

O/C

ASHWIN S. MEHTA

Advocate Bombay High Court

32, Madhuli, Dr. Annie Besant Road, Worli, Mumbai – 400 018.
Office No. 022 66519000, Mobile No. 9819917118, E-mail asm55@yahoo.com

Date: 1st December, 2023

To,

1. SHILPA BHATE ASSOCIATES

Advocate for Custodian Respondent No. 1

217, 2nd Floor, Rex Chamber,
W.H. Marg, Ballard Estate,
Mumbai 400 001.

Email: shilpabhatalegal@gmail.com

SHILPA BHATE & ASSOCIATES
217, 2nd Floor, Rex Chamber,
W.H. Marg, Ballard Estate,
Mumbai - 400 001.

Sehil 1:52

2. JADEJA & SATIA

Advocate for Respondent No. 2 & 3
1st Floor, Mistry Mansion,
107, M G Road, Fort,
Mumbai – 400 001.



3. JEHANGIR KHAJOTIA

Advocate for Respondent No. 5, 8.1 & 9.1
3rd Floor, Room No. 16, Radha Bhavan,
Nagindas Master Road,
Mumbai – 400 023.

*Recd a 100/-
on behalf of Rex No 5.
Jyoti
5/12/2023*

Dear Sirs,

REF: BEFORE THE SPECIAL COURT

MISC. APPLICATION NO. 10 OF 2023

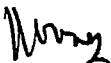
SMT. JYOTI H MEHTA
V/s
THE CUSTODIAN & ORS.

...APPLICANT
...RESPONDENTS

I am concerned for Applicant in the above Matter.

I am sending herewith copy of **AFFIDAVIT IN REJOINDER OF JYOTI H. MEHTA**
APPLICANT DATED 1ST DECEMBER, 2023 (PAGE NO. 836 TO 879) in the above
matter by way of service upon you.

Thanking You
Yours truly,


(Ashwin S Mehta)
Advocate for Applicant

Encl: as above

ASHWIN S MEHTA
Advocate Bombay High Court
32, Madhuli, Dr. A B Road, Worli, Mumbai 400 018.

Office No. 022 66519000, Mobile No. 9819917118, E-mail asm55@yahoo.com

**IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES), ACT, 1992 AT MUMBAI**

MISCELLANEOUS APPLICATION NO. 10 OF 2023

SMT. JYOTI H MEHTA

...APPLICANT

V/s

THE CUSTODIAN & ORS.

...RESPONDENTS

To,

The Officer on Special Duty,
Special Court, Mumbai.

Sir,

BE PLEASED to take on file the Affidavit in Rejoinder of Smt Jyoti H. Mehta
Applicant (Pages No. 836 – 879) as per Direction passed by Hon'ble Special
Court in the above Matter.

**"CERTIFIED THAT THE SOFT COPY FILED HEREWITH IS A
REPLICA OF THE HARD COPY FILED".**

Dated this 1st December, 2023.

Yours truly,

(ASHWIN S MEHTA)
Advocate for Applicant

Encl: as above



**BEFORE THE SPECIAL COURT (TRIAL OF OFFENCES RELATING
TO TRANSACTIONS IN SECURITIES) ACT, 1992**
MISC. APPLICATION NO. 10 OF 2023

JYOTI H. MEHTA

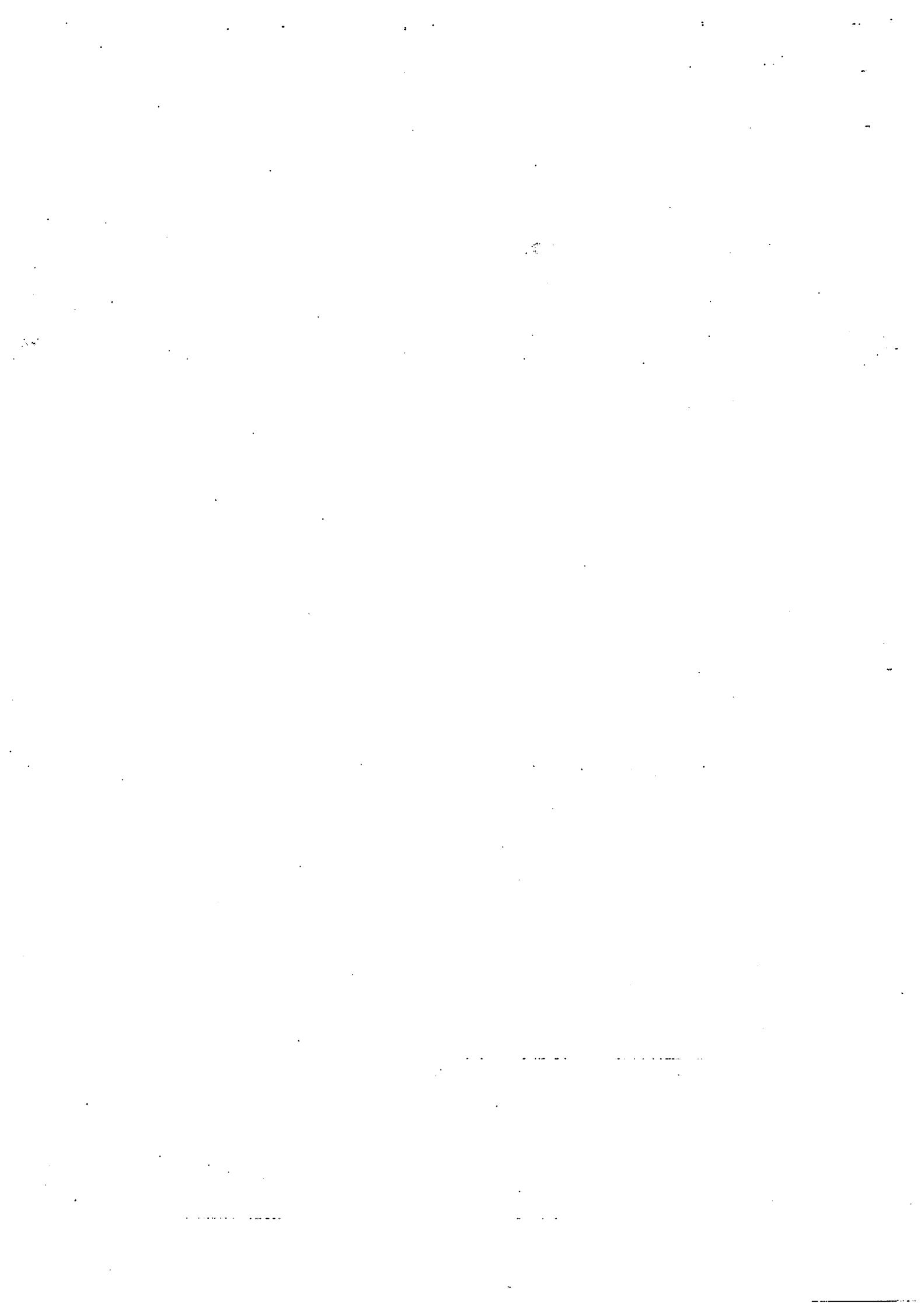
..APPLICANT

VS.

THE CUSTODIAN & ORS.

..RESPONDENTS

Exhibit	Particulars	Page Nos
	AFFIDAVIT-IN-REJOINDER OF SMT JYOTI H. MEHTA	836 - 861
A.	Copy of letter dated 21.11.2023 addressed by the Advocate of the Applicant to the Advocate of Respondent No.5 to seek inspection of material relied upon.	862 - 863
B.	Copy of reply dated 24.11.2023 addressed by the Advocate for Respondent No.5 denying the inspection.	864 - 869
C.	Copy of letter dated 27.11.2023 of Applicant on the issue of inspection.	870 -871
D.	Copy of the letter dated 09.03.1994 addressed by Custodian to Larsen and Toubro Ltd.	872 - 873
E.	Copy of the letter dated 11.01.1995 addressed by Custodian to Larsen and Toubro Ltd.	874 - 875
F.	Copy of the letter dated June 1995 addressed by Custodian to Larsen and Toubro Ltd.	876 - 879





**BEFORE THE SPECIAL COURT (TRIAL OF OFFENCES RELATING
TO TRANSACTIONS IN SECURITIES) ACT, 1992**

MISC. APPLICATION NO. 10 OF 2023

Jyoti H. Mehta

... Applicant

Vs

The Custodian & Ors.

... Respondents

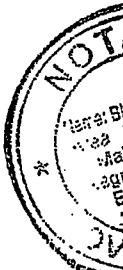
**AFFIDAVIT-IN-REJOINDER OF SMT JYOTI H. MEHTA, SOLE
LEGAL HEIR OF LATE SHRI HARSHAD S. MEHTA**

I, Smt Jyoti H. Applicant in the above matter and sole legal heir of late Harshad S. Mehta, residing at 32, Madhuli Apartments, Dr. Annie Besant Road, Worli, Mumbai 400 018, do hereby solemnly state and affirm as under:

1. I say that I have gone through the contents of the Affidavit-in-reply filed by one Shri Nirav D. Jobalia, Respondent No.5 and in rejoinder thereto I have to state as under.
2. I say that I deny everything that is stated by Respondent No.5 which is contrary to what I stated in my application and nothing should be deemed to be admitted by me unless it is so specifically stated by me.
3. At the outset I state that Respondent No. 5 has on oath consciously made several false statements and thereby committed the offense of perjury. I say that Respondent No.5 has also not come clean before this Hon'ble Court by suppressing several material facts and evidence in his possession particularly in relation to sale of attached shares of Hero Honda Motors Ltd. and accruals thereon and also suppressed material facts regarding utilization of such sale proceeds and where the same is currently to be found. I say that Respondent No.5 has also spun

a false story that his late father had purchased during the year 1992-93 shares of Hero Honda Motors Ltd. in the name of Respondent No.5 but has not adduced any supporting documentary evidence. I say that Respondent No.5 has also made bald denials and repeated ad nauseam that the subject shares are not an attached property only has self-serving averments. I say that on the crucial issue of alleged purchase of shares Respondent No. 5 has also not clarified whether the averments made by him is based on any personal knowledge or hear say so as not to make any firm statement on oath before this Hon'ble Court. I say that even the facts narrated by me in my application and the legal position explained by me citing the binding judgments have been twisted by this Respondent to suit his own convenience. I say that this Respondent has also defended the allegations made by me against Hero Honda Motors Ltd. and their Share Transfer Agent (STA) without having any authority to do so. I say that such an affidavit carrying the above infirmities is bound to be rejected on the threshold itself.

4. I say that after receipt of the Affidavit-in-reply in terms of Regulations framed by this Hon'ble Court u/s 9A of the Torts Act I awaited the Advocate of Respondent No.5 to offer inspection of the material relied upon by this Respondent in support of his averments but no inspection was offered and therefore through my Advocate under a letter dated 21.11.2023. I sought inspection from the of Respondent No.5 of the material relied upon by his client as also sought copies of correspondence exchanged by Respondent No.5 in securing the attached shares of Hero Honda Motors Ltd. with accruals thereon and a copy of my letter is enclosed at **Exhibit A**. I say that in reply to the above, the Advocate for Respondent No.5 has addressed a letter on 24.11.2023 a copy of which is enclosed at **Exhibit B**. I say that it can be seen that without even examining the said Regulations framed by this Hon'ble Court u/s 9A(4) of the Torts Act I have been refused inspection and therefore in terms of Regulation 15 Respondent No.5 may not be permitted to rely upon any material cited in the Affidavit-in-reply. I say that I have also given a brief reply to the above letter



dated 27.11.2023, a copy of which is enclosed at **Exhibit C**. I therefore humbly pray to this Hon'ble Court to permit me to file an additional affidavit if Respondent No.5 is allowed to rely upon any material in support of his averments. I shall now deal with the reply on a para-wise basis as under:

5. I say that so far as what is stated in Para No.1 of the reply is concerned, the same contains formal averments and therefore does not call for any reply.
6. I say that so far as what is stated in Para No.2 of the reply is concerned, I deny the contents of the same. I say that this Hon'ble Court in its combined order dated 13.03.1997 which is at Exhibit U of my application this Hon'ble Court has in para 7 has granted liberty to all parties to file applications before this Hon'ble Court in respect of recovery of alleged benami shares. I say that even otherwise in terms of the law laid down by Hon'ble Supreme Court, both the Custodian and the notified entities have *locus* to file applications before this Hon'ble Court for recovery of attached properties lying in the hands of third parties and once the facts relating to them are placed before this Hon'ble Court then it becomes the duty of this Hon'ble Court to recover such third attached property from third parties. I say that once the property belonging to notified persons gets simultaneously and automatically attached on and from the date of their notification, in the present case being 08.06.1992, such attachment continues until it is lifted by this Hon'ble Court. I say that it is also settled law that third parties holding attached properties have a duty, obligation and onus to come forward and disclose the same and hand it over to the Custodian. I say that the attachment statutorily takes place simultaneously on the date of notification and no separate order is required to be passed by this Hon'ble Court for attachment of each property belonging to the notified person.
7. I say that so far as what is stated in Para No.3 of the reply is concerned, the facts about notification as averred are true. I however deny that there is any delay in filing of the application and that the same is time-barred since the delay and



law of limitation runs against Respondent Nos.5 to 9.1 in the facts of the present case. At the outset, I state that it is settled law that the law of limitation does not apply to any proceedings involving recovery of attached assets of notified persons from third parties and therefore the question of limitation, delay and lashes does not arise. I say that in any case it was the onus of all the Jobalias including Respondent No.5 to handover the attached shares of Hero Honda Motors Ltd. since the same got attached much prior to their registration in the names of Jobalias on 08.06.1992. I say that in fact all the Jobalias have previously handed over large quantities of attached shares which had similarly come to be registered in their names without protest or challenging the fact that they were attached property. I say that at the relevant time the Jobalias have acted dishonestly by not handing over the shares of Hero Honda Motors Ltd. since their value was high. I say that after waiting for several years and realizing that the facts of these attached shares have remained undiscovered by the Income Tax department and the Custodian as also by Mehtas that the steps have then been taken to usurp these shares in the lead of Respondent No.5 who applied for recovery of shares and dividends from Investor Education and Protection Fund (**IEPF**) where they were deposited as unclaimed shares and dividends by Hero Honda Motors Ltd. I say that the particulars of attached shares previously disclosed and handed over by Jobalias is already provided by me in Exhibit F of the application. I say that therefore the present reply of Respondent No.5 is to be read alongwith their previous conduct of handing over of attached shares in atleast 18 companies. I say that such handing over of shares in 18 companies including by Respondent No.5 is liable to be treated as admission on his part that shares belonging to Mehtas in several companies constituting attached property have come to be registered in the name of Respondent No.5. I say that to put it differently the Jobalias have admitted to have lent their names for registration of shares of Mehtas in their names. I also state that merely because the Custodian has not filed any application before this Hon'ble Court for recovery of shares from the



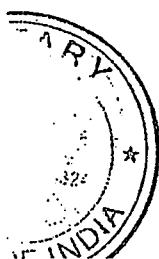
Jobalias, the same does not preclude me from filing the present recovery application.

8. I say that so far as what is stated in Para No.4 of the reply is concerned, the contents of the same are denied. I say that the said Income Tax department had identified several persons/entities in whose names the shares belonging to Mehtas came to be registered. I say that after identifying the names of such persons/entities the shares registered in their names were traced out by calling upon companies to disclose the shareholdings of such persons/entities in those companies. I say that the shareholdings of Jobalias in Hero Honda Motors Ltd. remained to be discovered only because Hero Honda Motors Ltd. have not provided complete details regarding their shareholdings in Hero Honda Motors Ltd. when the inquiries were conducted by the Income Tax department and the Custodian. I say that only because of failure of Hero Honda Motors Ltd. in providing the details of shareholdings of Jobalias that the subject shares and accruals on them could not get traced and recovered earlier. I say that in fact in the combined order passed by this Hon'ble Court passed on 13.03.1997 which is at Exhibit U of my application this Hon'ble Court had already directed the Custodian and others in para 7 as under:

Para 7: "It is clarified that the Custodian, the Income Tax department and all parties are at liberty to apply for further and other orders as may be necessary for the efficient working out of this order and or for a declaration that further and other shares are also benami shares."

(emphasis supplied)

I say that thereafter the Custodian filed MP 99 of 1998 identifying more shares which came to be declared as attached property under order of this Hon'ble Court dated 08.04.2003 which is enclosed at Exhibit G. It can be seen that even in this order the Custodian was given liberty to trace out and recover value of the shares and accretions, if any, by adopting appropriate steps.



9. I say that so far as what is stated in Para No.5 of the reply is concerned, the same pertained to Hero Honda Motors Ltd. and their Share Transfer Agent (STA) KFin Technologies Ltd. and therefore Respondent No.5 cannot deny the allegations on their behalf much as he may want to.

10. I say that so far as what is stated in Para No.6 of the reply is concerned, the contents of the same are denied since the allegations were made by me in para 5 of my application against Respondent Nos.2 and 3 and therefore the same cannot be denied by Respondent No.5 much as he may want to. However I reiterate that the above 2 Respondents disregarding the provisions of the Torts Act and the exclusive jurisdiction vested in it has sought to deal with the attached assets and also sought to defend the interest of the Jobalias vis-à-vis the notified entities. I say that though it is settled law that under the Torts Act there is no requirement to pass an order for attachment of assets as such attachment statutorily takes place u/s 3(3) of the Torts Act simultaneously upon the notification of a person but yet Respondent Nos.2 and 3 in order to cover up their violations are seeking an order from this Hon'ble Court about the attachment of the subject shares of Hero Honda Motors Ltd. I say that the fact these shares belonged to Mehtas on 08.06.1992 itself will lead to their simultaneous attachment. I say that such attachment cannot be resisted or denied taking into account the fact that the said Sec.3(3) also contains a non-obstante clause which disentitles the party objecting to the attachment from taking any defense under any general law.

11. I say that so far as what is stated in Para No.7 of the reply is concerned, the contents of the same are denied for the reasons specified in my application.

12. I say that so far as what is stated in Para No.8 of the reply is concerned, since no comments are offered the same does not call for any reply.

13. I say that so far as what is stated in Para No.9 of the reply is concerned, the contents of the same are denied. It is denied that in para 8 of my application description of attached property of only 800 shares are given as it is expressly



stated that even Respondent No.5 has been declared as a benamidar of Shri Harshad Mehta. It is denied that the Applicant has no *locus* to speak about any share belonging to Respondent No.5 as the subject shares of Hero Honda Motors Ltd. do not belong to Respondent No.5 and he is put to strict proof thereof.

14. I say that so far as what is stated in Para No.10 of the reply is concerned, the contents of the same are denied. I say that the orders passed by this Hon'ble Court in MA 194 of 1994 and MA 53 of 1994 itself establishes that the shares which were disclosed as attached property were not exhaustive and as explained before liberty was granted by this Hon'ble Court in its order dated 13.03.1997 permitting all parties to apply for further and other order for a declaration that further and other shares are also benami shares. I say that thus the averments made by Respondent No.5 are contrary to facts and order passed by this Hon'ble Court as above.

15. I say that so far as what is stated in Para No.11 of the reply is concerned, I deny the contents of the same. I say that the computer programme is developed in-house and the same has assisted in tracing the shares of Hero Honda Motors Ltd. in case of Jobalias and others. I say that this Respondent has sought to defend the allegations levelled against Hero Honda Motors Ltd. and their STA as also Custodian which itself establishes his collusion with the company and its STA.

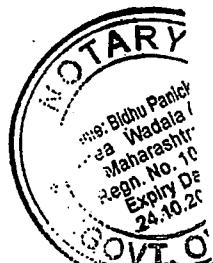
16. I say that so far as what is stated in Para No.12 of the reply is concerned, while the Respondent No.5 has stated against him and therefore he is not giving any reply but yet he has levelled the allegations against me which are denied and this Respondent is put to strict proof thereof.

17. I say that so far as what is stated in Para No.13 of the reply is concerned, the same is denied. I say that the company has already admitted to having deposited with IEPF 3875 shares of Hero Honda Motors Ltd. standing in the name of Mehtas and this admission came only after the Applicant carried out the matching exercise. I say that so far as Respondent No.5 is concerned he has already been declared a benami shareholder of attached shares belonging to



Mehtas in several companies the particulars of which are already provided in Exhibit F of my application. I say that this Respondent has not challenged the fact of handing over of all the shares listed in Exhibit F standing in his name nor any of his family members have denied the fact that vast quantities of shares belonging to Mehtas came to be registered in their names. This Hon'ble Court granted opportunity to each shareholder to make a claim on the shares but none of the Jobalias came forward and made a claim on any of the shares standing in their names as disclosed in above Exhibit F. I say that therefore they are now estopped from taking any contrary stand which is already taken by them earlier. I say that this Hon'ble Court has already declared the shares listed in Exhibit F as attached property belonging to Mehtas and the orders passed by this Hon'ble Court were also not challenged by any of the Jobalias and therefore they have become final and binding. The Jobalias cannot now carve out an exception in the case of Hero Honda Motors Ltd. despite the facts being completely identical and cannot be distinguished with. I say that thereafter both the Custodian and Hero Honda Motors Ltd. has already complied with the orders of this Hon'ble Court in respect of 800 benami shares of Hero Honda Motors Ltd. standing in the name of Shri Nilesh Jobalia and even the company is no longer disputing this fact. I say that in the aforesaid facts and circumstances, Respondent Nos. 5 to 9 are put to strict proof thereof to establish their ownership in respect of further shares standing registered in their names and such proof should at the minimum include the following:

- a) Evidence of purchase of shares of Hero Honda Motors Ltd. in their names such as copies of Contract Notes and Bills and complete particulars through which registered members of the Stock Exchange they have effected the purchases.
- b) Irrefutable evidence of payment made to the registered member of the Stock Exchange together with the copies of bank statement evidencing the payment.



- c) Proof of delivery of shares and copies of Transfer Deeds of both sides and of Share Certificates received by them against the payment effected by them.
 - d) Evidence of lodgment of shares for transfer in the name of Jobalias together with copies of Transfer Deeds and Share Certificates.
 - e) Copies of covering letters forwarding the shares back to Jobalias post their registration.
 - f) Copies of bank accounts where Jobalias have deposited any dividends received from Hero Honda Motors Ltd.
 - g) In case the Dividend Warrants were not received or not encashed after their receipt the reasons thereof and the steps taken by the Jobalias to claim such unpaid dividends.
 - h) Copies of covering letters forwarding Bonus shares by Hero Honda Motors Ltd. in the year 1995 in the ratio of 1:4 on the base shares registered in their names and further bonus shares issued in the ratio of 1:1 in the year 1998.
 - i) Copies of covering letters forwarding further Share Certificates pursuant to Bonus and split in the face value of the shares. In case the shares were not received the steps taken by Jobalias to secure the same from the company may also be disclosed.
 - j) Jobalias also need to explain why for more than 3 decades barring Shri Nirav Jobalia they have not made claim on the shares and the accruals thereof in the form of dividend, bonus and shares issues pursuant to split in the base value of the shares despite their value running into several crores.
 - k) Jobalias should disclose copies of their Income Tax and Wealth Tax Returns disclosing the income on the shares in the form of dividends and their shareholdings in Hero Honda Motors Ltd. in their respective Balance Sheets.
18. I say that obviously because Hero Honda Motors Ltd. and their STA has

not informed the names of the other Jobalias holding the shares in their company to the Custodian and the Income Tax department and because they have not handed over the shares of Hero Honda Motors Ltd. to Shri Harshad Mehta that the subject shares have remained pending to be traced and recovered from the Jobalias. In this regard the averments made by the Custodian in MP 99 of 1998 in para 5 are extremely significant and the same are reproduced below:

Para 5 : “*The Petitioner’s office on receipt of the said shares had written to the Respondent Nos.3-130 herein (Hero Honda was Respondent No.42) inter alia. intimating that the said shares are attached shares under the provisions of the said Act and can only be dealt with directions under the direction of this Hon’ble Special Court. Copies of such letters written by the Petitioner to the Respondent No.66 is marked hereto and annexed at Annexure F (collectively). The Petitioners crave leave to refer to and rely upon the copies of other letters written to the Respondent No.3-130 when produced. The Petitioner states that some of the Respondent companies had replied to the Petitioner and have intimated that apart from the shares which were declared as attached under the Misc. Petition No.424 of 1994, there were further benami shares of the Respondent No.1. The Petitioner submits that all such shares of the Benamidars (subject to the procedure laid down by this Hon’ble Court in the order dated 19.10.1993 in Misc. Application No.194 of 1993 of the Certification) should also be declared as attached.”*

(emphasis supplied)

I say that in Exhibit F (collectively) of the above Petition, the Custodian had enclosed copies of 3 letters addressed to Larsen and Toubro Ltd. on 09.03.1994, on 11.01.1995 and in June 1995 which for the ease of reference are enclosed at **Exhibit D, Exhibit E and Exhibit F respectively**. It can be seen particularly from letter dated 11.01.1995 that the Custodian had issued the following instructions to companies which would obviously include Hero Honda Motors Ltd.:

“*He (HSM) has now submitted an updated list of those shares to the Special Court*



on 09.08.1994 (copy enclosed). You may also kindly arrange to verify and confirm the shareholdings indicated therein and discrepancies, if any, noticed may be pointed out to this office immediately.

You may also kindly arrange to note the instructions given in this office letter dated 9 March / 19 March 1994 and furnish the additional information called for in this office letter No.248/Cus/Att/MA-53/987 dated 16/18 April 94 to this office immediately in respect of shares and folio nos. which were not listed in his earlier affidavit on 25.02.94. " (emphasis supplied).

I say that it is absolutely necessary that the Custodian and Hero Honda Motors Ltd. and their STA is directed to bring on record entire correspondence exchanged between the Custodian and the company and their STA particularly since the same has been withheld and suppressed by Hero Honda Motors Ltd. in the Affidavit-in-reply filed by them in the present proceeding on 01.09.2023. I say that they have a duty to come clean before this Hon'ble Court and assist in recovery of attached property so that Respondent Nos.5 to 9 do not get away usurping the attached property.

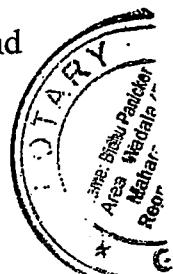
19. I say that so far as what is stated in Para No.14 of the reply is concerned, the same is denied and Respondent No.5 is put to strict proof thereof. I say that Respondent No.5 has not come clean before this Hon'ble Court and disclosed material facts and evidence in his possession while stating that he has recovered the subject shares and dividends from IEPF by following the due process of law and the due procedure contemplated under the Rules of IEPF. I say that Respondent No.5 owes a duty to this Hon'ble Court to disclose and explain atleast the following:

- a) The facts, circumstances and reasons leading to depositing of accruals in the form of dividends, bonus and split shares in the IEPF and his failure to act for 3 decades in their recovery since he has claimed that his father had purchased the shares on or before 1992.
- b) Place the copies of the correspondence entered into by this Respondent



with the company and the IEPF for recovery of the subject shares and accruals thereon.

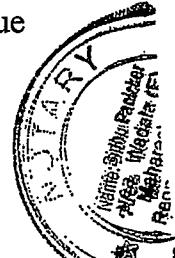
- c) To disclose the particulars of sale of shares made by this Respondent and how the sale proceeds have been utilized and where the said amounts are currently deployed. These shares and the sale proceeds constitutes attached property and liable to be dealt with only by the Custodian under orders of this Hon'ble Court and this Respondent both under the Torts Act as also under the general law has a legal obligation to give a complete account of the shares and their accruals.
- d) That if the subject shares were purchased by the late father of Respondent No.5 in his name how the same becomes the property of Respondent No.5 if the consideration was admittedly paid by the father of Respondent No.5. That even under the provisions of Benami Properties Act, 1988 these shares would constitute benami property. That since Respondent No.5 has not purchased the subject shares and also not paid any consideration in that regard he does not possess any right, title and interest in the subject shares and therefore cannot resist the attachment and recovery of the shares for want of *locus*. That in any case Respondent No.5 will have to establish that his late father had acquired any valid title in the subject shares by their purchase and payment of consideration for the same but in the reply filed by Respondent No.5 he has failed to do so. Instead it clearly emerges that Respondent No.5 has attributed several acts to his late father so that the same cannot be established or verified easily in his absence. Since Sec. 3(3) of the Torts Act contains non-obstante clause Respondent No.5 cannot resist or obstruct recovery of an attached property from him but instead he has an *onus* and obligation to disclose the attached property and handover the same to the Custodian.
- e) All the above are material facts and evidence some of which are in exclusive possession of Respondent No.5 were bound to be disclosed and



brought on record by Respondent No.5 in his present reply but he has deliberately failed to do so. In fact Respondent No.5 has a duty to come clean before this Hon'ble Court so that in case this Hon'ble Court comes to the conclusion that the subject shares are an attached property u/s 3(3) of the Torts Act then it can immediately take steps for recovery of the same from Respondent No.5.

20. I say that in order to usurp the attached shares and accruals on them, Respondent No.5 has fabricated a completely false story about threats issued to him and he is put to strict proof thereof. I say that if any such threats were actually issued to Respondent No.5 as falsely claimed then why he has failed to take any steps and not availed remedies available to him to file a complaint and only now in the present proceedings made false allegations about threats. I say that in fact earlier in the year 1993-94, all the members of Jobalia family including Respondent No.5 have admittedly disclosed and handed over to Shri Harshad Mehta vast quantities of attached shares registered in their names even without any order from this Hon'ble Court. The shares were handed over knowing fully well that they did not belong to Jobalias but were the properties of Mehtas and the details of such shares are provided in Exhibit F to my application. I say that after the subject shares were traced and discovered in the recent years, I immediately addressed letters to the Custodian, Respondent No.2 and also IEPF claiming the subject shares as property belonging to Mehtas and that they were already attached u/s 3(3) of the Torts Act from 08.06.1992. I also requested Custodian to take steps to recover the same from Jobalias and I crave leave of this Hon'ble Court to refer to and rely upon the entire correspondence in this regard when produced. I say that besides addressing letters, Shri Ashwin Mehta in fact called upon some of the members of Jobalia family including Respondent No.5 to handover the shares and the accruals as also the sale proceeds for depositing them with the Custodian who was already informed about them. Since the Jobalias had previously handed over vast quantities of shares it was reasonably

expected by us that even the subject shares and accruals will be handed over by the Jobalias particularly since their conduct of keeping back the attached shares was already exposed. I say that Shri Nirav Jobalia actually came over to Mumbai to meet Shri Ashwin Mehta in his office and made a commitment that he will handover the subject shares with accruals and sale proceeds. Shri Ashwin Mehta also appraised Respondent No.5 about the stringent provisions of the Torts Act, about automatic attachment without requirement of specific order of attachment, about the law laid down by it in regard to attached shares and accruals deposited with IEPF and the precedents set by this Hon'ble Court in the case of Shri Suresh Chandak who had failed to deposit attached shares of United Phosphorous Ltd. In fact even copies of orders passed by this Hon'ble Court were provided to Respondent No.5. I say that only after his return Respondent No.5 changed his mind and did not handover the attached property because of which I have filed the present application after waiting for Custodian to take steps for recovery of attached property. I say that one Shri Jatin Makani of Ahmedabad and Rajkot is indeed known to Shri Ashwin Mehta who extended his help and set up a meeting of Shri Ashwin Mehta with Police authorities in Ahmedabad so that the steps for recovery of our attached property could be initiated against Jobalias. I say that some members of the Jobalia family viz. Smt Kalpana Jobalia wife of late Shri Jayesh D Jobalia and her 2 sons have already agreed to give complete cooperation and handover the shares and accruals standing in her name and her late husband's name Shri Jayesh Jobalia no sooner they are recovered from IEPF and in view of their cooperation I have not proceeded against them in the present application. I say that thus the dishonest stand taken by Respondent No.5 is not being supported by his own family members atleast by Smt Kalpana Jobalia acting on her behalf and on behalf of her late husband Shri Jayesh Jobalia. I am therefore pursuing recovery of attached shares and accruals from Smt Kalpana Jobalia and no sooner the shares and accruals are received from them the same will be deposited with the Custodian. In this regard I humbly pray to this Hon'ble Court to issue



directions to the Custodian to assist me in causing recovery of above attached property and discharge his statutory duties under the Torts Act.

21. I say that indeed Shri Nirav D Jobalia has been pressurizing Smt Kalpana Jobalia and her family not to handover the attached shares and accruals and has made completely false averments that he is not on speaking terms with his other family members. I say that these false averments are made to impede recovery of attached property from those family members in the Jobalia family. I say that besides above, Respondent No.5 has not explained why he is not on speaking terms with Respondent Nos. 6.1, 6.2 and 7 and why does he not even know the whereabouts and addresses of his own family members and close relatives.

22. I say that the averment of Respondent No.5 that Respondent No. 8 being his late father had the capacity to purchase the subject shares is not an issue which is required to be gone into but in fact Respondent No.5 is required to establish the purchase and payment by adducing the evidence required in that regard and as enlisted by me earlier. I say that even in the proceedings in MP 1, 2 and 3 of 1992 this Hon'ble Court by its combined order dated 27.07.1992 has laid out the requirements for establishing a *bona fide* transaction of purchase and these requirements would be squarely applicable at the minimum for compliance by Respondent No.5. I say that Respondent No.5 have instead only made bald averments devoid of any supporting evidence for the alleged purchase of shares by his late father and only therefore he is put to strict proof thereof. I say that so far as the averments of Respondent No.5 that an order for recovery of attached property is required from this Hon'ble Court the Respondent is feigning ignorance about the applicable law of automatic attachment u/s 3(3) of the Torts Act and the law laid down by Hon'ble Supreme Court that no separate order for attachment of property is required under the Torts Act. I say that in fact the Jobalias including Respondent No.5 handed over the attached shares in the year 1993-94 without asking for any such order and therefore he is fully aware about the provisions of the Torts Act and legal requirements thereunder. I say that

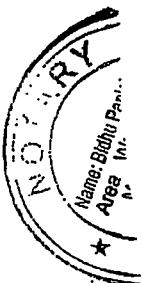
Respondent No.5 should first explain the above handing over of the shares by him and his family members to Shri Harshad Mehta without seeking any order of this Hon'ble Court. I say that such false and baseless defenses are unavailable to Respondent No.5 for resisting recovery of attached property particularly in view of Sec.3(3) r/w Sec.13 of the Torts Act.

23. I say that so far as what is stated in Para No.15 of the reply is concerned, the contents of the same are denied for the reasons given in my application and the present rejoinder. I reiterate the same.

24. I say that so far as what is stated in Para No.16 of the reply is concerned, the contents of the same are denied since all the Jobalias are already declared by this Hon'ble Court as persons in whose names the attached shares belonging to Mehtas have come to be registered. I say that the declaration of their names have neither been denied nor opposed by the Jobalias ever since 1993-94. I say that after passing the order on 13.03.1997 this Hon'ble Court in proceedings in MP 98 of 1999 have even recovered those benami shares which were not handed over by the concerned persons to the Custodian.

25. I say that so far as what is stated in Para No.17 of the reply is concerned, the contents of the same are denied. I say that this Hon'ble Court has passed numerous orders and laid down the law that the attached property cannot be dealt with without the permission of this Hon'ble Court and if any transaction in attached property is undertaken without the permission of this Hon'ble Court the same would be illegal and void *ab-initio*. This Hon'ble Court has also set precedent directing third parties to replenish the attached shares if they have been sold without the permission of this Hon'ble Court but yet Respondent No.5 has filed his reply ignoring the binding law only in order to cover up his patently illegal conduct.

26. I say that so far as what is stated in Para No.18 of the reply is concerned, the contents of the same are denied. Respondent No.5 has previously handed over attached shares to Shri Harshad Mehta knowing fully well that his name was



listed amongst the names of benami shareholders holding attached shares and till date had never challenged this fact now for past 31 years. Respondent No.5 is deliberately misreading my application and the facts and law cited by me therein to suit his convenience the averments made by Respondent No.5 are false to his own knowledge. In any case the shares held by Respondent No.5 in Hero Honda Motors Ltd. are having identical facts as the facts of 800 shares previously traced and identified in the name of Shri Nilesh D Jobalia and there is nothing to distinguish between them.

27. I say that so far as what is stated in Para No.19 of the reply is concerned, the contents of the same are denied for the reasons already set out in my application and the present rejoinder. I say that in view of exclusive civil jurisdiction of this Hon'ble Court u/s 9A of the Torts Act and even in terms of Sec.206A of the Indian Companies Act Hero Honda Motors Ltd. could not have taken any side with Jobalias particularly after the facts and the binding law were revealed to them. I say that the SEBI guidelines governing STAs empower the companies and their registrars to check the antecedents of the shareholders and the company ought to have therefore called upon Respondent No.5 and other Jobalias to produce before them the proof of ownership.

28. I say that so far as what is stated in Para No.20 of the reply is concerned, the contents of the same are denied. At the cost of repetition I say that the Jobalias have been declared by this Hon'ble Court as benami shareholders in respect of shares belonging to Mehtas and which constitutes attached property and no separate declaration for each shareholding is required but yet Respondent No.5 to suit his convenience is harping for an order of this Hon'ble Court. In this regard I rely upon the law laid down by Hon'ble Supreme Court in the case of T.B. Ruia vs. A.K. Menon reported (1997) 9 SCC 123. It is also denied that I have ever said that the Respondent No.5 is the sole legal heir of late Shri Dalichand Jhutalal Jobalia as he is only one of his legal heir.

29. I say that so far as what is stated in Para No.21 of the reply is concerned,

the contents of the same are denied. I say that even in the reply presently filed by Respondent No.5 no explanation has come explaining total failure to act by each and every member of the Jobalia family including Respondent No.5 in recovery of their shares and accruals for a period of almost 3 decades which can lead to only one conclusion that Jobalias knew at all times that the subject shares and accruals do not belong to them but they were biding time to see if these shares get discovered by Mehtas or Custodian. I say that after realizing that no claim was made on the shares for about 3 decades Respondent No.5 took steps to recover the shares and accruals from IEPF and have also sold the shares so as to permanently usurp the attached property. I say that it is averred that the true facts of the case of Respondent No.5 is mentioned herein below but no facts are set out at all. This is only because Respondent No.5 actually has no explanation to offer.

30. I say that so far as what is stated in Para No.22 of the reply is concerned, the contents of the same are denied for the reasons already stated in my application and the present Affidavit in rejoinder. I say that merely making bald denials without making any positive case and without adducing any evidence is impermissible in law and such averments are liable to be rejected. I say that the fact that Respondent No.5 is defending the allegations made against Hero Honda Motors Ltd. itself conclusively establishes the same. I say that Respondent No.5 has no *locus* to defend Respondent No.2.

31. I say that so far as what is stated in Para No.23 of the reply is concerned, the contents of the same are denied for the reasons already stated in my application and the present Affidavit in rejoinder. I say that the averments of Respondent No.5 besides being bald denials are also self-serving devoid of any supporting evidence and therefore the same are liable to be rejected.

32. I say that so far as what is stated in Para No.24 of the reply is concerned, the contents of the same are denied for the reasons already stated in my application and the present Affidavit in rejoinder. I say that since Respondent No.5 has challenged the attachment it is only for this Hon'ble Court to adjudicate



the said issue for which purpose Respondent No.5 has an obligation to come clean before this Hon'ble Court. I say that while Respondent No.5 has already admitted that he has sold the subject shares in the open market for consideration but has deliberately suppressed all material facts relating to such sales and the utilization of the sale proceeds in order to prevent this Hon'ble Court from taking any steps for recovery of the same. I say that in this manner Respondent No.5 is impeding administration of justice.

33. I say that so far as what is stated in Para No.25 of the reply is concerned, since Respondent No.5 has not made any fresh averment the same does not call for any reply.

34. I say that so far as what is stated in Para No.26 of the reply is concerned, the contents of the same are denied for the reasons already stated in my application and the present Affidavit in rejoinder. I say that without adducing an iota of evidence in respect of purchase of the shares Respondent No.5 has already decided the matter in his favour and made self-serving statements to cover up his gross violation of the provisions of the Torts Act. I say that as explained earlier Respondent No.5 does not have any right, title and interest in the subject shares and accruals thereof even though the shares came to be registered in his name.

35. I say that so far as what is stated in Para No.27 of the reply is concerned, the contents of the same are denied for the reasons already stated in my application and the present Affidavit in rejoinder. I say that under the provisions of the Torts Act it is the *onus* and obligation of Respondent No.5 to disclose and handover the attached property failing which to face the consequences that follow. I say that not an *iota* of evidence is adduced by Respondent No.5 to establish his right, title and interest in the subject shares and since this deponent does not have any material to support his case he has resorted to making bald denials and vague averments. I therefore put Respondent No.5 to the strict proof thereof.

36. I say that so far as what is stated in Para No.28 of the reply is concerned,

the contents of the same are denied as mere bald denials are made and so far as the binding law and precedents cited by me the deponent wants to deal with them at the time of final argument.

37. I say that so far as what is stated in Para No.29 of the reply is concerned, the contents of the same are denied for the reasons already stated in my application and the present Affidavit in rejoinder. I say that it is not for Respondent No.5 to aver whether the Custodian has accomplished his job of tracing and recovery of attached property particularly since the same is forming part of his statutory duty and the exercise of tracing and recovery of attached property from third parties is an on-going exercise. I say that besides Custodian even I am also entitled to pursue recovery of our attached assets lying in the hands of third parties since our notification has not divested us of our right, title and interest in our attached properties. In this regard I have already placed reliance on the law laid down by Hon'ble Supreme Court in the case L.S. Synthetics vs. FFSL reported as **(2004) 11 SCC 456**.

38. I say that so far as what is stated in Para Nos.30 to 34 of the reply are concerned, since no new averments are made by Respondent No.5 the same does not call for any reply.

39. I say that so far as what is stated in Para No.35 of the reply is concerned, the contents of the same are denied for the reasons already stated in my application and the present Affidavit-in-rejoinder and I put Respondent No.5 to the strict proof of the averments made by him. I say that Respondent No.5 has himself admitted that his father in the year 1992-93 has purchased the subject shares of Hero Honda Motors Ltd. in the name of Respondent No.5 and this admission itself confirms that such a transaction would be a benami transaction. I say that Respondent No.5 is required to adduce complete evidence of purchase of subject shares on the lines as set out in para 19 of the present rejoinder. I say that the factum of purchase of the subject shares does not get established only on the basis of following averments:



- a) That Respondent No.8 at the relevant time had means and resources to purchase the shares.
- b) That Respondent No.8 was doing business in the name of Bella Electronics and was distributor TV, Fridges and other electronic appliances.
- c) That Respondent No.8 several years ago in the year 1971-72 and 1972-73 had purchased a parcel of agricultural land.
- d) That Respondent No.8 in the year 1995 had undertaken some foreign travel and had purchased 2000 Dollars for the same.

I say that Respondent No.5 cannot ask this Hon'ble Court to make presumption of purchase of shares by Respondent No.8 in complete absence of evidence since this Hon'ble Court under its order dated 27.07.1992 in MP 1, 2 and 3 of 1992 has already laid down the legal requirements for any person to establish any *bona fide* purchase of shares. I say that Respondent No.5 has both *onus* and obligation to establish his case which *onus* cannot be shifted onto this Hon'ble Court.

40. I say that if Jobalias were rich persons and had means to purchase the subject shares then Respondent No.5 also needs to explain why they lent their names for registration of attached shares belonging to Mehtas in their names as per the particulars given in Exhibit F to my application. I say that the facts of the present case are identical to the facts of shares covered under Exhibit F to my application and therefore adverse inference is bound to be drawn against all the Jobalias in whose names the shares of Hero Honda Motors Ltd. came to be registered. I say that such a conclusion gets further supported by the following facts:

- i) That Shri Nilesh Jobalia is already found to be holding 800 benami shares of Hero Honda Motors Ltd. which have since been recovered.
- ii) That orders passed by this Hon'ble Court against Jobalias have never been challenged by anyone of them and therefore they have attained finality



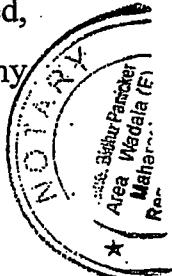
and become binding on them.

- iii) That ever since 1993 the Jobalias have never treated any shares of Hero Honda Motors Ltd. as belonging to them by never seeking accruals on them in the form of dividends, bonus issue of shares and only in the year 2019 Respondent No.5 for the first time dishonestly tried to recover the shares and accruals which is after passage of almost 26 years.
- iv) That Smt Kalpana Jobalia on her behalf and on behalf of Shri Jayesh Jobalia have already agreed to handover the subject shares with accruals.
- v) That other than Shri Nirav Jobalia no other Jobalias have yet taken any step for claiming the shares from the company or IEPF as belonging to them.
- vi) That the conduct of all the Jobalias including of Shri Nirav Jobalia until 2019 is consistent with conduct of persons as if the shares did not ever belonged to them.

41. I say that so far as the averments made in regard to the 10,000 shares Respondent No. 5 has not come clean and has suppressed several material facts. I say that Respondent No. 5 has relied upon Exhibit III and Exhibit IV which discloses several documents executed by Respondent No. 5 and the FIR filed by him regarding loss of Share Certificates but these crucial documents have not been brought on record by the Respondent. I say that in view of the above, I deny all the averments made by Respondent No.5 which are contrary to and inconsistent with what has been stated by me in my application and the present rejoinder.

42. I say that so far as what is stated in Paras No.36 to 40 of the reply are concerned, since Respondent No.5 has only repeated his averments the same are denied and not dealt with by me once again.

43. I say that so far as what is stated in Para No.41 of the reply is concerned, the contents of the same are denied for the reasons already stated in my



application and the present Affidavit in rejoinder. I say that Respondent No.5 needs to first explain his complete failure to take any action for recovery of the shares and accruals for more than 26 years if he believed that the subject shares and accruals thereon constituted his own property. I say that Respondent No.5 has not brought on record all the correspondence and documents executed by him and the same are suppressed from this Hon'ble Court. I say that Respondent No.5 has deliberately not offered any of the documents in inspection despite my request. I say that Hero Honda Motors Ltd. and their STA have failed to disclose the shareholdings of Jobalias in Hero Honda Motors Ltd. both to the Income Tax department as also to the Custodian. I say that they have also failed to probe the request of Shri Nirav Jobalia for issue of duplicates and the claim made by him on the shares after 26 years and taken upon itself the responsibility to make good any losses and indemnify IEPF by entering into a non-liability clause as under:

Non-liability clause:

"The company shall be solely liable under all circumstances whatsoever to indemnify the IEPF authority in case of any dispute or lawsuit that may be initiated due to any incongruity or inconsistency or disparity in the verification report or otherwise.

The IEPF Authority shall not be liable to indemnify the security holder or company for any liability arising out of any discrepancy in Verification Report submitted etc. leading to any litigation or complaint arising thereof."

I say that having issued the Verification Report Hero Honda Motors Ltd. has already got legally bound to IEPF in above terms and thereby a vested interest is already created by the company in favour of Respondent No.5 to support his illegal case. This clearly emerges from page 835 of the reply. I say that ever since I lodged the claim for recovery of the attached shares and cited binding law and orders of this Hon'ble Court, Hero Honda Motors Ltd. has taken an adversarial stand against me so as to protect itself and Respondent No.5 and prevent recovery of attached property. I say that in these facts and circumstances I am entitled to

recovery of my attached property both from Jobalias and Respondent Nos.2 and 3 on joint and several basis.

44. I say that so far as what is stated in rest of the Paras of the reply are concerned, the same are merely repetition of the stand taken by Respondent No.5 which have already been dealt with extensively by me in the present rejoinder and therefore I am not dealing with the same again. I say that the story of Respondent No.5 that only after the death of his father on 20.07.2016 the Respondent No.9 his mother informed the fact of purchase of shares in the name of Respondent No.5 is false to his own knowledge and Respondent No.5 is put to strict proof thereof. I say that since then Respondent No.9 has also expired and it is quite obvious that Respondent No.5 is attributing all the acts to his late father and late mother so that they cannot be factually verified. I say that it is also falsely stated by Respondent No.5 that only after he discovered the fact of crediting of dividends by Hero Honda Motors Ltd. that he immediately applied for transfer of 10,000 shares in his name. In fact there is a clear contradiction and inconsistency in the above 2 stands taken by Respondent No.5. I say that Respondent No.5 has not produced any Death Certificates of Respondent Nos. 8 or 9 nor disclosed whether they had died testate or intestate. I say that since admittedly the subject shares are claimed to have been purchased by Respondent No.8 in the name of Respondent No.5, he is liable to explain how he has acquired the right, title and interest in the shares which were never purchased by him nor they have been bequeathed to him. I say that there are obviously several legal heirs of Respondent No.8 and therefore it is absolutely necessary for Respondent No.5 to establish his own claim on the shares admittedly purchased by his father and paid for by his father. I say that merely because the shares got registered in the name of Respondent No.5 the same does not become his property even if it was purchased by his father. I say that Respondent No.5 is also liable to surrender the subject shares with accruals as claimed since they never belonged to him and he therefore has no *locus* to resist my application and the attachment and recovery of the



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subject shares.

45. I say that in view of what is stated above the reliefs prayed for by me against Respondent Nos. 5 to 9 are liable to be granted.

46. Whatever stated herein above is true and correct to my own knowledge and belief. Hence this Affidavit in rejoinder is filed.

Solemnly affirmed at Mumbai)
on this 1st day of December 2023)

X JH.mehta
(Jyoti H Mehta)
Applicant

X Ashwin Mehta
(Ashwin Mehta)
Advocate for Applicant

BEFORE ME
Bidhu Panicker
BIDHU PANICKER
B.Com., LL.B.
ADVOCATE HIGH COURT
NOTARY (Govt. of India)
Res: 303, Sandeep Apt., Plot No. A/197,
Sector-20, Near Balaji Temple,
Nerul (W), Navi Mumbai, Maharashtra.

1 DEC 2023





VERIFICATION

I, Smt Jyoti H Mehta, Applicant, in the above matter and sole legal heir of late Harshad S. Mehta, residing at 32 Madhuli, Dr. Annie Besant Road, Worli, Mumbai 400 018, do hereby solemnly declare that what is stated in the foregoing Affidavit in rejoinder is true to my own knowledge and belief.

Solemnly declared at Mumbai)
this 1st day of December 2023)

X JH. Mehta

(Jyoti H. Mehta)
Applicant

X MM
(Ashwin Mehta)
Advocate for Applicant

Adv. Code. I22110

OS REG. NO. 17189

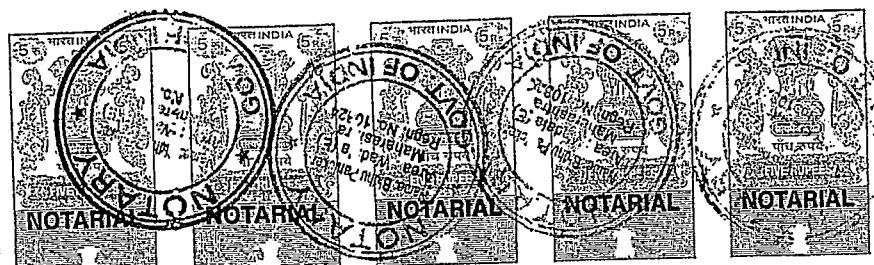
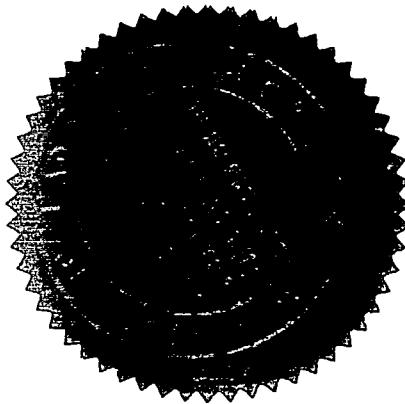
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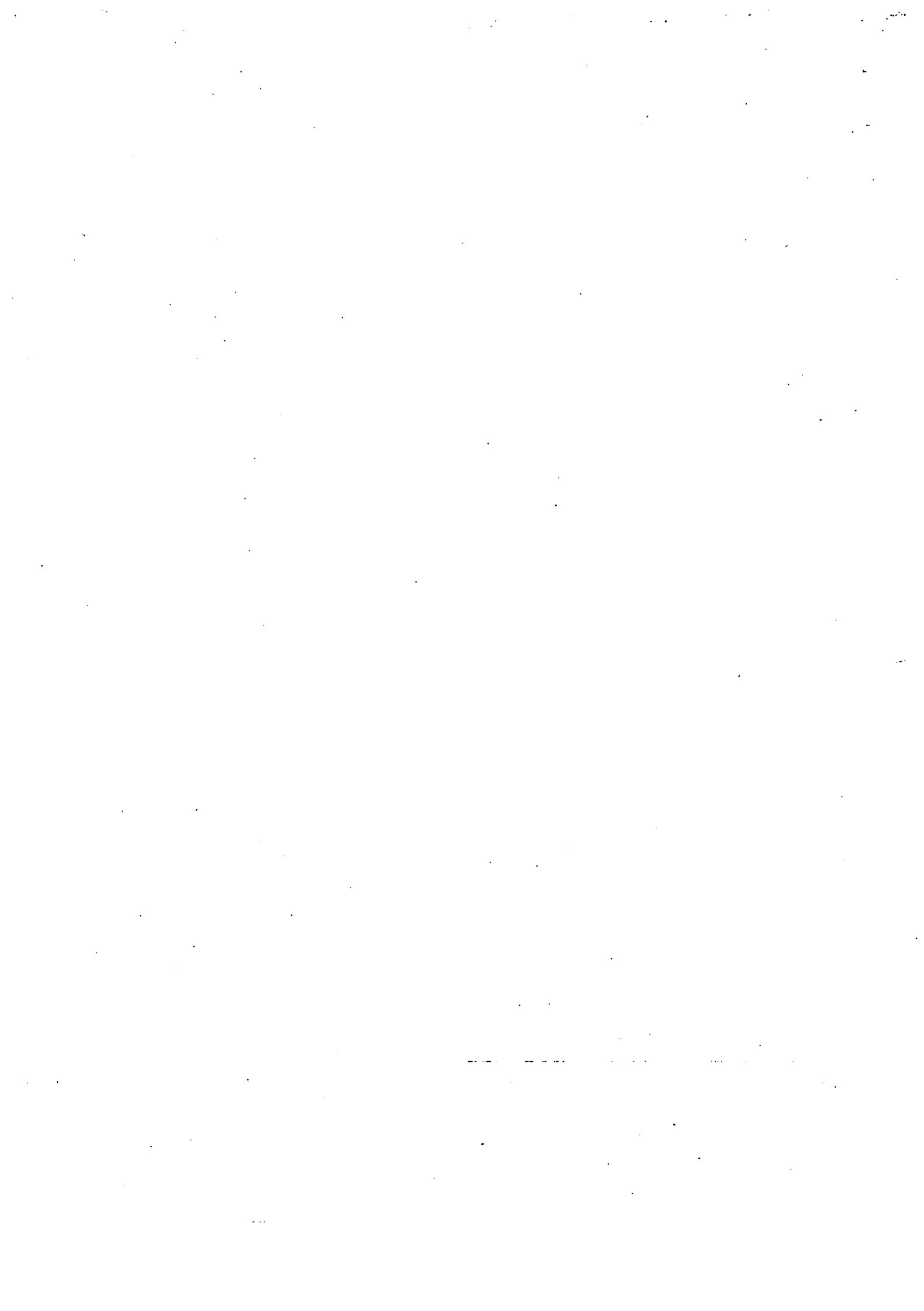
BEFORE ME
BIDHU PANICKER

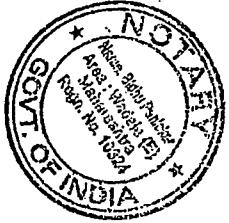
B.Com., LL.B.
ADVOCATE HIGH COURT
NOTARY (Govt. of India)
Res: 303, Sandeep Apt., Plot No. A/197,
Sector-20, Near Balaji Temple,
Nerul (W), Navi Mumbai, Maharashtra.

Notary Reg. Sr. No. 7423 | 2023
In Book No. V

R. 1 DEC 2023







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Exhibit-A"

JRC

ASHWIN S. MEHTA

32, Madhuli Apartments, Dr. Annie Besant Road, Worli, Mumbai 400 018

21 November 2023

To,
Shri Jehangir Khajotia
Advocate, High Court,
3rd Floor, Room No.16,
Radha Bhavan,
Nagindas Master Road,
Mumbai 400 023

EN923615775IN INR:6977923615775
SF WORLI S.O <400015>
Counter No:1,21/11/2023,14:42
To:JEHANGIR KHAJOTIA,ADVOCATE
PIN:400001, Mumbai GPO
From:ASHWIN S MEHTA
Wt:20gms
Amt:17.70(Cash)Tax:2.70
<Track on www.indiaost.gov.in>



**Re: Before the Special Court (Trial of Offences Relating to
Transactions in Securities) Act, 1992
Misc. Application no.10 of 2023**

Jyoti H. Mehta

... Applicant

Vs

The Custodian & Ors.

... Respondents

Inspection of documents relied upon by your client Shri Nirav D Jobalia in support of his Affidavit-in-reply dated 29.09.2023

I am addressing this letter on behalf of my client Smt Jyoti Mehta who has asked me to address you as under:-

- That your client Shri Nirav D Jobalia, Respondent No.5 has filed an Affidavit-in-reply in the above proceedings on 29.09.2023. In terms of the Regulations framed by Hon'ble Special Court u/s 9A of the Torts Act, your client has not offered any inspection of the material relied upon by him and therefore my client has asked me to call upon your client to offer inspection of the material being relied upon by him preferably within next 48 hours.
- My client also seeks from your client copies of correspondence and all documents executed by your client for securing shares of Hero Honda Motors Ltd. and accruals on them both from the company and IEPF including those documents which are already relied upon and cited in Exhibit III page 828, Exhibit IV page 832 of the Affidavit-in-reply. Your client has executed several documents as are listed in the above

TRUE COPY

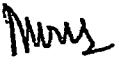
JRC

Advocate For Petitioner / Respondent / Applicant

Exhibits 3 and 4 but the copies of the same have not been enclosed with the Affidavit-in-reply and therefore the same are being sought by my client.

3. Your client is also called upon by my client to disclose the material facts and supporting documents in regard to the sale of shares of Hero Honda Motors Ltd. as admitted in the Affidavit-in-reply and also disclose complete details of utilization of sale proceeds and where the same have been deployed by your client.
4. Please note that my client is also forwarding a copy of this letter to the office of the Custodian for their information and necessary action.

Yours truly,


(ASHWIN S. MEHTA)
Advocate

SHILPA BHATE & ASSOCIATES

217, 2nd Floor, Rex Chamber,
W.H. Marg, Ballard Estate, 3rd 4th
Mumbai - 400 001. 2111123 

CC : Ms. Shilpa Bhate & Associates, Advocates for Custodian,
217, 2nd Floor, Rex Chamber, W.H. Marg, Ballard Estate,
Mumbai 400 001.

Email: shilpabhatelocal@gmail.com

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Exhibit -B

Jehangir Khajotia

Advocate, High Court
Email id jehangirk@gmail.com



3rd Floor, Room No.16, Radha bhavan, Nagindas Master Road, Mumbai - 400 023

24th November 2023

To,

Mr. Ashwin S. Mehta,
Advocate
32, Madhuli Apartments,
Dr. Annie Besant Road,
Worli, Mumbai – 400 018.

Sir,

Re. Before the Special Court (Trial of Offences Relating to
Transaction in Securities) Act, 1992
Misc. Application No.10 of 2023
Jyoti H. Mehta ... Applicant
Versus
The Custodian & Ors. ... Respondents

My client has received your letter dated 21st November 2023 addressed by you, to my client and is replying as under:-

- As per paragraph 1, it is true that my client, being Respondent No.5 has filed an Affidavit in Reply in the above proceedings on 29th September 2023 and the same was served upon your client by hand delivery on 29th September 2023. It is your contention in paragraph no 1 of your notice that as per the regulation framed by the Hon'ble Special Court under Section 9A of TORTS Act that my client has not offered any inspection of the material relied by my client and therefore, you asking inspection of the same at the behest of your client. On behalf of my client, I like to state that as per Section 9A of the TORTS Act which runs as under:-

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TRUE COPY

[Signature]
Advocate For ~~Petitioner / Respondent / Applicant~~

Jehangir Khajotia

Advocate, High Court
Email id jehangirmk@gmail.com

3rd Floor, Room No.16, Radha bhavan, Nagindas Master Road, Mumbai - 400 023

"9A. Jurisdiction, powers, authority and procedure of Special Court in Civil matter.

(1)

(2)

(3)

(4) *While dealing with cases relating to any matter or claim under this section, the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and subject to the other provisions of this Act and of any rules, the Special Court shall have power to regulate its own procedure.*

(5) *Without prejudice to the other powers conferred under this Act, the Special Court shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters namely:-*

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;"*

As per Section 9A of the TORTS Act, the procedure laid down by the Code of Civil Procedure Code is not bounded to this Hon'ble Court. But this Hon'ble Court for the purpose of

Jehangir Khajotia

Advocate, High Court
Email id jehangirk@gmail.com

3rd Floor, Room No.16, Radha bhavan, Nagindas Master Road, Mumbai - 400 023

discharging its function under Section 9A, this Hon'ble Court has powers to summon and enforce attendance of any person, and examine him on oath requiring the discovery and production of documents. In the entire Section 9A of the TORTS Act, there is no provision for inspection of the documents. Therefore, your contention as per paragraph no.1 has out rightly to be rejected. The stage of evidence has not come. Therefore, your contention at this juncture is not at all maintainable on the ground of your client seeking instructions from my client.

2. Further, the provisions as per Section 9, which states about the procedure and powers of the Special Court, the provisions to be followed is adopting the trial, the same procedure prescribed in warrant cases before a Magistrate. In the warrant triable case also, there is no provision of asking any document directly from any person from any individual person / accused. The person conducting the trial before the Special Court is a Public Prosecutor. Your client is nowhere appointed as a Public Prosecutor. Therefore, there is no provision under Section 9A for asking the documents from my client. Whenever the Court will issue directions / judicious orders, my client will comply with the same invoking the provisions of Section 9A of the TORTS Act.

3. As per paragraph no.2, you have no right to call upon my client the copies of correspondences and all documents executed by my client for securing shares of Hero Honda Motor Ltd. and accruals on them both from the Company and the IEPF, which are in page no.828 and 832 of the Affidavit in Reply. As per page no.828 of

Jehangir Khajotia

Advocate, High Court

Email id jehangirmk@gmail.com

3rd Floor, Room No.16, Radha bhavan, Nagindas Master Road, Mumbai - 400 023

the Affidavit in Reply of my client, the said correspondences were exchanged by KARVY Fintech Pvt. Ltd., the earlier Share Transfer Agents of Hero Honda Motor Ltd. You are not a party to the said letter. On the contrary, no order passed by any Court has declared your client as the owner of the said shares of Hero Honda Motors Ltd. Therefore, you on behalf of your client have no right to ask the said documents. There is provision under the TORTS Act only this Hon'ble Court can invoke its powers under Section 9A of TORTS Act and call for such documents. The said documents mentioned in page no.828 is not relied by my client in the Affidavit in Reply. Therefore, you have no right to ask those documents from my client. Only the letter addressed by KARVY Fintech Pvt. Ltd. to my client has been relied by him. Further, as per your contention as per page no.832 of the Affidavit in Reply, that my client has executed several documents the same has not been relied by my client in his affidavit in reply. The same cannot be asked by your client. The said Verification Report addressed by Hero Motor Corp Ltd. to my client is rightly relied by him and there is no necessity for him to rely on the attachments with the original claim. It is also important to note that your client has annexed at page no.648, where Hero Motor Corp Ltd., has already replied to you, representing your client that the said documents are received in confidence and there is no obligation on the part of the Company to disclose the said information and the same was out rightly rejected by the Hero Motor Corp Ltd. The said copy of the affidavit in reply has been served to Hero Motor Corp Ltd shown as respondent no 2 in your

Jehangir Khajotia

Advocate, High Court
Email id jehangirk@gmail.com

3rd Floor, Room No.16, Radha bhavan, Nagindas Master Road, Mumbai - 400 023

client's application but no kind of any grievance has been raised by them at any point of time.

4. You cannot force my client to file any documents to be relied by my client as there is no provision either in the Civil Procedure Code or under Criminal Procure Code where you dictate terms to my client to produce any documents and rely on the same.
5. As per paragraph no.3 of your letter, no order has been passed in favour of your client. The matter is sub judiced before the Hon'ble High Court. Therefore, there is no need to disclose complete details of utilization of sale proceeds and the same has been deployed by my client, as no order has been passed by this Hon'ble Court. Your client has not been declared as the owner of the said shares. The Hon'ble Court has not given any finding that the shares are benami. Therefore, your contention as per paragraph no.3 is not at all justifiable.
6. The said affidavit in reply was served to you on 29th Sept 2023, but you on behalf of your client has not filed counter reply to my clients reply and have taken time from these Hon'ble Court on last two dates, it seems your application filed by your client is be refit of any merits and has ought rightly has to be rejected. The application being served upon you on 29th Sept 2023 and the letter addressed to my client is also belated for a period of one month and 20 days also aids that your case is meritless in the application filed by your clients.

Jehangir Khajotia

Advocate, High Court

Email id jehangirmk@gmail.com

3rd Floor, Room No.16, Radha bhavan, Nagindas Master Road, Mumbai - 400 023

7. Since you have addressed letter to the Custodian for their information and necessary action, my client is also sending the copy of the present reply to the Custodian.

Yours faithfully,

Jehangir
(Jehangir Khajotia)
Advocate High Court

C.C. to:

Ms. Shilpa Bhate & Associates
Advocates for Custodian,
217, 2nd Floor, Rex Chamber
W.H. Marg, Ballar Estate,
Mumbai – 400 001
Email: shilpabhatalegal@gmail.com



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Exhibit - C

ASHWIN S. MEHTA

32, Madhuli Apartments, Dr. Annie Besant Road, Worli, Mumbai 400 018

27 November 2023

To,
Shri Jehangir Khajotia
Advocate, High Court,
3rd Floor, Room No.16,
Radha Bhavan,
Nagindas Master Road,
Mumbai 400 023

Rehni 352

**Re: Before the Special Court (Trial of Offences Relating to
Transactions in Securities) Act, 1992
Misc. Application no.10 of 2023**

Jyoti H. Mehta

... Applicant

Vs

The Custodian & Ors.

... Respondents

Inspection of documents relied upon by your client Shri Nirav D
Jobalia in support of his Affidavit-in-reply dated 29.09.2023

*Jehangir
Attn for Rehni
No 5*

*29/11/2023
at 1.45pm*

This is in response to your letter dated 24.11.2023 and in reply thereto my client Smt Jyoti Mehta has asked me to convey to your client Respondent No.5 as under address you as under:-

1. It is apparent from the contents of your reply that you are unaware that u/s 9A(4) of the Torts Act the Hon'ble Special Court has framed Regulations relating to procedure for Civil cases and in terms of Regulation 15 of the said Regulations your client had an obligation to offer inspection of the material relied upon by him and upon failure to do so no material can be relied upon. Thus ignoring the legal requirements a long reply is given disclosing belligerent approach of your client. In these circumstances my client is proceeding with filing her rejoinder without benefit of the inspection and will be compelled to urge that your client Respondent No.5 may not be allowed to rely upon any material for which he has not offered inspection as sought for by

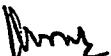
TRUE COPY

MMS

Advocate For Petitioner / Respondent / Applicant

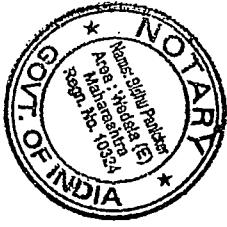
my client. My client also deems it unnecessary to deal with the contents of your letter on a para-wise basis as it would be futile to do so.

Yours truly,


(ASHWIN S. MEHTA)
Advocate

CC : Ms. Shilpa Bhate & Associates, Advocates for Custodian,
217, 2nd Floor, Rex Chamber, W.H. Marg, Ballard Estate,
Mumbai 400 001.

Email: shilpabhatelegal@gmail.com



872

Exhibit "D"

6/1/16
305

विशेष न्यायालय (प्रभिगृहीत संघवाहार समिति
श्रष्टरोध दिवारण) अधिनियम, 1992
गोपनीय मनिकुमार आक शर्मा
16, पालियापाल
ग्रामपाल, 3326836, 3327279
No. 518 CUS/ATT/MA-536 OF 9/1/987 (K)

OFFICE OF THE CUSTODIAN
THE SPECIAL COURT (Trial of offences relating
to transactions in Securities) Act, 1992 2/9
3rd Floor, Bank of Baroda Bhawan,
16, Parliament Street,
NEW DELHI-110001
Phone: 3326836, 3327279
MARCH 9, 1994
Dated the..... 19.....

To The Company Secretary,

Larsen & Toubro Ltd.,
L & T House,
Ballard Estate,
Bombay 400 038.

Dear Sirs,

Harshad S. Mehta, a notified person under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 - in his affidavit filed with the Special Court in Misc. Application 194 of 93 and 53 of 1994, has claimed that the shares and debentures enumerated in the list enclosed belong to one or the other of 29 parties of Harshad Mehta Group (HMG) or are shares/ debentures purchased by the three stock-broking firms of M/s Harshad S. Mehta, M/s Ashwin Mehta and M/s Jyoti H Mehta on behalf of their clients' including entities within the group and family members. He has also stated that some more shares/debentures, which have remained unregistered, the details of which are under compilation and will be submitting the same to the Special Court at a later date.

In this connection, you are requested to confirm whether the shares/debentures enumerated in the said list are in the names of the first holders indicated therein. It should be noted that in terms of Secs. 3(3) and 3(4) of the Special Court's Act, all properties - movable or immovable or both, belonging to persons notified under the said Act, stand 'attached' simultaneously with the issue of Notification and constructively rest with the Special Court.

In the light of the above, you are hereby called upon not to deal with these shares/debentures in any manner whatsoever without the permission of the Special Court.

You are faithfully,

(S.K. ROY CHOWDHURY)
Officer on Special Duty.

As above

TRUE COPY

Waz

Advocate For Petitioner / Respondent / Applicant

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* LARSEN & TOUBRO

BIPIN D MODI	50	B77303
HIS AVALANI	1250	H72463
JAYESH D. JOBALIA	1200	J76459
JAYPRakash R SHETH	500	J76478
K' ANA N. JOBALIA	200	K83541
KALPANA N. JOBALIA	1100	K83543
M J SHETH	1200	M85665
NILESH H. MODI	949	N77696
NILESH D. JOBALIA	1000	N77708
NIRAV D. JOBALIA	1350	N77709
REKHABEN H AVALANI	1150	R85568
SANTIBHAI AVALANI	700	ST1703
SHANTILAL AVALANI	1000	ST1710
** Subtotal **	11649	



874

Exhibit - "E"

प्राधिकारिक आम सार्वजनिक
विशेष न्यायालय (प्रतिभूति संबंधित सचिवालय)
प्रपराष विचारण) प्रधिकारिक, 1992
गोपी मंत्रिल, बैंक ऑफ बाबुदा भवन,
16, पार्लिमेंट स्ट्रीट,
दृष्टिगत: 3326036, 3327279, 3329231
फँस्ट: 91 11 331-1665

210
205
215

OFFICE OF THE CUSTODIAN
THE SPECIAL COURT (Trial of offences relating to
Transactions in Securities) Act, 1992
3rd Floor, Bank of Baroda Bhawan,
16, Parliament Street,
NEW DELHI 110001
Phones: 3326838, 3327279, 3329231
FAX: 91 11 331-1665

Regd.

No. 2953 /CUS/ATT/MA-53/194/987(KW-5) 11.1.95

To : The Company Secretary
LARSEN & TOUBRO LTD
L&T HOUSE
BALLARD ESTATE
BOMBAY - PIN - 400038.

Sir,

Sub: Updating list of Benami shares submitted by Harshad S. Mehta to Special Court on 9th August 94

Harshad S. Mehta in his Affidavit dated 25th February 94 had submitted a list of Benami share holding in various companies which was forwarded to you. Vide this office letter No. 5181 / Cus/ Att/MA-53 of 94/987-KW DATED 9TH/19th March 94.

He has now submitted an updated list of those shares to the Special Court on 9th August 94 (copy enclosed). You may kindly arrange to verify and confirm the share holdings indicated therein and discrepancies, if any, noticed may be pointed out to this office immediately.

You may also kindly arrange to note the instructions given in this office letter dated 9th/19th March 94 and furnish the additional information called for in this Office letter No. 242 / Cus/Att/MA-53/987 dated 18th / 19th April 94 to this office immediately in respect of shares and folios which were not listed in his earlier affidavit of 25th February 94.

Yours faithfully,

(D. K. ROY CHOWDHURY)
OFFICER ON SPECIAL DUTY

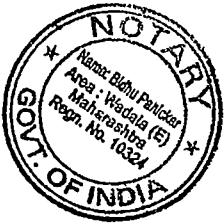
Enclosure above

TRUE COPY

Advocate For Petitioner / Respondent / Applicant

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LARSEN & TOURO		
BIRIN D. MODI	LTB77303	50
H.S.AVALANI	H72463	1250
J.MEESH D. JOBALIA	J76459	1200
JAYPSAKASH R. SHETH	J76478	600
KALPANA N. JOBALIA	K83541	200
KALPANA N. JOBALIA	K83543	1100
M. J. SHETH	M85685	1200
M. H. MODI	N77696	949
NILESH D. JOBALIA	N77708	1000
HIRAV D. JOBALIA	N77709	1350
R.H.AVALANI	R85568	1150
S.G.AVALANI	ST1710	977
S.G.AVALANI	ST1710	23
S.S.AVALANI	ST1709	700
** Subtotal **		11649



श्रीमत राजक का कोषलयं
चिंगम न्यायालय (प्रतिकूलि न्यायवकार संस्थाधी
अपनाध विधारण) अधिनियम 1992
नगरो नियम, वेश आंग यांग भरन,

CONFIDENTIAL

OFFICE OF THE CUSTODIAN / 214
THE SPECIAL COURT (Trial of offences relating
to transactions in Securities) Act, 1992
3rd Floor, Bank of Baroda Bhawan,
18, Parliament Street,
NEW DELHI-110001
Phone: 3326836, 3327279

दृष्टान्त: 3326836, 3327279
Dated the 19.....
NO. 5528/CUS/MA-297 OF 94(987-KW)

June, 1995

To

The Company Secretary

Lavasa and Tarka

L&T FUSC

Balawali Estate, Bhandup

Dear Sir,

On the directions of the Special Court (Trial of Offences Relating to Transactions in Securities - TORTS), Bombay, this Office has been informed that a large number of shares pertaining to your company, belonging to the Harshad Mehta Group (HMG) notified under the Special Court (TORTS) Act, 1992 have been registered in benami names by them. A list of such parties in whose names the shares have been purported to be registered in the books of your company, as made available to the Custodian is enclosed.

2. Under Sec.3(3) of the Special Court Act, all properties, movable or immovable, or both, stand attached simultaneously with the issue of notification. As such all attached properties constructively vest with the Special Court. Where, therefore, there is certainty that one or the other of the properties belong to the notified persons, although in benami names, they will be deemed attached.

3. The Custodian has also been informed that several of these shares so registered in benami names, have been sold in the market.

4. In order to have a proper perspective of the position, you are requested to urgently indicate the following:-

(a) Confirmation of the fact that the shares indicated in the list are/were registered in the names of the parties mentioned therein. The date(s) from which the shares were so registered may also be indicated;

(b) Details of transfer in the name of the parties mentioned in the list and name(s) of brokers through whom the purchase was made as indicated in the transfer documents with the date of transfer; and

[- 2 -]

TRUE COPY

Wm

Advocate For Petitioner / Respondent / Applicant

877

(c) Transfers, if any, from the parties whose names are indicated in the list, details such as name(s) of transferee(s), number of shares, date of transfer, name(s) of brokers through whom transfers have taken place as indicated in the transfer documents, and Distinctive Certificate Nos./Folia Nos.

5. Details at (a) less at (c) above, will indicate the position regarding the number of shares continuing to be registered in the names of the parties in the list.

6. As these details will have to be produced to the Special Court in connection with pending applications before Court, an early reply is requested.

7. If possible, in addition to the signed reply to this Office, we may also be furnished the details on floppies.

Yours faithfully
K. ARAVINDHAN
OFFICER ON SPL.DUTY

Enc: As above.

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NAME OR FIRM HOLDING IN STOCK		NAME OF STOCKHOLDER	AMOUNT HELD	AMOUNT SHIPPED
NAME	ADDRESS	NAME	(1)	(4)
LARSEN & TOUERO	H. J. MUTH	N772463	1250	
LARSEN & TOUERO	NILESH D. JAGALIA	N776459	1000	
LARSEN & TOUERO	NIRAV D. JAGALIA	N776458	500	
LARSEN & TOUERO	NIRAV N. JAGALIA	N03541	200	
LARSEN & TOUERO	NIRAV N. JAGALIA	N03543	1100	
LARSEN & TOUERO	N. J. MUTH	N03608	1200	
LARSEN & TOUERO	NILESH H. MODI	N77676	949	
LARSEN & TOUERO	NILESH D. JAGALIA	N77708	1000	
LARSEN & TOUERO	NIRAV D. JAGALIA	N77709	1350	
LARSEN & TOUERO	REKHABEN H. AVALANI	R05568	1130	
LARSEN & TOUERO	SANTOSHJI AVALANI	ST1709	700	
LARSEN & TOUERO	SANTOSHJI AVALANI	ST1710	1000	
Subtotal:			11399	

879

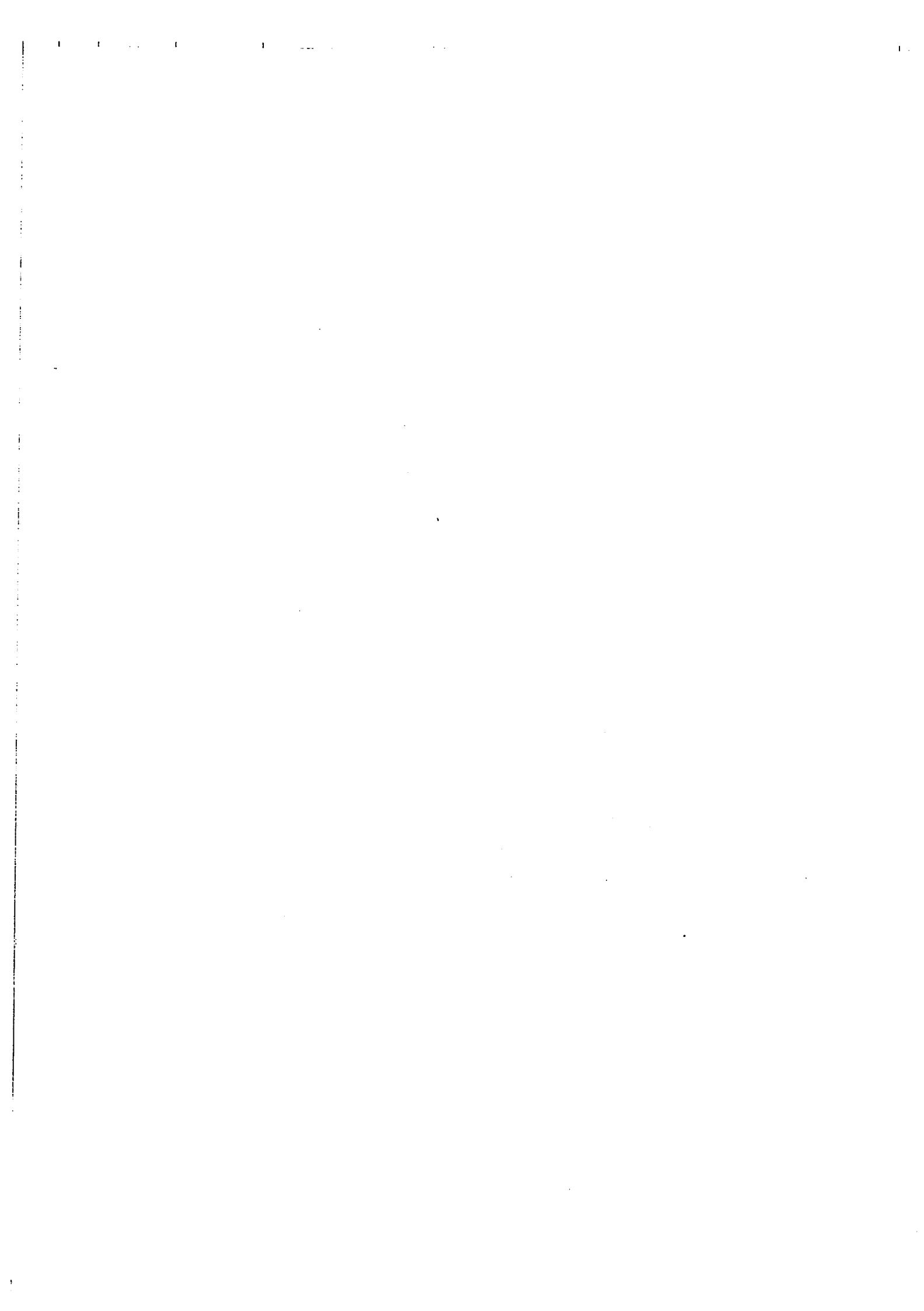
17 GORRI - LANGORI AND TOUERO
LANGORI AND TOUERO BIFINI O HODI

as Subtotal as

B77303

50

50



**BEFORE THE SPECIAL COURT (TRIAL
OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT,
1992**

MISC. APPLICATION NO. 10 OF 2023

Jyoti H Mehta Applicant
Vs.
The Custodian & Ors. Respondents

**AFFIDAVIT-IN-REJOINDER OF SMT
JYOTI H. MEHTA, SOLE LEGAL HEIR OF
LATE SHRI HARSHAD S. MEHTA**

Dated this 1st day of December 2023



**Ashwin S Mehta
Advocate for Applicant
32, Madhuli, Dr. Annie Besant Road,
Worli, Mumbai – 400 018.**