

EXAMINER PRESS BUILDING,
35, DALAL STREET, FORT, MUMBAI - 400 023.
PHONE : 2267 3096 / 2267 1565
FAX : (91-22) 2264 2233
E-mail : haridasco@rediffmail.com
haridasco@gmail.com

26th September, 2013.
Date :

Ref. No. : B/ 649 /2013
HDFC Ltd.,
Ramon House, 4th floor,
H T Parekh Marg,
169, Backbay Reclamation,
Churchgate,
Mumbai - 400 020.

Dear Sirs,

Re: The property being the piece or parcel of land admeasuring 2000 square meters bearing C.T.S. Nos.411 and 411/1 of Village Kandivli in the Registration Sub-District of Mumbai Suburban together with the structure standing thereon bearing Plot No.8, ABCD Government Industrial Estate, Charkop, Kandivli (West), Mumbai - 400067.

As instructed by M/s. Trinity Consortium Development Pvt. Ltd. formerly known as Messrs. Jesal Construction Co. Pvt. Ltd. (hereinafter referred to as "**Trinity**") we have investigated their title to the aforesaid property and given our opinion herein below:

For investigating the title and giving our opinion, we have:

- (i) perused the documents of title beginning with the Indenture of Lease dated 6th February, 1967 executed by the Govt. of Maharashtra as the Lessor and Messrs. Foranco, a Sole Proprietary concern of Shri Rameshchandra Maganlal Thakkar as the Lessee (being the predecessors of the Trinity followed by several other documents and government orders etc. as narrated below.
- (ii) taken search of the records of rights in the offices of the Sub-Registrar of Assurances at Mumbai, Bandra and Borivli.
- (iii) published Public Notices in the news paper issues of Free Press Journal and Nav Shakti dated 12th September, 2013.

- (iv) taken Search of the Register of Charges maintained by the Registrar of Companies, Maharashtra, Mumbai.

Our investigation reveals as follows, that is to say:

1. The aforesaid Plot No.8 admeasuring 2000 square meters or thereabouts being the subject matter of this report (hereinafter referred to as **"the said Plot"**) is forming part of the larger property known as Kandivli Industrial Estate which is admeasuring approximately 116 Acres and 20 Gunthas bearing Survey Nos. 67(P), 68, 69, 70(P), 161(P), 159(P), 157(P) and 41(P) of Kandivli, Taluka Borivli in the Registration Sub-District of Mumbai Suburban and hereinafter referred to as **"the said Kandivli Industrial Estate"**.
2. Originally the said Kandivli Industrial Estate belonged to the Government i.e. The State of Maharashtra. By the Indenture of Lease dated 6th February 1967, the Maharashtra Government demised the said Plot to one Rameshchandra Maganlal Thakkar who carried on business in the name of Messrs. Foranco as the Sole Proprietor thereof. The Lease was for a period of 30 years commencing from 6th February 1967.
3. By another Lease Deed dated 4th September, 1973 the Government of Maharashtra granted fresh lease of the said Plot in favour of Mr. R. M. Thakkar, Proprietor of the said Messrs. Foranco for a period of 30 (Thirty) years commencing from 4th September, 1973 at or for the rent reserved and upon the terms, conditions and covenants therein contained. By the said Lease Deed, the said previous Lease Deed dated 6th February, 1967 was cancelled as recorded therein.
4. The said Messrs. Foranco, thereupon constructed a factory building comprising of ground floor admeasuring 902 square metres on the said property.
5. Acquirers of the various plots comprising of the said Kandivli Industrial Estate formed the Society known as Kandivli Co-operative Industrial Estate Ltd. registered under Co-operative Societies Act, 1960 under No.BOM/W-R/RSR/SR/1161/2002-2003, hereinafter referred to as **"the said Society"**. The said Messrs. Foranco being the holder of the said plot was admitted as member thereof.
6. The said Messrs. Foranco, the sole proprietary firm, of the said Rameshchandra Maganlal Thakkar was allotted 10 (Ten) shares of the said Society bearing distinctive Nos.81 to 90 under Share Certificate No.009 of the face value of Rs.100/- per share (hereinafter referred to as **"the said Shares"**)



7. By the Order dated 9th April, 2001 bearing No.C/Desk-VIIB/K.I.E/Plot No.8 ABCD, the Collector, Mumbai Suburban District pursuant to the Maharashtra Government's Memorandum dated 27th December, 1982 through the Revenue & Forest Department, the Government granted to the said Messrs. Foranco, the said land as Class-II Occupant subject to the terms and conditions therein contained. On perusal of a copy of the said Order dated 9th April, 2001 it is noted that—

- (i) the Allottee shall not transfer, assign, encumber, mortgage the land without previous written consent from the Government;
- (ii) the Government shall be free to refuse such consent;
- (iii) grant such consent subject to payment of premium;
- (iv) in case of sale of the land with building, the Government shall be entitled to half of the unearned income.

8. The Department of Industry, Energy and Labour of the Government of Maharashtra by its Order dated 30th April, 2004 bearing No.IES-3034/(7971)/U-18 directed to deliver the said Kandivli Industrial Estate to the said Society subject to all the occupancies encroachments etc. and on the terms and conditions which are reproduced hereinafter:

- (i) The said Society shall be responsible to recover all arrears of dues from members within a reasonable period, preferably within one year from the date of transfer of the said Government Industrial Estate in the name of the said Kandivli Co-operative Industrial Estate Limited.
- (ii) The said Society shall be liable to pay water Bills, Electric Bills, and any other outgoings. Individual Industrialists shall be individually and the Kandivli Co-operative Industrial Estate Limited shall be jointly responsible for the same, for all the Industrial Units.
- (iii) About 20% of the land holders of the Industrial Estate at Govt. Industrial Estate, Kandivli, have not paid their dues to Government till date. These plot holders have filed suits with the Courts of Law and the said Suits are pending before Courts. There are encroachments on some of the plots. The Kandivli Co-operative Industrial Estate Limited shall alone be responsible to defend or



prosecute such proceedings till their final disposal by the Courts of Law.

9. In pursuance of the aforesaid, the possession of the Kandivli Industrial Estate as aforesaid was handed over to the said Society on 12th May, 2004 as recorded in the Possession Receipt (Taba Pavti).

10. The name of the Society therefore is mutated in the Property Register Card as "**the Lessor**" and the name of the Government of Maharashtra accordingly is deleted. Prior to the said Possession Receipt similar Possession Receipt dated 23rd January, 2004 was executed by the City Survey Officer, Borivli in favour of the said Society. The entire Kandivli Industrial Estate is thus transferred to the said Society subject to the occupancies, encroachments etc. including the grand of the said land in favour of Trinity as per the said allotment of the aforesaid land and in our opinion no other document of transfer by the Government to the Society is required. In view of the above, the said Kandivli Industrial Estate is transferred to the name of the Society as "**Holder**" and the name of the Government of Maharashtra has been deleted.

11. No document of transfer between the Government of Maharashtra and the Society is reflected in the Search Report. In light of the aforesaid, in our opinion, the Society has become the Lessor of the Trinity.

12. Since the entire Kandivli Industrial Estate is transferred to the Society, in our opinion, these conditions with regard to the permission are, in our opinion, to be observed que the Society and not que the Government. In case of mortgage, no provision is made or condition is stipulated for any premium or unearned income to the Government. In view of this, we are of the firm opinion that Trinity can mortgage the property on obtaining N.O.C. from the Society.

13. In our opinion, after the transfer of the Kandivli Industrial Estate to the said Society the terms and conditions of the Collector's Order dated 9th April, 2001 is now no longer in force, and the said Society only shall be responsible to recover the arrears of the dues from its members. In our opinion, therefore the premium of an unearned income is not required to be paid on the creation of mortgage. As the terms and conditions of the Collector's Order dated 9th April, 2001 are no longer in force and only the Society being entitled for the recovery of all the arrears, in our opinion no amount would be payable for creation of mortgage by the Trinity to the Government if permission is obtained from the Society to create the mortgage.



14. As stated in para 3 hereinabove the said Lease dated 4th September, 1973 was for a period of 30 (Thirty) years by efflux of time is expired on 5th September, 2003. Thereafter, in pursuance of the Order dated 12th May, 2004 the possession of the Kandivli Industrial Estate was handed over to the Society and the Trinity holds over the said plot and continued to use, occupy and possess the said plot. The Trinity has thus become the Tenant Member of the Society occupying the said plot. In the above circumstances, the relation between the Society and the Trinity is as Lessor/Owner and Lessee/Occupant respectively. The Trinity, therefore, is subject to the observance of the terms and conditions in the G.R. dated 30th April, 2004 bearing No.I.E.S.-3034 7931/Industries-18 que the said Society.

15. As regards the status of the Society and Trinity is concerned, Trinity is the Tenant Member of the Society and the Society is the holder of the land claiming under the Government.

16. By the Deed of Assignment dated 22nd February, 2007 and executed between the said Messrs. Foranco as 'the Assignor' of the One Part and Jesal Construction Private Limited as 'the Assignee' of the Other Part and registered in the office of the Sub-Registrar of Assurances at Borivali-5 under Serial No.BDR-11/01842 of 2007, the said Assignor sold, assigned and transferred the said land together with the said factory building and the said shares in favour of the said Assignee at or for the consideration therein mentioned. Thus the said Jesal Construction Private Limited became the Lessee of the land being the Lessee of the said Society. Along with this Deed of Assignment, the said Assignors Messrs. Foranco, through its Proprietor executed the Power of Attorney in favour of the Director of the said Assignee to do various acts, deeds and things pending transfer of the property in the name of the Assignee and notwithstanding the powers therein contained, the Assignee in its own rights as the holder of the land have become entitled to deal with or transfer the said property including creating mortgage etc. subject to the permission being granted by the Society.

17. The Labour Commissioner by the letter dated 9th July, 2008 and addressed to the Commissioner, Municipal Corporation of Brihanmumbai, has given his No Objection for development of the property recording that the factory was closed since 16th May, 2000 and at that time there were in all 33 (Thirty Three) labourers working and an aggregate sum of Rs.19,16,935.35 (Rupees Nineteen Lakhs Sixteen Thousand Nine Hundred Thirty Five and Paise Thirty Five Only) being the amount legally due to the said labourers was thereon paid.



18. The Municipal Corporation of Brihanmumbai by its letter dated 14th May, 2007 has also cancelled the Factory Permit of the Predecessors. All the workmen were suitably provided for in view of what is stated in para 17 above.

19. The said Society by its letter dated 1st March, 2007 bearing No.KCIEL/8ABCD/3/07/542 approved the transfer and assignment of the said property in favour of the said Jesal Construction Co.

20. The name of the said Jesal Construction Co. is changed to Trinity Consortium Development Private Limited and fresh Certificate of incorporation consequent upon change of name is issued by the Registrar of Companies, Maharashtra, Mumbai, dated 24th June, 2008.

21. We certify that in pursuance of the said Public Notices published in the newspapers inviting claims and objections as aforesaid, we have not received any claim or objection from any party till date.

22. A charge on the property is recorded in the Register of Charges maintained by the Registrar of Companies, Maharashtra, Mumbai, for Rs.1,10,00,00,000/- (Rupees One Hundred Ten Crores) in favour of HDFC Asset Management Co. Ltd., which is created on 30th August, 2011 and registered on 29th October, 2011.

23. In addition to the aforesaid charge, Mortgage to secure the sum of Rs.4,00,00,000/- (Rupees Four Crores Only) is created in favour of The Kapol Co-operative Bank Ltd. under the Deed of Mortgage dated 27th October, 2008. The said mortgage is duly satisfied and the said bank has issued letter dated 6th December, 2010 confirming that Trinity has fully paid the loan and to cancel the lien. There is no other encumbrance recorded in the records of the Sub Registrar of Assurances or in the Register of Charges of Registrar of Companies save and except as aforesaid.

24. On application being made by the Trinity, the Municipal Corporation of Greater Mumbai, has issued I.O.D. for construction of the building as I.T. Park named as "Inforspark". We have been specifically asked that on creation of mortgage whether Trinity is required to pay any premium to the Government. In our opinion, mortgage can be created on obtaining the permission from the Society in whose favour the Kandivli Industrial Estate is transferred as aforesaid.

25. The land is now being used for constructing Information Technology Park. The grant does not specify for which purpose the grant was



made. As per the D.C. Regulation No.56(3)(f) provides for construction of I.T. Park on the land which is abutting 12 meters public road. The B.M.C. has sanctioned the plan accordingly. The user of the land therefore is permissible.

26. On application being made by the Trinity, the Society on 1st October, 2013 granted its no objection for mortgage to any bank and financial institutions subject to the copy of the Deed of Mortgage to be forwarded to the Society for its record and information.

27. In our opinion therefore, since Trinity is proposing to create mortgage of the leasehold right, the permission for the same need be taken from the Society which has been substituted as Lessor in the place of the Collector/Government. The said Society has by its letter dated 1st October, 2013 bearing No.KCIEI/108-ABCD/10/2013/374 granted its permission to Trinity to mortgage the said property in favour of Bank/Financial Institution.

28. In light of the aforesaid, we are of the Opinion that subject to the aforesaid charges and subject to the observance, compliance and performance of the terms and conditions of the Society the title of Trinity is clear and marketable.

Yours truly,
For **HARIDAS & CO.,**



Partner.

Advocates & Solicitors for
Messrs. Trinity Consortium
Development Pvt. Ltd.