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The Sunday Times
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6 September 2009

VERY URGENT

DEFAMATION PRE-ACTION PROTOCOL LETTER OF CLAIM

ENGLISH HIGH COURT – CIVIL PROCEDURE RULES C6-003

Dear Sirs

Re: (1) Lavasa Corporation Limited (2) Hindustan Construction Company (3) Mr Ajit Gulabchand (4) Mr Rajgopal Nogja V Times Newspapers Limited

**The Sunday Times for 30th August 2009, page 14, article headed
“University dragged into Indian land-grab row”;
[http://www.timesonline.co.uk/tol/life_and_style/education/article6814906
.ece](http://www.timesonline.co.uk/tol/life_and_style/education/article6814906.ece)**

We are instructed by Lavasa Corporation Limited (“LCL”), Hindustan Construction Company (“HCC”), Mr Ajit Gulabchand and Mr Rajgopal Nogja. LCL is a major Indian company which is presently developing a new city at Lavasa, between Mumbai and Pune in the Indian state of Maharashtra. LCL is a subsidiary of HCC, founded in 1926, which is the largest infrastructure company in India and listed on the Indian Stock Exchange. Mr Gulabchand is the Chairman and Managing Director of HCC and the Chairman of LCL. Mr Nogja is the President of LCL.

The development at Lavasa will provide as benefits for residents a modern balanced way of life, including access to the world’s finest theme parks, universities, hospitality and sporting schools. It is fully supported at Indian Federal and State level. The project aims to bring reputable and internationally recognised Western brands to Lavasa. Some significant corporations have already committed to invest substantial sums at the site and others are currently considering whether to do so. The project is advised by a number of highly reputable international companies, including Accenture, AC Nielsen, Deloitte, WATG (UK), HOK (USA) and Landor (Hong Kong). It has received awards for the Best Master Plan from The Congress of New

Urbanism, USA, and an “Award of Excellence” presented by the American Society of Landscape Architects.

In addition to its work at Lavasa, HCC has been involved in the construction of the Mumbai to Pune Expressway, the Delhi Metro and the Bandra to Worli Sea link in Mumbai, among many other major beneficial construction projects. The neighbouring state of Gujarat has been so impressed with HCC’s work at Lavasa that it has invited HCC to create a similar city in Gujarat.

No one can be in any doubt that all media interest concerning Lavasa, LCL, HCC and their principals, in particular Messrs Gulabchand and Nogja, must be accurate and well researched if actual or potential further investors in and partners for the project are not to be deterred from maintaining or providing support. Your article of 30th August 2009, still being published on your website at the URL (web address) identified above, written by Mr Matthew Holehouse with additional reporting by Ms Nicola Smith (your South Asia Correspondent) and Ms Tripti Nath, falls woefully short of the standards to be expected of responsible journalists.

The article identifies as its subjects by name LCL and Messrs Gulabchand and Nogja. HCC is also referred to, and therefore identified as a subject of the piece, by the seventh paragraph which names Mr Gulabchand as the “*chairman of the company that controls Lavasa*”. As is widely known in this country and abroad, that company is HCC, and as we have noted above Mr Gulabchand is its Chairman and Managing Director. The article makes the following highly defamatory and completely false allegations of our clients and each of them. It alleges that LCL, and therefore HCC and Messrs Gulabchand and Nogja, in the light of their positions of control concerning the activities of LCL:

- (1) Have used armed employees to threaten and coerce indigenous farmers into selling their land at rock bottom prices.
- (2) Have used fraudulent intermediaries to procure from illiterate tribal people the signature of sale documents which they did not understand.
- (3) That in particular, in the case of Mr Vishnu Navji Shedge, they fraudulently procured such a signature from a man who was 97, blind and too sick to care for himself and then paid for the land with cheques which bounced.
- (4) Have worsened deforestation and committed serious environmental damage by cutting down millions of trees.

You make these allegations, of course, under a headline and sub-heading, which read (in unqualified terms) “**University dragged into Indian land-grab row**” and “**Oxford’s plan for an overseas campus has become mired in a human rights battle**”. The references to “University” and “Oxford” in the headings are picked up extensively in the article, where you report that it is Oxford University that is planning to offer courses in an education centre in Lavasa.

We are instructed that your allegations are completely false. First, Lavasa has purchased for the project only land that has been voluntarily offered to it at prices agreed with vendors by private negotiation and after proper verification of title, in particular with reference to the Government record of rights. The size of the site overall is about 100 square kilometers, which is similar to the size of Paris. Of this, LCL has purchased approximately 10,000 acres by private land purchases, entailing something in the order of 1500 separate land transactions. Each sale deed has been registered with the relevant Government authorities by LCL and the vendor in the presence of witnesses as is required under Indian law. This process rules out any prospect of threats or coercion, including the use of armed intimidation of the sort you allege. To Lavasa's knowledge, there has been no case lodged with the police authorities alleging threats, coercion or intimidation. That would not be the case were there any truth at all in your allegations, in particular that armed LCL employees had threatened villagers.

We note that you report the source of your allegations in this respect as being Ms Medha Patkar. It is a matter of public record that LCL has had reason to file criminal complaints (first information reports) against Ms Patkar for trespass, the criminal intimidation of LCL employees, illegally obstructing work on the Lavasa project and inciting others to violence against LCL employees. The resultant police enquiries into Ms Patkar's activities continue.

Secondly, the only support you offer for your allegation that our clients have used fraudulent intermediaries to procure from illiterate tribal people the signature of sale documents which they did not understand is the example of Mr V N Shedge, which is misleading and false. The truth concerning Mr Shedge is as follows. He previously owned five lots of land which are now owned and registered, perfectly properly and regularly, by LCL. LCL purchased three of these lots from a Smt Swati Ramdas Daware. Smt Daware had previously purchased them in August 2000 from Mr Shedge, acting through a Smt Nilambari Sunil Joshi in whose favour Mr Shedge had in 1996 (nearly four years before his death) executed a power of attorney concerning the land. That power of attorney appointed both Smt Joshi and a Mr Ganesh Shankar Chandras, and was witnessed by Mr Shedge's sons, namely Messrs Dnyaneshwar Vishnu Shedge (to whom your journalist spoke) and Maruti Vishnu Shedge.

A fourth lot of land was the subject of the same sale as the first three lots, but the mutation (a term referring to certain formalities following a sale of land) of this lot to Smt Daware was not completed, since the land in question was new tenure land and Mr Shedge died (on 9th November 2000) before the collector's permission and the payment of a fee ('Nazarana') to the Government, which are required in the case of new tenure land, had been provided. This lot therefore remained in the name of Mr Shedge senior, and on his death devolved to the Shedge brothers and Mr Shedge's other family. However, on 30th April 2003, 18th June 2003 and 1st July 2003 Messrs D V and M V Shedge and the late Mr Shedge's other family executed further powers of attorney in favour of a Mr Milind Anant Kale in respect of this lot which Mr Kale had agreed to purchase. The powers of attorney were registered with the Government. Mr Kale subsequently agreed to sell this lot to Expat Properties (India) Limited ("Expat") and therefore executed a power of attorney in favour of Mr R Vijendra Rao, a nominee of Expat, which power of attorney was registered with the Government.

Expat subsequently agreed to sell this lot to LCL, which sale was completed on 13th August 2007. Although on 5th March 2002 the Shedge brothers had given a written undertaking on stamp paper stating that they had received full payment for the entire 7.74 hectares making up the four lots to Mr Prakash Kane (the son in law of Mr Chandras in whose favour Mr V N Shedge had executed a power of attorney in 1996 witnessed by Messrs D. V. and M. V Shedge in respect of the four lots referred to above), LCL understands that they then extracted further payment from Mr Kale when executing their power of attorney in his favour. In effect, they succeeded in obtaining payment twice over for the disposition of this land, that had previously been owned by their father. You should note that Lavasa's title to the fourth lot was entered in the revenue records of the Government (and so mutated to Lavasa) only after the relevant Government Authority had dismissed as unjustified at a hearing certain objections raised then by the Shedge brothers.

The fifth lot of land was sold by Mr Shedge (senior) to Neeta Deepak Kulkarni and Eknat Genuji Nangre on 23rd August 1989. LCL purchased this lot (properly) from Neeta Deepak Kulkarni on 18th March 2007, over 17 years later.

As we have shown, your allegations of misconduct, including the employment of fraudulent intermediaries, in relation to any purchase of land by LCL that once belonged to Mr Shedge are wholly unsustainable. So, too, is any suggestion that the execution of any relevant document was procured by fraud, or that Mr Shedge, his sons and family did not understand the effect of documents executed by them. In particular, you will note that it was Mr Shedge's sons who were themselves witnesses to the power of attorney executed by him concerning the first four lots, and that as long ago as March 2002 they had confirmed that they had received full payment for Mr Shedge senior's land.

Mr D V Shedge's subsequent activities of trespassing on LCL land and intimidating LCL employees (in an apparent attempt to extract monies from LCL to which he is not entitled) have forced LCL to file a criminal complaint (first information report) against him, as they had to do with Ms Patkar. He has been arrested and is currently on bail, pending enquiries by the police authorities.

The falsity of your allegations concerning Mr Shedge and the Shedge family leaves your general claim, that our clients caused illiterate tribal people living on the site to be pushed into validating sale documents they did not understand, wholly unsubstantiated. We are instructed that this general allegation, of which you have provided no instance apart from the misleading account concerning the Shedges, is completely untrue.

As regards your allegation that cheques provided to Mr Shedge by LCL (or on its behalf) bounced, this again is untrue. This can only be a misconceived reference to a separate dispute, not concerning LCL, between the Shedge brothers and a Mr Prakash Kane concerning a part of the second, third and fourth lots of the land totalling 35 acres. LCL's best understanding is that following the death of Mr Shedge senior, the brothers claimed from Mr Kane (who is the son in law of Mr Chandras, in whose favour Mr Shedge had executed his power of attorney witnessed by the Shedge brothers) further payment following the transfer between Smt Joshi (for Mr Shedge senior) and Smt Daware. Following enquiry to the revenue authorities and

after perusing records Mr Kane rejected this additional claim by the Shedge brothers as unjustified and stopped a series of post-dated cheques that he had provided to them pending the resolution of any dispute. This is, or was, a matter entirely between the Shedge brothers and Mr Kane, and does not in any way affect LCL's proper acquisition of the land in question for the correct agreed consideration. Mr Kane was not an intermediary acting on behalf of LCL, still less a fraudulent one. He dealt with the Shedge brothers in relation to Mr Shedge's (senior's) power of attorney executed in favour of Messrs Joshi and Chandras, which power of attorney as we have already stated the Shedge brothers witnessed.

Finally, as regards the principal factual inaccuracies in your article, we are instructed that our clients are not cutting down "*millions of trees*" or anything of that order. Land currently under development runs to approximately 1000 acres. This is land which is classified by Government records as barren wasteland having a minimal coverage of trees. No tree can in any event be cut or removed without permission. From time to time, LCL has obtained permission to cut some trees where its development makes this necessary. LCL's practice is to nurture large trees by transplanting them. Further, LCL has a program to plant up to three million trees in the Lavasa area, of which so far about 600,000 trees have been planted. LCL also carries out slope stabilisation, using hydro-seeding and geomat. Not only is your allegation of deforestation therefore false, but the impression it leaves of environmental vandalism by LCL is contrary to the true position: as a result of LCL's environmental initiatives Lavasa is in fact much greener than before.

Finally, as an indication of your concern with accuracy, we must point out that the map published to accompany your newspaper article, which suggests a helipad has been built on land still owned by villagers, is inaccurate. Had you performed the simple task of checking the relevant Government land records, you would have found that this allegation, too, is simply false. Similarly inaccurate and unsustainable is the suggestion by your map that the entire Lavasa site is on "Disputed territory". As we have already stated, the site extends to an area equivalent to the size of Paris. There is simply no dispute, arising from any of the 1500 or so land purchase transactions, of which our clients are aware that would begin to support such allegation.

No properly researched article could have been responsibly published which made the highly defamatory allegations that your article does.

On 21st August 2009 (a Friday), your journalist Mr Holehouse contacted Mr Nogja (the President of LCL) by telephone and in some haste made enquiries of Mr Nogja concerning the nature of Oxford University's connections with the Lavasa project. Mr Holehouse's enquiries were restricted to asking questions about the history of the university's introduction to the project, how it might participate, whether it had a financial interest in the project, and various other financial queries in particular in relation to LCL's construction budgets. At no stage did Mr Holehouse raise a single one of the highly damaging allegations that you later published concerning our clients' conduct at the site, or give to Mr Nogja any notice that you were contemplating the publication of such a highly defamatory article. It was during this telephone conversation that Mr Holehouse obtained the quotation from Mr Nogja, that "*It's [the university is] going to be the best building in my city, timeless*

architecture for the best university in the world." (see the tenth paragraph of the article). You did not in the event publish any article in your following newspaper, for Sunday 23rd August 2009.

At 11.15 am Delhi time on 28th August 2009 (the Friday immediately before first publication of your article) Ms Smith, your South Asia correspondent, sent an email to Messrs Jimmy Mogal and Sandeep Sawant of HCC. Inexplicably, your enquiries by this email came from a stringer, who had not previously contacted our clients, and not from Mr Holehouse, the principal journalist working on this piece who had a week previously spoken to Mr Nogja. Indeed, on the same day, 28th August 2009, Mr Holehouse was still involved in enquiries for the piece, since he sent to Faldo Enterprises some highly pejorative questions concerning its connections with Lavasa, including the suggestion that Faldo Enterprises and Nick Faldo ought not to be involved in a project which, Mr Holehouse claimed, has given rise to "serious human rights questions". It is clear from this, if nothing else, that Mr Holehouse was embarked on a hatchet job. Equally inexplicable was your decision to approach in the first instance Messrs Mogal and Sawant of HCC, when previously you had sought and received from Mr Nogja of LCL cooperation and information in response to Mr Holehouse's enquiries concerning the nature of Oxford University's involvement.

Extraordinarily, whilst acknowledging the extreme gravity of your allegations against our clients Ms Smith also acknowledged in her email that it might well not be possible in the few hours which she was prepared to allow our clients to respond (by the "end" of Friday 28th August) for them to investigate your proposed allegations in depth. Ms Smith's email numbered something in the order of 20 different serious criticisms of our clients and their conduct, failing in many instances even to identify the source or alleged sources for the allegations you intended to make. Further, while she referred to various instances that you might publish allegations in respect of, she failed altogether to specify what it was that you were actually intending to publish.

Quite mistakenly, Ms Smith appears to have considered it her duty only to notify our clients of your proposed litany of allegations against them, so that they "[were] fully aware of what [you] intend to report and that [they were] able to respond as [they] see fit.". She, and therefore you, failed to appreciate altogether that the actual purpose of putting highly defamatory allegations to any subject prior to a publication in the media is not merely to tell the subject what is about to be published, but to allow the subject a proper opportunity to make informed comment on any damaging allegation prior to publication. The subject may, as in this case (for example concerning Mr Shedge senior's land dispositions), have information that others do not possess or have not disclosed to the journalist. Equally, the journalist's duty is to obtain the subject's side of the story, and include the gist at least of it in any published piece. Approaching the subject is also an opportunity, that ought to be taken, to verify information obtained by the journalist, including the status of such information. Equally, the subject may be able to indicate where a particular source or informant of the journalist has no direct knowledge of relevant events, or has his or her own axe to grind (as is the case here, concerning for example Ms Patkar and Mr D V Shedge). None of this should come as a surprise to you, Ms Smith, Mr Holehouse or anyone else concerned in the preparation of this piece: see *Reynolds*

v Times Newspapers Limited [2001] 2 AC 127 at 205 in particular; and *Jameel v Wall Street Journal SPRL (No 3)* [2007] 1 AC 359. We can only conclude from the terms and timing of Ms Smith's email that you were doing no more than paying lip service to the requirements of responsible journalism by dispatching it.

At about 2 pm on Friday 28th August, Ms Smith and Mr Nogja spoke by telephone. The telephone conversation lasted perhaps 15 minutes. Mr Nogja confirmed to Ms Smith that he was aware of her email to HCC, but protested that it was impossible to deal with the very serious allegations that she was making in the few hours which she had allowed. Mr Nogja emphasised that our clients would need sufficient time to address the points raised by Ms Smith, and that the best way of their doing so would be to invite Ms Smith to their office and the site in order to explain their position fully to her, and to allow her to view the site and the project on the ground. Mr Nogja told Ms Smith that all the allegations in her email were completely false. He pointed out that there had been more than a thousand purchase agreements entered into by LCL, none of which had given rise to any dispute. Further, there were no criminal complaints filed against Lavasa, and there had been nothing in the nature of large scale protests to imperil the project. In this respect, Mr Nogja contrasted the absence of controversy in the case of the Lavasa project, with instances of the closure of a Tata nano-car plant in West Bengal and the putting on hold of a prominent Reliance project near Mumbai, both due to major local protests over land acquisition where the relevant state Governments were directly involved with the acquisition of the relevant parcels of land in the respective states. Mr Nogja further explained to Ms Smith the quality of the institutions that have chosen to be or are considering being a part of the project. He also pointed out the benefits of the project that have already been achieved for the local population, namely that road access to the area has been improved substantially, electricity and water supplies to villages have been established, and the Crystal House school for the underprivileged has been set up.

So far as the particular allegations in Ms Smith's email were concerned, Mr Nogja suggested that many of her allegations appeared more or less the same as the contents of the so-called "Interim Report of the PEOPLE'S COMMISSION OF INQUIRY" dated 20th April 2009. He said that he would arrange for a written issue by issue response to this document, already prepared by LCL, to be forwarded to Ms Smith, which in the event was done later the same afternoon by Mr Mogal (see below). Mr Nogja also warned Ms Smith that the "People's Commission" was not any form of independent, impartial or government appointed body, but simply happened to consist of four individuals who Ms Patkar had asked to accept "appointment" to it.

Finally, the conversation ended with Mr Nogja urging Ms Smith to visit Lavasa, pointing out that since her allegations were clearly so defamatory it was very important that she should see the true facts on the ground. Ms Smith agreed that she would be pleased to visit Lavasa as Mr Nogja suggested, but whether or not she could do so would depend on her editor. She said however that she would ask you if she could arrange a visit.

Notwithstanding the serious inconvenience to which you put our clients in responding in such short order, Mr Mogal of HCC was nevertheless able to respond to Ms Smith, further to Mr Nogja's telephone conversation with her, by an email later the same

day, Friday, 28th August. As you know, Mr Mogal explained to Ms Smith in his email that your allegations (which, like Mr Nogja, he also took to have been adopted from the so-called "Interim Report of the PEOPLE'S COMMISSION OF INQUIRY" dated 20th April 2009) were fabricated, false and without basis. Mr Mogal provided a further short explanation in the body of his email concerning our clients' response to the said "Interim Report". Some of this was included in your article, in the final column, albeit as little more than an invitation to the reasonable reader to disbelieve our clients' protestations of innocence.

Significantly, however, Mr Mogal also attached to his email to Ms Smith substantial and detailed written material prepared by LCL in response to the "Interim Report": first, clarifications placed by LCL in the media in response to the misinformation campaign by the commission; secondly, an issue by issue response to the report itself (the document which had earlier been promised on the telephone by Mr Nogja). Mr Mogal highlighted to Ms Smith that the latter document in particular had already addressed most of the issues raised by her email. For example, in relation to Mr Shedge and what is said about him above, see Section 9 of Annexure A from pages 26 to 29. However, it appears that in finalising your article for publication you had no regard at all to this detailed information. Had you done so, then we cannot see how, for example, you could have made the allegations concerning Mr Shedge that you do, at least not without including LCL's detailed rebuttal of the claims in this respect as set out in its issue by issue response. You and Ms Smith plainly received this information from Mr Mogal, and had a proper opportunity to review it, since at 4.36 pm on the same Friday Ms Smith sent Mr Mogal a short email thanking him.

Our clients cannot understand why Ms Smith ignored their invitation to attend a site visit and discussion on Lavasa, in order to inform herself and therefore you better in your researches. While warning that any hurried reporting based on a campaign of misinformation would be defamatory and damage our clients' reputation, Mr Mogal (like Mr Nogja before him) extended his invitation explicitly to Ms Smith. Since she is based, as we understand it, in New Delhi her attendance at Lavasa would involve little more in practical terms than taking a short internal flight. Rather than rushing your article to print on 30th August, for which there was no justification of urgency, Ms Smith could have travelled to Lavasa during the week beginning 31st August, with a view to meeting our clients and attending the site, and then assisting in the preparation of an accurate, well-informed and responsible article for publication by you in your newspaper for, say, Sunday 6th September 2009. It is obviously highly regrettable that even though Ms Smith herself plainly thought a visit to Lavasa was desirable, you appear to have taken a contrary view.

In all the circumstances described above our clients require from you as a matter of urgency:

1. Your written apology for each of your false and defamatory allegations that we have identified, in terms to be approved by us and including a full and unequivocal written retraction of each of the said allegations. Your apology should be published in the next edition of your newspaper with suitable prominence.

2. Your undertaking not in the future to repeat your allegations or anything similar.
3. Your immediate removal of the article from your website, and your marking of it on any archive or similar service to which it has been supplied with the factual corrections made necessary by the false reporting identified above. Such marking should be in terms approved by us, and will have to address in particular the factual errors you have published concerning Mr Shedge, the fact of the Shedge brothers' knowledge of the power of attorney signed by their father (which they witnessed), LCL's environmental practice and the location of the helipad.
4. Your proposals for substantial financial compensation to be paid to each of our clients for the injury to their respective reputations, and as concerns Messrs Gulabchand and Nogja the considerable distress and upset your allegations have caused them. Your proposals in this respect should include consideration not only of the damage arising from your own article, and its maintenance at your website, but also in relation to the entirely foreseeable raft of republications and repetitions of your libels in the Press in India and elsewhere, including the Business Standard (Mumbai) for 31st August 2009 and on the same date, The Asian Age (Mumbai), The Free Press Journal (Mumbai), Divya Bhaskar (Mumbai), the Business Standard (New Delhi), The Hindu (New Delhi) and The Asian Age (New Delhi).
5. Confirmation that you will fully indemnify our clients for the legal costs that they have incurred in this matter.

We look forward to hearing from as soon as possible in accordance with the pre-action protocol for defamation claims. Given the seriousness of the allegations that you have made, and their continuing availability at your website, we expect your substantive response to the points we have raised and the actions we have requested of you above within the fourteen days provided by the pre-action protocol. In the meantime, please acknowledge safe receipt of this letter by return.

Yours faithfully

MAGWELLS