

(English Translation of the Commercial Bench, Dzongkhag Court Judgment)

RICBL VIS Ugyen Wangchuk, Druk Tsentop Construction

Case pertaining to loan recovery

4. ISSUES

- 4.1. Whether or not the defendant Ugyen Wangchuk has executed legally valid agreement while availing loans from the Royal Insurance Corporation of Bhutan Limited?
- 4.2. Whether or not the plaintiff Royal Insurance Corporation of Bhutan Limited has collected all relevant documents as per norms of the bank while sanctioning loans to the defendant Ugyen Wangchuk?
- 4.3. Whether or not there is need for extension or abridgement of time?
- 4.4. Whether or not Mr. Tshering Dorji, Dechen Peldon and Sonam Zangpo are relevant in this case?
- 4.5. Whether or not the mortgaged properties are required to be seized in the event the defendant is not able to pay the loan?

5. Summary Findings of the Court

The legal representative, Mr. Sonam Jurney of the Royal Insurance Corporation of Bhutan Limited submitted before the Court that the defendant U. Wangchuk Construction's owner, Mr. Ugyen Wangchuk has availed a Contractors Revolving Credit Scheme loan bearing the account number CRCS/2010/84 on 04.06.2010 with the principal amount of Nu. 3,000,000/- (Three million) at 13% interest rate for one (1) year against mortgaged properties consisting of **firstly**, the land measuring 6,531.85 sq. ft. on Thram No. 28, Plot No. 191/xiii M18/3 located at Changshingpek in Mongar registered in his name, **secondly**, the land measuring 26 decimals on Thram No. 312, Plot No. 55 located at Melphey in Trashigang registered in the name of Yoeden, and **thirdly**, a land cruiser car with Vehicle Registration No. BP-I-B5306 (A/c. No. 21430). A Bank Guarantee was issued and invoked later against the above said loan account. Since the loan remain unpaid, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged properties be allowed to be seized and auctioned. In response, while Mr. Ugyen

Wangchuk acknowledged availing the loans, he requested the court to investigate whether the loans were sanctioned as per norms, and whether the Bank Guarantees were invoked appropriately with his consent as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each contention as to whether loans were given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, it was established that although the loan agreement dated 04/06/2010 in respect of the loan account No. CRCS/2010/84 for Nu. 3,000,000.00 (Three million) was executed between RICBL and Ugyen Wangchuk, the signature in the agreement was that of his sister, Tshering Pem. Further, the defendant's CIB was not checked appropriately. Of the aforementioned three mortgaged properties, only the 26 decimals land which is in the name of Mrs. Yuden under Thram No. 312, Plot No. 55 at Trashigang Melphey has been registered appropriately. However, since Mr. Ugyen Wangchuk has sold all three mortgaged properties, and since the land measuring 6,531.85 sq.ft. on Thram No. 28, Plot No. 191/xiii M18/3 located at Changshingpek, Mongar registered in the name of the defendant and the Land Cruiser vehicle bearing Registration No. BP-I-B5306 (A/c. No. 21430) have not been legally registered, the mortgaged properties cannot be reclaimed and given to the Royal Insurance Corporation of Bhutan Limited. However, Mr. Ugyen Wangchuk must be penalized for breach of contract.

Mrs. Jurme Chetsho, an employee of the Royal Insurance Corporation of Bhutan Limited has, without the consent of Ugyen Wangchuk, debited a repayment of Nu. 2,000,000/- (Two Million) from Ugyen Wangchuk's account number PLCONSUMOD/2012/217 and deposited to his account number CRCS/2010/84. In the same way, Mr. Tashi Penjor, an employee of the Royal Insurance Corporation of Bhutan Limited has, without Ugyen Wangchuk's consent, transferred Nu. 1,000,000/- (One Million) from his other account to Ugyen Wangchuk's account number CRCS/2010/84. Further, on 20/02/2012, the Royal Insurance Corporation of Bhutan Limited has, without Ugyen Wangchuk's consent, withdrawn Nu. 1,000,000/- (One Million) twice from Ugyen Wangchuk's account number CRCS/2010/84 and deposited Nu. 1,000,000/- (One Million) each in Mrs. Jurme Chetsho's loan account number PLCOSUMOD/2011/166 and PLCOSUMOD/2011/193. Further, Mrs. Ugyen Lhamo, an employee of the Royal Insurance Corporation of Bhutan Limited has, without consent of Mrs. Tshering Pem disbursed Nu.

1,662,835/- from her loan account number PLCONSUMOD/2012/217 and deposited in the loan account number CRCS/2010/84 and additionally, it has been established that amount against seven (7) BG encashments have been merged with this loan account without proper documentation. Again, Mr. Jigme Namgyal, an employee of the Royal Insurance Corporation of Bhutan Limited has, without Ugyen Wangchuk's consent, withdrawn Nu. 440,000/- (Four hundred forty thousand) from Ugyen Wangchuk's account number CRCS/2010/84.

While examining the repayments in the said loan account, it was observed that the repayments were not made by Ugyen Wangchuk but availed new loans from the Royal Insurance Corporation of Bhutan Limited without following due process and closed the old loan accounts, which was found to be the fault of both the parties. Therefore, in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that "*when both parties are at fault the loss has to be shared equally*", the loss in respect of the interest accumulated as of 25/12/2019 amounting to Nu. 2,439,973.89 (Two million four hundred thirty-nine thousand nine hundred seventy-three and chetrum eighty-nine) and a late fee of Nu. 147,954.76 (one hundred forty-seven thousand nine hundred fifty-four and chetrum seventy-six) which sums up to Nu. 2,5928.65 (twenty-five million ninety-two thousand twenty-eight and chetrum sixty-five) must be borne equally by both parties with each party liable to Nu. 1,293,964.33 (one million two hundred ninety-three thousand nine hundred sixty-four and chetrum thirty-three) since the loan was sanctioned without following financial norms to make back-and-forth adjustment transactions from the loan account. The principal balance of Nu. 5,617,937.65 (five million six hundred seventeen thousand nine hundred thirty-seven and chetrum sixty-five) and the interest and late fee of Nu. 1,293,964.33 (one million two hundred ninety-three thousand nine hundred sixty-four and chetrum thirty-three) amounting to the total outstanding loan balance of Nu. 6,911,901.98 (six million nine hundred eleven thousand nine hundred one and chetrum ninety-eight) must be paid by Ugyen Wangchuk as per norms of the bank to the Royal Insurance Corporation of Bhutan Limited. In case of failure to pay the said loan amount within the duration awarded by the court, it is decreed that the Royal Insurance Corporation of Bhutan Limited can seize and take over the registered mortgaged property.

6 (A). As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, Mr. Ugyen Wangchuk has availed Nu.

2,000,000/- at 15% interest against the loan account number PLCONSUMOD/2012/217 for a term of one (1) year on a renewal basis against the security of the mortgaged land measuring 15 decimals on Thram No. 812 located at Chang Debsi registered in the name of Tshering Dema. The amount against this loan account also includes the Bank Guarantee encashments invoked. Since the loan remain unpaid, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged properties be allowed to be seized and auctioned. In response, while Mr. Ugyen Wangchuk acknowledged availing the loan, he requested the court to investigate whether the loans were sanctioned as per norms, and whether the Bank Guarantees were invoked appropriately with his consent as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each contention as to whether loans were given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, it was established that the above loan of Nu. 2,000,000/- (Two million) sanctioned was not to utilized for himself but with his consent, it was deposited in the loan account PLCONSUMOD/2011/165 of Mr. Norbu Tashi. While availing Nu. 2,000,000/- (Two million) in respect of the loan account number PLCONSUMOD/2012/217 on 20/02/2012, the loan agreement between the two parties reflected that the property mortgaged is a land measuring 15 decimals on Thram No. 812 located at Chang Debsi registered in the name of Tshering Dema but while referring the mortgage registration record maintained with Dzongkhag Land Record Office, Thimphu, the Thram No. 812 has land measuring 9,147.6 sq. ft. with 3 storied building is registered in the name of Ugyen Wangchuk. The two documents are not consistent and there is no sign of the mortgagor, Mrs. Tshering Dema in the guarantee letter. Further, the Royal Insurance Corporation of Bhutan Limited has, without the consent of Mrs. Tshering Pem has withdrawn Nu. 263,500/- (Two hundred sixty-three thousand five hundred) from her loan account number PLCONSUME1/2012/51 and has renewed her loan account. Again, on 31/12/2014, the Royal Insurance Corporation of Bhutan Limited has withdrawn Nu. 520,610/- (Five hundred twenty thousand six hundred ten) from Ugyen Wangchuk's loan account number PLCONSUMOD/2012/217 and deposited the said amount to his sister Tshering Pem's loan account number PLCONSUME1/2012/51 without his consent. The Royal Insurance Corporation of Bhutan Limited has, without Ugyen Wangchuk's consent, not just withdrawn Nu. 5,000/- (Five thousand) and Nu. 2,000/- (Two thousand) from Ugyen Wangchuk's loan account number

PLCONSUMOD1/2012/31 on 31/12/2013 and made loan adjustments against the said account but also has withdrawn Nu. 1,500,000/- (Fifteen hundred thousand) on 19/12/2015 from Ugyen Wangchuk's loan account number BLTERM1/2015/302 to adjust the said loan account. From the same loan account of Ugyen Wangchuk, Nu. 2,113.78 was withdrawn on 28/04/2016 and was deposited in the loan account number PFSLIMPORT/2009/160. And the Royal Insurance Corporation of Bhutan Limited has without obtaining any documents from Ugyen Wangchuk and without obtaining his consent, released two (2) Bank Guarantee encashments against the said loan account. Further, although the CIB report of the defendant showed the outstanding loan balance of Nu. 27,327,007/- (Twenty-seven million three hundred twenty-seven thousand and seven) in the name of the defendant, yet new loan was sanctioned, which was the fault of both parties. Therefore, the loss in respect the interest and late fee accumulated as of 25/12/2019 must be borne equally by both the parties since the loan was sanctioned without following financial norms to make back-and-forth adjustment transactions from the loan account in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that "*when both parties are at fault the loss has to be shared equally*". The remaining loan outstanding balance after deducting the interest and late fee must be paid by Ugyen Wangchuk as per norms of the bank.

(B). In case, Mr. Ugyen Wangchuk fails to pay the loan as per the duration awarded by the court, it is decreed that although the land measuring 15 decimals on Thram No. 812 located at Chang Debsi registered in the name of Tshering Dema is mentioned as mortgaged, as per the mortgage registration record maintained with Dzongkhag Land Record Office, Thimphu, since the Thram No. 812 with land measuring 9,147.6 sq. ft. together with 3 storied building is registered in the name of Ugyen Wangchuk, and since despite above two documents being inconsistent, the Thimphu Dzongkhag Land Record Office, without proper verification, registered the said property as mortgage with two financial institutions, the Royal Insurance Corporation of Bhutan Limited and the Bhutan Insurance Limited can seize the mortgaged property.

(C). Although the defendant, Ugyen Wangchuk has availed a loan of Nu. 2,000,000/- (Two million) against the loan account number PLCONSUMOD/2012/217 by mortgaging the land measuring 15 decimals on Thram No. 812 located at Chang Debsi registered in the name of Tshering Dema

which has been registered and recorded by the Thimphu Dzongkhag Land Record Office, the ownership of the said land measuring 15 decimals on Thram No. 812 of Tshering Dema has been transferred in the name of Ugyen Wangchuk, and based on the new Lag Thram issued, Mr. Ugyen Wangchuk has fraudulently mortgaged the said land with the Bhutan Insurance Limited. Hence, Mr. Ugyen Wangchuk must be penalized for mortgaging one property to avail two (2) loans, and further, the Dzongkhag Land Record Office must be held accountable for failing to exercise due diligence and wrongfully mortgaging the same property twice.

7(A).As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, Mr. Ugyen Wangchuk has availed Nu. 2,200,000/- (Two million two hundred thousand) at 16% interest against the loan account number PLCONSUMOD1/2012/31 for a term of one (1) year against the security of the mortgaged land measuring 21 decimals on Thram No. 812 at Chang Debsi registered in the name of Tshering Dema. Against the said loan account, the BG encashment of Nu. 14,000,000/- (Fourteen million) was paid to Pemagatshel Dzongkhag. Since the loan remain unpaid, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged properties be allowed to be seized and auctioned. In response, while Mr. Ugyen Wangchuk acknowledged availing the loan, he requested the court to investigate whether the loans were sanctioned as per norms, and whether the Bank Guarantees were invoked appropriately with his consent as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, examined each contention as to whether loans were given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan. It was established that while the defendant, Ugyen Wangchuk has submitted the loan application form on 18/06/2012 and received the loan upon executing the loan agreement on 19/09/2012, the CIB report was verified later, on 19/11/2012 which reflected the list of irregular repayment of loans and some cases were about to be accepted by the court, it was the fault of the Corporation to have sanctioned the new loan. Further, though the above mortgage was based on the sale deed executed between Ugyen Wangchuk and Tshering Dema, the mortgage was not appropriately registered and moreover, from the loan account number PLCONSUMOD1/2012/31, a sum of Nu. 2,035,536/- was withdrawn on 20/09/2012 without Ugyen

Wangchuk's consent and was deposited in his loan account number PLCONSUMOD/2012/230. Similarly, an employee of the Royal Insurance Corporation of Bhutan Limited, Mr. Tashi Peljor has, without the defendant's consent, not only withdrawn Nu. 186,000/- (One hundred eighty-six thousand) on 20/09/2012 but also deposited Nu. 60,000/- (sixty thousand) in the loan account of the defendant on 29/10/2012. Likewise, it was wrong on the part of the Corporation for making several back-and-forth transactions by withdrawing from and depositing into the loan account of the defendant without his consent. Further, no proper documents were obtained in respect of the Bank Guarantee encashment and without mortgaging any additional security, the Bank Guarantee of Nu. 14,000,000/- (Fourteen million) was encashed against his loan account number PLCONSUMOD1/2012/31 on 02/07/2015 in favour of Pemagatshel Dzongkhag, which was found to be the fault of both the parties. Therefore, in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that *"when both parties are at fault the loss has to be shared equally"*, the loss in respect the interest and late fee accumulated as of 25/12/2019 must be borne equally by both the parties since the loan was sanctioned without following financial norms and for making back-and-forth adjustment transactions from the loan account without the defendant's consent. The remaining loan outstanding balance after deducting the interest and late fee must be paid by Ugyen Wangchuk as per norms of the bank.

(B). Although the land measuring 21 decimals on Thram No. 812 located at Chang Depsi, Thimphu registered in the name of Mrs. Tshering Dema has been mortgaged, since the mortgage has not been registered in accordance with the Moveable and Immovable Property Act of Kingdom of Bhutan, the ownership of the 15 decimals land under the Thram No. 812 which was earlier in Mrs. Tshering Dema's name had been transferred to Ugyen Wangchuk and thereafter Ugyen Wangchuk has deceitfully mortgaged it with the Bhutan Insurance Limited with proper documentation and registration. Hence, it was proven that two loans have been availed against the same land. In case Ugyen Wangchuk fails to pay the loan amount within the duration awarded by the Court, it is decreed that the Royal Insurance Corporation of Bhutan Limited and the Bhutan Insurance Limited can jointly obtain the Seizure Order from the Court and sell the above said mortgaged property.

8(A).As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, Mrs. Tshering Pem has availed a personal loan amounting to Nu. 2,000,000/- (Two million) vide loan account No. PLCONSUME1/2012/51 at 13% interest rate for six (6) years with a monthly installment of Nu. 43,384/- (Forty-three thousand three hundred eighty-four) by hypothecating a Prado bearing Registration No. BP-I-C2080 registered in the name of Mr. Namgay Penjor. Since the loan remain unpaid, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the hypothecated property be allowed to be seized and auctioned. In response, while Mrs. Tshering Pem's representative Ugyen Wangchuk acknowledged availing the loan, he requested the court to investigate whether the loan was sanctioned as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each contention as to whether the loan was given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, and also in accordance with the provisions of the Movable and Immovable Property Act of the Kingdom of Bhutan, it was established that firstly, the Corporation has approved the loan although Mrs. Tshering Pema has not filled in the loan application form appropriately. Further, without obtaining consent and Power of Attorney from the vehicle owner Mr. Namgay Penjor, the vehicle has been accepted as a collateral by mentioning the same in the loan agreement and registering it accordingly. The CIB report of Mrs. Tshering Pem was not checked and verified before sanctioning the loan. In addition, without the consent of the defendant Tshering Pem, Nu.1,926,135/- (One million nine hundred twenty-six thousand one hundred thirty-five) was withdrawn from her account number PLCONSUME1/2012/51 on 22/12/2012 and deposited Nu.1,662,835/- (One million six hundred sixty-two thousand eight hundred thirty-five) in her brother Ugyen Wangchuk's loan account No. CRCS/2010/84 and Nu. 263,300/- (Two hundred sixty-three thousand three hundred) in the loan account number PLCONSUMOD/2012/217 on 22/12/2012. Further, since the Corporation has deducted the vehicle insurance from Tshering Pem's loan account No. PLCONSUME1/2012/51 without her consent, it is wrong on the part of the Corporation to have debited and credited the defendant's account without her consent. Therefore, in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that

“when both parties are at fault the loss has to be shared equally”, the loss in respect the interest and late fee accumulated as of 25/12/2019 must be borne equally by both the parties since the loan was sanctioned without following financial norms and for making back-and-forth adjustment transactions from the loan account without the defendant’s consent. The remaining loan outstanding balance after deducting the interest and late fee must be paid by Tshering Pem as per norms of the bank.

(B). Mrs. Tshering Pem has availed the loan amounting to Nu.2,000,000/- (Two million) against loan account No. PLCONSUME1/2012/51 by hypothecating the Prado car bearing Registration No.BP-I-C2080 registered in the name of Mr. Namgay Penjor. After the hypothecation against the vehicle has been registered in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan, the defendant Tshering Pem’s brother, Mr. Ugyen Wangchuk sold the said vehicle to him Mr. Tshering Dorji, the Chairperson of the Local Government at Paro Dzongkhag. This was confirmed as per the statement submitted by Mr. Tshering Dorji before the court stating that it has been three (3) years since he purchased the vehicle from Ugyen Wangchuk in the year 2016 as Ugyen Wangchuk informed him that there was no loan against the said vehicle. Since the vehicle being a moveable property, it cannot be given back to the Royal Insurance Corporation of Bhutan Limited, but the loan outstanding balance against the said vehicle must be paid by the defendant Tshering Pem. As Mr. Tshering Dorji could not prove before the court that he has paid the insurance for the said vehicle, he is liable to pay the insurance payment of the said vehicle for three (3) years amounting to Nu.95,294/- (Ninety-five thousand) to Tshering Pem, which the Royal Insurance Corporation of Bhutan Limited has deducted from her loan account.

(C). Although the defendant Tshering Pem has availed a loan of Nu. 2,000,000/- (Two million) vide loan account No. PLCONSUME1/2012/51 against the security of a Prado car bearing Registration No. BP-I-C2080 registered in the name of Mr. Namgay Penjor, the charge of which was hypothecated in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan, since the said hypothecated car was sold to Mr. Tshering Dorji, the Chairperson of the Paro Dzongkhag Local Government in 2016 by Mrs. Tshering Pem’s brother, Ugyen Wangchuk, accountability must be fixed for a breach of contract.

9(A). As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, the defendant Tshering Pem has availed a loan with the principal amount of Nu. 2,000,000/- (Two million) vide loan account no PLCONSUMOD1/2014/244 at the interest rate of 16% for a year for a term of one (1) year by mortgaging the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 registered in the name of Namgay Wangmo located at Tshento, Paro, and the land measuring 23.5 decimals on Thram No.51, Plot No. MEW-5368 located at Mewang, Thimphu. Since she failed to repay the said loan on time, it was prayed before the court that the total loan outstanding balance with interest be recovered through the court from Tshering Pem failing which, the mortgaged properties be allowed to be seized and auctioned. In response, the defendant Tshering Pem's representative Mr. Ugyen Wangchuk denied mortgaging the properties against the said loan account as claimed by the Royal Insurance Corporation of Bhutan Limited. Further, he requested the court to investigate as to who have taken the loan, how the loan has been utilized, and whether the loan was sanctioned as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, examined each contention as to whether loans were given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, and in accordance with the provisions of the Movable and Immovable Property Act of the Kingdom of Bhutan. It was established that the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 registered in the name of Namgyel Wangmo located at Tshento, Paro has been already mortgaged with Bhutan Development Bank Limited, and from the total land measuring 0.43 acres on Thram No.51, Plot No.MEW-5368 located at Mewang Gewog, Thimphu registered in the name of Kencho Wangmo, 23.4 decimals land has been mortgaged, since the mortgage has not been legally registered. Secondly, the CIB report of the defendant Tshering Pem has not been checked before sanctioning the loan. Thirdly, the Principal loan amount of Nu.2,000,000/- from loan account no. PLCONSUMOD1/2014/244 of the defendant Tshering Pem has not been sanctioned as a new loan but Nu.44,000/- (Forty-four thousand) has been deposited in loan account No. PFLIMPORT/2009/160, Nu.695,000/- (Six hundred ninety-five thousand) has been deposited in the loan account No. TLHVTRUCK/2010/417, Nu.415,000/- has been deposited in the loan account No.PLCONSUOD1/2012/31, Nu.435,000/- (Four hundred thirty-five thousand) has been deposited in the loan account No. PLCONSUMOD/2012/51 and Nu.411,000/-

(Four hundred eleven thousand) has been deposited in the loan account No. PLCONSUMOD/2012/217 on 31/12/2013 as per cheque No.948994. Since it is proved that the Corporation has wrongfully withdrawn the loan amount from one loan account and deposited into another loan account without consent of the defendant, the loss in respect the interest and late fee accumulated as of 25/12/2019 must be borne equally by both the parties in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that “*when both parties are at fault the loss has to be shared equally*”. The remaining loan outstanding balance after deducting the interest and late fee must be paid by Ugyen Wangchuk as per norms of the bank.

(B). In case the defendant Tshering Pem fails to repay the loan on the time, the Royal Insurance Corporation of Bhutan Limited has the right to seize the mortgaged land measuring 23.5 decimals on Thram No.51, Plot No.MEW-5368 known as Daminang located at Mewang Gewog, Thimphu Dzongkhag registered in the name of Kencho Wangmo. However, since the land measuring one (1) acre 44 decimals on Thram No.783, Plot No.TSE-1076 registered in the name of Namgyel Wangmo located at Tshento, Paro Dzongkhag has been already mortgaged with the Bhutan Development Bank Limited, no Seizure Order can be issued.

10. As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, Ugyen Wangchuk had availed a loan with a Principal amount of Nu. 10,000,000/- (Ten million) on 30/09/2015 vide loan account no HCLN2/2015/123 at the interest rate of 13.5% for 20 years against the mortgaged the land measuring 7710 sq. ft on Thram No.TT-849, Plot No.148 and 6 storied building on the said land registered in his name located at Changzamtok, Thimphu Dzongkhag. Since the loan remained unpaid on time, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged property be allowed to be seized and auctioned. In response, while Ugyen Wangchuk admitted availing the loan for constructing the building but since he did not construct the 6-storied building, he requested the court to investigate whether the said loan was sanctioned as per norms for the construction of the building.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each contention as to whether the loan was given as

per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, and also in accordance with the provisions of the Movable and Immovable Property Act of the Kingdom of Bhutan, it was established that firstly, although the mortgaged property has been registered appropriately, the CIB report of Ugyen Wangchuk was not checked prior to sanctioning the loan. Secondly, as per the loan agreement, the loan is sanctioned on 30/09/2016 but according to the loan statement, the loan was sanctioned on 14/09/2015. Thirdly, on 14/09/2015 the Royal Insurance Corporation of Bhutan Limited has, without following norms of the housing loan, deposited Nu.4,741,580/- (Four million seven hundred forty-one thousand five hundred eighty) in Ugyen Wangchuk's BOB account No.40100220597141216. On 26/10/2015 Nu.2,984,934 has been withdrawn and although Nu.450,000/- was paid to Phuntsho Rabten there is no receipt for the said payment. Further, since the remaining amount was deposited in Ugyen Wangchuk's loan accounts No. PLCONSUMOD1/2014/244, PLCONSUME1/2012/51, TLHVTRUCK/2010/417 and PLCONSUMOD1/2012/31 without following the due process by the Corporation because of whose fault the construction of the building could not be completed. Therefore, no late fee can be charged against this loan account and accordingly, as per the agreement executed between two parties, the remaining loan outstanding balance, after deducting the late fee charged till 25/12/2019 must be paid by Ugyen Wangchuk as per norms of the bank.

- II. As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, the defendant Ugyen Wangchuk has availed a loan with Principal amount of Nu. 3,300,000/- (Three million three hundred thousand) against the loan account No. BLTERM1/2015/302 at the interest rate of 14% for 15 years against the mortgaged land measuring 9,147.6 sq. ft on Thram No.812 registered in his name located at Chang Debsi, Thimphu; the land measuring 7,710 sq. ft on Thram No.849, Plot No.148 registered in his name located at Changzamtok, Thimphu; 23.4 decimals land from 0.43 acres on Thram No.51, Plot No.MEW-5368 located at Namseling, Mewang Gewog, Thimphu Dzongkhag, registered in the name of Kencho Wangmo; and the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 located in Tsentog, Paro Dzongkhag. Since the loan remained unpaid on time, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged property be allowed to be seized and auctioned. In response, while Ugyen Wangchuk

admitted availing the loan, he requested the court to investigate whether the said loan was sanctioned as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each contention as to whether the loan was given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, and also in accordance with the provisions of the Movable and Immovable Property Act of the Kingdom of Bhutan, it was established that although Ugyen Wangchuk had submitted the loan application on 04/12/2015 and the loan was sanctioned by executing the loan agreement on 19/12/2015, the loan amount from this account had been deposited in Ugyen Wangchuk's loan account No. TLHVTRUCK/2010/417, PLCONSUMOD1/2012/31, CRCS/2010/84, PLCONSUMOD/2010/217, and other loan accounts. Moreover, CIB report of Ugyen Wangchuk was checked later on 08/01/2016 and although Ugyen Wangchuk's loans in other banks, which are in default and are about to be accepted by courts, the Corporation was at fault for sanctioning the loan. The Corporation had accepted the mortgaged properties based on the internal agreement executed between the private individuals and although the three mortgaged properties had been registered as per the procedure, the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 registered in the name of Namgyel Wangmo located at Tsentog, Paro Dzongkhag has not been registered as mortgage as per the procedure, and moreover, the mortgage against the said land has been already registered by the Bhutan Development Bank Limited. So, since both parties are at fault, the loss in respect the interest and late fee accumulated as of 25/12/2019 must be borne equally by both the parties in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that *"when both parties are at fault the loss has to be shared equally"*. The remaining loan outstanding balance after deducting the interest and late fee must be paid by Ugyen Wangchuk as per norms of the bank. In case he fails to pay the loan on time, the Royal Insurance Corporation of Bhutan Limited has the right to seize the above mentioned three (3) properties mortgaged appropriately against the said loan account.

12. As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, the defendant Ugyen Wangchuk availed the in the principal amount of Nu.3,000,000/- (Three million) at the rate of 14.5% for one (1) year

renewable thereafter vide the loan account no. CDL/2016/409 by mortgaging the land measuring 4.30 acres on Thram No.722, Plot No.59/B,69/I and 225/D registered in the name of Dechen Pelden located at Dekiling, Sarpang.

Since the loan remained unpaid on time, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged property be allowed to be seized and auctioned. In response, while the defendant Ugyen Wangchuk admitted availing the loan, but he submitted that Dechen Pelden be held liable to pay the loan since the loan was utilized by her. The court, in order to dispense justice, while examining each contention as to whether the loan was given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, and also in accordance with the provisions of the Movable and Immovable Property Act of the Kingdom of Bhutan, it was established that as per the loan application submitted by the defendant Ugyen Wangchuk on 11/02/2016, the said loan was sanctioned on the same date upon execution of the loan agreement, and as consented by Ugyen Wangchuk as per norms, since the Royal Insurance Corporation of Bhutan Limited had deposited the principal amount of Nu.3,000,000/- (Three million) in the loan account no. CDL/2010/788 of Dechen Pelden by debiting Ugyen Wangchuk's loan account No. CDL/2016/409, Dechen Pelden admitted receiving the said loan and also accepted to repay the loan by herself. Since the mortgaged property is in her name, she requested the court that the loan outstanding balance of the defendant Ugyen Wangchuk against this loan account be transferred in her name so that she can pay the loan. The court accepted as prayed for. However, in case the said loan is not paid on time, the Royal Insurance Corporation of Bhutan Limited shall have the right to seize the above-mentioned mortgaged property that has been appropriately registered.

- 13.** As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurney, the defendant Ugyen Wangchuk had availed the loan in the principal amount of Nu.5,000,000/- (Five million) at the rate of 13% for one (1) year vide loan account No.CRCSI/2016/168 against his existing collateral securities and the work order letter No. CDA/DES-12/2015-2016/128 dated 03/09/2015 worth of Nu.15,469,289/- (Fifteen million four hundred sixty-nine thousand two hundred eighty-nine). Since the loan remained unpaid on time, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged property be allowed to be seized and auctioned. In response,

while the defendant Ugyen Wangchuk admitted availing the loan, he requested the court to investigate whether the said loan was sanctioned as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each contention as to whether the loan was given as per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, and also in accordance with the provisions of the Movable and Immovable Property Act of the Kingdom of Bhutan, it was established that although the loan to the defendant Ugyen Wangchuk was based on the contract work order and the linked mortgaged properties being the same properties mortgaged against his earlier loans have not been identified, as per the loan agreement executed between the parties in line with the provision of the Contract Act and the Evidence Act of Bhutan, the defendant Ugyen Wangchuk shall be liable to pay the total loan outstanding balance in respect of the loan account No.CRCSI/2016/168 to the Royal Insurance Corporation of Bhutan Limited in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan.

(B). While sanctioning the said loan, since the Royal Insurance Corporation of Bhutan Limited has not identified the linked mortgaged properties and since the loan sanctioned was based on the contract work order, the Court is not able to issue the Order for seizure of the mortgaged properties as per the Moveable and Immovable Property Act of the Kingdom of Bhutan.

14(A). As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, the defendant Ugyen Wangchuk had availed a loan in the principal amount of Nu.7,500,000/- at the interest rate of 12.5% for a term of one (1) month vide loan account No.BLODI/2017/512 against the existing securities mortgaged with loan account No.BLTERM1/2015/302, HCLN2/2015/123 and PLCONSUMODI/2012/31. Since the loan remained unpaid on time, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged property be allowed to be seized and auctioned. In response, while the defendant Ugyen Wangchuk admitted availing the loan, he requested the court to investigate whether the said loan was sanctioned as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each contention as to whether the loan was given as

per norms or whether all documents were in order as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, and also in accordance with the provisions of the Movable and Immovable Property Act of the Kingdom of Bhutan, it was established that the defendant Ugyen Wangchuk has not properly filled the loan application form at the time of sanctioning the loan. Further, the original copy of the loan agreement executed between the parties is missing and the CIB report was not verified as per norms of the credit business. Despite knowing that there were no repayments for loans sanctioned earlier, the Royal Insurance Corporation of Bhutan Limited continued to sanction one loan after another to the defendant Ugyen Wangchuk. In this matter, since both the parties are at fault the loss in respect the interest and late fee accumulated as of 25/12/2019 must be borne equally by both the parties in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that *“when both parties are at fault the loss has to be shared equally”*. The remaining loan outstanding balance after deducting the interest and late fee must be paid by Ugyen Wangchuk as per norms of the bank.

- (B).** If the defendant Ugyen Wangchuk fails to pay the loan outstanding balance within the stipulated period prescribed by the Court, the properties mortgaged against various loan account No. BLTERM1/2015/302, HCLN2/2015/123 and PLCONSUMOD1/2012/31 can be seized and sold by the Royal Insurance Corporation of Bhutan Limited after obtaining seizure order from the court in accordance with the provisions of the Moveable and Immovable Property Act of the Kingdom of Bhutan.
- 15.** As per the petition submitted before this Court by the legal representative of the Royal Insurance Corporation of Bhutan Limited, Mr. Sonam Jurmey, all properties mortgaged against all loan accounts of the defendant Ugyen Wangchuk have also been collateralized against the loan account No.CRCSI/2018/371 from which Bank Guarantee has been encashed and paid. Since the loan remained unpaid on time, it was prayed that the loan outstanding amount with interest be recovered through the court failing which, the mortgaged property be allowed to be seized and auctioned. In response, the defendant Ugyen Wangchuk requested the court to investigate whether the bank guarantee was issued and encashed with his consent as per norms.

Since the matter was disputed with contentions of all kinds between the parties, the court, in order to dispense justice, while examining each issue as per provisions of the Contract Act of Bhutan and the Evidence Act of Bhutan, it was established that the principal amount of Nu.5,638,069/- sanctioned against this loan account was not availed for his own use but it was the invocation of Bank Guarantees as per his two application forms, and as per Sipso Dungkha Drungpa Dasho Tshewang Tobgay's letter No.DAT/ENGG-03/2017-2018/3387 dated 01/03/2018 for Nu.3,238,069/-(Three million two hundred thirty-eight thousand sixty-nine) and Nu.2,400,000/- (Two million four hundred thousand) as per letter No. RELOFRENTN/2017/2272 dated 20.06.2017. The date and month were mentioned in the petition submitted by the plaintiff although two bank guarantees have been issued. Further, although no loan agreement was executed between the Corporation and the defendant, since the Corporation has sanctioned the new loan, both the parties are found to be at fault, and therefore, the loss in respect the interest and late fee accumulated as of 25/12/2019 must be borne equally by both the parties in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that *"when both parties are at fault the loss has to be shared equally"*. The remaining loan outstanding balance after deducting the interest and late fee must be paid by Ugyen Wangchuk as per norms of the bank.

16. Judgment

- (A).** As per the Summary Findings No.5 above, although the loan agreement in respect of the loan amount of Nu. 3,000,000/- (Three million) availed by the defendant Ugyen Wangchuk from the Royal Insurance Corporation of Bhutan Limited on 04/06/2010 vide loan account No. CRCS/2010/84 was made to be executed between the defendant Ugyen Wangchuk and the Royal Insurance Corporation of Bhutan Limited as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan, the signature in the agreement was signed by Ugyen Wangchuk's sister Tshering Pem as per Section 3 and 4 of the Evidence Act of Bhutan. Further, CIB report of the defendant has not been verified while sanctioning the loan, and without the consent of Ugyen Wangchuk, some of the employees of the Royal Insurance Corporation of Bhutan Limited have withdrawn and deposited the money against Ugyen Wangchuk's loan account No. CRCS/2010/84 without his consent and without adhering to the banking norms. Further, as per Section 3 and 4 of the Evidence Act of Bhutan, it has been proven that a total seven (7) Bank

Guarantee encashment amount has been merged in this loan account without any proper documentation. While examining the repayments made against this loan account, it has been established that Ugyen Wangchuk has not made any repayment in this loan account but rather the Royal Insurance Corporation of Bhutan Limited has sanctioned new loans and closed old loan accounts without following the norms. Therefore, since both the parties are at fault, as per section 22 of the Movable and Immovable Properties Act of Bhutan and as per the Principle of Interenational Law which states that “*When both the parties are at fault the loss has to be shared equally*” the interest and late fee accrued till 25/12/2019 amounting to Nu.2,587,928.65/- (Two Million Five Hundred Eighty Seven Thousand Nine Hundred Twenty Eight and Chetrum Sixty Five) has to be shared equally between both the parties thereby each party being liable for Nu.1,293,964.33/-(One Million Two Hundred Ninety Three Thousand Nine Hundred Sixty Four and Chetrum Thirty Three). Ugyen Wangchuk is, therefore, liable to pay the total loan outstanding of amount of **Nu.6,911,901.98/-(Six Million Nine Hundred Eleven Thousand Nine Hundred One and Chetrum Ninety Eight)** being the sanction amount of Nu.5,617,928.65/- and the interest and late fee charged amounting to Nu.1,293,954.33/- (One Million Two Hundred Ninety Three Thousand Nine Hundred Fifty Four and Chetrum Thirty Three) since there is an agreement executed between the parties in accordance with Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan, and this has been admitted by the defendant Ugyen Wangchuk as per Section 80 of the Evidence Act of Bhutan. Therefore, as per Section 17(1) of the Movable and Immovable Property Act of the Kingdom of Bhutan and as per norms of the bank, the defendant Ugyen Wangchuk is liable to pay to the Royal Insurance Corporation of Bhutan Limited the loan outstanding amount with interest within 6 months from the date of Judgment in accordance with Section 56 of the Movable and Immovable Properties Act of Bhutan.

- (B).** The defendant U. Wangchuk Construction’s proprietor, Ugyen Wangchuk while availing loan amount of Nu.3,000,000/-(Three Million) against the loan account No. CRCS/2010/84 on 04/06/2010, in accordance with Section 24(2) of the Movable and Immovable Properties Act of the Kingdom of Bhutan, had mortgaged the properties consisting firstly, the land measuring 6531.85 sq.ft on Thram No.191/12 registered in his name at Changshingpek, Mongar; secondly, the land measuring 26 decimal on Thram No.312 Plot No.55 at Melphel, Trashigang; and thirdly, a Land Cruiser car bearing Registration No.BP-I-B5306 (A/c No.21430). However, since Ugyen

Wangchuk had, in violation of the Section 211 of the Contract Act of Bhutan, sold the above three (3) mortgaged properties. As such, the land measuring 6531.85 sq.ft. on Thram No.191/12 registered in the name of Ugyen Wangchuk at Changshingpek, Mongar and the Land Cruiser car bearing Registration No. BP-I-B53306 (A/c No.21430) have been mortgaged as per Section 38(1) (a) of the Movable and Immovable Properties Act of the Kingdom of Bhutan, since the mortgage has not been registered as per Section 180 and 181 of the land Act 2007 and Section 27,29,20, 90 and 93 of the Movable and Immovable Act of the Kingdom of Bhutan, these two (2) properties cannot be reclaimed and given to the Corporation. However, if Ugyen Wangchuk fails to pay the loan outstanding balance within the stipulated time, the money the defendant Ugyen Wangchuk had received by selling the two mortgaged properties in accordance with Section 214-216 of the Movable and Immovable Property Act of the Kingdom of Bhutan must be restituted to the Royal Insurance Corporation of Bhutan Limited in accordance to Section 46 of the Penal Code of Bhutan. Since the land measuring 26 decimals on Thram No.312, Plot No.55 registered in the name of Yuden at Melphey, Trashigang has been mortgaged as per Section 180 and 181 of the Land Act of Bhutan 2007 and Sections 27,29,30,90 and 93 of the Movable and Immovable Property Act of the Kingdom of Bhutan, if the loan is not repaid within the stipulated time in accordance with the Judgment No.16(A) above, the Royal Insurance Corporation of Bhutan Limited can, in compliance with Section 55(1) and 77(1) of the Movable and Immovable Properties Act of the Kingdom of Bhutan seize the land measuring 26 decimals under Thram No. 312, Plot No. 55 registered in the name of Yuden at Melphey, Trashigang after obtaining the Seizure Order from the Court and sell mortgaged property as per Section 64(1) of the Movable and Immovable Property Act of the Kingdom of Bhutan.

- (C).** The defendant U. Wangchuk Construction's proprietor, Ugyen Wangchuk while availing the loan amount of Nu.3,000,000/-(Three Million) dated 04/06/2010 against loan account No. CRCS/2010/84, in accordance with Section 24(2)(a) of the Movable and Immovable Property Act of the Kingdom of Bhutan, had mortgaged the properties consisting firstly, the land measuring 6531.85 sq.ft on Thram No.191/12 registered in his name at Changshingpek, Mongar; secondly, the land measuring 26 decimal on Thram No.312 Plot No.55 at Melphey, Trashigang; and thirdly, a Land Cruiser car bearing Registration No.BP-I-B5306 (A/c No.21430). However, since Ugyen Wangchuk had, in violation of the Section 211 of the Contract Act of Bhutan, sold the above three

(3) mortgaged properties, he must be held liable for breach of contract in accordance with Section 285 of the Penal Code of Bhutan. Therefore, in accordance with Section 286 of the Penal Code of Bhutan, the defendant Ugyen Wangchuk sentenced to three months imprisonment, for which *Thrim Thue* may be paid in lieu of the imprisonment in accordance with Section 28 of the Penal Code of Bhutan.

17(A).As mentioned per the Summary Findings No.6(A) above, and as per Section 80 of the Evidence Act of Bhutan, the defendant Ugyen Wangchuk has admitted availing the loan amounting to Nu.2,000,000/-(Two Million) against loan account No. PLCONSUMOD/2012/217. Further, although the agreement has been executed between the parties as per Section 16 of the Contract Act of Bhutan, Section 35 of the Evidence Act of Bhutan, and Section 6 of the Movable and Immovable Property Act of the Kingdom of Bhutan, it has been proven as per Section 3 and 4 of the Evidence Act of Bhutan that the above loan amount of Nu.2,000,000/- (Two Million) was not to utilized for himself but with his consent, it was deposited in the loan account PLCONSUMOD/2011/165 of Mr. Norbu Tashi. Further, although the mortgaged land measuring 15 decimal on Thram No.812 registered in the name of Tshering Dema at Chang Depsi, Thimphu has been admitted by the defendant Ugyen Wangchuk as mortgaged as per Section 24(2)(a) and Section 38(1)(a) of the Movable and Immovable Property Act of the Kingdom of Bhutan, but while referring the mortgage registration record maintained with Dzongkhag Land Record Office, Thimphu as per Section 180 and 181 of the Land Act of Bhutan 2007, and Section 27, 29 and 30 of the Movable and Immovable Property Act of the Kingdom of Bhutan, the Thram No. 812 has land measuring 9,147.6 sq. ft. with 3 storied building registered in the name of Ugyen Wangchuk. The two documents are not consistent and does not match with each other as per Section 3 and 4 of the Evidence Act of Bhutan. There is no signature of the landowner Tshering Dema in the guarantee letter. Further, as per Section 3 and 4 of the Evidence Act of Bhutan, it has been proven that the Corporation has made several transactions by debiting and crediting the loan account without the consent of the account holder Tshering Pem and Ugyen Wangchuk and without following the norms of the bank. And the Royal Insurance Corporation of Bhutan Limited has, without obtaining any documents from Ugyen Wangchuk and without obtaining his consent, released two (2) Bank Guarantee encashments against the said loan account. Further, although the CIB report of the defendant showed the outstanding loan balance of Nu. 27,327,007/- in the name

of the defendant, yet new loan was sanctioned, which was the fault of both the parties. Therefore, since it has been proved by preponderance of the evidence as per section 96(1) of the Civil and Criminal Procedure Code of Bhutan that the loan was sanctioned without following banking norms to make back-and-forth adjustment transactions from the loan account, the loss in respect the total interest and late fee accumulated till 25/12/2019 amounting to Nu. 1,902,147.97 (One million nine hundred two thousand one hundred forty-seven and chetrum ninety-seven) must be borne equally by both the parties in accordance with Section 22 of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that “*when both parties are at fault the loss has to be shared equally*”. After deducting the Corporation’s liability amount of Nu. 951,073.985 (nine hundred fifty-one thousand seventy-three and chetrum nine hundred thirty-five), the remaining loan outstanding till 25.12/2019 amounting to **Nu. 5,718,967.935 (Five million seven hundred eighteen thousand nine hundred sixty-seven and chetrum nine hundred thirty-five)** along with applicable interest as per agreement executed between the parties and Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Ugyen Wangchuk to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

- (B).** Although the land measuring 15 decimals on Thram No.812 located at Chang Debsi, Thimphu registered in the name of Mrs. Tshering Dema has already been mortgaged, the defendant Ugyen Wangchuk has again obtained a loan from the Bhutan Insurance Ltd. by mortgaging the same land. As per the section 38 (1) (a) of Movable and Immovable Property Act of the Kingdom of Bhutan, although the priority of the mortgages shall be based on an order in which the mortgages were registered. However, as per the mortgage documents submitted by the Royal Insurance Corporation of Bhutan Limited to the Dzongkhag Land Record Section, Thimphu, the land measuring 9147.6 sq.ft and 3 storied building on T/No. 812 was registered in the name of Mr. Ugyen Wangchuk while as per the agreement, the said land is registered in the name of Mrs. Tshering Dema. Therefore, since the two documents do not match, the mortgage was not considered legally registered in accordance with Sections 26 and 90 of Movable and Immovable Property Act of the Kingdom of Bhutan. However, the defendant Ugyen Wangchuk while availing loan from the Bhutan Insurance Limited had registered the mortgage as per Sections 180 and 181

of Land Act of Bhutan 2007 and as per the Sections 27, 29 & 30 of the Movable and Immovable Property Act of the Kingdom of Bhutan. Therefore, since it has been proved by preponderance of the evidence as per section 96(1) of the Civil and Criminal Procedure Code of Bhutan that the same land was mortgaged twice, in case the defendant Ugyen Wangchuk fails to pay the loan within the given time by the court as per Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan, the Royal Insurance Corporation of Bhutan Limited and the Bhutan Insurance Limited can, without violating Sections 55 (1) and 77 (1) of the Movable and Immovable Property Act of the Kingdom of Bhutan, obtain the Seizure Order from the court and sell the land and divide the amount as per the loan outstanding in accordance with Section 64 (1) of Movable and Immovable Property Act of the Kingdom of Bhutan,

- (C).** The defendant Ugyen Wangchuk has, in accordance with Section 16 of Contract Act of Bhutan and Section 35 of Evidence Act of Bhutan, availed the loan in the principal amount of Nu. 2,000,000 (Two million) vide loan account No. PLCONSUMOD/2012/217 against Mrs. Tshering Dema's land measuring 15 decimals on Thram No. 812 located at Chang Debsi. The mortgage against the said land was registered with the Land Record Office, Thimphu as per the section 3 and 4 of Evidence Act of Bhutan. However, after transferring the ownership of the said land from Mrs. Tshering Dema to Ugyen Wangchuk, he has deceitfully mortgaged the said land with new Lag Thram and availed the loan from Bhutan Insurance Limited. Since two loans have been availed against the same land, it is a criminal offense under Section 302 of the Penal Code of Bhutan, which states that "a defendant shall be guilty of the offence of execution of a document by deception..." and therefore, the defendant Ugyen Wangchuk is sentenced to one year imprisonment for misdemeanor as per the section 303 of the Penal Code of Bhutan.
- (D)** The defendant Ugyen Wangchuk while availing the loan of Nu. 2,000,000/- (Two million) account No. PLCONSUMOD/2012/217 against the land measuring 15 decimals on Thram No. 812 located at Chang Debsi, registered in the name of Mrs. Tshering Dema, has registered the mortgage with the Land Record Office of the Thimphu Dzongkhag as per the section 93 of Movable and Immovable Property Act of the Kingdom of Bhutan. However, after transferring the ownership of the said 15 decimals land in the name of Ugyen Wangchuk, he has mortgaged the same land to Bhutan Insurance Limited. The defendant Ugyen Wangchuk was able to deceitfully avail two loans

against the same land since the Dzongkhag Land Record Office, Thimphu has failed to exercise due diligence as per the Sections 94 (1) (2) and 95 (a) of the Movable and Immovable Property Act of the Kingdom of Bhutan. Since Mr. Sonam Zangpo, an Administrative Officer of the Thimphu Dzongkhag has violated Section 44 (d) of the Civil Service Act 2010, an administrative action must be taken against Mr. Sonam Zangpo as per section 75 of the Civil Service Act 2010, and accordingly a report must be submitted before the court.

18(A). As per the Summery Findings No. 7(A) above, the defendant Ugyen Wangchuk has availed loan of Nu.2,200,000.00 (Two Million and Two Hundred Thousand) from the Royal Insurance Corporation of Bhutan Limited against the loan account number PLCONSUMOD/2021/31 by mortgaging the land measuring 21 decimal on Thram No.812 located at Chang Debsi, Thimphu registered in the name of Mrs. Tshering Dema. This was admitted by both the parties as per section 80 of Evidence Act of Bhutan. Further, although there is a mutually executed valid loan agreement between the parties as per section 16 of Contract Act of Bhutan, section 35 of Evidence Act of Bhutan and section 6 of Moveable and Immovable Property Act of the Kingdom of Bhutan, no additional mortgage has been obtained and without proper documentation, the Royal Insurance Corporation of Bhutan Limited had paid the Bank Guarantee encashment of Nu.14,000,000.00 (Fourteen Million) to Pemagatshel Dzongkhag by debiting this loan account number PLCONSUMOD/2021/31 of Ugyen Wangchuk. After the invocation of the Bank Guarantee, the defendant Ugyen Wangchuk and Pemagatshel Dzongkhag went into litigation regarding the said Bank Guarantee invocation, and as per the judgment passed by the Supreme Court of Bhutan, Pemagatshel Dzongkhag has been held liable to refund the Bank Guarantee amount to the defendant Ugyen Wangchuk. Moreover, while the Royal Insurance Corporation of Bhutan Limited has sanctioned the loan on 19/09/2012 the CIB report was verified later on 19/11/2012 as per Sections 3 and 4 of the Evidence Act of Bhutan. Although the CIB report revealed the record of irregular repayment it was found that the Royal Insurance Corporation of Bhutan Limited has sanctioned the new loans.

The Royal Insurance Corporation of Bhutan Limited has based the area of the above said mortgaged land on the sale deed executed between Mrs. Tshering Dema and the defendant Ugyen Wangchuk and has not registered the mortgage property as per section 24 (2)(a) of the Movable and Immovable Property Act of the Kingdom of Bhutan. Further, the Royal Insurance Corporation

of Bhutan Limited has violated section 3 and 4 of Evidence Act of Bhutan and made a transaction by debiting and crediting the defendant Ugyen Wangchuk's loan account without his consent. Therefore, as per section 96(1) of the Civil and Criminal Procedure Code of Bhutan it has been proven that both the parties have equal lapses while sanctioning the loan. Accordingly, as per section 22 of the Movable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law which states that "*when both the parties are at fault the loss has to be shared equally*" the interest and late fee accrued till 25/12/2019 amounting to Nu.8,279,114.05 (Eight Million Two Hundred Seventy-Nine Thousand One Hundred Fourteen and Chhertum Zero Five) has to be shared equally between both the parties. The Royal Insurance Corporation of Bhutan Limited has to bear Nu.4,139,557.025 (Four Million One Hundred Thirty-Nine Thousand Five Hundred Fifty-Seven and Chhertum Zero Two Five) being the 50 percent of the interest and late fee amount of Nu.8,279,114.05 (Eight Million Two Hundred Seventy-Nine Thousand One Hundred Fourteen and Chhertum Zero Five) charged till 25/12/2019. After deducting the Corporation's liability amount of Nu.4,139,557.025 (Four Million One Hundred Thirty-Nine Thousand Five Hundred Fifty-Seven and Chhertum Zero Two Five) the remaining loan outstanding till 25/12/2019 amounting to **Nu.20,539,344.445 (Twenty Million Five Hundred Thirty-Nine Thousand Three Hundred Forty-Four and Chetrum Four Hundred Forty-Five)** as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan along with applicable interest as per agreement executed between the parties and Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Ugyen Wangchuk to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

- B.** Although the land measuring 21 decimals on Thram No.812 located at Chang Debsi, Thimphu registered in the name of Tshering Dema has been mortgaged with the Royal Insurance Corporation of Bhutan Limited, it was not registered as per section 26 and 90 of Moveable and Immovable Property Act of the Kingdom of Bhutan. After 15 decimal land has been transferred to Ugyen Wangchuk from Tshering Dema, the defendant Ugyen Wangchuk has deceitfully mortgaged the same land with the Bhutan Insurance Limited and accordingly the mortgage has been registered with Bhutan Insurance Limited as per norms. Therefore, since it is proven that the same land is

mortgaged against two loans, if Ugyen Wangchuk fails to make loan repayment within deadline provided by the court as per section 56 of Movable and Immovable Property Act of the Kingdom of Bhutan, the Royal Insurance Corporation of Bhutan Limited and the Bhutan Insurance Limited can sell the mortgaged land by obtaining seizure order from court as per section 55(1) and 77(1) of Movable and Immovable Property Act of the Kingdom of Bhutan and divide the sale proceeds amount based on the loan outstanding as per Section 64(1) of Movable and Immovable Property Act of the Kingdom of Bhutan.

19(A).As per the Summery Findings No. 8(A) above, the defendant Tshering Pem has availed a loan in the principal amount of Nu.2,000,000.00 (Two Million) against loan account No. PLCONSUME1/2012/51 against the security of a Prado car bearing Registration No. BP-I-C2080 registered in the name of Mr. Namgay Peljor. This was agreed by both the parties as per section 80 of Evidence Act of Bhutan. Moreover, both the parties mutually agreed and signed the loan agreement as per section 16 of Contract Act of Bhutan, section 35 of Evidence Act of Bhutan and section 6 of Moveable and Immovable Property Act of the Kingdom of Bhutan. However, the Royal Insurance Corporation of Bhutan Limited has violated section 3 and 4 of Evidence Act of Bhutan since the Corporation has accepted the loan application form submitted by Tshering Pem although the loan application forms have not been duly filed. Further, the Royal Insurance Corporation of Bhutan Limited has hypothecated the Prado in the agreement without authorization letter and consent of the registered owner of the vehicle, Mr. Namgay Peljor. Tshering Pem's CIB report was not verified prior to sanctioning of the loan.

Moreover, without consent of account holder Tshering Pem, the Royal Insurance Corporation of Bhutan Limited has withdrawn Nu.1,926,135.00 (One Million Nine Hundred Twenty-Six Thousand One Hundred Thirty Five) on 22/12/2012 from loan account No.PLCONSUME1/2012/51 of Tshering Pem and on the same day deposited Nu.1,662,835.00 (One Million Six Hundred Sixty-Two Thousand Eight Hundred Thirty-Five) against loan account number CRCS/2010/84 and Nu.263,300.00 (Two Hundred Sixty-Three Thousand Three Hundred) against loan account number PLCONSUMOD/2012/217 of Ugyen Wangchuk. Further, without consent of the account holder, Tshering Pem, the Royal Insurance Corporation of Bhutan Limited has debited the insurance premium of the Prado car from loan account number PLCONSUME1/2012/51 of Tshering Pem and made various transactions. Therefore, as per section 96(1) of Civil and Criminal

Procedure Code of Bhutan it has been proven that both the parties have equal lapses while sanctioning the loan. Accordingly, as per section 22 of the Movable and Immovable property act of the Kingdom of Bhutan and as per Principle of International Law, which states that “*when both the parties are at fault the loss has to be shared equally*”, the interest and late fee accrued till 25/12/2019 amounting to Nu.695,846.91 (Six Hundred Ninety-Five Thousand Eight Hundred Forty-Six and Chetrum Nine One) has to be shared equally between both the parties. The Royal Insurance Corporation of Bhutan Limited has to bear Nu.347,923.455 (Three Hundred Forty-Seven Thousand Nine Hundred Twenty-Three and Chetrum Four Five Five) being the 50 percent of the interest and late fee amount of Nu.695,846.91 (Six Hundred Ninety-Five Thousand Eight Hundred Forty-Six and Chetrum Nine One) charged till 25/12/2019. After deducting the Corporation’s liability amount of Nu.347,923.455 (Three Hundred Forty-Seven Thousand Nine Hundred Twenty-Three and Chetrum Four Five Five) the remaining loan outstanding till 25/12/2019 amounting to **Nu.1,841,280.495 (One Million Eight Hundred Forty-One Thousand Two Hundred Eighty and Chetrum Four Nine Five)** as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan along with applicable interest as per agreement executed between the parties and Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Tshering Pem to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

- (B). The defendant Tshering Pem had hypothecated Mr. Namgay Penjor’s Prado car bearing Registration No. BP-I-C2080 and accordingly registered the charge as per sections 26 and 90 of Moveable and Immovable Property Act of the Kingdom of Bhutan. As per section 3 and 4 of the of Evidence Act of Bhutan, it was proven that the said vehicle was sold by the defendant’s brother, Ugyen Wangchuk three years back in 2016 to Mr. Tshering Dorji, the Chairperson of the Local Government of Paro Dzongkhag, as per the statement submitted by Mr. Tshering Dorji before the court. Further, Mr. Tshering Dorji submitted that he was told by Ugyen Wangchuk that there was no loan against the said vehicle. Therefore, while the vehicle being a movable property cannot be handed over to the Royal Insurance Corporation of Bhutan Limited as per Section 64(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan, the remaining loan outstanding

balance against the said vehicle must be paid by the defendant Tshering Pem to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of the judgment as per Section 56 of Moveable and Immovable Property Act of the Kingdom of Bhutan.

- (C).** In case the defendant Tshering Pem cannot not pay the loan within the aforementioned deadline, the sale price of the vehicle must be restituted to the Royal Insurance Corporation of Bhutan Limited as per Section 46 of the Penal Code of Bhutan. Further, since Mr. Tshering Dorji could not prove that he paid the vehicle insurance for three years as per sections 3 and 4 of Evidence Act of Bhutan, the vehicle insurance payment of Nu.95,294.00 (Ninety-Five Thousand Two Hundred Ninety-Four) deducted from the defendant Tshering Pem's loan account must be paid by Mr. Tshering Dorji to the defendant Tshering Pem within one (1) month from the date of the judgment according to section 56 of Moveable and Immovable Property Act of Kingdom of Bhutan.
- (D).** The Prado car bearing Registration No. BP-I-C2080 registered in the name of Mr. Namgyal Penjor was mortgaged by the defendant Tshering Pem and it was registered according to sections 26 and 90 of Moveable and Immovable Property Act of the Kingdom of Bhutan. The defendant Tshering Pem's brother Ugyen Wangchuk had breached the contract as per section 211 of Contract Act of Bhutan since the vehicle was sold three years back in 2016 to Mr. Tshering Dorji, the Chairperson of the Local Government of Paro Dzongkhag as per Sections 3 and 4 of the Evidence Act of Bhutan. Therefore, since it has been proved by preponderance of the evidence as per section 96(1) of the Civil and Criminal Procedure Code of Bhutan, Ugyen Wangchuk must be held liable for breach of contract in accordance with Section 285 of the Penal Code of Bhutan. Therefore, in accordance with Section 286 of the Penal Code of Bhutan, Ugyen Wangchuk has been sentenced to three months imprisonment, for which *Thrim Thue* may be paid in lieu of the imprisonment in accordance with Section 28 of the Penal Code of Bhutan.

20(A). As per the Summary Findings No.9(A) above, the defendant Tshering Pem's representative Ugyen Wangchuk had availed a loan against his loan account number PLCONSUD1/2014/244 in a principal amount of Nu.2,000,000.00 (Two Million) from Royal Insurance Corporation of Bhutan Limited as per section 16 of Contract Act of Bhutan, section 35 of Evidence Act of Bhutan, and section 6 of Moveable and Immovable Property Act of the Kingdom of Bhutan. Though Ugyen

Wangchuk admitted availing the loan as per section 80 of Evidence Act of Bhutan, he contended for an investigation as to whom the loan was given. Accordingly, upon the judicial investigation, it was established that those properties mortgaged were not mortgaged legally as per Sections 26 and 90 of Moveable and Immovable Property Act of the Kingdom of Bhutan. Secondly, prior to sanctioning the loan to the defendant Tshering Pem, her CIB report was not checked as per sections 3 and 4 of Evidence Act of Bhutan. The loan sanctioned in the name of the defendant Tshering Pema vide loan account number PLCONSUD1/2014/244 in a principal amount of Nu.2,000,000.00 (Two Million) was not a new loan given to the defendant Tshering Pem by the Royal Insurance Corporation of Bhutan Limited. Instead, as per Sections 3 and 4 of the Evidence Act of Bhutan, Nu.44,000/- has been deposited in loan account No. PFSLIMPORT/2009/160, Nu.695,000/- has been deposited in the loan account No. TLHVTRUCK/2010/417, Nu.415,000/- has been deposited in the loan account No.PLCONSUD1/2012/31, Nu.435,000/- has been deposited in the loan account No. PLCONSUMOD/2012/51 and Nu.411,000/- has been deposited in the loan account No. PLCONSUMOD/2012/217 on 31/12/2013 as per the cheque No.948994. Therefore, since it has been proved by preponderance of the evidence as per section 96(1) of the Civil and Criminal Procedure Code of Bhutan and further, it was admitted that the mortgage was based on the sale-purchase agreement of the land, the mortgaged land measuring 1 acre and 44 decimals on Thram No.783, Plot No.TSE-1076 located at Tshento under Paro Dzongkhag registered under Namgyal Wangmo, was already mortgaged with the Bhutan Development Bank Limited, hence the land cannot be handed to the Royal Insurance Corporation of Bhutan Limited. However, 23.5 decimals from the total land measuring 0.43 acre under Thram No.51, Plot No.MEW-5368 located at Mewang, under Thimphu Dzongkhag registered under Kencho Wangmo was mortgaged, yet without consent of defendant Tshering Pem, the Corporation has carried our transactions by debiting and crediting the loan accounts. Accordingly, as per section 22 of Moveable and Immovable Property Act of the Kingdom of Bhutan, and principle of the International Law which states that *“when both parties are at fault the loss has to be shared equally”* the interest and late fee accrued till 25/12/2019 amounting to Nu.1,098,932.20 (One Million Ninety-Eight Thousand Nine Hundred Thirty-Two and Chetrum Two Zero) has to be shared equally between both the parties. The Royal Insurance Corporation of Bhutan Limited has to bear Nu.549,466.10 (Five Hundred Forty-Nine Thousand Four Hundred Sixty-Six and Chetrum One Zero) being the 50 percent of the interest and late fee amount of Nu.1,098,932.20 (One Million Ninety-Eight

Thousand Nine Hundred Thirty-Two and Chetrum Two Zero) charged till 25/12/2019. After deducting the Corporation's liability amount of Nu.549,466.10 (Five Hundred Forty-Nine Thousand Four Hundred Sixty-Six and Chetrum One Zero) the remaining loan outstanding till 25/12/2019 amounting to **Nu.2,523,372.66 (Two Million Five Hundred Twenty-Three Thousand Three Hundred Seventy-Two and Chetrum Six Six)** as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan along with applicable interest as per agreement executed between the parties and Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Tshering Pem to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

(B). As per section 56 of Moveable and Immovable Property Act of the Kingdom of Bhutan, if the defendant Tshering Pem cannot pay the loan amount within the deadline, the Royal Insurance Corporation of Bhutan shall obtain a Seizure Order from the court in respect of the land measuring 23.5 decimals out of 0.43 acres under Thram No.51, Plot No.MEW-5368 located at Mewang, under Thimphu Dzongkhag registered in the name of Kencho Wangmo and sell it in accordance with section 64(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and same can be auctioned but without violating section 55(1) and 77(2) of the Moveable and Immovable Property Act of the Kingdom of Bhutan. However, the seizure order in respect of the land measuring 1 acre and 44 decimals on Thram No.783, Plot No.TSE-1076 located at Tshento, under Paro Dzongkhag registered in the name of Namgyal Wangmo cannot issued as per sections 38 (1)(a) and 90 of Moveable and Immovable Property Act of the Kingdom of Bhutan, since the said land has already been mortgaged with the Bhutan Development Bank Limited.

21(A). As per the Summary Findings No.10 above, the defendant Ugyen Wangchuk, admitted availing the loan on 30/09/2015 against his loan account number HCLN2/2015/123 for a principal amount of Nu.10,000,000.00 (Ten Million) as per section 16 of Contract Act of Bhutan, section 35 of Evidence Act of Bhutan and section 6 of Moveable and Immovable Property Act of Kingdom of Bhutan and as per section 80 of Evidence Act of Bhutan. However, since the defendant has raised an issue on whether the housing loan was sanctioned as per the housing loan rules and regulations, the judicial investigation established that firstly, although the mortgaged property has been legally registered

as per sections 26 and 90 of Moveable and Immovable Property Act of the Kingdom of Bhutan, the CIB report of Ugyen Wangchuk was not checked prior to sanctioning the loan to the defendant Ugyen Wangchuk as per sections 3 and 4 of Evidence Act of Bhutan. Secondly, on 14/09/2015 the Royal Insurance Corporation of Bhutan Limited has, without following norms of the housing loan, deposited Nu.4,741,580/- in Ugyen Wangchuk's Bank of Bhutan account No.40100220597141216 as per sections 3 and 4 of the Evidence Act of Bhutan. On 26/10/2015 Nu.2,984,934 has been withdrawn and paid Nu.450,000/- to Phuntsho Rabten but there is no receipt for the said payment. The remaining amount was deposited in the defendant Ugyen Wangchuk's loan accounts No. PLCONSUMOD1/2014/244, PLCONSUME1/2012/51, TLHVTRUCK/2010/417 and PLCONSUMOD1/2012/31 without following the due process by the Corporation. This fault of the Corporation has been proved by preponderance of the evidence as per section 96(1) of the Civil and Criminal Procedure Code of Bhutan. Accordingly, as per section 22 of Moveable and Immovable Property Act of the Kingdom of Bhutan, the late fee against this account till 25/12/2019 amounting to Nu.497,048.63 (Four Hundred Ninety-Seven Thousand Forty-Eight and Chetrum Six Three) cannot be charged. However, since the execution of the agreement on 30/09/2015 in respect of the loan account No. HCLN2/2015/123 for a principal amount of Nu. 10,000,000/- (Ten million) was admitted as per section 80 and 35 of the Evidence Act of Bhutan, section 16 of the Contract Act of Bhutan, and section 6 of the Moveable and Immovable Property Act of the Kingdom of Bhutan, after deducting the late fee of Nu. 497,048.63 (Four Hundred Ninety-Seven Thousand Forty-Eight and Chetrum Six Three) as on 25/12/2019, the remaining amount of **Nu.14,952,247.13/- (Fourteen Million Nine Hundred Fifty Two Thousand Two Hundred Forty Seven and Chetrum One Three)** along with applicable interest as per Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Ugyen Wangchuk to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

- (B). If Ugyen Wangchuk fails to pay the entire loan outstanding amount to Royal Insurance Corporation of Bhutan Limited within 6 months from the date of judgment as per section 56 of the Moveable and Immovable Property Act of Kingdom of Bhutan, the Royal Insurance Corporation of Bhutan Limited can sell the mortgaged land measuring 7710 sq.ft on Thram No.2618, Plot No.CZ1-880

along with six (6) storied building registered in the name of Ugyen Wangchuk located at Changzamtok under Thimphu Dzongkhag after obtaining the seizure order from the court as per section 64 (1) of Movable and Immovable of Property Act of Kingdom of Bhutan but without violating sections 55(1) and 77(1) of the Movable and Immovable of Property Act of Kingdom of Bhutan.

22(A). As per the Summary Findings II above, the defendant Ugyen Wangchuk admitted availing the loan of Nu.3,300,000/- (Three Million Three Hundred Thousand) vide loan account No. BLTERM1/2015/302 in accordance with section 35 of the Evidence Act of Bhutan, section 16 of the Contract Act of Bhutan, and section 6 of Movable and Immovable of Kingdom of Bhutan. Both parties accepted availing the loan by executing the legally valid agreement against the loan account No. BLTERM1/2015/302 as per the sections 80 of the Evidence Act of Bhutan. However, no additional mortgage was obtained as per norms and further, the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 located at Tshento Gewog under Paro Dzongkhag registered in the name of Namgyal Wangmo which was registered as mortgage as per section 24(2)(a) of the Moveable and Immovable Property Act of the Kingdom of Bhutan, was not properly registered. In addition, since the land was previously mortgaged in favor of Bhutan Development Bank Limited noted as per sections 38 (1) (a) and 90 of the Movable and Immovable Property Act of Kingdom of Bhutan, it was released from the mortgage. As per section 3 and 4 of the Evidence Act of Bhutan it was established that although Ugyen Wangchuk had submitted the loan application on 04/12/2015 and the loan was sanctioned by executing the loan agreement on 19/12/2015, the loan amount from this account had been deposited in Ugyen Wangchuk's loan account No. TLHVTRUCK/2010/417, PLCONSUMOD1/2012/31, CRCS/2010/84, PLCONSUMOD/2010/217, and other loan accounts. Moreover, CIB report of Ugyen Wangchuk was checked later on 08/01/2016 and although Ugyen Wangchuk's loans in other banks, which are in default and are about to be accepted by courts, the Corporation was at fault for sanctioning the loan. Accordingly, as per section 22 of Moveable and Immovable Property Act of the Kingdom of Bhutan, and principle of the International Law which states that "*when both parties are at fault the loss has to be shared equally*" the interest and late fee accrued till 25/12/2019 amounting to Nu.1,412,397.36/- (One Million and Four Hundred Twelve Thousand Three Hundred Ninety Seven and Cheltrum Three Six) has to be shared equally between both the parties. The Royal Insurance Corporation of Bhutan

Limited has to bear Nu.706,198.68/- (Seven Hundred Six Thousand One Hundred Ninety Eight and Cheltrum Six Eight) being the 50 percent of the interest and late fee amount of Nu.1,412,397.36/- (One Million and Four Hundred Twelve Thousand Three Hundred Ninety Seven and Cheltrum Three Six) charged till 25/12/2019. After deducting the Corporation's liability amount of Nu.549,466.10 (Five Hundred Forty-Nine Thousand Four Hundred Sixty-Six and Chetrum One Zero) the remaining loan outstanding till 25/12/2019 amounting to **Nu.3,950,585.68/- (Three Million and Nine Hundred Fifty Thousand Five Hundred Eighty Five and Cheltrum Six Eight)** as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan along with applicable interest as per agreement executed between the parties and Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Tshering Pem to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

(B). In case if Ugyen Wangchuk fails to pay the above mentioned loan amount within the time awarded, then the land measuring 9,147.6 sq.ft on Thram No.812 located at Debsi, Thimphu which is also mortgage with Bhutan Insurance Limited should be seized and auctioned jointly. Land measuring 7,710 sq.ft on Thram No. 849, Plot No.148 located at Changzamtok, Thimphu and land measuring 23.5 decimals out of 43 decimals on Thram No.51, Plot No.MEW-5368 located at Namseling, Thimphu registered in the name of Kencho Wangmo mortgaged as per norms in line with sections 93 and 94 of the Movable and Immovable Property Act of Kingdom of Bhutan can be sold by the Royal Insurance Corporation of Bhutan Limited in compliance with section 55(1) and 77 (2) of the Movable and Immovable Property Act of Kingdom of Bhutan upon obtaining the seizure order from the court as per section 64 (1) of the Movable and Immovable Property Act of Kingdom of Bhutan.

22(A).As per the Summary Findings No. 12 above, Ugyen Wangchuk has admitted availing a loan of Nu.3,000,000/- (Three Million) vide loan account no. CDLI/2016/409 against the mortgage land measuring 4.30 acres on Thram No.722, Plot No.59/B, 69/I and 225/D located at Dekiling, Gelephu, under Sarpang Dzongkha registered in the name of Dechen Pelden in accordance with sections 16

of the Contract Act of Bhutan and section 35 of Evidence Act of Bhutan and section 6 of the Movable and Immovable Property Act of Kingdom of Bhutan The parties have accepted that the said loan amount was fully deposited in Dechen Pelden loan account No. CDL/2010/788 as per section 80 of the Evidence Act of Bhutan. Since Dechen Pelden has agreed to pay the said loan, the loan account CDLI/2016/409 with the principal amount of Nu.3,000,000/- (Three Million) along with the interest will be transferred to the mortgaged property owner Dechen Pelden as per section 43 of the Movable and Immovable Property Act of kingdom of Bhutan. The loan outstanding against the said loan account should be transferred to the landowner Dechen Pelden who shall pay the loan as per section 56 of Movable and Immovable Property Act of kingdom of Bhutan should pay to the Royal Insurance Corporation of Bhutan Limited within 6 months from the date of the judgment awarded.

(B). If Dechen Pelden cannot pay the loan within 6 months' time granted by the court, the Royal Insurance Corporation of Bhutan Limited can, without violating the section 55 (1) and 77 (2) of the Movable and Immovable Property Act of Kingdom of Bhutan, sell the mortgaged land measuring 4.30 acres on Thram No.722, Plot No.59/B, 69/I and 225/D located at Dekiling, Gelephu, Sarpang after obtaining the seizure order from the court as per section 64 (1) Movable and Immovable Property Act of the Kingdom of Bhutan.

23(A). As per the Summary Findings No. 13(A) above, the defendant Ugyen Wangchuk admitted availing the loan of Nu.5,000,000/- (Five Million) vide the loan account No. CRCSI/2016/168 against the contract work vide work order No.CDA/DES-12/2015-2016/128 dated 03/09/2015 worth Nu.15,469,289/- and against properties collateralized against other loan accounts as per section 16 of Contract Act of Bhutan, section 34 of the Evidence Act of Bhutan, and section 6 of the Movable and Immovable Property Act of the Kingdom of Bhutan. The defendant Ugyen Wangchuk is liable to pay the loan outstanding balance with interest as per section 17 (1) of the Movable and Immovable Property Act of kingdom of Bhutan to the Royal Insurance Corporation of Bhutan Limited within 6 months from the date of judgment as per section 56 of the Movable and Immovable Property Act of the Kingdom of Bhutan.

(B). Previous mortgage property was considered and bills receivable from the work order while sanctioning the loan to Ugyen Wangchuk by the Royal Insurance Corporation of Bhutan Limited and as per sections 26 and 90 of the Movable and Immovable Property Act of the Kingdom of Bhutan the mortgage property was not verified in the CIB therefore, as per section 64 (I) of the Movable and Immovable Property Act of kingdom of Bhutan seizure order for the mortgage property could not be awarded.

25(A).As per the Summary Findings No.14 (A) above, the defendant Ugyen Wangchuk has admitted availing the loan vide the loan account No. BLODI/2017/512 for a loan of Nu.7,500,000/- (Seven Million and Five Hundred Thousand) against the securities that have already been collateralized against loan account No. BLTERM1/2015/302, HCLN2/2015/123, and PLCONSUODI/2012/31, which is as per section 80 of the Evidence Act of Bhutan. While both the parties have accepted having executed a legally binding agreement which is as per section 16 of the Contract Act of Bhutan and section 35 of the Evidence Act of Bhutan, since the details of the mortgaged property were not specified, nor was the CIB report verified as per sections 26 and 90 of the Moveable and Immovable Property Act of the Kingdom of Bhutan. Further, despite knowing that there were no repayments for loans sanctioned earlier, the Royal Insurance Corporation of Bhutan Limited continued to sanction one loan after another to the defendant Ugyen Wangchuk. This was proven to be the fault of both the parties by preponderance of the evidence as per section 96 (I) of the Civil Criminal Procedure Code of Bhutan.

Therefore, as per section 22 of the Movable and Immovable Property Act of the Kingdom of Bhutan and the Principle of Interenational Law which states that, “*when both parties are at fault the loss has to be shared equally*” the interest and late fee accrued till 25/12/2019 amounting to Nu.3,812,597.77/- (Three Million and Eight Hundred Twelve Thousand Five Hundred Ninety Seven and Cheltrum Seven Seven) has to be shared equally between both the parties. The Royal Insurance Corporation of Bhutan Limited has to bear Nu.1,906,298.94/- (One Million and Nine Hundred Six Thousand Two Hundred Ninety Eight and Cheltrum Nin Four) being the 50 percent of the interest and late fee amount of Nu.3,812,597.77/- (Three Million and Eight Hundred Twelve Thousand Five Hundred Ninety Seven and Cheltrum Seven Seven) charged till 25/12/2019. After deducting the Corporation’s liability amount of Nu.1,906,298.94/- (One Million and Nine Hundred Six Thousand

Two Hundred Ninety Eight and Cheltrum Nin Four) the remaining loan outstanding till 25/12/2019 amounting to **Nu.9,218,487.94/- (Nine Million and Two Hundred Eighteen Thousand Four Hundred Eighty Seven and cheltrum Nine Four)** as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan along with applicable interest as per agreement executed between the parties and Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Ugyen Wangchuk to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

- (B).** In case, the defendant Ugyen Wangchuk fails to pay the loan within the time awarded by the court as per section 56 of the Movable and Immovable Property Act of Kingdom of Bhutan, the Royal Insurance Corporation of Bhutan Limited can obtain seizure order from the court in respect of the mortgaged properties collateralized against loan accounts No.BLTERM1/2015/302, HCLN2/2015/123 and PLCONSUOD1/2012/31 as per section 64 (1) of the Movable and Immovable Property Act of Kingdom of Bhutan and sell them but without violating section 55 (1) and 77 (1) of the Movable and Immovable Property Act of Kingdom of Bhutan.

26(A).As per the Summary Findings No.15 above, although no agreement was executed between the Royal Insurance Corporation of Bhutan Limited and the defendant Ugyen Wangchuk, based only on two application forms of Ugyen Wangchuk, the Royal Insurance Corporation of Bhutan Limited has, without following the bank's norms, created the loan account bearing No. CRCSI/2018/371 against the invocation of two Bank Guarantees as per Sipso Dungkhag Drungpa Dasho Tshewang Tobgay's letter No.DAT/ENGG-03/2017-2018/3387 dated 01/03/2018 for Nu.3,238,069/- (Three Million and Two Hundred Thirty Eight Thousand Sixty Nine) and Nu.2,400,000/- (Two Million and Four Hundred Thousand) as per letter No. RELOFRENTN/2017/2272 dated 20.06.2017 in accordance sections 3 and 4 of the Evidence Act of Bhutan. This was proven to be the fault of both the parties by preponderance of the evidence as per section 96 (1) of the Civil Criminal Procedure Code of Bhutan.

Therefore, as per section 22 of the Movable and Immovable Property Act of the Kingdom of Bhutan and the Principle of Interenational Law which states that, “*when both parties are at fault the loss has to be shared equally*” the interest and late fee accrued till 25/12/2019 amounting to Nu.1,676,309.56/- (One Million and Six Hundred Seventy Six Thousand Three Hundred Nine and Cheltrum Five Six) has to be shared equally between both the parties. The Royal Insurance Corporation of Bhutan Limited has to bear Nu.838,154.78/- (Eight Hundred Thirty Eight Thousand One Hundred Fifty Four and Cheltrum Seven Eight) being the 50 percent of the interest and late fee amount of Nu.1,676,309.56/- (One Million and Six Hundred Seventy Six Thousand Three Hundred Nine and Cheltrum Five Six) charged till 25/12/2019. After deducting the Corporation’s liability amount of Nu.1,676,309.56/- (One Million and Six Hundred Seventy Six Thousand Three Hundred Nine and Cheltrum Five Six) the remaining loan outstanding till 25/12/2019 amounting to **Nu.6,476, 223.78/- (Six Million and Four Hundred Seventy Six Thousand Two Hundred Twenty Three and Cheltrum Seven Eight)** as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan along with applicable interest as per agreement executed between the parties and Section 17(1) of the Moveable and Immovable Property Act of the Kingdom of Bhutan and the financial norms must be paid by the defendant Ugyen Wangchuk to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of judgment in accordance with Section 56 of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

26. The Parties may prefer an appeal on this case on or within 10 days from the date of judgment as per section 96.5 and 109.1 (c) of the Civil and Criminal Procedure Code of Bhutan.

ORDER

Following exhaustive deliberations as per section 96 of the Civil and Criminal Procedure of Bhutan, this Court hereby decrees:

(A). That the defendants Ugyen Wangchuk, Tshering Pem and Dechen Pelden must pay the loan that is liable against each party as per the above judgment to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of the judgment. In case of failure to pay the loan, the Royal Insurance Corporation of Bhutan Limited seize the mortgaged properties after obtaining the seizure order from the Court.

- (B). That as per the judgment above, Tshering Dorji must pay the vehicle insurance amount of Nu.95,294/- (Ninety-Five Thousand Two Hundred Ninety-Four) to the defendant Tshering Pem within one (1) month from the date of the judgment.
- (C). That as per the judgment above, for the fault of registering the mortgage of one land against two loans, the Administration of the Dzongkhag Administration, Thimphu or the Thrompon of the Thromde Office shall, take administrative action against Sonam Zangpo and submit the report to this Court.
- (D). That as per the judgment above, the defendant Ugyen Wangchuk is sentenced to one (1) year and six (6) months imprisonment since he has committed an offense of selling the mortgaged properties and tempering the documents by fraudulently obtaining new Lag Thram. However, he may pay *Thrimthoe* in lieu of the sentence. Therefore, any party who is not complying with this judicial order will be held in contempt of the court as per section 104/107 of the Civil and Criminal Procedure Code of Bhutan.

Order of the Royal Court of Justice.

Wangchuk Drukpa
Drangpoen
Commercial Bench
Dzongkhag Court, Thimphu