101.)

2] Mira Bhayander Municipal Corporation)
 a statutory corporation incorporated under the)
 provisions of the Maharashtra Municipal)
 Corporation Act, 1949, having its office at)
 Indira Gandhi Bhavan, Chhatrapati)
 Shivaji Maharaj Marg, Bhayander (West),)
 Thane 401 101.)

3] The then Town Planner,)
 Mira Bhayander Municipal Corporation)
 having its office at Indira Gandhi Bhavan,)
 Chhatrapati Shivaji Maharaj Marg,)
 Bhayander (West), Thane 401 101.)

4] The Assistant Director of Town Planning)
 Mira Bhayander Municipal Corporation)
 having his office at Indira Gandhi Bhavan,)
 Chhatrapati Shivaji Maharaj Marg,)

Bhayander (West), Thane 401 101.)
 5] Acting Asst. Town Planner)
 Mira Bhayander Municipal Corporation)
 having his office at Indira Gandhi Bhavan,)
 Chhatrapati Shivaji Maharaj Marg,)
 Bhayander (West), Thane 401 101.) .. Respondents

TO

THE HON'BLE THE CHIEF JUSTICE AND
 THE HON'BLE OTHER PUISNE JUDGES OF
 THE HON'BLE HIGH COURT OF BOMBAY

HUMBLE PETITION OF THE
PETITIONERS ABOVENAMED:

MOST RESPECTFULLY SHEWETH:

1. **Parties:**

1.1 Petitioner No. 1 is a partnership firm registered under the provisions of Indian Partnership Act, having its registered office at the address mentioned in the cause title of the Petition. Petitioner No. 1 is engaged in the business of developing the properties in the City of Mumbai and Thane District. Petitioner No. 2 is the partner of Petitioner No.1 and is the national and citizen of India.

1.2 Respondent No. 1 is the Commissioner of Respondent No.2, Respondent No. 2 is Mira Bhayander Municipal Corporation, a corporation constituted under the provisions of Maharashtra Municipal Corporation Act, 1849 ("MMC Act"), and is a

Planning Authority under the Maharashtra Regional and Town Planning Act, 1966, (MRTP Act for short) for the property, which is subject matter of the present Petition. Respondent Nos. 3 to 5 are the Officers of Respondent No. 2, (*inter alia*, discharging duties under the provisions of the MRTP Act and MMC Act.)

- 1.3 All the Respondents are statutory authorities discharging duties under the provisions of MRTP Act and MMC Act and are 'state' within the meaning of Article 12 of the Constitution of India and therefore are amenable to writ jurisdiction of this Hon'ble Court.

2. **Challenge / purpose of the Petition:**

By this petition under Article 226 of the Constitution of India, the Petitioners are challenging the arbitrary and unreasonable communication dated 29th July 2017 issued by Town Planner of Mira Bhayander Municipal Corporation rejecting the Application / Proposal for planning permission submitted by the Petitioners which is already approved by the Respondents. The Petitioners submit that on 13th January 2016, Petitioners' Architect Anish & Associates had submitted a proposal for sanction of amalgamation of 18 existing approved layouts to MBMC. The requisition made by MBMC for certain documents was complied with by Petitioners' architect by his letter dated 31st March 2016. The Petitioners submit that from March, 2016 to February, 2017 numbers of meetings held between the Architect of Petitioners and Town Planning Department whereby scrutinized all the



documents related to the proposal and thereafter the Petitioners proposal got approved and Plan and C.C. has been signed by the Town Planning Department and the then Commissioner. The Petitioners then applied for deferment of the payment of development charges / premium and Petitioners were informed by letter dated 18th February, 2017 that Municipal Commissioner has sanctioned Petitioners' proposal for deferment and Petitioners have to pay Rs. 39,79,38,548/-. Thus Petitioners on 31st March, 2017 have paid an amount of Rs. 7,90,81,397/-. In fact the office notes made by MBMC on the letter dated 18th February, 2017 show that the Petitioners' planning proposal was approved and C.C. was granted and signed by the Town Planning Department and the then Municipal Commissioner and only formality of putting outward No. on Plan and C.C. was remained to be issued. However, on 29th July 2017, the Town Planner, MBMC under the pressure of present Municipal Commissioner issued a communication to Petitioners, pointing out 6 deficiencies which are not relatable to the provisions of the MRTP Act and beyond the jurisdiction of Town Planning Officer and stated that Petitioners were informed of these deficiencies "orally". The Petitioners submit that this impugned communication dated 29th July 2017 is arbitrary, unreasonable, ultra vires the provisions of MRTP Act, without jurisdiction, in violation of principles of natural justice and violative of Petitioners' rights under Articles 14, 19(1)(g) and 300 A of the Constitution of India. The Petitioners are therefore approaching this Hon'ble Court in its

extra ordinary jurisdiction under Article 226 of the Constitution of India challenging the communication dated 29th July 2017.)

3. **Brief facts:**

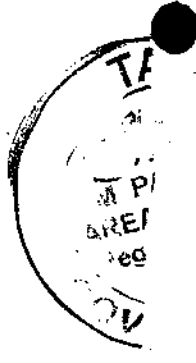
The brief facts giving rise to the filing of the present Petition are as under. The facts are stated chronologically for the purpose of convenience although the Petitioners were not aware of the same at the relevant time.

3.1 The subject matter of the present Petition is a property situated at Village Ghodbunder and Navghar, Taluka and District Thane, within the Municipal Limits of Mira Bhayander Municipal Corporation ("subject property"). The detailed list of survey numbers of the subject property are mentioned are annexed as **Exhibit 'A'** to the present Petition.

3.2 On 11th January 2016, the Petitioners' Architect made an Application/Proposal to the Municipal Commissioner of MBMC for approval for the amalgamation of 18 layouts and regularization of unauthorized construction duly received by Corporation on 13/1/2016. The Petitioners' architect also communicated that they are ready and willing to pay necessary charges for regularization, open space deficiency, premium and development charges. Hereto annexed and marked **Exhibit 'B'** is a copy of the said letter dated 11th January 2016 duly received by MBMC on 13th January 2016.

- 3.3 On 25th March 2016, the Petitioners addressed a communication to the Commissioner of MBMC requesting him to grant deferment of payment of premiums for about 6 to 9 months, as the layout submitted by the Petitioners was huge and the development charges and other premiums would work out to be huge. Hereto annexed and marked Exhibit 'C' is a copy of the said letter dated 25th March 2016 duly received by Corporation on 31st March, 2016.
- 3.4 On 28th March 2016, the Petitioners' Architect addressed a communication to Commissioner, MBMC, submitting certain documents, requested by the Municipal Commissioner. Hereto annexed and marked Exhibit 'D' is a copy of the said letter dated 28th March 2016 duly received by Corporation on 31st March, 2016.
- 3.5 On 18th February 2017, the Town Planner of MBMC issued a communication to Petitioners bearing Ref. No. MB/MNP/NR/4828/2016-17 informing them that Petitioners' Application for planning permission dated 13th January 2016 and an application dated 31st March, 2016 for deferment of payment of various premiums has been approved by Municipal Commissioner and informed the Petitioners of exact amounts of various premiums. The total amount payable by the Petitioners for planning permission and revise proposal was calculated to be Rs. 39,79,38,548/- Hereto annexed and marked Exhibit 'E' is a copy of the said letter dated 18th February 2017.





- 3.6 On 21st March 2017, the Petitioners addressed a communication to Municipal Commissioner of MBMC requesting him that the amount of Rs. 35,83,30,928/- is a huge amount and due to demonetization and bad condition of Market Petitioners requested for accepting a payment of Rs. 20 crores in the next two days and Petitioners would pay the balance amount within three months with interest and Petitioners requested the Municipal Commissioner to accept the amount of Rs.20 crores. Hereto annexed and marked **Exhibit 'F'** is a copy of the said letter dated 21st March 2017.
- 3.7 On 21st March, 2017, the Executive Engineer of MBMC prepared an Office Note for approving Petitioners' proposal for deferment of the payment of development charges. Hereto annexed and marked as **"EXHIBIT 'G'"** is the copy of the said Office Note dated 21st March, 2017.
- 3.8 On 31st March 2017, the Assistant Town Planner of Town Planning Department approved the Petitioners' request for installments and prepared an office Note accordingly, Petitioners paid an amount of Rs.7,90,81,397/- on 31st March 2017 towards 5 Items viz. (1) Premium of land area, (2) Scrutiny fees, (3) Development charges, (4) Security deposit and (5) Open land tax. Hereto annexed and marked **Exhibit 'H'** is a copy of the said Office Note dated 31st March 2017. The MBMC also issued a receipt of payment of the aforesaid amount. Hereto annexed and



marked Exhibit 'I' is a copy of the said receipt dated 31st March 2017.

- 3.9 On 31st May 2017, Petitioners addressed a communication to Municipal Commissioner forwarding him a D.D. No.738587 dated 17th May, 2017 drawn on Indusind Bank of an amount of Rs.17,10,00,000/- in the name of Mira Bhayender Municipal Corporation towards the payment of development charges / premiums. Hereto annexed and marked Exhibit 'J' is a copy of the said letter dated 31st May 2017 along with Xerox copy of said D.D. dated 17th May, 2017.
- 3.10 On 25th July 2017, Petitioners addressed a communication to the Municipal Commissioner and Assistant Director of Town Planning Department of MBMC recording that though it was agreed that Petitioners would pay an amount of Rs. 25 crores, till 30th April 2017, the Petitioners' D. D. of Rs.17,10,00,000/- was not accepted by MBMC, as there was a delay of 17 days. The Petitioners also informed that Petitioners' application for planning permission dated 13th January 2016 and 31st March 2016 is deemed to have been approved under Section 45 (5) of MRTP Act, 1966 and further requested to accept the draft of Rs.17,10,00,000/-. Hereto annexed and marked Exhibit 'K' is a copy of the said letter dated 25th July 2017.
- 3.11 On 29th July 2017, the Town Planner of MBMC addressed a communication to Petitioners and their Architects informing them



that Petitioners' Application for planning proposal is found to be deficient in respect of the following:

- (a) that the lands which are newly included in the layout are without non-agricultural permission;
- (b) that there is no environmental clearance for the proposed layout;
- (c) NOC from Fire fighting Dept., is not obtained;
- (d) That the documents of lands relating to ownership are not registered documents;
- (e) The reservations in the layout and D.P. Road, are necessary to be transferred to MBMC by registered documents;
- (f) ULC NOC for extension of time is not submitted.

The letter dated 29th July 2017 alleged that the above deficiencies were orally informed to Petitioners and since the Petitioners have not complied with the same. And further note that the Petitioners by submitting D. D. of Rs.17,10,00,000/- out of balance amount along with letter dated 1/6/2017 requested for Development Permissions but the said D. D. Municipal Corporation has not accepted and alleged that since the Petitioners have failed to pay the total amount of development charges, Petitioners permission was rejected. Hereto annexed and marked Exhibit 'L' is a copy of the said letter dated 29th July 2017.



3.12 On 4/10/2017 the Petitioners addressed a communication to Municipal Commissioner and Town Planner of M.B.M.C. whereby they furnished clarification clarified in details of all 6 Nos. of queries mentioned in above para 3.11 and in letter dated 29/7/2017 of MBMC and on the basis of that the Petitioners further requested Respondent No. 1 to consider the proposal of Petitioners. Hereto annexed and marked as Exhibit-'M' is the copy of the said letter dated 04.10.2017.

3.13 Thereafter Petitioners had come to know that on 8/11/2017 the Municipal Commissioner of MBMC the Respondent No.1, has sent the said proposal to the Director of Town Planner of Maharashtra at Pune for further clarification / directions that as per letter dated 4/10/2017, communicated by the Petitioners whether the proposal shall be granted or not. The Director of Town Planner of Maharashtra Pune, by his letter dated 15/12/2017 addressed to the Municipal Commissioner of MBMC directed that the proposal submitted by the Petitioners, can be considered the Rules and Regulations of DCR, the said letter duly received by the Commissioner of MBMC. But till date there is no communication from the Municipal Corporation. Here to annexed and marked as Exhibits -'N' & 'O' are the copies of letter dated 08.11.2017 & 15.12.2017 respectively.



4. In the premises aforesaid the Petitioners are therefore approaching this Hon'ble Court invoking its extra ordinary jurisdiction under Article 226 of the Constitution of India, challenging the arbitrary and unreasonable actions on the part of Respondents in rejecting Petitioners planning proposal on flimsy grounds. The Petitioners are also seeking a declaration that Petitioners' planning proposal dated 13th January 2016 and 31st March 2016 is already approved and/or deemed to have been approved under Section 41 of MRTP Act. The Petitioners are therefore challenging the said arbitrary and unreasonable action on the part of the Respondents on following grounds amongst others, which are without prejudice to each other.

GROUND

- A. All the Respondents are the statutory authorities performing functions and discharging duties under the provisions of the Maharashtra Regional and Town Planning Act, 1966 and Maharashtra Municipal Corporation Act, 1949 and are required to be fair, reasonable and non-discriminatory in their dealings with the citizens and not arbitrary, unreasonable, fanciful and capricious. The actions on the part of Respondents in rejecting the planning proposal on flimsy grounds is arbitrary unreasonable and violative of Article 14 of the Constitution of India.



B. Section 44 of MRTP Act, provides that an application for planning permission within a period of 60 days from the date of receipt of the Application to decide the Application for planning permission within 60 days. Section 44 (5) provides that such application for planning permission is deemed to have been granted. The Petitioners Application for sanction of layout dated 13th January 2016, was received by MBMC on the same day. The requisition made by MBMC was complied with by Petitioners' letter dated 31st March 2016. The Petitioners submit that expiry of 60 days from 31st March 2016, Petitioners Application for planning permission is therefore deemed to have been sanctioned by MBMC as the Petitioners did not receive any response from MBMC. The Petitioners therefore informed MBMC by their letter dated 25th July 2017 that their application for planning permission is deemed to have been granted. The impugned action of planning permission of by letter dated 29th July 2017, by the Town Planner of MBMC is therefore absolutely illegal, without jurisdiction, ultra vires and contrary to the provisions of the MRTP Act and is therefore liable to be quashed and set aside.

C. In any case the requisitions for the non compliance of which Petitioners application for planning permission is rejected by letter dated 29th July 2017, are beyond the scope of MRTP Act and the Town Planning Officer has no jurisdiction to raise such requisitions and the impugned



letter dated 29th July 2017 is therefore liable to be quashed and set aside.

- D. The Petitioners submit that the first requisition about non agricultural permission is not required in view of the amendment introduced in Maharashtra Land Revenue Code in the form of Section 42A introduced by Maharashtra Act XXXVII of 2014 w.e.f 22nd December 2014 from letter dated 4/10/2017 Para (A-i) as the subject property is situated in residential and commercial user in the sanctioned development plan of Mira Bhayander Municipal Corporation. The second requisition relating to environmental clearance is also not required for sanction of plans and is evident from the circular issued in 2011 by MOEF and as well as Circular dated 30/1/2014 bearing Ref.No.SE/AA/2014/CR.02/TC 3 issued by the Principal Secretary, Environmental and MSSEIAA which states that an application for environmental clearance is required to be accompanied with the sanctioned plans. Hereto annexed and marked as Exhibit - P the copy of the said Circular dated 30/1/2014. The third requisition relating to the NOC from Fire Department is baseless, as Petitioners already have a No Objection Certificate from Chief Fire Officer dated 11/4/2016. Hereto annexed and marked as Exhibit - Q the copy of NOC dated 11/11/2016. The 4th requisition that the documents of ownership of Petitioners are not registered is clearly beyond the scope of planning



authority and nobody has raised an objection to Petitioners' ownership of the subject property and Petitioners have already undertaken to submit the indemnity bond indemnifying the Corporation for any dispute as to Petitioners ownership of the subject property. The fifth requisition as to handing over the D.P. Roads and reservations to MBMC can only be done after the MBMC sanctions the Petitioners' layout. Lastly, the 6th requisition relating to the ULC NOC is also beyond the scope of Planning Authority and without jurisdiction. The Petitioners submit therefore that all the requisitions relying on which the impugned communication dated 29th July 2017 rejects the planning permission of Petitioners are baseless which was already sanctioned and approved by the then Municipal Commissioner is mentioned in letter dated 18th February, 2017 of MBMC, not required for planning permission and therefore the impugned communication dated 29th July 2017 is without jurisdiction and ultra vires the provisions of MRTP Act and is therefore liable to be quashed and set aside.

- E. In any case, the Petitioners submit that the 6 requisitions mentioned in the impugned letter dated 29th July 2017 were not informed to the Petitioners within a period of 60 days and therefore Petitioners Application for planning permission is deemed to have been granted. The Petitioners submit that such illegal requisition cannot be allowed to be



raised at a belated stage on the specious plea that Petitioners were orally informed of such requisitions. The Petitioners therefore submit that Petitioners Application for planning permission submitted in January 2016 and March 2016 is deemed to have been sanctioned in view of the clear mandate of section 44 of MRTP Act.

F. The only relevant consideration for a town planning officer to consider a planning permission under section 44 of MRTP Act, is that whether the application for planning permission is in accordance with the sanctioned development control regulation of MBMC or not. The Impugned communication dated 29th July 2017 therefore venturing into the permissions under various other statutes (which also are not required for planning permission) are clearly without jurisdiction, illegal and are therefore liable to be quashed and set aside.

G. The impugned communication dated 29th July 2017 is issued at a belated stage after Petitioners invoked the plea of deemed planning permission without granting any opportunity of being heard to the Petitioners or their architect and is therefore contrary to the principles of natural justice and is therefore liable to be quashed and set aside. The impugned communication dated 29th July 2017 takes into consideration irrelevant factors ignoring the relevant factors for grant of planning permission. The



impugned communication dated 29th July 2017 is therefore contrary to the Wednsbury principle of reasonable as enunciated by the Hon'ble Supreme Court in Rohtas Industries Limited v. S. D. Agarwal & Anr, reported in 1969 (1) SCC 325 and Tata Cellular v. Union of India reported in 1994 (6) SCC 561.

H. The impugned communication dated 29th July 2017 is also violative of Petitioners rights under Article 14, 19(1)(g) and 300A of Constitution of India.

I. The Petitioners submit that in any case the Petitioners' Application for planning permission was sanctioned by then Municipal Commissioner and only a formal communication in this regard was remained to be issued. The Petitioners therefore had vested right to get planning permission pursuant to the approval of Municipal Commissioner. The Impugned communication dated 29th July 2017 is therefore liable to be quashed and set aside as it takes away the vested rights of the Petitioners.

5. The Petitioners are therefore approaching this Hon'ble Court invoking its extra ordinary jurisdiction under Article 226 of the Constitution of India challenging the impugned communication dated 29th July 2017. The Petitioners are also seeking a declaration that their application for planning permission submitted in January 2016 and March 2016 is deemed to have been sanctioned and a direction against the Respondents to issue a



formal approval of planning permission. The Petitioners therefore have no alternate efficacious remedy. The Petitioners submit that the remedy of Appeal under Section 47 of the MRTP Act, is not an alternate efficacious remedy. In any case, impugned communication dated 29th July 2017 is clearly without jurisdiction and contrary to the principles of natural justice and therefore the Petitioners ought not to be relegated to such an alternate remedy in view of the decision of the Hon'ble Supreme Court in Whirlpool Corporation v. Registrar of Trade Marks reported in 1998 (8) SCC 1 and Harbanslal Sahania v. Indian Oil Corporation reported 2003 (2) SCC 261.

6. The impugned communication dated 29th July 2017. Therefore, the Petition as filed is not hit by delay and laches and Petitioners have approached this Hon'ble Court as expeditiously as possible.
7. The subject property is situated in Thane District. All the Respondents have their offices in Thane & Mumbai. The entire cause of action has arisen in Thane District and therefore this Hon'ble Court has jurisdiction to try, entertain and dispose of the present petition under its extra ordinary Appellate Civil Jurisdiction.
8. The Petitioners have made representation dated 13/1/2016 to the Respondents authorities and have demanded justice. However, the same has been deemed to the Petitioners. The Petitioners are therefore approaching this Hon'ble Court invoking its extra ordinary jurisdiction

- 
9. Petitioners have not filed any other Petition regarding the subject matter of the present petition either in this Hon'ble Court or in the Hon'ble Supreme Court.
 10. The Petitioners have paid the fixed court fees of Rs. 250 on the present Petition.
 11. The Petitioners crave leave to add, alter, amend or delete the grounds in the present Petition.
 12. The Petitioners will rely on the documents, a list whereof is annexed hereto.
 14. The Petitioners therefore pray:
 - (a) that this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari calling for the records and proceedings in respect of issuance of letter dated 29th July 2017 by Respondent No. 4 and after going through legality, validity and propriety thereof, the same be pleased to quash and set aside.
 - (b) That this Hon'ble Court be pleased to declare that Petitioners' Application for planning permission dated 13th January 2016 and 31st March 2016 is deemed to have been sanctioned in view of section 44 of MRTP Act;



- (c) that this Hon'ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature mandamus directing Respondent Nos. 2 to 6 to:
- i) issue a formal letter of approval of planning permission;
 - ii) to cancel and/or withdraw the impugned letter dated 29th July 2017;
- (d) pending the hearing and final disposal of the petition, direct Respondent Nos. 2 to 6 to
- i) issue a formal letter of approval of planning permission;
 - ii) to cancel and/or withdraw the impugned letter dated 29th July 2017;
- (e) For interim and ad-interim reliefs in terms of prayers (d) above;
- (f) For costs;
- (g) For such other and further reliefs as the nature and circumstances of the case may require.

Advocates for the Petitioners

(Petitioner No. 1)

(Petitioner No. 2)

VERIFICATION

I, Jayesh T. Shah, one of the Partner of Petitioner No. 1 above named, residing at Laxmi Palace, 76, Mathuradas Road, Kandivali (West), Mumbai 400 067, do hereby solemnly declare that what is stated in the paragraph Nos. 3, 4, 5, 13, 7, 8, 9, 10 & 12 to 11 is true to my own knowledge and ~~legal~~ submissions made in the remaining paragraph nos. 1, 2, 4, 5, 6 & 11 to 10 ^{are} is based on information and belief and I believe the same to be true. and Para 14 contains my respectful prayers.

Solemnly declared at Mumbai)

This 15 JAN 2018, 2018.)

Before me,


Advocates for the Petitioners



Before me in Mumbai.


ASHOK M. PANDYA
ADVOCATE & NOTARY (GOVT. OF INDIA)
C-6, Diamond Apt., Behind Diamond Cinema, L. T. Road, Borivali (West),
Mumbai - 400 092.

15 JAN 2018

