

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: shilpabhatelegal@gmail.com

SHILPA BHATE & ASSOCIATES

217, 2nd Floor, Rex Chamber,

W. H. Marg, Ballard Estate,

Mumbai - 400 001.

Shilpa 1:52

2. JADEJA & SATIA

Advocate for Respondent No. 2 & 3

1st Floor, Mistry Mansion,

107, M G Road, Fort,

Mumbai – 400 001.



1/12/23
1:15 PM

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
for Bar No. 5
J. Khajotia
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

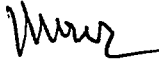
...RESPONDENTS

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. 880 TO 898) 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.

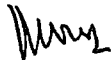
Sir,

BE PLEASED to take on file the **Affidavit in Rejoinder of Smt Jyoti H. Mehta Applicant (Pages No. 880 to 898)** 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

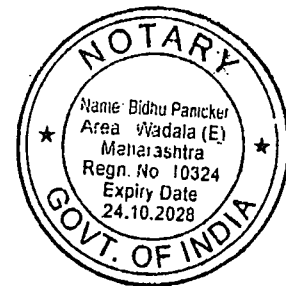
Vs

The Custodian & Ors.

... Respondents

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**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**

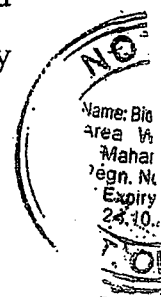
I, Smt Jyoti H. Applicant in the above matter and sole legal heir of late Harshad S. Mehta, residing at 32, Madhuli Apartments, Dr. Annie Besant Road, Worli, Mumbai 400 018, do hereby solemnly state and affirm as under:

1. I say that I have gone through the contents of the Affidavit-in-reply filed by one Shri Samar Bhatia claiming to be DGM Secretarial and authorized to file affidavit on behalf of Respondent No.2 and in rejoinder thereto I have to state as under.
2. I say that I deny everything that is stated by Respondent No.2 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 in respect of the benami shares substantial correspondence has already taken place between the Income Tax department and Respondent No.2 and their Share Transfer Agents (STAs) and also between the Custodian and Respondent No.2 and their STAs. The Income Tax department and the Custodian have sought from Respondent No.2 and their STAs the name/s of the benami shareholders and their shareholdings and accruals paid on them in

order to trace and recover each and every benami shareholder and their shareholdings since the same constitutes attached asset u/s 3(3) of the Torts Act belonging to Shri Harshad Mehta and his family members. It is the duty and the obligation of Respondent No.2 to bring the same on record of the present proceedings, particularly since it has already adopted an adversarial position against me in several letters already addressed by me to it and denied that the subject shares and accruals thereon are an attached property liable to be recovered from the Jobalias. By withholding all the above crucial material, Respondent No.2 is only promoting the patently false stand already taken by it against me.

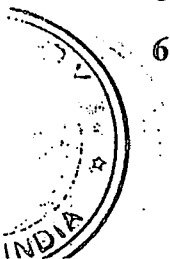
4. I say that besides above, the Income Tax department and the Custodian has filed a number of Applications/Petitions before this Hon'ble Court for tracing and recovering such attached shares together with accruals thereon and their particulars are already disclosed in Exhibit C to my application. I have also disclosed the particulars of orders passed by this Hon'ble Court in these applications / petitions in some of which Respondent No.2 is already joined as a party Respondent. I say that in above proceedings, both the Income Tax department and the Custodian has already established that vast quantities of shares belonging to Mehtas have come to be registered in the names of several third parties after 08.06.1992 though such shares were admittedly purchased prior to 08.06.1992. In fact, the Income Tax department while undertaking the investigation has recorded on oath the statements of several persons who have admitted that vast quantities of shares have come to be registered in their names which were not purchased by them but for which they had only lent their names and addresses. That vast quantities of such shares were also seized by the I.T. department and under the orders of this Hon'ble Court they have been handed over to the Custodian.

5. I say that the I.T. department has also issued notices and passed restrain orders on companies to trace out the names of all the benami shareholders and the shares which have come to be registered in their names in each and every



Public Limited Company. I say that both the I.T. department and the Custodian on the basis of the identity of benamidars have traced and recovered the shares standing in the names of such benamidars in a number of companies and therefore the investigation is primarily carried out on the basis of names of benamidars. I say that the names of such benamidars have been provided to each company to find out the shares standing registered in their names in each and every company. I say that despite knowing this fully well, Respondent No.2 having already dealt with the attached property and having given an immunity to the Investor Education and Protection Fund (IEPF) against any likely losses is now dishonestly contesting my claim on the attached shares by calling upon me to provide specific order of attachment in respect of shares standing registered in the names of Jobalias in its company. I say that in fact just like Respondent No.2 each and every company was called upon to provide the details of shareholdings in the names of such benamidars and the same have been made available by every company to the Income Tax department and the Custodian but so far as Respondent No.2 is concerned despite being informed that 800 shares were benami shares held in the name of Nilesh Jobalia it has failed to disclose the shareholdings of its company in the name of other Jobalias and even after I called upon them to treat the other shares in the name of Jobalias as attached property, it has refused to do so. I say that in fact it has chosen to extend further co-operation to the Jobalias in taking out the shares and accruals from the custody of IEPF by completely ignoring the binding provisions of the Torts Act and the law laid down thereunder as can be seen from its letter dated 23.08.2021 which is enclosed at Exhibit 1 to their reply. I say that besides above, the Custodian is fully empowered under the provisions of the Torts Act to trace and recover each and every attached property which is lying in the hands of third parties and the same constitutes part of his statutory duties since the same can help achieve the objects of the Torts Act.

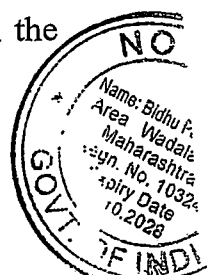
6. I say that besides above in the above applications / petitions as also in case



of missing shares this Hon'ble Court has passed several orders from time to time wherein it has not only appreciated and complimented the efforts made by the I.T. department in recovery of attached shares but it has also empowered and expressly directed that each and every benami shares as also missing shares may be traced and recovered by the Custodian and even if they are sold then the sale proceeds in the hands of such sellers may be recovered and the relevant extracts of such directions and orders passed by this Hon'ble Court are reproduced in **Exhibit A** which is enclosed herewith. It may be noted from above that in para 7 of its combined order dated 13.03.1997 this Hon'ble Court *"has given liberty to all parties besides Custodian and the I.T. department 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"*.

I say that despite above Respondent No.2 and Respondent No.5 have been challenging the present application filed by me on a number of false and frivolous grounds.

7. I say that besides above, in the above applications / petitions several companies including Respondent No.2 have been joined as a party Respondent because of which they are fully appraised of and aware about the provisions of the Torts Act particularly in relation to automatic attachment u/s 3(3) of the Torts Act and that it contains *non-obstante* clause and further that the attached property is liable to be dealt with only by the Custodian u/s 3(4) of the Torts Act. That besides above, u/s 9A of the Torts Act only this Hon'ble Court has exclusive civil jurisdiction in respect of both the transactions undertaken in securities during the statutory period of 01.04.1991 to 06.06.1992 and in all matters relating to the property attached automatically u/s 3(3) of the Torts Act. It is settled law that the Torts Act is a Special Statute and since Sec. 3(3) and 13 of the Torts Act carries non-obstante clauses the provisions of the Torts Act have an overriding effect on the provisions of every other statute wherever there is a conflict between the



provisions of 2 statutes.

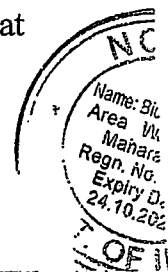
8. I say that it is also settled law that u/s 3(3) of the Torts Act if any property belongs to a notified person the same gets simultaneously and automatically attached on and from the date of notification and such attachment covers any property lying in the hands of third parties and for such an attachment to take effect there is no necessity to pass a separate order of attachment. Further, under the Torts Act it is duty and obligation of third party holding the attached property to come forward, disclose and handover the attached property to the Custodian or else face all the costs and consequences thereof. That third party holding the attached property cannot resist or deny the attachment by adopting defenses available to him under the general law in view of *non-obstante* clauses u/s 3(3) and 13 of the Torts Act. It is settled law that if any third party chooses to transact in the attached property without taking permission from this Hon'ble Court then such a transaction would be illegal and void *ab-initio* and no title would ever pass in favour of purchaser of such property. I say that it is also laid down that if any party dishonestly resists and impedes recovery of attached property they should be made to pay high rates of interest and actual costs of litigation.

9. I say that besides above, the other unique feature of the Torts Act is that the law of limitation is not made applicable to recovery of attached property and that once the property gets automatically attached such attachment continues until it is lifted. I say that the Hon'ble Supreme Court in the case of L.S. Synthetics vs. FFSL reported as (2004) 11 SCC 456 has further laid down the law that both the Custodian and the notified entities have a *locus* to bring the facts of any attached property lying in the hands of third parties to the knowledge of this Hon'ble Court. However, in past 32 years this Hon'ble Court has been recovering attached properties from third parties even at the instance of the I.T. department and CBI and as explained before it has given liberty to any person to come before this Hon'ble Court for seeking its orders in regard to recovery of attached shares and accruals thereon. I say that this Hon'ble Court can even *suo motu* recover the

attached property from third parties if it comes to its notice and knowledge.

10. I say that since the affected banks are not permitted to directly cause recovery of attached property belonging to notified persons a duty has been cast upon this Hon'ble Court to recover each and every attached property lying in the hands of third parties. I say that Respondent No.2 has been fully aware about its obligations to comply with the provisions of the Torts Act and besides being joined as a Respondent in the above applications / petitions it has itself earlier filed before this Hon'ble Court MA 434 of 1999 in the matter of recovery of attached shares and payment of accruals thereon and I crave leave of this Hon'ble Court to refer to and rely upon the proceedings in the above application when produced. I say that Respondent No.2 is one of the leading company in which the Mehtas held more than 5% of their equity capital. I say that Respondent No.2 is required to follow highest standards of corporate governance including for protecting the interest of its genuine shareholders vis-à-vis any dishonest and fraudulent claimants on the shares issued by it. That even the Share Transfer Agents appointed by Respondent No.2 are regulated by Securities and Exchange Board of India (SEBI) and their actions also bind Respondent No. 2 in all matter concerning issue of duplicate shares, transfer of shares and payment of accruals to the IEPF. I say that Respondent Nos. 2 and 3 are also bound by the provisions of the Torts Act and required to make full compliance with the orders of this Hon'ble Court and the law laid down by this Hon'ble Court and Hon'ble Supreme Court and cannot adopt and set up defenses under the general law or the Indian Companies Act as it has done in the present case. I say that to the extent Respondent Nos.2 and 3 have dealt with the attached assets belonging to Mehtas they are also equally liable to be proceeded against for the recovery of attached benami shares belonging to Mehtas. I shall now deal with the affidavit-in-reply on a para-wise basis as under:

11. I say that so far as what is stated in Para 1 of the reply is concerned, the same contains some formal averments which do not call for any reply. I say that



so far as the defense taken that only limited records are available, the same is liable to be rejected as under the Regulations framed by SEBI, both the company and their STAs are required to fully maintain all the records at all the times

12. I say that so far as what is stated in Para 2 of the reply is concerned, the contents of the same are denied. I say that contrary to the provisions of the Torts Act and law laid down thereunder and in order to cover up the gross violations committed by Respondent Nos.2 and 3 they are calling upon me to produce an order of this Hon'ble Court declaring the Jobalias as benami shareholders. I say that this is despite the fact that I have already addressed several letters explaining to Respondent No. 2 the provision of automatic attachment u/s 3(3) of the Torts Act covering even third parties and requiring no separate order of attachment. I say that besides above, I have already adduced complete particulars of numerous proceedings conducted before this Hon'ble Court in respect of benami shares and orders passed therein declaring Jobalias as holders of attached benami shares. I have duly explained that the entire investigation has been conducted around the names of the benami shareholders and on which basis shares standing in their names have been traced and recovered with the assistance of all the companies who have duly complied with the orders passed by this Hon'ble Court. I say that Respondent No. 2 is fully familiar with the true effect of the provisions of the Torts Act and even the law laid down by Hon'ble Supreme Court in the case of T.B. Ruia Vs Custodian reported as (1997) 9 SCC 123 as can be seen from their own letter addressed to IEPF on 09.07.2012 forming part of Exhibit S of my application. I say that by my Advocate's letter dated 05.05.2012 which is forming part of Exhibit T, Respondent No. 2 was once again explained the true effect of the provisions of the Torts Act. I say that besides above, this Hon'ble Court has already passed a combined order on 13.03.1997 in MA 194 of 1993 which is at Exhibit U to the application where the following directions have been given in Paras 6 and 7 as under:

Para 6: *"The Custodian already has in his possession a large number of shares.*

The Custodian to now adopt necessary steps to recover possession of the balance shares from the benamidars, if they can be found. If the benamidars cannot be found the Custodian to apply for duplicate shares from the concerned companies." (emphasis supplied)

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 in view of the above and other orders passed by this Hon'ble Court Respondent No. 2 cannot ask me to produce any further orders of this Hon'ble Court.

13. I say that besides above, Respondent No. 2 is also familiar with the procedure of certification required to be complied with by the alleged benami shareholders. I say that after I addressed letter to Respondent No. 2 making a claim on the subject benami shares, it was obligatory and legally required of Respondent No.2 to call upon the Jobalias to produce before it the proof of purchase of the subject shares but having already acted in violation of the provisions of the Torts Act and the notices issued to it by the Income Tax department and the Custodian and having supported the false claim of Shri Nirav D. Jobalia, Respondent No. 2 has consciously chosen to collude with Shri Nirav Jobalia and the Jobalia family vis-à-vis my valid claim. I say that earlier in a proceeding in MA 83 of 2006 when a false claim on benami shares was made by one Ketan Mathuradas Chatwani, Respondent No. 2 supporting the Report of the Custodian and to oppose the claim filed an affidavit on 02.04.2011 in MA 217 of 2010, a copy of which is already forming part of Exhibit W of my application. It can be seen therefrom that it is repeatedly stated on oath by Respondent No. 2 that the Applicant Ketan Mathuradas Chatwani failed to adduce the basic



documents in support of purchase of shares and which included valid Contract Note and/or proof of purchase of the shares. I say that departing from its previous stand on oath in regard to benami shareholdings, in the present case even after being put to notice Respondent No. 2 has not taken any steps of recalling the shares and dividends from Shri Nirav Jobalia but instead has been threatening me that it would proceed with the issue of shares to Shri Nirav D. Jobalia and other Jobalias. I say that the shares have been issued by the IEPF to Shri Nirav D. Jobalia on indemnity given by Respondent No. 2 to IEPF as can be seen from Pg.835 being letter verification report issued by Respondent No. 2 to the IEPF on 14.06.2019 (Refer Pgs.832 to 835).

14. I say that so far as what is stated in Para 3 of the reply is concerned, the contents of the same are denied for the reasons already explained as above. I say that 36,295 benami shares as per the information provided by Respondent No. 2 in its letter dated 23.06.2021 and forming part of Exhibit JJ to my application on Pg.613, it has already disclosed that 620 shares of its company stand registered in the name of Shri Nilesh D. Jobalia who even as per Respondent No. 2 declared a benami shareholder of Shri Harshad Mehta. I say that such shares could never have been dealt with and transferred by Respondent No. 2 to the IEPF nor it can call upon me to produce any order of declaring Shri Nirav D. Jobalia as benami shareholder in Respondent No. 2 company.

15. I say that so far as what is stated in Para 4 of the reply is concerned, the same are denied. I say that much prior to the letter dated 05.05.2012 addressed by R.A. Sheikh, my Advocate, the company had already acted on the basis of letter addressed by Custodian to it addressed on 09.03.1994 which is at Exhibit O to my application and which is also confirmed in the affidavit filed by Respondent No. 2 in MA 217 of 2010 on 02.04.2011 forming part of Exhibit W to my application. I say that in fact in terms of letters addressed by Custodian to Respondent No. 2 it had the obligation to disclose the names of all the benami shareholders who were holding shares in Respondent No. 2 company and provide

complete particulars in that regard to the Income Tax department and the Custodian. I say that because Respondent No. 2 have suppressed copies of correspondence exchanged by Custodian with it, I have already addressed a letter to Custodian on 28.11.2023 seeking his co-operation in bringing crucial evidence of the letters addressed by his office to Respondent No. 2 including in respect of benami shares and a copy of this letter is enclosed at **Exhibit B**. I say that copies of some of the letters addressed by Custodian are already disclosed and explained in my affidavit-in-rejoinder to the affidavit-in-reply of Respondent No. 5.

16. I say that so far as what is stated in Para 5 of the reply is concerned, the contents of the same are denied as it was both the duty and obligation of Respondent No. 2 and their STA to comply with notices issued to it by the Income Tax department and letters addressed by the Custodian seeking full and complete disclosure of benami shares. I say that even the orders passed by this Hon'ble Court in all the proceedings involving benami shares were required to be complied with by Respondent No. 2, the details of which are furnished by me in Exhibit C of my application. I say that the relevant portions of the above orders are already provided by me in my rejoinder through the reply filed by Respondent No. 5. I say that clearly Respondent No. 2 and their STA have failed to report the shareholdings in their company of the Jobalias so much so that even 620 shares of Shri Nilesh Jobalia have been illegally transferred by Respondent No. 2 to the IEPF. I deny that any shares standing in the name of Jobalias together with accruals on them can ever be treated as 'unclaimed' and be deposited with IEPF u/s 205 of the Companies Act, 1956. I say that Respondent No. 2 has violated the provisions of the Torts Act by depositing dividends and shares with the IEPF even in respect of shares standing in the name of Mehtas and such shares and the dividends had to be traced and recovered from IEPF. I say that Sec.205 of the Indian Companies Act, 1956 is not attracted and applicable so far as any attached shares u/s 3(3) of the Torts Act are concerned and even IEPF has not challenged the order passed by this Hon'ble Court on 18.08.2016 in MA 24 of 2016, copy of



which is already enclosed by me at Exhibit D of my application.

17. I say that so far as what is stated in Para 6 of the reply is concerned, the contents of the same are denied as the Hon'ble Supreme Court in their judgment in the case of L.S. Synthetics Vs FFSL reported as (2004) 11 SCC 456 has already laid down the law that law of limitation is not applicable in proceedings involving recovery of attached property and following the above judgment even this Hon'ble Court has held that as above. I say that besides above, in the present case the onus and obligation was of Jobalias and Respondent No. 2 to come forward, disclose and handover the attached property and therefore the delay, if any, is entirely attributable to them. I say that despite above such false and frivolous grounds are raised to prevent recovery of attached property and this manner impediments are created by Respondent No. 2 to prevent recovery of attached property.

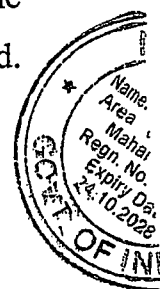
18. I say that so far as what is stated in Paras 7 to 7.7(i) of the reply is concerned, I deny the contents thereof and since the same are repetitive and carrying bald denials and therefore I am not dealing with them once again. I say that in Para 7.4 in regard to 3875 shares standing in the names of Harshad Mehta and Pratima Mehta are concerned it is falsely stated by Respondent No. 2 that the title of these shares was not clear even though they are standing duly registered in the name of notified entities, Harshad Mehta and Pratima Mehta. I say that these shares are admittedly an attached property which fact cannot be disputed or denied by Respondent No. 2 but only in order to cover up its patently illegal act of transfer of these shares to IEPF the above false averments are made by Respondent No. 2. I say that instead of asking orders of this Hon'ble Court in support of my application, Respondent No. 2 ought to explain their failure to ask for proof of purchase of the subject shares by the Jobalias, particularly since it has given immunity to IEPF while assisting Shri Nirav Jobalia in securing release of the shares. I state that since in the matter of Ketan Mathuradas Chatwani, Respondent No. 2 opposed the claim on the ground that he had failed to adduce



Contract Notes and proof of purchase the same is equally applicable in the facts of the present case and Respondent No. 2 ought to have called upon the Jobalias to produce the proof of purchase. I say that now Shri Nirav Jobalia has already filed his affidavit-in-reply on 29.09.2023 wherein he has failed to produce any proof of purchase Respondent No. 2 ought to immediately take steps for recovery of the attached shares and accruals from the Jobalias and the IEPF or else should suffer all the costs and consequences of gross violation of provisions of the Torts Act and the law laid down thereunder. I say that Respondent No. 2 has also not met with the requirements, information and evidence sought by the Custodian from Respondent No. 2 under his letter dated 19.05.2021 forming part of Exhibit II of my application. I say that Respondent No. 2 is also a habitual offender as it has violated the provisions of the Torts Act and the law laid down thereunder by depositing dividends of crores belonging to Smt Rina Mehta and Smt Rasila Mehta and Shri Harshad Mehta with the IEPF.

19. I say that so far as what is stated in Para 8 of the reply is concerned, I deny that I am not entitled to any reliefs prayed for by me in my application and that the same is liable to be dismissed *in limine* with costs. I say that in fact the reliefs are liable to be granted to me because of dishonest and contumacious conduct of the Jobalias and the collusive conduct of Respondent No. 2 with the Jobalias even after being put to full notice both by me and the Custodian. I say that in view of what I have stated in my application and rejoinders both the Jobalias and in particular Shri Nirav Jobalia and Respondent No. 2 are jointly and severally liable to make good the attached benami shares together with the accruals as claimed by me. I say that Respondent No. 2 is also liable to face all the costs and consequences of illegally transferring shares standing in the name of notified entities in the account of IEPF.

20. 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.



21. 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)

Ashwin Mehta

(Ashwin Mehta)
Advocate for the Applicant

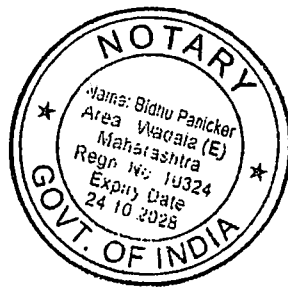
J H Mehta
(Jyoti H Mehta)
Applicant

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



CV





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 st 1 day of December 2023)

J.H. Mehta
(Jyoti H. Mehta)
Applicant

Ashwin Mehta
(Ashwin Mehta)
Advocate for the Applicant
Adv. Code. I22110
OS REG. NO. 17189

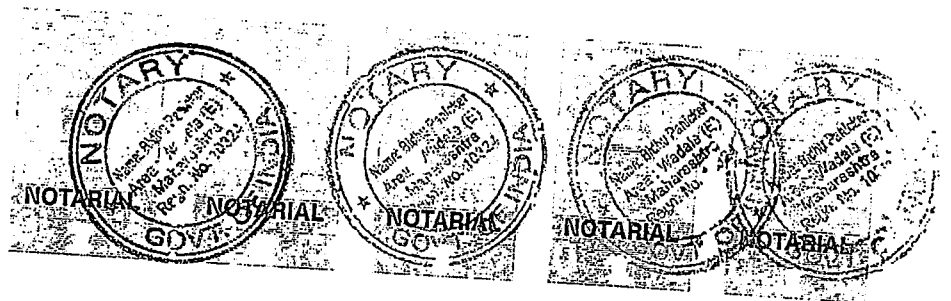
Seen original Aadhar card
No 854900447746

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.

Notary Reg. Sr. No. 7422/2023
In Book No. V

- 1 DEC 2023





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EXHIBIT - A

Extract of Directions given to Custodian by the Hon'ble Special Court in respect of Benami Shares

M.A. No. 194 of 1993

Order dated 19.10.1993 – Page No. 2

“It is understood and agreed by all concerned that the Custodian take steps with the assistance of the Income Tax and Stock Exchange authorities to trace the first person who has acquired the shares before they were placed in the market and in the circumstances has no objection. If the attachment of shares and scrips which have been sold to bona fide purchasers for value without notice stands sed. It is without prejudice to any action which the custodian may take under section 4 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.”

Combined Order in M.A. No. 194 of 1993, M.A. No. 53 of 1994, M.A. No. 92 of 1994, M.A. No. 93 of 1994, M.A. No. 424 of 1994 in M.A. No. 297 of 1994

Order dated 13.03.1997

Para 6: *“The Custodian already has in his possession a large number of shares. The Custodian to now adopt necessary steps to recover possession of the balance shares from the benamidars, if they can be found. If the benamidars cannot be found the Custodian to apply for duplicate shares from the concerned Companies.”*

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.”*

M. P. No. 99 of 1998

Order dated 08.04.2003

Para 10: *“.....However, the Custodian is at liberty to trace out and recover value of the shares and accretions, if any, by adopting appropriate steps. Needless to add that accretions like bonus and rights on the said shares which are transferred to innocent third parties before 9/7/1999 would also not come under the ambit of the above Directions. If any concerned Company has paid*

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Advocate For Self / Dependent / Applicant



dividend before 9/7/1999 to the benamidars, the Company will not be asked to pay the dividends twice over.

Para 13: “.....I direct the Custodian to pay the balance call money with interest at 15% per annum to Respondent No.10. The interest amount may be adjusted against the dividend which Respondent No.40 has kept in abeyance along with the bonus. In the circumstances, the said shares numbering 29381 can be demated on the Custodian paying the balance call money with interest at 15% per annum. All consequential steps thereto may be taken by the Custodian.”

M. A. No. 66 of 1998

Order dated 10.09.2003

Para 5: “.....If these shares have been disposed off or such public notice for sale of shares including these shares has been issued before such certification has been carried out, the monetary value of such shares (as well as of bonus shares ordered to be handed over) as on the date of the certification shall be handed over by the Custodian to the concerned third parties (shareholders). Any dividends or other accretions ordered to be handed over pursuant to such certification would be handed over by the Custodian if he has received them or by the applicant if it had retained them.”

Para 8: “That the Custodian be permitted to meet all the fees, cost and incidental expenses relating to the present Application from the attached “HMG-Benami share Account” mentioned above.”

Para 9: “.....The Custodian is at liberty to trace out and recover value of the shares and accretions, if any, by adopting appropriate steps. Further accretions like bonus and rights on the said shares which have also been transferred before 09.07.1999 they would also not be affected.....”

Para 10: “Public Notice shall be issued by the Custodian in the Economic Times at Mumbai and Delhi in respect of the shares now declared attached as benami shares listing the names of benami entities along with the folio numbers in respect of ACC Ltd. as at Exhibit B.”



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Extract of Directions given to Custodian by the Hon'ble Special Court in respect of Missing Shares

M. P. No. 88 of 2000

Order dated 05.05.2001

Para 1: "..... I had indicated that the Custodian had informed 90 companies not to effect transfers in view of the complaint filed by Harshad Mehta Group that 27 lakh shares have been stolen.....I now propose to pass n Order with regard to the directions to be given by the Custodian to the said 90 companies."

"The Custodian is directed to inform the said companies that they are free to transfer/demat 27 lakh shares, whose particulars are given in Exhibit-G to the Petition, except those shares which have not been transferred in the books of the companies till today since 8th June, 1992. In other words, in case of successive transfers after 8th June 1992, the Stop Transfer Direction of the Custodian to the companies stands lifted whereof in cases where shares continue to stand in the name of the registered holder as on the date of the notification i.e. 8th June 1992 till today, the Stop Transfer Direction given by the Custodian will continue to operate....."

"Accordingly, the Custodian is directed to forward copy of this Order to each of the said 90 companies who, in turn, will intimate the same to the holders seeking transfer/demat of their respective shares. However, it is made clear that those shares which are the subject matter of the earlier Orders of this Court shall continue to be governed by such orders.

M.P. No. 88 of 2000

Order dated 28.04.2001

Para 6(viii): "The Custodian, under the Act of 1992 simultaneously is free to make inquiry regarding the purchase of 27 lac shares as also the source of payment."



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EXHIBIT - B

Ashwin Mehta

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

28th November, 2023

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

Dear Madam,

Shilpa 1:11

Re: In the Special Court at Mumbai

MA 10 of 2023

Jyoti H. Mehta

... Applicant

Vs

The Custodian & Ors.

... Respondents

1. I am addressing this letter on behalf of Smt Jyoti H. Mehta, sole legal heir of late Harshad Mehta who has filed the above application before Hon'ble Special Court for recovery of attached benami shares from Jobalia family and she has now asked me to address and request your client, Custodian as under.
2. That Smt Jyoti Mehta is aggrieved that Hero Honda Motors Ltd., Respondent No.2 has been taking adversarial position against Smt Jyoti Mehta and thereby impeding recovery of attached benami shares. That the company has been completely disregarding the orders passed by the Hon'ble Special Court in regard to the benami shares and the law laid down through various judgments passed by Hon'ble Special Court and Hon'ble Supreme Court. That Shri Nilesh Jobalia, one of the family members had previously already admitted to and handed over 800 shares of the company which were recovered by your client but the rest of the family members did not disclose and handover the attached benami shares and the company also did not disclose their names to your client Custodian and to the Income Tax department and hence the present letter is addressed to your client to seek his support and for recovering the attached benami shares.
3. That Smt Jyoti Mehta seeks assistance of your client Custodian of inspection of files and correspondence exchanged by your client with Hero Honda Motors Ltd. and their Share Transfer Agents (STA) in regard to unregistered shares, missing shares and benami shares. That your client has addressed letters to the company seeking disclosure of all the benami shares standing registered in the names of numerous entities which were already identified or which were required to be identified so that the Custodian could then trace and recover the attached shares of Hero Honda Motors Ltd. In fact your client had also thereafter filed before

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Advocate For Petitioner / Respondent / Applicant



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- Hon'ble Special Court MP 99 of 1998 and secured orders from Hon'ble Special Court for securing recovery of attached shares.
4. That the above inspection is sought since Hero Honda Motors Ltd. have taken adversarial position against my client and opposing recovery of benami shares standing registered in the name of Jobalias and has suppressed from Hon'ble Special Court copies of letters addressed by the Custodian as above.
 5. This letter is also addressed so that my client, Smt Jyoti Mehta does not have to initiate any fresh proceedings and delay the recovery of attached property by invoking Regulation 16 of Regulations framed u/s 9A(4) of the Torts Act. In case your client is agreeable to meet the above legitimate request, then the inspection may kindly be given on an urgent basis to enable her to bring the material evidence on record of the above proceedings. My client solicits co-operation from your client in recovery of above attached property.

Yours truly,


(Ashwin Mehta)
Advocate

Cc: Ms. Anita Rupavataram, Director, Office of the Custodian, 10th Floor,
Nariman Bhavan, Nariman Point, Mumbai 400 021.



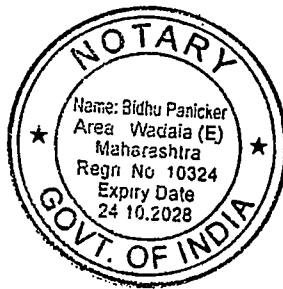
**BEFORE THE SPECIAL COURT (TRIAL
OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT,
1992**

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 the Applicant
32, Madhuli, Dr. Annie Besant Road,
Worli, Mumbai – 400 018.