

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No. 34/(MAH)/2017  
CA No.

CORAM:


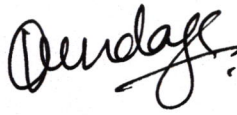
Present: SHRI B.S.V. PRAKASH KUMAR  
MEMBER (J)

SHRI V. NALLASENAPATHY  
MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 14.03.2017

NAME OF THE PARTIES: HDFC Bank Limited  
V/s.  
Esskay Motors Pvt. Ltd.

SECTION OF THE COMPANIES ACT: I & BP of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
1	Sankalp Anantwar a/w Srinivas Akaya	Advocate for Applicant	
2	Vsunda Daga	Advocate for Respondent	

Order

CP No. 34/I&BP/NCLT/MB/MAH/2017

Counsel for the Corporate Debtor filed an Application for withdrawal of the Insolvency Petition reflecting settlement in between them, accordingly this Petition is hereby dismissed as withdrawn by looking at the terms arrived in between them.

Sd/-  
**B.S.V. PRAKASH KUMAR**  
Member (Judicial)

Sd/-  
**V. NALLASENAPATHY**  
Member (Technical)

Encls: Settlement Agreement dated 10.3.2017.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

AT MUMBAI

INSOLVENCY PETITION NO. 34 OF 2017

HDFC Bank Limited

... Applicant

V/s.

Esskay Motors Private Limited.

... Corporate Debtor

**APPLICATION FOR WITHDRAWAL OF THE INSOLVENCY PETITION**  
**ON BEHALF OF THE APPLICANT ABOVENAMED**

On behalf of the Applicant abovenamed, it is humbly stated as under:

1. The Applicant had filed Company Petition No. 711 of 2016 before the Hon'ble High Court, Bombay in the event of the Corporate Debtor's inability to pay its debt. The Company Petition stood transferred before this Hon'ble Tribunal as per Notification G.S.R 1119 (E) dated 7/12/2016. In compliance of the said notification, the Applicant filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 on 7<sup>th</sup> February, 2017. The Petition was listed before the Hon'ble Tribunal on 10<sup>th</sup> March, 2017 for admission.
2. In the meantime, the parties after discussions and deliberations agreed to settle the dispute and the Corporate Debtor agreed to pay the outstanding amount as per the terms agreed in a Settlement Agreement dated 10<sup>th</sup> March, 2017. A copy of the Settlement Agreement dated 10<sup>th</sup> March, 2017 is annexed hereto and marked as **Exhibit: 'A'**.
3. In view of the aforesaid and the parties settling their disputes, the Applicant humbly prays that the above Petition be allowed to be withdrawn as per Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

FOR THIS ACT OF KINDNESS THE APPLICANT SHALL EVER PRAY.

Dated this 14<sup>th</sup> day of March, 2017

**FOR M/s. INDIALAW**



Advocates for the Applicant

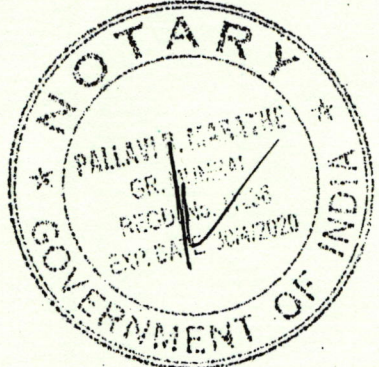
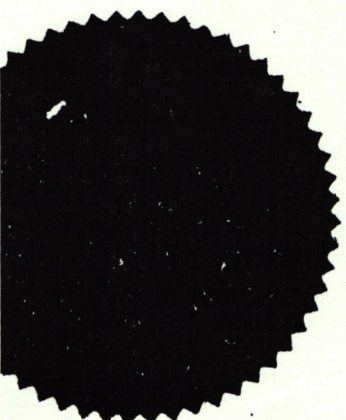
Exhibit : 'A'



महाराष्ट्र MAHARASHTRA

2016

AC 022714



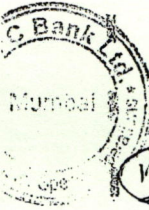
प्रधान मुद्रांक कार्यालय, मुंबई  
प. मु. वि. क्र. ८०००००६  
- 3 MAR 2017  
सक्षम अधिकारी

**SETTLEMENT AGREEMENT**

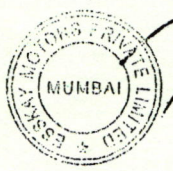
THIS SETTLEMENT AGREEMENT is made and entered into at  
Mumbai on 10<sup>th</sup> day of March, 2017

BETWEEN

**HDFC Bank Limited**, A banking company having its registered office at  
HDFC Bank House, Senapati Bapat Marg, Lower Parel (West), Mumbai -  
400 013 and having one of its office Department for Special Operations  
at Peninsula Business Park, B-Wing, 4th Floor, Dawn Mill Compound,  
Ganpat Rao Kadam Marg, Lower Parel, Mumbai, 400 013 through Mr.  
Sunil Bhanushali, Assistant Vice President - Legal, and authorized  
signatory of the Bank, of the **FIRST PART**;



*Sunil Bhanushali*



*Atul Chitkesh  
N. Ramchandra Prakash  
Komal. C. Patil*

AND

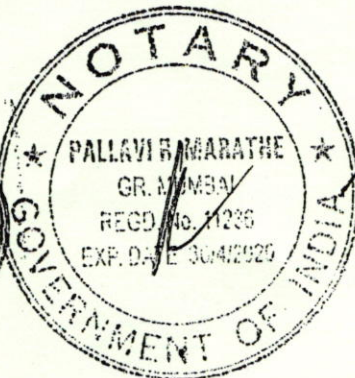
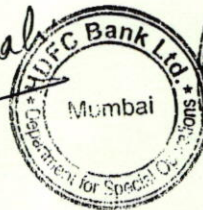
**Esskay Motors Pvt. Ltd.**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Mezzanine and Ground Floor, Motilal Oswal Tower, Junction of Gokhale Road and Sayani Road, Prabhadevi, Mumbai - 25 and having CIN No. U34300MH2011PTC217218, through its CMD, Mr. Chandra Kalian Parkash, of the **SECOND PART**.

AND

(1). **Mr. Chandra Kalian Parkash**, Managing Director & Guarantor of M/s. Esskay Motors Pvt. Ltd., having address at Flat no.11 and 12, Maker tower - H Cuffe parade, Colaba, Mumbai- 400 005, and A-0102, Lodha Bellissimo, Appolo Mills Compound, N.M.Joshi Marg, Mahalaxmi, Mumbai-400 011; (2). **Neelam Chandra Parkash**, Director & Guarantor of M/s. Esskay Motors Pvt. Ltd., having address at Flat no.11 and 12, Maker tower - H Cuffe parade, Colaba, Mumbai- 400 005 and A-0102, Lodha Bellissimo, Appolo Mills Compound, N.M.Joshi Marg, Mahalaxmi, Mumbai-400 011; (3). **Komal Chandra Parkash**, Director & Guarantor of M/s. Esskay Motors Pvt. Ltd., having address at Flat no.11 and 12, Maker tower - H Cuffe parade, Colaba, Mumbai- 400 005 and A-0102, Lodha Bellissimo, Appolo Mills Compound, N.M.Joshi Marg, Mahalaxmi, Mumbai-400 011; (4). **Sheetal Chandra Parkash**, Director & Guarantor of M/s. Esskay Motors Pvt. Ltd., having address at Flat no.11 and 12, Maker tower - H Cuffe parade, Colaba, Mumbai- 400005 and A-0102, Lodha Bellissimo, Appolo Mills Compound, N.M.Joshi Marg, Mahalaxmi, Mumbai-400 011; of the **THIRD PART**

WHEREAS:-

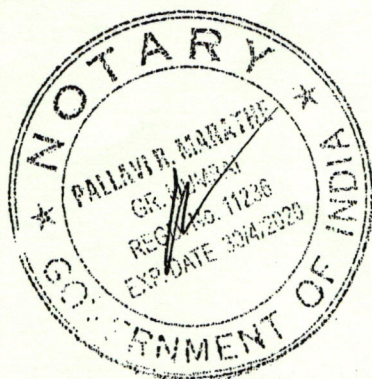
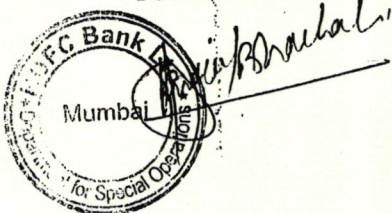
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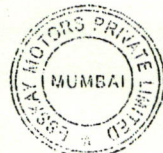
*[Handwritten initials]*  
NCP  
KLP



- 1 Party of the first part herein, being the Financial Creditor, for the sake of brevity will be referred to as "**Bank**";
- 2 Parties of the second part herein, being the Corporate Debtor, for the sake of brevity will be referred to as "**Company**";
- 3 Parties of the third part herein, being the directors and guarantors of the Company, for the sake of brevity will be referred to as "**Guarantors**";
- 4 The Company approached the Bank to avail Inventory Funding Facility (AUIF) and the Bank, in accordance with the terms and conditions mentioned in the Sanction Letter dated 23<sup>rd</sup> May, 2014 sanctioned an Inventory Funding (AUIP) Facility for a sum up to Rs.3,00,00,000/- (Rupees Three Crores Only) (hereinafter referred to as the said "Facility"). The Bank and the Company thereafter executed a Loan Agreement dated 12<sup>th</sup> July, 2014, inter alia, recording the terms and conditions including but not limited to the obligations of the Company under the Loan Agreement along with other incidental security documents in favour of the Bank including the Personal Guarantees given by the parties of the third part.
- 5 The Company availed and utilized the said Facility for its benefit but failed to repay the amounts due and payable under the said Facility and committed continuous defaults in the payment of the installments/interest/principal due as stipulated in the terms and conditions of the Loan Agreement.
- 6 The Bank claims an amount of Rs.1,32,27,784.63 (Rupees One Crore Thirty Two Lakhs Twenty Seven Thousand Seven Hundred Eighty Four and Sixty Three Paise only) is due and payable by the Respondent to the Petitioner as on 30<sup>th</sup> June, 2016 along with further interest calculated @ 24% per annum from the date of the notice until payment and/or realization.



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7 Upon default and failure to pay the outstanding amounts by the Company despite several requests and demands by the Bank, the Bank initiated the following legal actions against the Company for recovery of the outstanding amounts as under:

- a. Original Application No. 638 of 2016 filed in the Debt Recovery Tribunal – II, Mumbai;
- b. Case No. 1307/SS/2016 under Section 138 of the Negotiable Instruments Act, 1881;
- c. Company Petition No. 711 of 2016 (filed in the Bombay High Court), which was transferred and tagged with Insolvency Petition No. 34 of 2017 in the National Company Law Tribunal, Mumbai Bench;

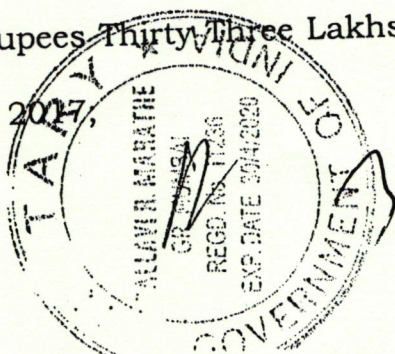
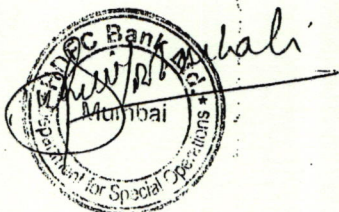
8 The parties after detailed discussions and negotiations have agreed to settle the said Claim for a full and final settlement amount of Rs.1,32,27,784.63 (Rupees One Crore Thirty Two Lakhs Twenty Seven Thousand Seven Hundred Eighty Four and Sixty Three Paise only) ("**Settlement Amount**");

9 The parties are desirous of recording the terms and conditions of their settlement in writing.

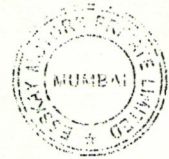
**NOW THIS SETTLEMENT AGREEMENT WITNESSETH AS UNDER:-**

1. The Company hereby irrevocably agrees, declares, confirms and acknowledges that an outstanding amount of Rs.1,32,27,784.63 (Rupees One Crore Thirty Two Lakhs Twenty Seven Thousand Seven Hundred Eighty Four and Sixty Three Paise only) being the amount due and payable by the Company to the Bank as on as on 30<sup>th</sup> June, 2016;
2. The Company shall make payment of the Settlement Amount in the following manner as specified hereunder:

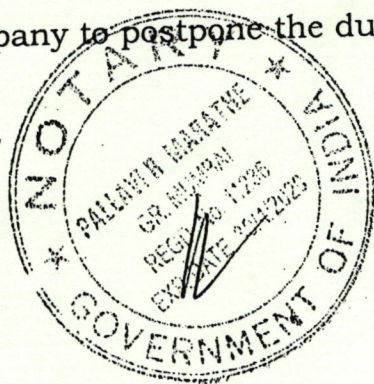
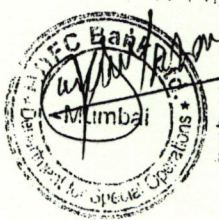
- a. Rs.33,00,000/- (Rupees Thirty Three Lakhs Only) shall be paid on or before 24<sup>th</sup> March, 2017,



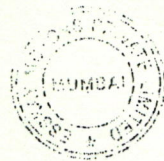
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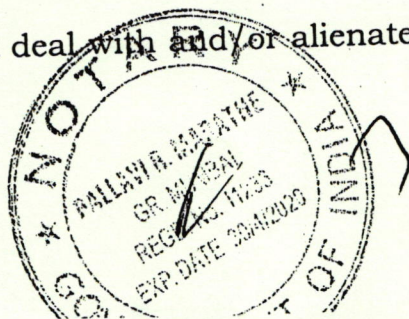
- b. Rs.33,00,000/- (Rupees Thirty Three Lakhs Only) shall be paid on or before 10<sup>th</sup> April, 2017;
- c. Rs.33,00,000/- (Rupees Thirty Three Lakhs Only) shall be paid on or before 24<sup>th</sup> April, 2017;
- d. Rs.33,27,784.63/- (Rupees Thirty Three Lakhs Twenty Seven Thousand Seven Hundred Eighty Four and Sixty Three Paise) shall be on or before 10<sup>th</sup> May, 2017;
3. The Debtor Company has issued and handed over ~~Demand Draft and~~ Post Dated Cheques, details of which are as follows:-
- a. Cheque bearing No. 22442 dated 24.03.2017 drawn on Union Bank, Veer Nariman Branch, Mumbai favouring the Bank in respect of the instalment mentioned in Clause 1.(a) above.
- b. Cheque bearing No. 22443 dated 10.04.2017 drawn on Union Bank, Veer Nariman Branch, Mumbai favouring the Bank in respect of the instalment mentioned in Clause 1.(b) above.
- c. Cheque bearing No. 22444 dated 24.04.2017 drawn on Union Bank, Veer Nariman Branch, Mumbai favouring the Bank in respect of the instalment mentioned in Clause 1.(c) above.
- d. Cheque bearing No. 22445 dated 10.05.2017 drawn on Union Bank, Veer Nariman Branch, Mumbai favouring the Bank in respect of the instalment mentioned in Clause 1.(d) above.
4. The Debtor Company agrees that all the post-dated cheques in respect of the instalments mentioned in Clause 1(a) to 1(d) above shall be deposited by Applicant in their Bank on its respective due dates without any prior intimation to the Debtor Company and there will not be any request by the Debtor Company to postpone the due date of payment for any reason whatsoever.



3 Self  
NIP  
KUP



5. In the event of the Debtor Company committing any default in respect of payment of the amounts as per the aforementioned clauses, the Bank shall continue with the pending legal proceedings for the remaining amounts including interest and other applicable charges, which are due and payable.
6. Upon signing the present Settlement Agreement the Bank shall withdraw the Insolvency Petition No. 34 of 2017 in the National Company Law Tribunal, Mumbai Bench;
7. Upon payment of all the installments as mentioned in Clause 1 above, the Bank shall withdraw the other legal proceedings as follows:
  - a. the Original Application No. 638 of 2016 filed in the Debt Recovery Tribunal – II, Mumbai; and
  - b. Case No. 1307/SS/2016 under Section 138 of the Negotiable Instruments Act, 1881;
8. Upon payment of all the installments as mentioned in Clause 1 above, the Company shall withdraw the following:
  - a. The Counter Claim filed by the Company and its directors in the Original Application No. 638 of 2016 filed in the Debt Recovery Tribunal – II, Mumbai
  - b. The Revision Applications filed in the Sessions Court, Bombay challenging the issuance of process order in Case No. 1307/SS/2016 under Section 138 of the Negotiable Instruments Act, 1881 filed by the Bank.
9. The Company shall not raise any claim against the Bank in respect of said Facility or otherwise in future.
10. The party of the Second Part (Company) and the Party of the Third Part (Guarantors) shall not deal with and/or alienate and/or create any third



By  
NIP  
KUP





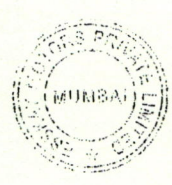
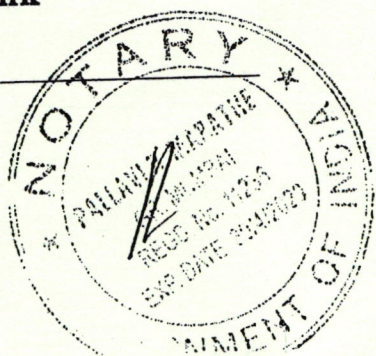
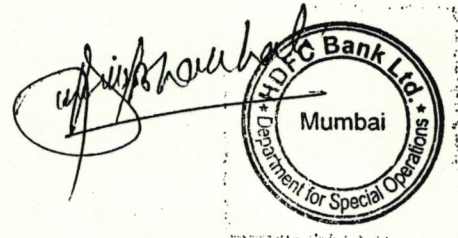
party rights in respect of their personal properties until realization of the entire Settlement Amount as mentioned hereinabove.

11. Upon receipt and realization of all the instalments as mentioned hereinabove, the Bank shall issue No Due Certificate to the parties of the Second Part (Company) and the Third Part and discharge them from all liabilities in respect of the said Facility.
12. Upon receipt and realization of the full and final payment of the Settlement Amount, the party of the First Part will not have any claim against the personal properties of parties of the second part and the third part, i.e. either of the borrower (Company) and/or guarantors in any manner whatsoever.
13. The present Settlement Agreement is signed by all the parties by their free will and without any coercion or undue influence being exerted upon them.
14. *Settlement Agreement is executed*  
The present ~~Consent Terms~~ are being filed without prejudice the right of the Applicant to initiate fresh Insolvency Proceedings in respect of the aforesaid Claim, in the event the Debtor Company commits any default in respect of payment of amounts as per the aforementioned clauses.

*[Handwritten signature]*

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands to the day and year first hereinabove written.

SIGNED, SEALED AND DELIVERED by )  
The within-named )  
**HDFC Bank Limited** )  
**through Mr. Sunil Bhanushali, authorized** )  
**signatory of the Bank** )  
In the presence of \_\_\_\_\_ )



*[Handwritten initials and date]*  
7  
20/11/21

SIGNED, SEALED AND DELIVERED by )

The within-named )

**Esskay Motors Pvt. Ltd,** )

through Mr. Chandra Kalian Prakash )

In the presence of \_\_\_\_\_ )

**Chandra Kalian Parkash** )

In the presence of \_\_\_\_\_ )

**Neelam Chandra Parkash** )

In the presence of \_\_\_\_\_ )

**Komal Chandra Parkash** )

In the presence of \_\_\_\_\_ )

**Sheetal Chandra Parkash** )

In the presence of \_\_\_\_\_ )

For ESSKAY MOTORS PRIVATE LIMITED

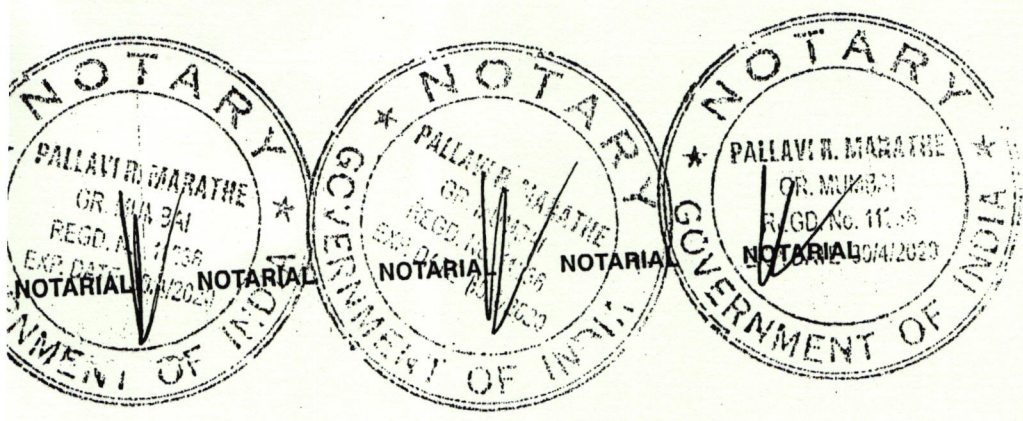
*[Signature]*  
Director

*[Signature]*

*Neelam e Parkash*

*Komal C. Parkash*

*Sheetal Parkash.*



S.No. 0704/17  
DATE 14 MAR 2017

BEFORE ME

*[Signature]*  
PALLAVI R. MARATHE  
ADVOCATE & NOTARY  
B/8, Sunder Sadan, 63-A  
Wajila Patel Road,  
Opp. Robert Money School,  
Girgaon, Mumbai - 400 002

यूनियन बैंक  
ऑफ इंडिया

**Union Bank**  
of India

वीर नरिमान रोड, मुंबई - ४०० ०२०  
Veer Nariman Road, MUMBAI - 400 020  
IFS Code : UBIN0531952

Valid for 3 months from the date of issue

दिनांक  
Date 10 05 2017  
D D M M Y Y Y Y

Pay **HDFC Bank Ltd.**

या धारक को **Or Bearer**

रुपये Rupees *Thirty three lacs twenty seven*

*thousand seven hundred and eighty four paise* अदा करें ₹ 33,27,784/63 p

खाता सं.  
A/c No. 319501010036521

चेक नं.  
Cheque No. 12224435

For **ESSKAY MOTORS PRIVATE LIMITED**

Director

Please sign above

**VOID**

भारत की हमारी सभी शाखाओं में सममूल्य पर देय  
PAYABLE AT PAR AT ALL OUR BRANCHES IN INDIA

⑈ 224435⑈ 400026021⑈ 319512⑈ 29

यूनियन बैंक  
ऑफ इंडिया

**Union Bank**  
of India

वीर नरिमान रोड, मुंबई - ४०० ०२०  
Veer Nariman Road, MUMBAI - 400 020  
IFS Code : UBIN0531952

Valid for 3 months from the date of issue

दिनांक  
Date 10 04 2017  
D D M M Y Y Y Y

Pay **HDFC Bank Ltd.**

या धारक को **Or Bearer**

रुपये Rupees *Thirty three lacs only*

अदा करें ₹ 33,00,000/-

खाता सं.  
A/c No. 319501010036521

चेक नं.  
Cheque No. 12224433

For **ESSKAY MOTORS PRIVATE LIMITED**

Director

Please sign above

**VOID**

भारत की हमारी सभी शाखाओं में सममूल्य पर देय  
PAYABLE AT PAR AT ALL OUR BRANCHES IN INDIA

⑈ 224433⑈ 400026021⑈ 319512⑈ 29

यूनियन बैंक  
ऑफ इंडिया

**Union Bank**  
of India

वीर नरिमान रोड, मुंबई - ४०० ०२०  
Veer Nariman Road, MUMBAI - 400 020  
IFS Code : UBIN0531952

Valid for 3 months from the date of issue

दिनांक  
Date 24 03 2017  
D D M M Y Y Y Y

Pay **HDFC Bank Ltd.**

या धारक को **Or Bearer**

रुपये Rupees *Thirty three lacs only*

अदा करें ₹ 33,00,000/-

खाता सं.  
A/c No. 319501010036521

चेक नं.  
Cheque No. 12224432

For **ESSKAY MOTORS PRIVATE LIMITED**

Director

Please sign above

**VOID**

भारत की हमारी सभी शाखाओं में सममूल्य पर देय  
PAYABLE AT PAR AT ALL OUR BRANCHES IN INDIA

⑈ 224432⑈ 400026021⑈ 319512⑈ 29

यूनियन बैंक  
Payee

**Union Bank**  
of India

वीर नरिमान रोड, मुंबई - ४०० ०२०  
Veer Nariman Road, MUMBAI - 400 020  
IFS Code : UBIN0531952

Valid for 3 months from the date of issue  
दिनांक  
Date 24 04 2017  
D U M M Y Y Y Y

Pay HDFC Bank Ltd.

या धारक को Or Bearer

रुपये Rupees Thirty three lacs only

अदा करें। ₹ 33,00,000/-

खाता सं.  
A/c No. 319501010036521

चेक नं.  
Cheque No. 12224434

For ESSKAY MOTORS PRIVATE LIMITED

**VOID**

भारत की हमारी सभी शाखाओं में सममूल्य पर देय  
PAYABLE AT PAR AT ALL OUR BRANCHES IN INDIA



Director  
Please sign above

⑈ 224434 ⑈ 400026021⑈ 319512⑈ 29



**CERTIFIED TRUE COPY OF THE EXTRACT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF M/S. ESSKAY MOTORS PRIVATE LIMITED, GROUND & MEZZANINE FLOOR, MOTILAL OSWAL TOWER, JUNCTION OF GOKHALE AND SAYANI ROAD, PRABHADEVI, MUMBAI 400025 HELD ON 10<sup>TH</sup> MARCH, 2017**

The Chairman cum Managing Director [CMD] Mr. C.K. Parkash informed the Board that the matter of the inventory funding facility of Rs. 1,32,27,784.63/- provided by HDFC Bank Limited was required to be settled in terms of the initialed draft of the SETTLEMENT AGREEMENT put to the Board. The CMD was required to sign the settlement agreement for and on behalf of the Company and Mr.C.K.Parkash, Mrs. Neelam C.Parkash, Ms Sheetal C. Parkash and Ms, Komal C. Parkash were requested to sign the said settlement agreement as guarantors.

**RESOLVED :**

That the Chairman cum Managing Director Mr. C.K. Parkash be and is hereby authorized to sign the settlement agreement for and on behalf of the Company and Mr.C.K.Parkash, Mrs. Neelam C.Parkash, Ms Sheetal C. Parkash and Ms, Komal C. Parkash were requested to sign the said settlement agreement as guarantors.

The common seal of the Company be affixed in the presence of Mr.C.K.PARKASH on all the necessary documents.

Certified True Copy

**For ESSKAY MOTORS PRIVATE LIMITED**

**Director**

**Esskay Motors Pvt Ltd.**

Regd. Office / Showroom:  
Mezzanine & Ground Floor, Motilal Oswal Tower,  
Junction of Gokhale and Sayani Road, Prabhadevi, Mumbai - 400 025.  
Tel. + 91 022 24338500, Fax + 91 022 24338509  
Email : sales@esskaymotors.in

IN THE NATIONAL COMPANY LAW  
TRIBUNAL

AT MUMBAI BENCH

INSOLVENCY PETITION No.34 OF 2017

HDFC BANK LTD ... Applicant

V/s.

ESSKAY MOTORS PRIVATE LIMITED.

....Debtor Company

**APPLICATION FOR WITHDRAWAL**

Dated this 14<sup>th</sup> day of March, 2017

**M/s.INDIALAW**

Advocates for the Applicant  
Ground Floor, Apeejay Chambers  
Wallace Street, Fort,  
Mumbai - 400 001.  
Tel. No.22197400