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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 924 OF 2001

Anil K. Bodani & Anr.

..... Plaintiffs

VERSUS

Manju Meadows Pvt. Ltd. & Ors.

..... Defendants

Mr.Snehal Shah, a/w. Ms.Deepti Panda, Ms.Jyoti Sinha, i/b. Negandhi Shah and Himaytullah for the Plaintiffs.

Mr.Cyrus Ardhesir, i/b. Kanga & Co. for Defendant No.1.

Mr.Simil Purohit, i/b. MKS Legal for Defendant No.2.

Mr.Sachin Pandey, a/w. Mr.D.Madpe, i/b. P.K.Shroff & Co. for Defendant Nos. 3, 11 and 12.

Mr.Siddharth Samantary, i/b. Shiralkar & Co. for Defendant No.21.

Mr.Aditya Raut, i/b. Desai Desai Carrimjee & Mulla for Defendant No.10.

CORAM : R.D.DHANUKA J.

DATED : SEPTEMBER 20, 2013.

P.C.

The matter is placed on board for deciding admissibility of documents proposed to be tendered in evidence by the plaintiff's first witness along with affidavits in lieu of examination in chief. Learned counsel appearing for the parties have tendered draft minutes in respect of 20 documents which are forming part of the compilation tendered by the plaintiff



which read as under :

1. Re: Sr. No. 1 of the Plaintiffs' Affidavit of Documents dated

23.09.11: Document dated 23.10.1998 being a Certified true copy of the Resolution of the Board of Directors of Defendant No.1 inter alia approving sale of 24,990 shares of the Company to the Plaintiffs under the then proposed Sale Purchase Agreement. The same is referred to in para 8 of the Complaint and in para 18 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"The said certified true copy is signed by Govind Gupta, the 2nd Defendant, as Director of the 1st Defendant. I identify his signature."* The same is also referred to in para 2 of the Affidavit dated 03.08.2013, wherein it is averred: *"I say that the Board Resolution dated 23rd October 1998 which is listed at sr. no. 1 of the compilation of documents, has been issued to me in the form of a certified true copy by the Defendant No. 1. I say that the contents thereof are true and correct. I have by my Advocate's letter dated 24th July 2013 given notice to Defendant No. 1 to produce the Original Board Resolution."* The said document is marked as **Exhibit "P-6"**.

2. Re: Sr. No. 3 of the Plaintiffs' Affidavit of Documents dated

23.9.2011: Document dated 27.10.1998 being the original Share Purchase Agreement entered into amongst Defendant Nos.2, 3, 4, 5, 6 and 7 of the First Part; Plaintiff Nos.1 and 2 of the Second Part; Plaintiff No.1 of the Third Part and Defendant Nos.2, 8 and 9 of the Fourth Part. The same is referred to in paras 7(b) and 9 of the Complaint and in para 17 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"The Share Purchase Agreement ("SPA") was signed in my house in the presence of all signatories except Ashwin Mehta, who signed later. ... on whose instructions"*) and in para 4 of the



Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*"The Share Purchase Agreement dated 27th October 1998....The contents of the said document are true and correct"*). The said document is marked as **Exhibit "P-7"**.

3. **Re: Sr. No. 4 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 27.10.1998 being Original Agreement of Debt for Rs. 12 Lakhs and Rs.13 Lakhs executed between Defendant No.1 and the Plaintiffs. The same is referred to in para 11 of the Plaint and in para 21(a) of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"Counterpart original of Agreement of Debt for two amounts of Rs.12 lakhs and Rs. 13 lakhs (total Rs.25 lakhs) dated 27.10.1998 between Defendant No.1 and the Plaintiffs. The initials thereon are of myself, my wife Plaintiff No.2 and Defendant No.2, Govind Gupta. I identify the signatures"*) and in para 5 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*"The Agreement of Debt dated 27th October 1998.....The contents of the said document are true and correct"*). The said document is marked as **Exhibit "P-8"**.

4. **Re: Sr. No. 5 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 27.10.1998 being the Original Deed of Simple Mortgage between Defendant No.1 and the Plaintiffs. The same is referred to in para 12 of the Plaint and in para 21(b) of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"Original Deed of Simple Mortgage dated 27th October, 1998 executed between the 1st Defendant and the Plaintiffs creating a simple mortgage in respect of two portions of the 1st Defendant's stud farm property. It has been signed by Defendant No.2 on behalf of Defendant No.1 and by the Plaintiffs. I identify all the signatures and initials thereon"*) and in para 6 of the Additional Affidavit in lieu of



examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*"The Deed of Simple Mortgage dated 27th October 1998..... The contents of the said document are true and correct"*). The said document is marked as **Exhibit "P-9"**.

5. **Re: Sr. No. 6 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 27.10.1998 being the Original Demand Promissory Note for Rs.12 Lakhs executed by Defendant No.1 in favour of the Plaintiffs. The same is referred to in para 12(b) of the Plaint and in para 21(d) of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"Original Demand Promissory Note dated 27th October, 2010 for Rs.12 lakhs signed by Defendant No.2 on behalf of Defendant No.1 in favour of the Plaintiffs. I identify the signature of the 2nd Defendant thereon."* and in para 7 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*"Demand Promissory Note dated 27th October 1998.....The contents of the said document are true and correct."*) The said document is marked as **Exhibit "P-10"**.

6. **Re: Sr. No. 7 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 27.10.1998 being the Original Demand Promissory Note for Rs.13 Lakhs executed by Defendant No. 1 in favour of the Plaintiffs. The same is referred to in para 12(c) of the Plaint and in para 21(e) of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"Original Demand Promissory Note dated 27th October, 2010 for Rs.13 lakhs signed by Defendant No.2 on behalf of Defendant No.1 in favour of the Plaintiffs. I identify the signature of the 2nd Defendant thereon."* and in para 8 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*"Demand Promissory Note dated 27th October 1998.....The contents of the said document are true and*



correct.”). The said document is marked as **Exhibit “P-11”**.

7. **Re: Sr. No. 8 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011:** Document dated 27.10.1998 being the Original Specific Power of Attorney executed by Defendant No.1 in favour of Plaintiff No.1. The same is referred to in para 12(d) of the Plaint and in para 21(c) of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *“Original Power of Attorney dated 27th October, 2010 from the 1st Defendant in my favour and signed by Defendant No.2 on behalf of Defendant No.1”*. The said document is marked as **Exhibit “P-12”**.
8. **Re: Sr. No. 14 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011:** Document dated 30.03.1999 being the Copy of Form No. 32 filed by Defendant No.1 with the Registrar of Companies along with Filing Receipt dated 31.03.1999. The same is referred to in para 18(c) of the Plaint and in para 26 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *“Form No. 32 was also filed by the Company with the 22nd Defendant in this regard. I have a photocopy of this Form No.32. It was given to me by the 1st Defendant. The original was signed by Ashwin Mehta, Defendant No. 8 and his signature is shown on the photocopy also. I identify the said signature”* and in para 10 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: *“Insofar as document at sr. no. 14 of the compilation of documents is concerned, I say that the copy produced by me is a true copy of the document filed with Defendant No.22. I say that the contents thereof are true and correct”*. The said document is marked as **Exhibit “P-13”**.
9. **Re: Sr. No. 16 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011:** Document dated 30.09.1999 being the Certified true copy



of Annual return of Defendant No.1 for the year ended 31st March, 1999. The same is referred to in para 18(e) of the Plaint and in para 35 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"The 1st Defendant Company also filed an annual return dated September 30th, 1999 with the RoC wherein details relating to the share capital of the Company, the directors of the Company, details of shares held and the shareholding pattern, details of shares transferred etc. were disclosed. The return reflected the shareholding of the Plaintiffs and the fact that I was a director of the 1st Defendant Company. It also does not show the Defendant No.11 as a shareholder"*. The said document is marked as **Exhibit "P-14"**.

10. **Re: Sr. No. 25 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 16.11.2000 being the Original office copy of letter addressed by the Plaintiffs to Defendants No.2, 8 and 9. The same is referred to in para 30 of the Plaint and in para 48 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"Therefore, by a letter dated November 16, 2000 my wife and I called upon Defendants No. 2, 8 and 9 to submit their respective resignations from the directorship on the Board of the 1st Defendant Company with immediate effect. ... The said letter was delivered to the then registered office of the 1st Defendant and its receipt on behalf of Defendants Nos.2, 8 and 9 was acknowledged on a copy thereof by one Vinod Anand, an employee of the 1st Defendant. The said letter has been signed by me and my wife. I identify our signatures thereon. The acknowledgement of receipt is in the handwriting of the said Vinod Anand, who has signed the same. I identify his signature and writing. The contents of the said letter are correct to my knowledge"*) and in para 11 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it



is averred: *"At sr. nos. 25 to 27 of the said Compilation of documents are copies of letters bearing the acknowledgement of receipt of original letters by the recipients thereof. I say that the contents thereof are true and correct"*. The said document is marked as **Exhibit "P-15"**.

11. **Re: Sr. No. 26 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 16.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Shamrao Vithal Co-operative Bank Ltd. The same is referred to in para 31 of the Complaint and in para 49 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"We also wrote another letter dated November 16, 2000 to the Manager of Shamrao Vithal Co-operative Bank Ltd., Cuffe Parade Branch, and informed him, inter alia, that we were the 100% shareholders of the 1st Defendant Company. This letter was signed by my wife and me and also by the Defendant No.16 and Kinnari Bodani as our Constituted Attorneys. I identify the aforesaid four signatures thereon... The original of the said letter is with the said Bank. The contents of the said letter are correct."*) and in para 11 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: *"At sr. nos. 25 to 27 of the said Compilation of documents are copies of letters bearing the acknowledgement of receipt of original letters by the recipients thereof. I say that the contents thereof are true and correct"*. The said document is marked as **Exhibit "P-16"**.

12. **Re: Sr. No. 27 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 16.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Royal Western India Turf Club. The same is referred to in paras 32, 33, 34 of the Complaint and in para 50 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"By another letter of the same date (i.e. 16*



November 2000), my wife and I wrote to the Managing Committee, RWITC and informed them about the relevant portions of the SPA and the abuse of their authority by the 2nd, 8th and 9th Defendants as directors of the 1st Defendant Company. The signatures thereon are those of my wife and myself. The said letter was received by the RWITC on the same date and there is an acknowledgement endorsed in blue ink on the copy produced. The contents of the said letter are correct.”) and in para 11 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: “At sr. nos. 25 to 27 of the said Compilation of documents are copies of letters bearing the acknowledgement of receipt of original letters by the recipients thereof. I say that the contents thereof are true and correct”. The said document is marked as **Exhibit “P-17”**.

13. **Re: Sr. No. 40 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011:** Document dated 28.11.2000 being the Original office copy of the letter addressed by the Plaintiffs to the Defendants No. 2 & 3. The same is referred to in para 39 of the Plaint and in para 58 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (“By our letter dated 28th November 2000, my wife and I replied to the letter dated 21st November 2000 from the 2nd Defendant (and other Defendants), refuting the false allegations made against us and reiterating our demand for their resignations. The same was signed by my wife and me. I identify our signatures thereon. The contents thereof are correct to my knowledge. The original thereof will be with the 2nd Defendant and the 3rd Defendant”) and in para 9 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (“Insofar as documents at sr. nos. 12, 13, 15, 21 – 23 and 40 of the said compilation of documents are concerned, I have referred to them at paragraphs 34, 25, 43 and 58 of my said Affidavit.



*I am aware that what is stated therein is true and correct. Further I have by my Advocate's letter dated 24th July 2013, given notice to the Defendants 2 and 3 to produce Original letter dated 28.11.2000 (at sr. no. 40 of the said compilation of documents"). The said document is marked as **Exhibit "P-18"**.*

14. **Re: Sr. No. 44 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Documents dated 17.12.2000 and 18.12.2000 being the Original newspaper cuttings of the Public Notices published in the Times of India and in Mumbai Samachar. The same is referred to in para 43 of the Plaint and in para 62(c) of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"On behalf of the Plaintiffs, my son Dharmil had caused public notices to be published in the Times of India, Mumbai on 17th December 2000 and in the Mumbai Samachar on 18th December 2000 stating inter alia that the Plaintiffs were owners of 99.96% of the paid up share capital of the 1st Defendant Company and that they had requisitioned an EGM to remove the 2nd, 8th and 9th Defendants as the directors of the Company and to appoint other directors in their place and also to appoint some more directors. ...I produce the same and affirm the correctness of the contents thereof. The same were issued by my duly Constituted Attorney and I affirm and ratify his action in causing the aforesaid notices to be issued"*). The said document is marked as **Exhibit "P-19"**.

15. **Re: Sr. No. 50 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 4.01.2001 being the Photo-copy of the letter addressed by the Advocates for the Plaintiffs to the Defendant No. 1 forwarding copies of proxy forms. The same is referred to in para 48 of the Plaint and in para 62(d) of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief



*("Under cover of our Advocates' letter dated January 4, 2001, and on instructions given by Dharmil on our behalf (i.e., the Plaintiffs' behalf), proxy forms appointing Dharmil and Ashwin Ahya as proxies to vote for us (the Plaintiffs) at the EOGM of the 1st Defendant Company were forwarded to the 1st Defendant Company.The contents of the said letter are correct. I identify the signatures on the proxy forms which are signed by Dharmil (as my Constituted Attorney) and by Ashwin Ahya (as the Constituted Attorney of Plaintiff No.2). The contents thereof are correct") and in para 13 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: "In respect of documents listed at sr. nos. 45, 50, 53, 55, 56 and 58 of the said compilation of documents, I have referred to the said documents at paragraphs 63, 62(d), 68, 83, 82 and 84 of the said Affidavit. In addition to what I have stated therein, I say that by my Advocate's letter dated 24th July 2013 I have given notice to produce originals of the documents at sr. no. 45, 55 and 56 which is in the custody of the recipients thereof. These letters were addressed by my Advocates under my instructions. My Advocates had under my instructions made photocopies of the said letters from the originals and compared the copies so made with the originals. These office copies retained by my Advocates, for their record, were given to me. These photocopies are now tendered in evidence and I pray that the same be marked in evidence". The said document is marked as **Exhibit "P-20"**.*

16. **Re: Sr. No. 53 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 10.01.2001 being the Photo-copy of the office copy of the letter addressed by the Advocates for the Plaintiffs to the Defendant No 1. The same is referred to in para 51 of the Plaint and in para 68 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"Our advocates acted thereon and*



*by their letter dated January 10, 2001 addressed to the 1st Defendant Company, placed on record some of the aforesaid facts and conveyed our utter shock that the resolutions were defeated even though we held 99.96% of the equity share capital. I produce the same and identify the signature of our Advocate, Mr Vashi, thereon. The original thereof should be in the possession of the 1st Defendant and I call upon the 1st Defendant to produce the same.”) and in para 13 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: In respect of documents listed at sr. nos. 45, 50, 53, 55, 56 and 58 of the said compilation of documents, I have referred to the said documents at paragraphs 63, 62(d), 68, 83, 82 and 84 of the said Affidavit. In addition to what I have stated therein, I say that by my Advocate’s letter dated 24th July 2013 I have given notice to produce originals of the documents at sr. no. 45, 55 and 56 which is in the custody of the recipients thereof. These letters were addressed by my Advocates under my instructions. My Advocates had under my instructions made photocopies of the said letters from the originals and compared the copies so made with the originals. These office copies retained by my Advocates, for their record, were given to me. These photocopies are now tendered in evidence and I pray that the same be marked in evidence”. The said document is marked as **Exhibit “P-21”**.*

17. **Re: Sr. No. 55 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011:** Document dated 11.01.2001 being the Original office copy of the letter addressed by the Advocates for the Plaintiffs to the Defendant No. 22. The same is referred to in para 52 of the Plaint and in para 83 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (“By our Advocates’ letter dated 11.1.2001 to the 22nd Defendant, we set some of the foregoing facts on record and



*demanded that the 22nd Defendant not register any application or return of allotment without our consent and approval. The original is with the 22nd Defendant. The contents of the said letter are correct and are based on my instructions to our Advocates. The signature thereon is that of an Advocate in the office of Mr Vashi, i.e., Mr Sean Wassoodew") and in para 13 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: In respect of documents listed at sr. nos. 45, 50, 53, 55, 56 and 58 of the said compilation of documents, I have referred to the said documents at paragraphs 63, 62(d), 68, 83, 82 and 84 of the said Affidavit. In addition to what I have stated therein, I say that by my Advocate's letter dated 24th July 2013 I have given notice to produce originals of the documents at sr. no. 45, 55 and 56 which is in the custody of the recipients thereof. These letters were addressed by my Advocates under my instructions. My Advocates had under my instructions made photocopies of the said letters from the originals and compared the copies so made with the originals. These office copies retained by my Advocates, for their record, were given to me. These photocopies are now tendered in evidence and I pray that the same be marked in evidence". The said document is marked as **Exhibit "P-22"**.*

18. **Re: Sr. No. 56 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 15.01.2001 being the Photo-copy of the letter addressed by the Advocates for the Plaintiffs to the Advocates for the Defendants No. 2 & 8 in reply to their letter dated 10/01/2001. The same is referred to in para 53(a) of the Plaint and in para 82 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"We replied to the Advocates for the 2nd and 8th Defendants by our Advocates' letter dated 15.1.2001 The contents thereof are correct and are on the basis of instructions given by me to*



*our Advocates. I identify the signature thereon as that of Mr Sean Wassoodew the assistant to our Advocate, Mr M.M. Vashi") and in para 13 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: In respect of documents listed at sr. nos. 45, 50, 53, 55, 56 and 58 of the said compilation of documents, I have referred to the said documents at paragraphs 63, 62(d), 68, 83, 82 and 84 of the said Affidavit. In addition to what I have stated therein, I say that by my Advocate's letter dated 24th July 2013 I have given notice to produce originals of the documents at sr. no. 45, 55 and 56 which is in the custody of the recipients thereof. These letters were addressed by my Advocates under my instructions. My Advocates had under my instructions made photocopies of the said letters from the originals and compared the copies so made with the originals. These office copies retained by my Advocates, for their record, were given to me. These photocopies are now tendered in evidence and I pray that the same be marked in evidence". The said document is marked as **Exhibit "P-23"**.*

19. **Re: Sr. No. 58 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 6.02.2001 being the Photo-copy of the letter from the Advocates for the Plaintiffs to the Advocates for the Defendant No.1 recording that inspection of Minute-Books of Defendant No. 1 was not given. The same is referred to in para 84 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"I have disclosed a photocopy of our Advocates' letter dated 6.2.2001 at Sr. No. 58 of my Affidavit of Documents dated 23rd September, 2011 (Compilation Sr. No. 58, pages 281 – 286). I produce the same. The said letter was written on my instructions. The contents thereof are correct. The original thereof is with the Advocates of the 1st Defendant or the 1st Defendant. The*



*said letter was signed by the aforesaid Sean Wassoodew for Mr MM Vashi. I identify his signature” and in para 13 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: In respect of documents listed at sr. nos. 45, 50, 53, 55, 56 and 58 of the said compilation of documents, I have referred to the said documents at paragraphs 63, 62(d), 68, 83, 82 and 84 of the said Affidavit. In addition to what I have stated therein, I say that by my Advocate’s letter dated 24th July 2013 I have given notice to produce originals of the documents at sr. no. 45, 55 and 56 which is in the custody of the recipients thereof. These letters were addressed by my Advocates under my instructions. My Advocates had under my instructions made photocopies of the said letters from the originals and compared the copies so made with the originals. These office copies retained by my Advocates, for their record, were given to me. These photocopies are now tendered in evidence and I pray that the same be marked in evidence”. The said document is marked as **Exhibit “P-24”**.*

20. **Re: Sr. No. 15 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011:** Document dated 02.04.1999 being original letter addressed by the Defendant No. 1 to the Plaintiff No. 1. The same is referred to in in para 25 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (“*These photocopies were sent to me by Defendant No.1 vide its letter dated 2nd April 1999 addressed to me. I produce the original of the said letter The said letter is signed by Mr Rajesh Khandelwal, Defendant No.9. I identify his signature.*”) and in para 9 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: “*Insofar as documents at sr. nos. 12, 13, 15, 21 – 23 and 40 of the said compilation of documents are concerned, I have referred to them at paragraphs 34, 25, 43 and 58 of my said Affidavit. I am*



aware that what is stated therein is true and correct." The said document is marked as **Exhibit "P-25"**.

21. For the reasons recorded aforesaid minutes and upon consideration of depositions made by the witness in respect of various documents, the aforesaid documents are marked as Exh. P6 to P25.

22. As far as annexure P to the affidavit dated 15/11/2011 of the plaintiff no. 1 in lieu of examination in chief i.e. chart is concerned, in para 27 of the affidavit dated 15/11/2011 of plaintiff No. 1 in lieu of examination in chief, it is stated that the witness had undergone various tests and hospitalization from October, 1998 onwards which are disclosed in his affidavit of documents. He has personally verified the correctness of that tabulation and has signed and dated the same. It is stated that the contents thereof are correct to his personal knowledge and the initials and signatures thereon are that of the witness. Since the witness has got the chart prepared and verified the correctness thereof and has identified his signatures and initials thereon, the said chart is marked as Exh. P26. It is however, made clear that the witness has not proved the contents of what is contained in the said chart which is based on the bills and reports and the contents thereof will have to be proved by the plaintiff by examining any other witness.

23. In respect of the remaining documents, defendants have raised objection in marking those documents. The nature of dispute has been summarized by the plaintiffs in a chart submitted for perusal of this court. Mr. Shah, learned counsel for the plaintiffs tendered a note in support of his submission as to why remaining documents shall also be marked as exhibits which note/submissions are extracted by me while marking those documents.



1. As document at Sr. No. 2 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:

Document dated 23.10.1998 being a Certified true copy of the Resolution of the Board of Directors of Defendant No.1 inter alia authorising the Defendant No.2 for signing Deed of Mortgage, Agreement of Debt, Power of Attorney and Promisory Note. The same is referred to in para 8 of the Plaint and in para 3 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: *"I say that the Board Resolution dated 23rd October 1998 which is listed at sr. no. 2 of the compilation of documents, has been issued to me in the form of a certified true copy by the Defendant No. 1. The said copy has been duly signed and certified by Defendant No. 2 on behalf of Defendant No. 1. I say that the contents thereof are true and correct. I have by my Advocate's letter dated 24th July 2013 given notice to Defendant No. 1 to produce the Original Board Resolution."*

Defendant nos. 1, 2 and 3 have not disputed the existence and contents of this document. Upon consideration of the deposition made in the above referred paragraph of the plaint and affidavit, document is marked as Exhibit "P-27"

2. Re: Sr. No. 9 of the Plaintiffs' Affidavit of Documents dated 23.9.2011: Document dated 27.10.1998 being the Photo-copy of Agreement of Debt of Rs. 16 lakhs executed between Plaintiffs and Defendant No. 3. The same is referred to in para 14 of the Plaint and in para 22 of the Affidavit



dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"An amount of Rs. 16 lakhs was loaned by me and my wife to Manju Gupta....In respect of the first loan of Rs.16 lakhs, certain security documents were also executed. This entire loan amount was repaid after the present suit was filed and the security documents were returned. I do not therefore have the originals of these security documents in my power or possession"*). This document is not admitted by the defendant no. 1.

Defendant nos. 2 and 3 have admitted the existence of this document. Plaintiffs have issued notice to produce original. Original has not been produced by defendant no. 3. Plaintiffs are thus entitled to produce photocopy. Photocopy is thus marked as Exhibit "P-28".

3. Re: Sr. No. 10 of the Plaintiffs' Affidavit of Documents dated 23.9.2011: Document dated 27.10.1998 being the Photo-copy of the Memorandum of Agreement of Equitable Mortgage executed between Defendant No.3 and the Plaintiffs in respect of the Loan of Rs.16 Lakhs. The same is referred to in para 15(b) of the Complaint and in para 22 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"In respect of the first loan of Rs.16 lakhs, certain security documents were also executed. This entire loan amount was repaid after the present suit was filed and the security documents were returned. I do not therefore have the originals of these security documents in my power or possession"*.

This document is not admitted by defendant no. 1 but is



admitted by defendant nos. 2 and 3. Plaintiffs have issued notice to produce these documents. The original is not produced by defendant no. 3. Since defendant no.3 has admitted this document which is memorandum of agreement between the plaintiff and defendant no.3 and has not produced original thereof inspite of notice to produce, the photocopy of the document is marked as Exhibit "P-29".

4. **Re: Sr. No. 11 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 27.10.1998 being the Photo-copy of Special Power of Attorney executed by Defendant No.3 in favour of Plaintiff No.1. The same is referred to in para 15(c) of the Plaint and in para 22 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"In respect of the first loan of Rs.16 lakhs, certain security documents were also executed. This entire loan amount was repaid after the present suit was filed and the security documents were returned. I do not therefore have the originals of these security documents in my power or possession"*.

This document is not admitted by defendant no.1 but is admitted by defendant nos. 2 and 3. Special Power of attorney was executed by defendant no. 3 in favour of plaintiff no. 1. Since defendant no. 3 has not disputed the document, the same is marked as Exhibit "P-30".

5. **Re: Sr. No. 12 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 23.11.1998 being the Original letter from Defendant No.10 confirming that



amount of Rs. 1,27,08,069 was the personal liability of Defendant No.2. The same is referred to in para 20(a) of the Plaint and in para 34 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"Accordingly, by two separate letters dated November 23, 1998 the 10th and 11th Defendants wrote to the 1st Defendant Company recording inter alia that the 1st Defendant Company would not be held responsible for the payment of Rs. 1,27,08,069/- and Rs. 67,97,470/- owed respectively to them and, further, that the 2nd and the 3rd Defendants would be personally liable for the repayment of the said amounts. The said letters were signed by Defendant No.1 for and on behalf of Defendant No.11 and Defendant No.10. He also countersigned both letters in his personal capacity, as did Defendant No.3. I identify the signatures thereon. Although addressed to the 1st Defendant company, the said letters were given to me personally"* and in para 9 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*"Insofar as documents at sr. nos. 12, 13, 15, 21 – 23 and 40 of the said compilation of documents are concerned, I have referred to them at paragraphs 34, 25, 43 and 58 of my said Affidavit. I am aware that what is stated therein is true and correct."*)

This document is not admitted by defendant no. 1. Existence of this document however is admitted by defendant Nos. 2, 3 and 10. Defendant no. 10 is author of this document. The original of this document is produced. Upon consideration of the depositions made in paragraph 34 of the affidavit, the said document is marked as Exhibit



“P-31”.

6. Re: Sr. No. 13 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011: Document dated 23.11.1998 being the Original letter from Defendant No.11 confirming that amount of Rs. 67,97,470 was the personal liability of Defendant No.2. The same is referred to in para 20(b) of the Plaint and in para 34 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *“Accordingly, by two separate letters dated November 23, 1998 the 10th and 11th Defendants wrote to the 1st Defendant Company recording inter alia that the 1st Defendant Company would not be held responsible for the payment of Rs. 1,27,08,069/- and Rs. 67,97,470/- owed respectively to them and, further, that the 2nd and the 3rd Defendants would be personally liable for the repayment of the said amounts. The said letters were signed by Defendant No.1 for and on behalf of Defendant No.11 and Defendant No.10. He also countersigned both letters in his personal capacity, as did Defendant No.3. I identify the signatures thereon. Although addressed to the 1st Defendant company, the said letters were given to me personally”* and in para 9 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*“Insofar as documents at sr. nos. 12, 13, 15, 21 – 23 and 40 of the said compilation of documents are concerned, I have referred to them at paragraphs 34, 25, 43 and 58 of my said Affidavit. I am aware that what is stated therein is true and correct.”*).

This document is disputed by defendant no.1 and is not disputed by defendant nos. 2, 3 and 11. The original letter is issued by defendant no. 11 who is author of this



document who has admitted existence but has disputed the contents. In my view, defendant no. 11 who is author of the document can not dispute the contents of this document. The said document is marked as Exhibit “P-32”.

7. Re: Sr. No. 21 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011: Document dated 10.10.2000 being the Original letter addressed by the Defendant No. 2 to Defendant No. 1 regarding liability to Gupta Livestock Breeding & Research Farms being his personal liability. The same is referred to in paras 25 and 26 of the Plaint and in para 43 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*“In furtherance of this assurance, the Defendant No.2 also issued three separate letters all dated October 10, 2000 addressed to the 1st Defendant Company confirming inter alia, that the amounts of approx. Rs. 1.02 crores, Rs. 89.54 lakhs and Rs. 2.02 crores owed to Gupta Livestock Breeding & Research Farm, Gupta Emerald Mines Pvt Ltd and the Defendant No.11 respectively as on August 31, 2000 were the personal liability and responsibility of the Defendant No.2.The same are on the personal letterhead of the 2nd Defendant and have been signed by the 2nd Defendant. I identify the 2nd Defendant’s signature thereon”* and in para 9 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*“Insofar as documents at sr. nos. 12, 13, 15, 21 – 23 and 40 of the said compilation of documents are concerned, I have referred to them at paragraphs 34, 25, 43 and 58 of my said Affidavit. I am aware that what is stated therein is true and correct.”*)).

This document is not admitted by defendant no.1 but



existence thereof is admitted by defendant no. 2. Original letter was addressed by defendant no.2 to defendant no. 1. The witness has identified the signature of second defendant. On consideration of the depositions made in paragraph 43 of the affidavit dated 15/11/2011 and para 9 of the additional affidavit dated 3/8/2013, the said document is marked as Exhibit "P-33".

8. **Re: Sr. No. 22 of the Plaintiffs' Affidavit of Documents dated 23.9.2011:** Document dated 10.10.2000 being the Original letter addressed by the Defendant No. 2 to Defendant No. 1 regarding liability to Gupta Emerald Mines Pvt. Ltd. being his personal liability. The same is referred to in paras 25 and 26 of the Plaint and in para 43 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"In furtherance of this assurance, the Defendant No.2 also issued three separate letters all dated October 10, 2000 addressed to the 1st Defendant Company confirming inter alia, that the amounts of approx. Rs. 1.02 crores, Rs. 89.54 lakhs and Rs. 2.02 crores owed to Gupta Livestock Breeding & Research Farm, Gupta Emerald Mines Pvt Ltd and the Defendant No.11 respectively as on August 31, 2000 were the personal liability and responsibility of the Defendant No.2.The same are on the personal letterhead of the 2nd Defendant and have been signed by the 2nd Defendant. I identify the 2nd Defendant's signature thereon"* and in para 9 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*"Insofar as documents at sr. nos. 12, 13, 15, 21 – 23 and 40 of the said compilation of documents are concerned, I have referred to them at paragraphs 34, 25, 43 and 58 of my said*



Affidavit. I am aware that what is stated therein is true and correct.”).

This document is not admitted by defendant no.1 but existence thereof is admitted by defendant no. 2. Original letter was addressed by defendant no.2 to defendant no. 1. The witness has identified the signature of second defendant. On consideration of the depositions made in paragraph 43 of the affidavit dated 15/11/2011 and para 9 of the additional affidavit dated 3/8/2013, the said document is marked as Exhibit “P-34”.

9. **Re: Sr. No. 23 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011:** Document dated 10.10.2000 being the Original letter addressed by the Defendant No. 2 to Defendant No. 1 regarding liability to Defendant No.11 being his personal liability. The same is referred to in paras 25 and 26 of the Plaint and in para 43 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*“In furtherance of this assurance, the Defendant No.2 also issued three separate letters all dated October 10, 2000 addressed to the 1st Defendant Company confirming inter alia, that the amounts of approx. Rs. 1.02 crores, Rs. 89.54 lakhs and Rs. 2.02 crores owed to Gupta Livestock Breeding & Research Farm, Gupta Emerald Mines Pvt Ltd and the Defendant No.11 respectively as on August 31, 2000 were the personal liability and responsibility of the Defendant No.2.The same are on the personal letterhead of the 2nd Defendant and have been signed by the 2nd Defendant. I identify the 2nd Defendant’s signature thereon”* and in para 9 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013 (*“Insofar as*



documents at sr. nos. 12, 13, 15, 21 – 23 and 40 of the said compilation of documents are concerned, I have referred to them at paragraphs 34, 25, 43 and 58 of my said Affidavit. I am aware that what is stated therein is true and correct.”).

This document is not admitted by defendant no.1 but existence thereof is admitted by defendant no. 2. Original letter was addressed by defendant no.2 to defendant no. 1. The witness has identified the signature of second defendant. On consideration of the depositions made in paragraph 43 of the affidavit dated 15/11/2011 and para 9 of the additional affidavit dated 3/8/2013, the said document is marked as Exhibit “P-35”.

10. Re: Sr. No. 31 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011: Document dated 21.11.2000 being the Original letter dated 21.11.2000 addressed by M/s. Bharat V. Pathak & Co., Company Secretary to the Plaintiff No. 1. The same is referred to in para 35 of the Plaint and in para 55 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*“Mr Pathak will separately depose to the correctness of his report. I believe the same to be true and correct.It also indicated correctly that on October 27, 1998 – 24,990 shares were transferred to us, the Plaintiffs herein”*) and in para 12 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: *“The document at sr. no. 31 of the said Compilation of documents is prepared by Mr. Bharat V. Pathak, Company Secretary in the ordinary course of his business and/or in the discharge of professional duty. I had engaged his services for the purposes of this Report. The said Mr. Pathak died on/about*



12th November, 2011. As such his evidence cannot be produced. I tender the original report prepared on his letter head duly signed by him. I identify his signature”.

This document is denied by defendant no.1 . Existence is however, admitted by defendant no.2 . The letter was addressed by M/s. Bharat Pathak & Co. Company Secretary to Plaintiff No. 1. It is the case of the plaintiffs that Bharat Pathak & Co. Company Secretary has prepared the said document in the ordinary course of business and/or in discharge of professional duty whose services were engaged by the witness for the purpose of the said report. Mr. Shah, learned counsel appearing for the plaintiffs submits that the original of this document has been produced by the witness which document is a primary document under section 32 and thus has to be marked as Exh. P36. Since original is produced, it is primary document under section 32 of the Evidence Act and in view of what is stated in paragraph 12 the additional affidavit dated 3/8/2013, the document is marked as Exhibit “P-36”.

11. Re: Sr. No. 33 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011: Document dated 24.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Royal Western India Turf Club (“RWITC”). The same is referred to in para 37 of the Plaint and in para 57 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (“My wife and I also addressed several letters dated 24th November 2000 to various Race Clubs across the country informing them that we were the 99.96% shareholders of the 1st Defendant Company and the 2nd, 8th and 9th Defendants were



abusing their authority as the Directors of the 1st Defendant Company. ... All of the same are signed by my wife and me. I identify our signatures thereon. The contents of all are correct. The originals will be with the various Race-Clubs who are the addressees thereof").

Plaintiffs had addressed this letter to third party. Defendant nos. 1 and 2 have not disputed the existence of this document. This letter was addressed by witness himself. Plaintiffs have issued notice to produce to such third party, which original of this document has not been produced. Upon consideration of the deposition made in paragraph 57 of the affidavit dated 15/11/2011, the said document is marked as Exhibit "P-37".

12. Re: Sr. No. 34 of the Plaintiffs' Affidavit of Documents dated 23.9.2011: Document dated 24.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Royal Calcutta Turf Club. The same is referred to in para 37 of the Plaint and in para 57 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"My wife and I also addressed several letters dated 24th November 2000 to various Race Clubs across the country informing them that we were the 99.96% shareholders of the 1st Defendant Company and the 2nd, 8th and 9th Defendants were abusing their authority as the Directors of the 1st Defendant Company. ... All of the same are signed by my wife and me. I identify our signatures thereon. The contents of all are correct. The originals will be with the various Race-Clubs who are the addressees thereof")*). On 27th July, 2013 the Royal Calcutta Turf Club faxed a copy of the said letter dated 24th November, 2000 to the office of the Advocates



for the Plaintiffs.

Plaintiffs had addressed this letter to third party. Defendant nos. 1 and 2 have not disputed the existence of this document. This letter was addressed by witness himself. Plaintiffs have issued notice to produce to such third party with the original of this document which has not been produced. Upon consideration of the deposition made in paragraph 57 of the affidavit dated 15/11/2011, the said document is marked as Exhibit "P-38".

13. Re: Sr. No. 35 of the Plaintiffs' Affidavit of Documents dated 23.9.2011: Document dated 24.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Madras Race Club. The same is referred to in para 37 of the Plaint and in para 57 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"My wife and I also addressed several letters dated 24th November 2000 to various Race Clubs across the country informing them that we were the 99.96% shareholders of the 1st Defendant Company and the 2nd, 8th and 9th Defendants were abusing their authority as the Directors of the 1st Defendant Company. ... All of the same are signed by my wife and me. I identify our signatures thereon. The contents of all are correct. The originals will be with the various Race-Clubs who are the addressees thereof"*).

Plaintiff had addressed this letter to third party. Defendant nos. 1 and 2 have not disputed the existence of this document. This letter was addressed by plaintiff witness. Plaintiffs have issued notice to produce original to such third party which has not been produced. Upon



consideration of the deposition made in paragraph 57 of the affidavit dated 15/11/2011, the said document is marked as Exhibit “P-39”.

14. Re: Sr. No. 36 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011: Document dated 24.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Delhi Race Club 1940 Ltd. The same is referred to in para 37 of the Plaint and in para 57 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*“My wife and I also addressed several letters dated 24th November 2000 to various Race Clubs across the country informing them that we were the 99.96% shareholders of the 1st Defendant Company and the 2nd, 8th and 9th Defendants were abusing their authority as the Directors of the 1st Defendant Company. ... All of the same are signed by my wife and me. I identify our signatures thereon. The contents of all are correct. The originals will be with the various Race-Clubs who are the addressees thereof”*).

Witness had addressed this letter to third party. Defendant nos. 1 and 2 have not disputed the existence of this document. Plaintiffs have issued notice to produce original to such third party which has not been produced. Upon consideration of the deposition made in paragraph 57 of the affidavit dated 15/11/2011, the said document is marked as Exhibit “P-40”.

15. Re: Sr. No. 37 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011: Document dated 24.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Mysore Race Club 1940 Ltd. The same is referred to in



para 37 of the Plaint and in para 57 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"My wife and I also addressed several letters dated 24th November 2000 to various Race Clubs across the country informing them that we were the 99.96% shareholders of the 1st Defendant Company and the 2nd, 8th and 9th Defendants were abusing their authority as the Directors of the 1st Defendant Company. ... All of the same are signed by my wife and me. I identify our signatures thereon. The contents of all are correct. The originals will be with the various Race-Clubs who are the addressees thereof"*).

Plaintiffs had addressed this letter to third party. Defendant nos. 1 and 2 have not disputed the existence of this document. This letter was signed by witness himself. Plaintiffs have issued notice to produce original to such third party which has not been produced. Upon consideration of the deposition made in paragraph 57 of the affidavit dated 15/11/2011, the said document is marked as Exhibit "P-41".

16. Re: Sr. No. 38 of the Plaintiffs' Affidavit of Documents dated 23.9.2011: Document dated 24.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Hyderabad Race Club. The same is referred to in para 37 of the Plaint and in para 57 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"My wife and I also addressed several letters dated 24th November 2000 to various Race Clubs across the country informing them that we were the 99.96% shareholders of the 1st Defendant Company and the 2nd, 8th and 9th Defendants were abusing their authority as the*



Directors of the 1st Defendant Company. ... All of the same are signed by my wife and me. I identify our signatures thereon. The contents of all are correct. The originals will be with the various Race-Clubs who are the addressees thereof”).

Plaintiffs had addressed this letter to third party. Defendant nos. 1 and 2 have not disputed the existence of this document. This letter was signed by witness himself. Plaintiffs have issued notice to produce original to such third party which has not been produced. Upon consideration of the deposition made in paragraph 57 of the affidavit dated 15/11/2011, the said document is marked as Exhibit “P-42”.

17. Re: Sr. No. 39 of the Plaintiffs’ Affidavit of Documents dated 23.9.2011: Document dated 24.11.2000 being the Original office copy of letter addressed by the Plaintiffs to the Bangalore Turf Club Ltd. The same is referred to in para 37 of the Plaint and in para 57 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*“My wife and I also addressed several letters dated 24th November 2000 to various Race Clubs across the country informing them that we were the 99.96% shareholders of the 1st Defendant Company and the 2nd, 8th and 9th Defendants were abusing their authority as the Directors of the 1st Defendant Company. ... All of the same are signed by my wife and me. I identify our signatures thereon. The contents of all are correct. The originals will be with the various Race-Clubs who are the addressees thereof”).*

Plaintiffs had addressed this letter to third party. Defendant nos. 1 and 2 have not disputed the existence of this



document. This letter was signed by witness himself. Plaintiffs have issued notice to produce original to such third party which has not been produced. Upon consideration of the deposition made in paragraph 57 of the affidavit dated 15/11/2011, the said document is marked as Exhibit "P-43".

18. Re: Sr. No. 45 of the Plaintiffs' Affidavit of Documents dated 23.9.2011: Document dated 18.12.2000 being the Photo-copy of letter addressed by the Advocates for Plaintiffs to the Advocates for Defendant No.2. The same is referred to in para 44 of the Plaint and in para 63 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"The said reply was sent by our Advocates in our (i.e., the 2nd Plaintiff's and my) absence on December 18, 2000. I produce the same herewith and affirm the contents thereof as correct and in accordance with the instructions I had given to my Advocates. I identify the signature of our Advocate, Mr Vashi, thereon. I call upon the 2nd Defendant to produce the original thereof"*) and in para 13 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: *"In respect of documents listed at sr. nos. 45, 50, 53, 55, 56 and 58 of the said compilation of documents, I have referred to the said documents at paragraphs 63, 62(d), 68, 83, 82 and 84 of the said Affidavit. In addition to what I have stated therein, I say that by my Advocate's letter dated 24th July 2013 I have given notice to produce originals of the documents at sr. no. 45, 55 and 56 which is in the custody of the recipients thereof. These letters were addressed by my Advocates under my instructions. My Advocates had under my instructions made*



photocopies of the said letters from the originals and compared the copies so made with the originals. These office copies retained by my Advocates, for their record, were given to me. These photocopies are now tendered in evidence and I pray that the same be marked in evidence”.

This document is disputed by defendant no. 1. Existence of this document is admitted by defendant nos.2 and 3. Advocate for the plaintiffs had addressed this letter to advocate for defendant no. 2. Since existence of this document is not disputed by defendant no. 2 and in view of the fact that the notice to produce was given by plaintiffs to defendant no.2 and original has not been produced and upon consideration of paragraph 63 of the affidavit dated 15/11/2011 and para 13 of the affidavit dated 3/8/2013, this document is marked as Exhibit “P-44”.

19. Re: Annexure P-4 to the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief: Document dated 8.02.2001 being the Photo-copy of the letter addressed by the Advocates for the Plaintiffs to RWITC. The same is referred to in para 52(D)(c) of the Plaint and in para 81 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*“Our Advocates therefore addressed a letter dated 8th February, 2001 to RWITC Pune with a cc to RWITC Mumbai calling upon the RWITC not to permit the auction or private sale and / or transfers in respect of the horses of the 1st Defendant company. The original thereof will be with the RWITC. The said letter was sent on our instructions. The contents thereof, as seen in the photocopy annexed to the Plaint, are correct”*).



This document is disputed by defendant no. 1 but existence thereof is not disputed by defendant no. 2. Upon consideration of para 81 of the affidavit dated 15/11/2011, the said document is marked as Exhibit "P-45".

20. Re: Sr. Nos. 93 - 108 of the Plaintiffs' Affidavit of Documents dated 23.9.2011: Documents being the Share Transfer Forms in respect of transfer of shares of Defendant No. 1 in favour of the Plaintiffs No. alongwith the original Share Certificates. The same is referred to in para 24 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief (*"Pursuant to the aforesaid SPA, 17990 shares of the 1st Defendant Company of the face value of Rs.100/- each were transferred to my name and 7000 shares of the face value of Rs.100/- each were transferred to the name of the 2nd Plaintiff. The photocopies show the signatures of the transferors and the transferees which I identify"*) and in para 14 of the Additional Affidavit in lieu of examination-in-chief of the Plaintiff No. 1 dated 03.08.2013, wherein it is averred: *"In respect of the documents at sr. nos. 93 – 108 of the said compilation of documents, I have referred to them at paragraph 24 of the said Affidavit. I say that the contents thereof are true and correct".* **This document is admitted by defendant no.1 company which are share transfer forms in respect of transfer of shares of defendant no.1 in favour of plaintiff along with original share certificates. Since the existence and contents are admitted by defendant no. 1 and upon consideration of paragraph 24 of affidavit dated 15/11/2011 and para 14 of the additional affidavit dated 3/8/2013, this documents are marked as Exhibit "P-46".**



21. Re: Sr. Nos. 1 - 133 of the Plaintiffs' Supplementary Affidavit of Documents dated 14.10.2011: Documents being the Medical reports of the Plaintiff No. 1 for the period 28.10.98 to 17.04.2001. The same is referred to in para 27 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"The corresponding medical records are in my power and possession and are produced in my Affidavit of documents dated 14th October, 2011 at sr. nos. 2 - 133 (Compilation Sr. Nos. 110 – 244, pages 1223 – 1490)".*

These documents are disputed by all the defendants. Witness has produced original of these documents from his custody. These documents relates to medical treatment of plaintiff No. 1. Since these documents are primary documents, the documents are marked as Exh. P47, however, subject to proof of contents. It is made clear that the contents of these documents are not proved by this witness. Plaintiffs may examine any other witness to prove the contents of the said documents. Subject to proof of contents, the said document is marked as Exhibit "P-47".

22. Re: Sr. Nos. 143 of the Plaintiffs' Supplementary Affidavit of Documents dated 14.10.2011: Document dated 4.12.2000 being the Original Power of Attorney of Mrs. Chandrika A. Bodani executed in favour of Mr. Dharmil A. Bodani, Ms. Kinnari A. Bodani and Mr. Ashwin Ahya. The same is referred to in para 64 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *"I have disclosed the originals of the powers of attorney given by me to Dharmil and by my wife Chandrika Bodani, the 2nd Plaintiff, to*



Ashwin Ahya, the 17th Defendant at Sr. No. 143 & 144 of my supplementary Affidavit of Documents dated 14th October, 2011 (Compilation Sr. Nos. 255 & 256, pages 1581 to 1596). I produce the same and affirm the correctness of the contents thereof. I identify the signatures thereon as those of myself and my wife respectively. We have been identified thereon by Mr M.M. Vashi, Advocate. I identify his signature thereon”.

This document is disputed by all the defendants. The witness has produced original power of attorney given by witness and plaintiff no. 2 in favour of defendant no. 16 who is their son. Upon consideration of paragraph 64 of the affidavit dated 15/11/2011, the said document is marked as Exhibit “P-48”.

23. Re: Sr. Nos. 144 of the Plaintiffs’ Supplementary Affidavit of Documents dated 14.10.2011: Document dated 4.12.2000 being the Original Power of Attorney of Mr. Anil K. Bodani executed in favour of Mr. Dharmil A. Bodani, Ms. Kinnari A. Bodani and Mr. Bhavin H. Soonderji. The same is referred to in para 64 of the Affidavit dated 15.11.2011 of Plaintiff No.1 in lieu of examination-in-chief, wherein it is averred: *“I have disclosed the originals of the powers of attorney given by me to Dharmil and by my wife Chandrika Bodani, the 2nd Plaintiff, to Ashwin Ahya, the 17th Defendant at Sr. No. 143 & 144 of my supplementary Affidavit of Documents dated 14th October, 2011 (Compilation Sr. Nos. 255 & 256, pages 1581 to 1596). I produce the same and affirm the correctness of the contents thereof. I identify the signatures thereon as those of myself and my wife respectively. We have been identified thereon by Mr M.M. Vashi, Advocate. I identify his signature thereon”.*



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This document has been disputed by the defendants. The witness has produced the original power of attorney given by witness and plaintiff no.2 executed in favour of defendant no. 16 and others. Upon consideration of para 64 of the affidavit dated 15/11/2011 and since the witness is one of the author of the said document, the said document is marked as Exhibit "P-49".

(R.D.DHANUKA, J.)