

**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

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

**MISC. APPLICATION NO. 10 OF 2023**

SMT JYOTI H MEHTA

..APPLICANT

V/s

CUSTODIAN & ORS.

..RESPONDENTS

To  
The Officer on Special Duty,  
Hon'ble Special Court,  
Mumbai.

Sir,

BE PLEASED to take on file the **MISC. APPLICATION FILED BY SMT. JYOTI H MEHTA** I am pleased to forward you the soft copy of the aforesaid **MISC. APPLICATION**

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

Dated this 08<sup>th</sup> day of May, 2023.  
*June*

Yours truly,

*AS*  
(Ashwin S Mehta)  
Advocate for Applicant

Encl : As above



OK

**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](mailto:asm55@yahoo.com)

Date: 10<sup>th</sup> June, 2023

To,

**1. Shilpa Bhate Associates**

Advocate for Custodian Respondent No. 1  
217, 2<sup>nd</sup> Floor, Rex Chamber,  
W.H. Marg, Ballard Estate,  
Mumbai 400 001.

Email: [shilpabhatelegal@gmail.com](mailto:shilpabhatelegal@gmail.com)

**2. Hero MotoCorp Ltd. having its office**

Grand Plaza, Plot No.2,  
Nelson Mandela Road, Vasant Kunj  
Phase II, New Delhi – 110 070.

**3. KFin Technologies Pvt. Ltd.**

Selenium, Tower B,  
Plot Nos.31 and 32, Financial District,  
Nanakramguda, Serlingampally Mandal,  
Hyderabad 500 032.

**4. Chairman, Investor Education & Protection Fund (IEPF)**

Ground Floor, Jeevan Vihar Building,  
3, Sansad Marg, New Delhi – 110 001.

**5. Nirav D. Jobalia**

C/o. Bella Electronics, 5/6 Sevashram Shopping Centre, 5 Bati Bharuch 392001  
(as per the records of the Company).

Permanent Address

D-404, Annapurna Complex 4<sup>th</sup> Floor,

*Recd Bhail 12/6/2023 at. 3.15PM*  
**SHILPA BHATE & ASSOCIATES**  
217, 2nd Floor, REX Chamber,  
W. H. Marg, Ballard Estate,  
Mumbai - 400 001.

CM147216807IN IVR:6777147216807  
RP WORLI S.O <400018>  
Counter No:1.12/06/2023,14:43  
To:HERO MOTO COR.GRAND PLAZA, PLO  
PIN:110070, Vasant Kunj 50  
From:ASHWIN S ME,ADVOCATE BOMBAY  
Wt:1788gms  
Amt:84.00(Cash)  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>  
< Dial 18002666868 > <Wear Masks, Stay Safe>

CM147216926IN IVR:6777147216926  
RP WORLI S.O <400018>  
Counter No:1.12/06/2023,14:43  
To:KFIN TECHNOLO,SELENIUM, TOWER  
PIN:500032, Mantri S.O  
From:ASHWIN S ME,ADVOCATE BOMBAY  
Wt:1785gms  
Amt:84.00(Cash)  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>

CM147216912IN IVR:6777147216912  
RP WORLI S.O <400018>  
Counter No:1.12/06/2023,14:43  
To:CHAIRMAN, INVESTOR EDUCATI  
PIN:110001, New Delhi GPO  
From:ASHWIN S ME,ADVOCATE BOMBAY  
Wt:1785gms  
Amt:84.00(Cash)  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>  
< Dial 18002666868 > <Wear Masks, Stay Safe>

CM147216682IN IVR:6777147216682  
RP WORLI S.O <400018>  
Counter No:1.12/06/2023,14:43  
To:NIRAV D JOBAL,D/404, ANNAPURNA  
PIN:392001, Bharuch HO  
From:ASHWIN S ME,ADVOCATE BOMBAY  
Wt:1785gms  
Amt:84.00(Cash)  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>  
< Dial 18002666868 > <Wear Masks, Stay Safe>

Opp Pritam Society-1 Maktampur Road,  
Kasak Bharuch, Gujarat 392001 (as per  
the records of the Company).

## 6. Late Niles D. Jobalia

### 6.1. Alpa N. Jobalia

### 6.2. Aditi N Jobalia

Respondents no. 6 is represented by  
Legal Heirs 6.1 & 6.2  
residing at C/o. Bella  
Electronics, S/6 Sevashram Shopping  
Centre, 5 Bati Bharuch 392001

## 7. Alpa N. Jobalia

residing at C/o. Bella  
Electronics, S/6 Sevashram Shopping  
Centre, 5 Bati Bharuch 392001

## 8. Late Dalichand Jhoothalal Jobalia

### 8.1. Shri Nirav D Jobalia

Respondents no. 8 is represented by sole  
Legal Heir respondent No. 8.1  
residing at Flat No.B-801, Arihant  
Avenue-C, Jamnagar Road,  
Ghanteswar, Rajkot, Gujarat 360006.

## 9. Late Smitaben Dalichand Jobalia

### 9.1. Shri Nirav D Jobalia

Respondents no. 9 is represented by sole  
Legal Heir respondent No. 9.1  
residing at Flat No.B-801, Arihant

EM92361778IN IVR:677792361778  
SPP WORLI S.O <400018>  
Counter No:1,30/12/2023,15:47  
To:ALPA N JOBALIA,GHOGHA CIRCLE  
PIN:364001, Bhavnagar HO  
From:ASHWANI S M,MADHULI APPARTME  
Wt:2570gms  
Amt:247.80(Cash)Tax:37.80  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>  
<Dial 18002666868> <Wear Masks, Stay Safe>

CH147216909IN IVR:6777147216909  
RP WORLI S.O <400018>  
Counter No:1,12/06/2023,14:43  
To:ADITI N JOBALI,S/6, SEVASHRAM S  
PIN:392001, Bharuch HO  
From:ASHWINI S ME,ADVOCATE BOMBAY  
Wt:1780gms  
Amt:84.00(Cash)  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>  
<Dial 18002666868> <Wear Masks, Stay Safe>

CH147216237IN IVR:6777147216237  
RP WORLI S.O <400018>  
Counter No:1,14/06/2023,12:30  
To:ALPA N JOBALI,BHARUCH  
PIN:392001, Bharuch HO  
From:ASHWINI S MEHTA ADV.,WORLI  
Wt:1800gms  
Amt:84.00(Cash)  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>

CH147216210IN IVR:6777147216210  
RP WORLI S.O <400018>  
Counter No:1,12/06/2023,14:43  
To:NIRAV D JOBALI,FLAT NO B/801, A  
PIN:360006, Rajkot Madhapar DSO  
From:ASHWINI S ME,ADVOCATE BOMBAY  
Wt:1785gms  
Amt:84.00(Cash)  
<Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)>  
<Dial 18002666868> <Wear Masks, Stay Safe>

Avenue-C, Jamnagar Road,  
Ghanteshwar, Rajkot, Gujarat 360006.

Dear Sirs,

REF: BEFORE THE SPECIAL COURT

MISC. APPLICATION NO. 10 OF 2023

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

I am concerned for Applicant in the above Matter.

Please find enclosed herewith Copy of the Misc. Application No. 10 of 2023 Filed before the Hon'ble Special Court by way of service upon you.

Please note that the above Application is being produced for hearing before Hon'ble Mr. Justice N J Jamadar on 23<sup>rd</sup> June, 2023 at 10.30 am or soon thereafter when you may remain present if you so desire.

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](mailto:asm55@yahoo.com)

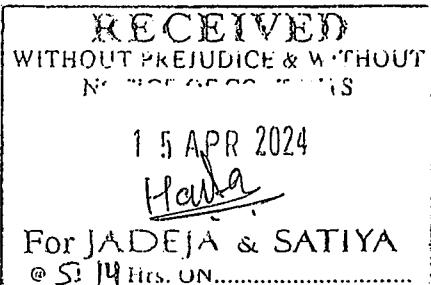
15<sup>th</sup> April 2014

To,

1. **SHILPA BHATE ASSOCIATES**  
Advocate for Custodian Respondent No. 1  
217, 2<sup>nd</sup> Floor, Rex Chamber,  
W.H. Marg, Ballard Estate,  
Mumbai 400 001.  
*Email: shilpabhattelegal@gmail.com*
2. **JADEJA & SATIA**  
Advocate for Respondent No. 2 & 3  
1<sup>st</sup> Floor, Mistry Mansion,  
107, M G Road, Fort,  
Mumbai – 400 001.
3. **JEHANGIR KHAJOTIA**  
Advocate for Respondent No. 5, 8.1 & 9.1  
3<sup>rd</sup> Floor, Room No. 16, Radha Bhavan,  
Nagindas Master Road,  
Mumbai – 400 023.
4. **LATE SHRI JAYESH JOBALIA**  
Represented by his wife  
Advocate for Respondent No. 10  
Kalpana Jobalia  
Flat No - B - 801, Arihant Avenue - C,  
Jamnagar Road, Ghanteshwar,  
Rajkot, Gujarat - 360006
5. **SMT KALPANA JOBALIA**  
Advocate for Respondent No. 11  
Flat No - B - 801, Arihant Avenue - C,  
Jamnagar Road, Ghanteshwar,  
Rajkot, Gujarat – 360006.
6. **ALPA N. JOBALIA**  
Plot No.1305, B-403, Shiva Blessing – 1, Nr B Division,  
Ghoga Circle, Bhavnagar, Gujarat 364001

**SHILPA BHATE & ASSOCIATES**  
217, 2<sup>nd</sup> Floor, REX Chamber,  
W. H. Marg, Ballard Estate,  
Mumbai - 400 001.

*Desh*  
15/4/24  
5:41



*Recd a copy on 16/04/2024  
at 4 P.M. before 5 At  
without prejudice,*

REGD. NO. 1126414 INR 1027374512606  
M. WORLI S. O. 400018  
Counter No. 1, 15/04/2024, 12:00  
RECEIVED BY JADEJA & SATIA FOR NO.  
15/4/2024, RECORDED IN THE FILE  
FROM ADVOCATE M. H. BHAMBhani, MUMBAI.  
RECORDED BY 15/4/2024  
15/04/2024 12:00 PM  
RECORDED ON 15/04/2024  
15/04/2024 12:00 PM  
RECORDED ON 15/04/2024  
15/04/2024 12:00 PM



REGD. NO. 1126414 INR 1027374512606  
M. WORLI S. O. 400018  
Counter No. 1, 15/04/2024, 12:00  
RECEIVED BY ALPA N. JOBALIA FOR NO.  
15/4/2024, RECORDED IN THE FILE  
FROM ADVOCATE M. H. BHAMBhani, MUMBAI.  
RECORDED BY 15/4/2024  
15/04/2024 12:00 PM  
RECORDED ON 15/04/2024  
15/04/2024 12:00 PM  
RECORDED ON 15/04/2024  
15/04/2024 12:00 PM



Dear Sirs,

REF: BEFORE THE SPECIAL COURT

Misc. Application No. 10 of 2023

REGD. NO. 1126414 INR 1027374512606  
M. WORLI S. O. 400018  
Counter No. 1, 15/04/2024, 12:00  
RECEIVED BY ALPA N. JOBALIA FOR NO.  
15/4/2024, RECORDED IN THE FILE  
FROM ADVOCATE M. H. BHAMBhani, MUMBAI.  
RECORDED BY 15/4/2024  
15/04/2024 12:00 PM  
RECORDED ON 15/04/2024  
15/04/2024 12:00 PM



Jyoti H Mehta

V/s.

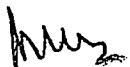
...Applicant

The Custodian & Ors.

...Respondents

As per the order and directions passed by His Lordship Mr. Justice N J Jamadar on 05.04.2024 in the above matter, please find enclosed herewith copy of the Amended Application by way of service upon you.

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**

**I N D E X**

<b>Exh</b>	<b>Particulars</b>	<b>Page No</b>
	Miscellaneous Application	<b>01 - 63</b>
	Vakalatnama	<b>64 - 66</b>
	Memorandum of registered address	<b>67</b>
	List of documents relied upon by the Applicant	<b>68</b>
A.	A copy of Gazette Notification issued by the Custodian on 08.06.1992 notifying 29 entities of Mehtas.	<b>69 - 71</b>
B.	Relevant extracts from judgments of Hon'ble Special Court and Hon'ble Supreme Court on the role, responsibilities, duties and functions of Custodian.	<b>72 - 94</b>
C.	A chart giving particulars of Applications/ Petitions filed by the IT department and Custodian in respect of recovery of benami shares and orders passed therein.	<b>95</b>
D.	A copy of order of this Hon'ble Court dated 18.08.2016 in MA 24 of 2016 on transfer of shares and accruals to Investor Education and Protection Fund (IEPF).	<b>96 - 101</b>
E.	A chart disclosing the particulars of 3875 attached shares of Hero MotoCorp belonging to Shri Harshad Mehta and Smt Pratima Mehta transferred to IEPF with accruals.	<b>102</b>

F.	List of companies in which Respondent Nos.5 to 7 held benami shares which were recovered by the Custodian with all accruals and not opposed by them.	<b>103 - 104</b>
G.	Copy of order of this Hon'ble Court dated 08.04.2003 in MP 99 of 1998 filed by Custodian in which benami shares were declared and recovered.	<b>105 - 115</b>
H.	Relevant extracts of law propounded by Hon'ble Supreme Court on automatic attachment u/s 3(3) of the Torts Act.	<b>116 - 130</b>
I.	Copy of order passed by Hon'ble Supreme Court on 08.05.2017 in CA 6326 of 2010 directing Custodian to recover all the attached assets belonging to Mehtas.	<b>131 - 133</b>
J.	Copy of Public Notice dated 10.09.1992 issued by the Custodian disclosing the names of notified persons and explaining the effect of such notification and the provisions of the Torts Act.	<b>134 -137</b>
K.	Copy of order of this Hon'ble Court dated 28.03.1995 in MA 400 of 1994 in Standard Chartered Bank vs. Canbank Financial Services Ltd. and Ors.	<b>138 - 141</b>
L.	Copy of order of this Hon'ble Court dated 24/25 February 1999 in Suit 2 of 1995 in National Housing Bank vs. State Bank of Saurashtra and Ors.	<b>142 - 258</b>
M.	List of judgments passed by Hon'ble Supreme Court on overriding effect of Sec.13 of the Torts Act.	<b>259</b>
N.	Copy of order of this Hon'ble Court dated 19.10.1993 in MA 194 of 1993 filed by I.T. department on attachment of benami shares.	<b>260 - 263</b>

O.	Copy of Custodian's letter dated 09.03.1994 to Hero MotoCorp providing the details of 20,170 benami shares and explaining the legal position obtaining in the case.	<b>264 - 265</b>
P.	Copy of reply of Hero MotoCorp dated 04.12.1998 to Custodian's letter dated 13.11.1998 on benami shares.	<b>266 - 267</b>
Q.	Copy of letter dated 11.11.2010 addressed by Smt Rasila Mehta to Hero MotoCorp seeking payment of unpaid dividends of Rs.3.10 Crores.	<b>268 - 270</b>
R.	Copy of letter dated 21.12.2010 addressed by Smt Rina Mehta to Hero MotoCorp seeking payment of unpaid dividends of Rs.5.52 Crores.	<b>271</b>
S.	Copy of letter dated 09.07.2012 addressed by Hero MotoCorp to IEPF transferring dividend of Rs.1.20 Crores belonging to Shri Harshad Mehta.	<b>272 - 279</b>
T.	Copy of Applicant's letter dated 05.05.2012 to Hero MotoCorp in regard to 20,170 benami shares.	<b>280 - 292</b>
U.	Copy of combined order of this Hon'ble Court dated 13.03.1997 in MA 194 of 1993 and MA 53 of 1994 declaring names of benamidars and their holdings.	<b>293 - 298</b>
V.	Copy of Custodian Report dated 31.01.2011 in MA 217 of 2010 opposing the reliefs prayed by the Applicant.	<b>299 - 301</b>
W.	Copy of Affidavit-in-reply of Hero MotoCorp dated 02.04.2011 in MA 217 of 2010.	<b>302 - 308</b>
X.	Copy of Applicant's letter dated 30.09.2020 seeking recovery of 3875 shares of Hero MotoCorp transferred to IEPF.	<b>309 - 388</b>
Y.	Copy of letter dated 04.10.2020 addressed by Mehtas to	<b>389 - 467</b>

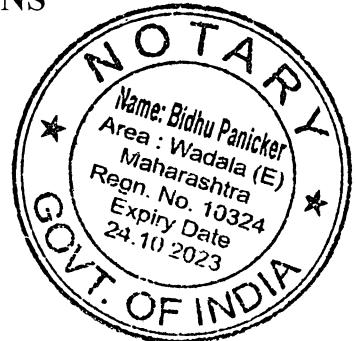
	Chairman, IEPF with a copy marked to the Custodian for recovery of 3875 shares of Hero MotoCorp. (With all Annexures, except copy of letter dated 30.09.2020, which is annexed at <b>Annexure G</b> to the letter)	
Z.	Copy of Custodian's letter dated 22.10.2020 to Hero MotoCorp for recovery of 3875 shares.	<b>468 - 469</b>
AA.	Copy of Applicant's letter dated 27.11.2020 to Hero MotoCorp for recovery of 32,480 benami shares.	<b>470 - 488</b>
BB.	Copy of Applicant's letter dated 03.12.2020 to ACC for recovery of 8,024 benami shares transferred to IEPF.	<b>489 - 508</b>
CC.	Copy of reply dated 07.01.2021 of Hero MotoCorp in response to letters dated 27.11.2020 and 02.12.2020 for recovery of benami shares.	<b>509 - 510</b>
DD.	Copy of Applicant's letter 14.01.2021 to Hero MotoCorp for recovery of 36,295 benami shares with accruals.	<b>511 - 568</b>
EE.	Copy of Custodian's letter dated 20.01.2021 addressed to ACC for recovery of 8024 benami shares.	<b>569 - 570</b>
FF.	Copy of reply of Hero MotoCorp dated 10.02.2021 to Applicant's letter dated 14.01.2021.	<b>571 - 584</b>
GG.	Copy of Applicant's reply dated 23.03.2021 to Hero MotoCorp to its letter dated 10.02.2021 for recovery of benami shares.	<b>585 – 601</b>
HH.	Copy of Applicant's letter dated 11.05.2021 to Custodian to address letter to Hero MotoCorp as done in case of ACC and United Phosphorus.	<b>602 – 609</b>
II.	Copy of Custodian's letter dated 19.05.2021 to Hero MotoCorp on recovery of 36,295 benami shares.	<b>610</b>

JJ.	Copy of letter dated 23.06.2021 addressed by Hero MotoCorp to Custodian's letter dated 27.05.2021 providing status on benami shares.	<b>611 - 616</b>
KK.	Copy of Custodian's letter dated 05.07.2021 to Hero MotoCorp with copy to Applicant for recovery of shares of the company transferred to IEPF with accruals.	<b>617 - 618</b>
LL.	Copy of Applicant's letter dated 10.07.2021 to Custodian calling upon him to recover the benami shares already released to 3 shareholders.	<b>619 - 623</b>
MM.	Copy of Applicant's letter dated 04.09.2021 to Hero MotoCorp making grievance on violation of law.	<b>624 - 647</b>
NN.	Copy of reply of Hero MotoCorp dated 08.09.2021 to Applicant's letter dated 04.09.2021 denying its obligation to provide documents on released shares.	<b>648 - 649</b>
OO.	Copy of Applicant's letter dated 16.09.2021 to Custodian to recover interest on unpaid dividends of Rs.5,64,000/- and recover dividend of Rs.7,48,000/- transferred to IEPF.	<b>650 - 654</b>
PP.	Copy of reply of Hero MotoCorp dated 28.09.2021 to Applicant's letter dated 16.09.2021 denying its obligations and liability.	<b>655 - 656</b>
QQ.	Copy of Applicant's letter dated 30.09.2021 to Custodian in continuation of letter dated 04.09.2021 calling upon him to recover benami shares.	<b>657 - 684</b>
RR.	Extracts of relevant page of Affidavit of Shri Harshad Mehta dated 25.02.1994 in MA 194 of 1993 disclosing 800 benami shares of Hero MotoCorp Ltd. of Shri Nilesh	<b>685</b>

	D Jobalia.	
SS.	Chart giving particulars of recoveries made by the Custodian on behalf of other notified entities.	<b>686 - 687</b>
TT.	Copy of order dated 04.01.2013 passed in MA 13 and 14 of 2011 directing Custodian to comply with all the orders and recover all the attached properties.	<b>688 - 690</b>
UU.	Copy of order dated 02.05.2017 passed in CA 6326 of 2010 setting aside the order of sale of residential flats.	<b>691 - 696</b>
VV.	Copy of order dated 08.05.2017 passed in CA 6326 of 2010 directing Custodian to recover attached properties belonging to notified entities.	<b>697 - 699</b>

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

**MISC. APPLICATION NO. 10 OF 2023**



Smt Jyoti H Mehta )  
 As sole legal heir of late Harshad S Mehta residing )  
 at 32, Madhuli, Dr. Annie Besant Road, Worli, )  
 Mumbai 400 018. ) ...APPLICANT

Versus

1. The Custodian having their Office at )  
 221 Nariman Bhavan, 10th Floor, )  
 Nariman Point, Mumbai 400 021. )
2. Hero MotoCorp Ltd. having its office )  
 at the Grand Plaza, Plot No.2, )  
 Nelson Mandela Road, Vasant Kunj )  
 Phase II, New Delhi – 110 070. )
3. KFin Technologies Pvt. Ltd. )  
 having its office at Selenium, Tower B, )  
 Plot Nos.31 and 32, Financial District, )  
 Nanakramguda, Serilingampally Mandal, )  
 Hyderabad 500 032. )
4. Chairman, Investor Education & Protection )  
 Fund (IEPF) having its office at Ground )



- Floor, Jeevan Vihar Building, 3, Sansad )  
Marg, New Delhi – 110 001. )  
5. Nirav D. Jobalia residing at C/o. Bella )  
Electronics, 5/6 Sevashram Shopping )  
Centre, 5 Bati Bharuch 392001 )  
(as per the records of the Company). )  
Permanent Address )  
D-404, Annapurna Complex 4<sup>th</sup> Floor, )  
Opp Pritam Society-1 Maktampur Road, )  
Kasak Bharuch, Gujarat 392001 (as per )  
the records of the Company). )  
6. Late Nilesh D. Jobalia )  
C/o. Bella Electronics, 5/6 Sevashram )  
Shopping Centre, 5 Bati Bharad 392001 )  
7. Alpa N. Jobalia residing at C/o. Bella )  
Electronics, S/6 Sevashram Shopping )  
Centre, 5 Bati Bharuch 392001 )  
8. Late Dalichand Jhoothalal Jobalia )  
residing at Flat No.B-801, Arihant )  
Avenue-C, Jamnagar Road, )  
Ghanteshwar, Rajkot, Gujarat 360006. )  
9. Late Smitaben Dalichand Jobalia )  
residing at Flat No.B-801, Arihant )  
Avenue-C, Jamnagar Road, )  
Ghanteshwar, Rajkot, Gujarat 360006. ) ... RESPONDENTS  
*Ans*

6. Late Nilesh D. Jobalia )  
*Murz* 6.1. Alpa N. Jobalia )  
6.2. Aditi N Jobalia )  
Respondents no. ~~6.1 & 6.2~~<sup>6</sup> is represented by )  
Legal Heirs ~~of respondents No.~~<sup>6.1 & 6.2</sup> )  
residing at C/o. Bella )  
Electronics, S/6 Sevashram Shopping )  
Centre, 5 Bati Bharuch 392001 )  
7. Alpa N. Jobalia )  
residing at C/o. Bella )  
Electronics, S/6 Sevashram Shopping )  
Centre, 5 Bati Bharuch 392001 )  
8. Late Dalichand Jhoothalal Jobalia )  
*Murz* 8.1. Shri Nirav D Jobalia )  
Respondents no. ~~8.1~~<sup>8</sup> is represented by ~~sole~~ )  
Legal Heir ~~of~~ respondent No. 8.1 )  
residing at Flat No.B-801, ARIHANT )  
Avenue-C, Jamnagar Road, )  
Ghanteshwar, Rajkot, Gujarat 360006. )  
9. Late Smitaben Dalichand Jobalia )  
9.1. Shri Nirav D Jobalia )  
*Murz* Respondents no. ~~9.1~~<sup>9</sup> is represented by ~~sole~~ )  
Legal Heir ~~of~~ respondent No. 9.1 )  
residing at Flat No.B-801, ARIHANT )  
Avenue-C, Jamnagar Road, )  
Ghanteshwar, Rajkot, Gujarat 360006. ) ... RESPONDENTS



## MOST RESPECTFULLY SHEWETH

1. The Applicant is a widow, a housewife and a person notified by the Custodian on 08.06.1992 u/s 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (**TORTS**) Act 1992. The Applicant is also the sole legal heir of late Shri Harshad Mehta who was also notified by the Custodian when he notified 29 entities but Shri Harshad Mehta expired in judicial custody on 30.12.2001 at the young age of 47 years due to gross neglect by the jail authorities who did not attend to him when he suffered an acute heart attack for about 4 hours and therefore he expired without any prior history of heart ailment. The present Application is filed by the Applicant in the capacity of wife and sole legal heir of late Shri Harshad Mehta who before he expired had drawn his Will and bequeathed all his assets in favour of the Applicant but to the exclusion of 2 other legal heirs viz. his mother being Smt Rasila S Mehta and son being Shri Aatur Mehta. The present application is filed by the Applicant to seek recovery of attached assets belonging to Mehtas which stands attached u/s 3(3) of the Torts Act from Respondent Nos.2 to <sup>g.i</sup> 9 who are joined in the present application since the Applicant is seeking relief against them.

2. Respondent No.1 is a Custodian appointed on 06.06.1992 under the provisions of the Torts Act. The Custodian on 08.06.1992 invoked his powers u/s 3(2) of the Torts Act and notified 29 entities in the family of Shri Harshad Mehta being himself and his wife the present Applicant, his 3 younger brothers and the wives of 2 younger brothers, 3 HUFs, 3 sole proprietary brokerage firms of M/s. Harshad S Mehta, M/s. Ashwin Mehta and M/s. J.H. Mehta, a partnership firm and several corporate entities promoted by them (who are hereinafter collectively referred to as "**Mehtas**") and the Gazette Notification

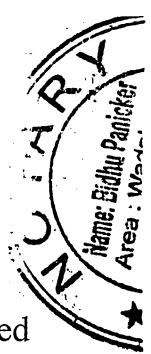


issued by the Custodian is enclosed at Exhibit- "A" The Applicant states that as a result of above notification all the assets of these 29 entities got simultaneously attached on 08.06.1992 u/s 3(3) of the Torts Act and in terms of Sec.3(4) of the Act these assets became liable to be dealt with by the Custodian only as per orders of this Hon'ble Court. The Applicant states that the role, responsibilities, duties and functions of the Custodian are very well defined under the provisions of the Torts Act and through a number of judgments passed by this Hon'ble Court and Hon'ble Supreme Court the relevant extracts of which are enclosed at Exhibit- "B" The Applicant states that on and from the date of notification the Custodian has taken charge and responsibility of managing the attached assets as they became liable to be dealt with by him as per the directions of this Hon'ble Court. The Applicant states that even otherwise once the Custodian takes control and management of the attached assets it becomes his primary duty to manage them efficiently, effectively and in a manner that he preserves, protects and augments them and the notified person at best can complement by assisting the Custodian and this Hon'ble Court in getting the assets attached.

3. The Applicant states that after the notification of 29 entities by the Custodian on 08.06.1992 the Income Tax department carried out investigation from around 1993 onwards and found out that large quantities of shares purchased by Mehtas prior to their notification had come to be registered in the names of several third parties who had neither purchased the shares nor paid any consideration for them but had only lent their names for getting the shares registered in their names and such entities were referred to by the IT department as the benami shareholders of Mehtas. That the IT department thereafter filed a number of applications/petitions before this Hon'ble Court to seek the relief of declaration of all such "benami shares" as the attached

properties of Mehtas with accruals thereon. This Hon'ble Court also issued directions particularly to the Custodian to trace and recover such shares together with accruals thereon. In support of the above contentions the Applicant is pleased to enclose at Exhibit- "C" a chart which discloses particulars of applications/petitions filed by the IT department and the Custodian in respect of benami shares and orders passed therein and the Applicant craves leave of this Hon'ble Court to refer to and rely upon the aforecited proceedings as and when produced.

4. The Applicant states that Respondent No.2 is Hero MotoCorp Ltd. whose erstwhile name was Hero Honda Motors Ltd. and is having its office at the address shown in the cause title. That Respondent No.3 is a Share Transfer Agent (**STA**) of Respondent No.2 and is situated at the address shown in the cause title. The Applicant states that this Hon'ble Court has laid down the law under an order dated 18.08.2016 in MA 24 of 2016 that the companies should not transfer any of the attached shares or accruals thereon as attached u/s 3(3) of the Torts Act into Investor Education and Protection Fund (**IEPF**) and further directed that any such shares or accruals transferred to this fund should be retrieved and returned to the Custodian and a copy of this order is enclosed at Exhibit-“D” It is further laid down that the notified entities because they suffer disability may not be in a position to take any steps but yet the Applicant has made efforts and filed the present application to cause recovery of attached property. The Applicant states that she has discovered that in violation of the provisions of the Torts Act and the law laid down by this Hon'ble Court as above these Respondents have transferred to the IEPF the shares standing registered both in the family of Shri Harshad Mehta as also accruals thereon. These Respondents have also transferred “**benami shares**” and accruals thereon to the IEPF even in respect of some benamidars whose names have



been publicized under orders of this Hon'ble Court as holders of attached property of Mehtas under the Torts Act. The Applicant called upon Hero MotoCorp to retrieve all such attached shares with accruals from the IEPF and deposit them with the Custodian which in gross violation of the provisions of the Torts Act and law laid down thereunder have been consciously violated by the company even after being put to notice by the Applicant by taking an adversarial stand and by threatening to handover such shares and accruals to their benami shareholders without calling upon them to produce the proof of their ownership.

5. The Applicant states that thus these 2 Respondents are guilty of violating Sections 3(3), 3(4) and 9-A of the Torts Act and decided the issue of ownership despite this Hon'ble Court having exclusive civil jurisdiction in that regard. The Applicant is pleased to enclose at Exhibit- "E" a chart which contains the particulars of 3875 shares standing in the names of Shri Harshad Mehta and Smt Pratima Mehta which have been transferred by it to the IEPF together with accruals and this violation is committed by the company even though earlier it admittedly committed the same violations of transferring attached dividends running into crores belonging to Smt Rasila Mehta, Smt Rina Mehta and Shri Harshad Mehta (all notified entities) which were paid to the Custodian only after proceedings for recovery of these dividends were initiated against the company. The company is now illegally and unauthorisedly defending the interest of benami shareholders vis-à-vis their true owners the notified entities and releasing and handing them over both the attached shares and accruals without causing enquiries, ascertaining facts and without seeking any order from this Hon'ble Court as required u/s 3(4) and 9-A of the Torts Act. Hero MotoCorp is fully aware that u/s 9A of the Torts Act only this Hon'ble Court has exclusive civil jurisdiction to decide the issue of ownership and it has



already passed several orders declaring Respondents Nos.5 to 7 as benami shareholders of Mehtas in several companies but yet Respondents No. 2 is consciously deciding the issue that the subject shares are not an attached property belonging to Mehtas but they belong to such benami shareholders. The Applicant submits that Hero MotoCorp is required to act as a responsible and law abiding corporate citizen and follow some corporate governance after causing losses of crores in interest to the above notified entities who were not paid dividends for years together until it was called upon to do so and now even in the present case it is taking an adversarial position against the Applicant and her family members.

6. The Applicant states that the company should have known that the Hon'ble Supreme Court in the case of L.S. Synthetics vs. FFSL reported as **(2004) 11 SCC 456** has laid down the law that the notified entities have a *locus* to bring the facts of attached assets lying in the hands of third parties to this Hon'ble Court and that once a property gets automatically attached u/s 3(3) of the Torts Act such attachment continues until it is lifted. It is further laid down that u/s 3(3) of the Torts Act the attachment simultaneously comes into effect on all the properties which belong to notified persons and in law there is no requirement to pass any separate order for attaching the properties including those lying in the hands of third parties. That such an attachment therefore cannot be resisted or denied by calling upon the Applicant to produce an order of attachment from this Hon'ble Court. The Applicant has therefore prayed for several reliefs against these 2 Respondents as they have become liable to make the good the attached property to the extent they have dealt with the same in violation of Sec.3(4) of the Torts Act.



7. The Applicant states that Respondent No.4 is Chairman of Investor Education and Protection Fund (**IEPF**) set up by the Government of India at the address given in the cause title. The Applicant states that the attached shares including benami shares and dividends thereon belonging to Mehtas have been illegally deposited by Respondent Nos. 2 and 3 in IEPF as unclaimed shares and dividends in gross violation of the provisions of the Torts Act and even after being put to notice and therefore this Respondent is joined as a party to the present proceedings so that all the attached properties can be recovered from it under orders of this Hon'ble Court and pending the same a restrain order is obtained against this Respondent from parting with the attached shares and dividends to the benami shareholders. The Applicant has marked copies of the letters addressed by her to Hero MotoCorp Ltd. to the IEPF so that it is informed and can comply with the law laid down by this Hon'ble Court under its order dated 18.08.2016 in MA 24 of 2016. The Applicant states that several precedents have already been set under which the IEPF has returned to the Custodian the attached shares and dividends belonging to notified entities which were deposited with it by several companies so as to comply with the above law laid down by this Hon'ble Court.

*S to 9.1*

8. The Applicant states that Respondent Nos. ~~5 to 9~~ are all individuals and members of one Jobalia family headed by late Shri Dalichand Jhoothalal Jobalia Respondent No. ~~8~~ <sup>8, 8.1</sup> and all of whom at the relevant time had lent their names for registration of vast quantities of attached shares belonging to Mehtas in their names and they are hereinafter collectively referred to as "**Jobalias**".

The Applicant states that she is not aware about the legal heirs of Respondents Nos. 6, ~~8 and 9~~ <sup>8, 8.1 & 9, 9.1</sup> but once the facts relating to them are ascertained they would be brought on record. However it does appear that Respondent Nos. 5 and 7 would be the legal heirs of these Respondents. The Applicant



states that previously the Income Tax department and the Custodian has filed several applications and petitions before this Hon'ble Court after causing extensive enquiries to recover vast quantities of attached shares and accruals thereon which stood registered in the names of several benami holders and this Hon'ble Court has accepted their findings and recovered such shares and accruals and the particulars of these proceedings are already cited earlier. The Applicant states that previously this Hon'ble Court under orders passed in above proceedings have already declared the names of Respondent Nos.5 to 7 as "**benami shareholders**" of Mehtas and vast quantities of shares which got registered in their names in several companies have already been declared to be the attached properties of Mehtas as per list which is enclosed at Exhibit-F

9. The Applicant states that since the names of the above persons are already declared as benami shareholders of Mehtas even therefore Respondent Nos.2 and 3 were bound by these orders and could not have insisted for specific orders in respect of such benami shares held in Respondent No.2 company. The Applicant states that in fact Shri Harshad Mehta in his affidavit filed before this Hon'ble Court in MA 194 of 1994 and MA 53 of 1994 have already disclosed the vast quantity of shares which got registered in the names of Respondent Nos. 5 to 7 and thereafter these shares have been handed over to the Custodian after they were declared to be the attached properties of Mehtas. The Applicant states that the Custodian has since caused recovery of these shares and accruals thereon but the complete facts and evidence in this regard is in exclusive possession of the Custodian. The Applicant craves leave of this Hon'ble Court to refer to and rely upon all the proceedings in respect of benami shares filed by the IT department and the Custodian before this Hon'ble Court. The Applicant states that Hero MotoCorp was joined as a party in applications



filed by the IT department and the Custodian and is thus fully aware of such benami shares and the fact that Respondent Nos.5 to 7 have been declared as benami shareholders of the shares belonging to Mehtas. The Applicant has therefore joined these Respondents in the present application to proceed against them for recovery of attached shares and accruals on a joint and several basis since Hero MotoCorp has actively colluded with them to usurp the attached shares and dividends thereon.

**10.** The Applicant states that recently she has made efforts to recover all the attached shares and accruals which have been transferred by several companies to the Government of India and also into IEPF. The Applicant states that she has got prepared a computer program to match the names of about 1400 benami shareholders and the notified entities with the names of those shareholders whose shares and dividends have been transferred by several companies into IEPF. The Applicant has obtained the data hosted by several companies on their websites to run the matching program. This program was developed as it was not possible to manually trace out shares standing in so many names. The Applicant states that unfortunately very few companies have hosted such data on their websites but it is expected that the process may be eased out soon. The Applicant states that the above matching has already yielded in tracing attached shares amounting to crores and the Applicant on that basis addressed letters to companies, Custodian and IEPF to cause their recovery. That so far as benami shares in Hero MotoCorp are concerned, the Custodian has not taken any steps for their recovery nor informed this Hon'ble Court about the claim made by the Applicant to seek its orders as required u/s 3(4) of the Torts Act. The Applicant is aggrieved that while the Custodian has addressed a letter to ACC for recovery of the benami shares but has failed to immediately take similar steps in case of Hero MotoCorp which has only emboldened the company to



act brazenly in dealing with the attached shares and the accruals. The Custodian addressed a letter to Hero MotoCorp only on 19.05.2021 followed by a letter dated 05.07.2021 but after seeking disclosure of information and after receiving some information now for past about 2 years the Custodian has failed to take any follow-up action. The Applicant states that this is despite the fact that Hero MotoCorp informed the Custodian under its letter dated 23.06.2021 that atleast 3 shareholders have secured release of their shares and accruals through the company from IEPF and therefore it required immediate action on his part which has not been taken. The Custodian has in fact till date not even placed the facts of pending recovery before this Hon'ble Court and thereby chosen to deal with the attached property all by himself in gross violation of Sec.3(3) of the Torts Act.

**11.** The Applicant states that in proceedings before this Hon'ble Court and Hon'ble Supreme Court the Custodian has stated on oath that he does not deal with any attached property by himself but always deals with them as per the orders of this Hon'ble Court but it has been experienced in past 30 years that the Custodian deals with attached properties either by not placing the facts relating to them before this Hon'ble Court and also by not complying with the orders of this Hon'ble Court in which directions have been given to him to cause recovery of attached properties from third parties. Till date, the Applicant has proved her allegations that the Custodian is deliberately not recovering the attached assets belonging to Mehtas from third parties in order to confer monetary favours on them at the cost of Mehtas knowing fully well that their assets far exceed their liabilities. The Custodian is seeking to punish the family members of late Shri Harshad Mehta and associate entities by deliberately not recovering their attached assets running into thousands of crores so as to then make a false claim that the liabilities of Shri Harshad Mehta



far exceeds his assets and therefore the assets of the family members and the corporate entities should be used to meet the claims on late Shri Harshad Mehta by treating several independent entities as '**one entity**' under the Harshad Mehta Group theory. In support of above allegations, the Applicant craves leave of this Hon'ble Court to refer to and rely upon the proceedings in MA 107 to 113 of 2007, MA 13 and 14 of 2011, MA 8 of 2016, CA 6326 of 2010 before Hon'ble Supreme Court and a number of other matters conducted before this Hon'ble Court where recovery of attached assets have taken place only because of the efforts of the Applicant and her family members when produced. The Applicant is aggrieved that the Custodian keeps claiming before this Hon'ble Court and Hon'ble Supreme Court that he does not deal with the attached assets by himself but only acts as per the order of this Hon'ble Court but by not placing the facts of pending recoveries and by not even addressing any letter to Respondent No.2 the Custodian has virtually dealt with the attached property by allowing third parties to benefit by sacrificing the interest of notified entities. The Applicant is therefore constrained to file the present application which will be followed up by further application/s in respect of other shares including the benami shares as they get traced by the Applicant.

**12.** The Applicant states that while carrying out such matching exercise in the case of Hero MotoCorp Ltd. she has discovered 3875 shares standing in the name of Mehtas as above and also discovered the names of Respondent Nos.5 to 9<sup>g.i</sup> who despite being the benami shareholders have not disclosed nor handed over till date all the benami shares and more particularly the benami shares which were registered in their names in Hero MotoCorp Ltd. the facts and details in which regard are set out hereinafter. The Applicant states that these Respondents have sought to usurp the attached benami shares and accruals by not delivering them to Shri Harshad Mehta while they handed over other



benami shares since the value of shares of Hero MotoCorp have always been much higher in comparison to shares in other companies. The Applicant states that these Respondents have withheld these shares with a view to usurp them at appropriate time by waiting to see if they get traced and recovered by the IT department / Custodian / company or by Mehtas. Since almost 3 decades have elapsed with no claim being made on the subject shares these Respondents have in recent times taken steps to recover both the shares and dividends from IEPF by taking advantage of the fact that the shares continue to stand registered in their names.

**13.** The Applicant has found out from the replies received from Hero MotoCorp that Respondent No.5 Shri Nirav Jobalia and some other benami shareholders have already succeeded in recovering the shares and dividends from IEPF with active assistance of the company and by now would have already sold some of these shares and done away with the sale proceeds and the dividends by usurping them knowing fully well that the said shares were never purchased by them and that they factually belong to Mehtas. This Respondent would not have expected the Applicant to trace these shares in his hands and would not have expected that the Applicant would call upon him both through letters and even in person for recovery of the shares, the facts relating to which are further set out hereinafter. The Applicant despite making efforts have failed to secure the shares and dividends from Respondent No.5 as also other Respondent Nos.6 to ~~9~~<sup>9.1</sup>. In order to protect and quickly recover the attached shares and dividends before they are usurped and sale proceeds siphoned off it has become absolutely necessary to take urgent steps including seeking complete disclosure of facts from Respondent Nos.2 to ~~9~~<sup>9.1</sup> and proceed against Respondent Nos.5 to ~~9~~<sup>9.1</sup> for recovery of the attached shares and dividends particularly since Respondent Nos.5 to 7 have not even replied to

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the letters addressed by the Applicant to them which tantamount to their admission and acquiescence to the claim made by the Applicant in her letters addressed to them.

**Muz** <sup>9.1</sup> **14.** The Applicant states that upon discovery of the above facts and after seeing that the Custodian also was not taking any steps she called upon Shri Nirav Jobalia through her Advocate, Shri Ashwin Mehta to return and handover the shares and dividends but despite persuasion and even after making promise Shri Nirav Jobalia has failed to keep his commitment. In fact, initially Shri Nirav Jobalia agreed and committed in personal meetings in Mumbai that he was ready and willing to handover the shares and dividends if some reward is given to him but has thereafter completely backed out from his above commitment and refused to deliver the shares and dividends to the Applicant or to the Custodian and has even dissuaded the other Respondents from handing over the shares and accruals in their possession and even therefore the Applicant has been constrained to file the present application. The Applicant states that in view of above, it has become absolutely necessary to proceed against Respondent Nos.4 to  $\emptyset$  on an urgent basis so that the recovery of attached property does not get jeopardized by passage of time. In support of above, the Applicant seeks to rely upon the law laid down by this Hon'ble Court and the Hon'ble Supreme Court and a number of precedents already laid down by it during past 30 years in proceedings involving recovery of attached property lying in the hands of third parties.

**15.** The Applicant states that earlier this Hon'ble Court has passed a combined order dated 13.03.1997 in MA 194 of 1993 and other applications filed by the I.T. department by declaring vast quantities of such benami shares as the attached properties of Mehtas including in the case of Respondent Nos.



3 to 7 and a copy of this order is relied upon together with all the applications filed by the I.T. department and the Custodian before this Hon'ble Court as cited earlier. The Applicant states that thereafter this Hon'ble Court has also passed an order on 08.04.2003 in MP 99 of 1998 filed by the Custodian to cause further recovery of shares at the behest of Custodian and a copy of which order is also enclosed at Exhibit- "G" The Applicant states that it can be seen from the above orders that this Hon'ble Court has declared vast quantities of shares brought to its notice by the IT department and the Custodian as attached properties belonging to Mehtas and declared several persons as benamidars and further directed the Custodian to trace and recover such shares wherever they remain to be recovered from third parties. The Applicant states that it can also be seen that vast recoveries have been caused even of those shares which were not in the possession of the Custodian by directing the companies to rectify its register of members and entering the name of the Custodian in place of names of several benami shareholders. The Applicant also relies upon some proceedings initiated by the Custodian before this Hon'ble Court for recovery of such shares when produced.

**16.** The Applicant states that if the attached shares are sold and converted into money by any benami shareholder, the claim will continue for recovery of attached shares and the third parties will have a legal obligation to purchase the subject attached shares and hand them over to the Custodian on behalf of the Applicant and her family members. The Applicant states that the claim in respect of recovery of shares cannot be converted into a money claim and such third parties who have dealt with the attached property cannot seek ratification of their illegal transactions and derive any benefit out of their illegal conduct. The right, title and interest of Mehtas in their shareholdings of Hero MotoCorp cannot be extinguished as what has got attached upon their notification on



08.06.1992 are the shares of Hero MotoCorp and even therefore the third parties cannot be absolved of their obligation to make good the attached shares with all accruals thereon. The Applicant states that this Hon'ble Court has already laid down the law that if any third party holding attached properties sells the same without the prior permission of this Hon'ble Court then such transaction would be *void ab initio* and no title will pass on to the purchaser of such attached property. The Applicant states that therefore and in the event Respondent Nos. 5 to 9 have sold the attached shares or created any third party rights, the same would be illegal and the Applicant would be entitled to cause recovery of the attached property even from such third party on a joint and several basis. In fact, Hon'ble Supreme Court has laid down the law that once a property gets attached the said attachment continues till the same is lifted by this Hon'ble Court and in fact highest primacy is given under the Torts Act to recovery of each and every attached property lying in the hands of third parties.

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17. The Applicant states that when the names of Respondent Nos. 5 to 7 came to be declared as benami shareholders of Mehtas in several companies they have not raised any objections or come forward to claim title or ownership in respect of any shares handed over by them to late Shri Harshad Mehta or recovered by this Hon'ble Court at the behest of the Custodian and the IT department and therefore the same amounts to their admission for having lent their names and addresses to register the shares belonging to Mehtas in their names. The Applicant states that such registration of shares have taken place after the notification of Mehtas on 08.06.1992 and in almost all cases within a short period and between the years 1992-1993. The Applicant states that at all times Hero MotoCorp has been aware that the 800 shares of Hero MotoCorp were declared benami held in their company standing in the name of Shri Nilesh D. Jobalia and that several family members in the Jobalia family were



declared benami shareholders of Mehtas after Shri Harshad Mehta disclosed their names and shareholdings in his affidavits filed before this Hon'ble Court.

**18.** The Applicant states that besides above Hero MotoCorp is also aware that Shri Nilesh Jobalia never raised any objection when Shri Harshad Mehta made claim on the shares standing registered in his name when they were declared as benami shareholdings. The Applicant states that in fact Hero MotoCorp in its letter dated 07.01.2021 has admitted to the existence of 20,170 benami shares in its company under 26 folios which were all declared as benami shares and therefore taking the entirety of facts and evidence on record there existed no justification for it to oppose the claim made by the Applicant on the company under several letters addressed by her. The Applicant states that in fact Hero MotoCorp ought to have called upon the Jobalias to produce the copies of Contract Notes and proof of purchase and payment of consideration to protect its own interest and at the same time extend co-operation in recovery of attached shares under the Torts Act which are held benami. The Applicant states that instead and acting illegally and high-handedly and to cover up its own failures, Hero MotoCorp has chosen to resist recovery of attached property and to confer benefits onto benami shareholders by sacrificing the interest of Applicant and other notified entities. The Applicant states that the company had no justification to disbelieve the Applicant and take an illegal stand in support of Jobalias and thereby it has grossly violated several provisions of the Torts Act and the law laid down thereunder. The Applicant appraised Hero MotoCorp of the true legal position applicable and binding in the present case but yet it has chosen to completely disregard the same at its own costs and consequences.

**19.** The Applicant states that this Hon'ble Court has already passed orders



declaring Jobalias as the benami shareholders of Mehtas and which orders are binding upon both Jobalias and Hero MotoCorp Ltd. The Applicant states that Hero MotoCorp is also aware of the numerous proceedings that have been filed before this Hon'ble Court by the Income Tax department and the Custodian under which the facts and circumstances are set out regarding registration of attached shares belonging to Mehtas in the names of several third parties commonly referred to as benami shareholders since the shares came to be registered in their names without their having purchased them and without paying any consideration for the same. The Applicant states that all the facts and evidence set out in these applications have been fully accepted by this Hon'ble Court and all the reliefs prayed for and the prayers made therein and to declare such persons as benami shareholders of Mehtas have also been fully granted by this Hon'ble Court. In fact and if any person has *bona fide* purchased such benami shares without notice even their interest has been protected by this Hon'ble Court by devising a certification scheme to enable them to claim the title on the shares so purchased by them.

**20.** The Applicant states that Hero MotoCorp is fully aware that the Jobalias until recently were not claiming any title over the shares and dividends now for more than 2 decades and have not even taken any steps which an owner shareholder would take such as to claim and encash dividends, to exchange shares upon change of their face value, dematerialization of their shares and on the very face of it their above conduct clearly establishes that the Jobalias themselves knew that the subject shares do not belong to them. They have been negligent in not claiming either the shares or the dividends and even allowed transfer of the same to the Government of India and the IEPF. These shareholders have neither informed the company about the change of address or even about the demise of 3 of the shareholders viz. Shri Nilesh D Jobalia,



Shri Dalichand Jhoothalal Jobalia and Smt Smitaben Dalichand Jobalia which conduct also is completely unbecoming of an owner shareholder. The Applicant states that the conduct of Jobalias is highly suspicious and is not in accordance with the conduct of a shareholder who truly believes that the shares are their property. The Applicant states that despite above Hero MotoCorp has consciously chosen to support them and opposed the legitimate claim of the Applicant. The Applicant states that Hero MotoCorp has deliberately dismissed all the above preponderant and overwhelming evidence against the Jobalias and chosen to continue its collusion with them completely ignoring their antecedents. The Applicant states that Hero MotoCorp is a habitual offender in violating the provisions of the Torts Act and in making compliance with them so far as payment of accruals and making compliance with the orders of this Hon'ble Court and the directions given to it by the Custodian is concerned. In further support of above contentions, the Applicant states that several companies have rendered complete co-operation to the Custodian and the Income Tax department in the tracing and recovery of the attached benami shares and accruals on them but Hero MotoCorp has consciously chosen to act as an adversary.

**21.** The Applicant states that while declaring such benami shares as attached properties belonging to Mehtas this Hon'ble Court has already taken care of protecting the interest of genuine and *bona fide* shareholders by devising a scheme of certification for such shareholders who can make a claim of ownership on the shares to get the relief of lifting of attachment on the shares and even therefore there is no necessity for Hero MotoCorp to sit in judgment and adjudicate on the issue of ownership of the subject shares as the same would be violative of exclusive Civil jurisdiction of this Hon'ble Court conferred on it u/s 9-A of the Torts Act. The Applicant states that in the least



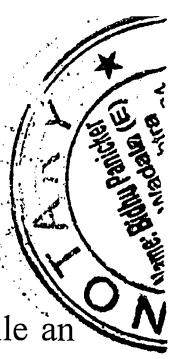
it would be expected of Hero MotoCorp to seek advice of the Custodian on the issue instead of threatening the Applicant that in absence of any order from this Hon'ble Court it would proceed to handover the shares or assist Jobalias if they were to make a claim on the shares by completely rejecting all the contentions raised by the Applicant. The Applicant states that there is also no justification for complete non-action on the part of Hero MotoCorp to cause any enquiry or ascertain any facts from the Jobalias or calling upon them to produce the proof of purchase and evidence of ownership which is entirely within its powers to do so. The Applicant states that it is obvious that in this manner Hero MotoCorp is completely shielding the Jobalias so that in the time made available to them they can falsely lay their claims on the shares and get them dematted and fully usurp them by selling the shares and siphoning off the sale proceeds.

**22.** The Applicant states that after this Hon'ble Court directed the Custodian and the Income Tax department to recover further benami shares it appears and evident that adequate steps have not been taken by the Custodian to trace and recover such shares even though vast quantities of the same yet remain pending to be traced and recovered from several third parties. The Applicant states that even in several cases the registered shareholdings of Mehtas and dividends on them have been found to be paid over to the Government of India or deposited in the IEPF as till date facts and evidence have emerged in this regard. The Applicant states that the Custodian has not devised any system of tracking the shareholdings and payment of accruals on them despite calling for information regarding the attached shareholdings from all the companies on more than one occasion and therefore the Applicant had to undertake enormous efforts to take steps to recover their attached properties. The Applicant states that therefore to supplement the efforts of the Custodian in several cases the Applicant and her



family members have been taking steps to recover the attached properties wherever it remains pending to be recovered notwithstanding the fact that the Custodian has been opposing every application of the Applicant for seeking release of monies from their attached accounts to incur genuine expenses such as to engage staff, Counsels and Advocates for carrying out the onerous tasks of tracing and recovering such attached assets. The Applicant states that the amount of such expense is a very minuscule amount of less than 1% of the potential pending recovery of thousands of crores but yet the Custodian has chosen to vehemently oppose such applications and denied the legitimate reliefs prayed for by Mehtas. In fact in several cases, the Custodian has even opposed the applications filed by Mehtas seeking recovery of their attached assets and in this regard grievance has already been made before this Hon'ble Court and even to the Custodian and the same is a matter of record. The Applicant states that the above conduct of the Custodian cumulatively establishes all the allegations made against him in the present application. The Applicant states that despite above, the Applicant has been single minded pursuing recovery of all attached property and in effect discharging the statutory duties which are cast upon the Custodian under the Torts Act.

**23.** The Applicant strongly apprehends that if such recovery of attached property is not caused quickly the same will jeopardize the recovery itself as the parties holding the attached assets will usurp the same and further divert the monies realized by sale of the attached shares which will make the task of recovery extremely difficult if not almost impossible. The Applicant states that since persons like Shri Nirav Jobalia have already started selling the attached shares it has become imperative that quick coercive steps are taken against him including by passing restraint orders against him and by freezing and attaching all his assets and banks accounts so that recovery can be ensured from such



Respondents. The Applicant states that he should also be directed to file an affidavit and state on oath the steps taken by him to retrieve the shares from IEPF after so many years and in the event he has sold the shares to bring on record all the facts regarding where the sale proceeds are lying and used by him.

**24.** The Applicant states that one of the prime objects of the Torts Act is to recover all the properties belonging to such notified persons whether they are lying in the hands of the notified persons or in the hands of third parties so that the recovered assets then becomes available for distribution amongst the creditors of such notified persons u/s 11(2) of the Torts Act and such creditors primarily being the IT department and the banks and Financial Institutions (**FIs**) for whose benefit the Torts Act have been promulgated. The Applicant states that to achieve the above object, Sec.3(3) provides for simultaneous and automatic attachment of all the properties belonging to a notified person and the relevant extracts of the law governing such automatic attachment u/s 3(3) of the Act as laid down by the Hon'ble Supreme Court is enclosed at Exhibit-H. The Applicant states that since the creditors do not participate in the proceedings involving recovery of attached assets, a statutory duty is cast upon the Custodian under the Act to trace and recover each and every attached asset whenever it is found to be lying in the hands of third parties. The Applicant states that therefore the primary statutory duty of the Custodian is to preserve, protect and augment the attached assets. The Applicant states that the Custodian may therefore be directed to act very swiftly and trace and recover all the attached assets belonging to Mehtas and comply with all the orders passed by this Hon'ble Court in MA 13 and 14 of 2011, in MA 8 of 2016 and also comply with the order passed by the Hon'ble Supreme Court on 08.05.2017 in CA 6326 of 2010 a copy of which is enclosed at Exhibit- "I"



25. The Applicant states that to expedite the recovery of such attached properties from third parties an *onus* is cast upon such parties holding attached monies/assets to disclose and handover the same to the Custodian. The Applicant states that once the properties gets automatically attached u/s. 3(3) of the Torts Act the said attachment continues till it is lifted by this Hon'ble Court. The Applicant states that for the benefit of the public on 10.09.1992 the Custodian issued a Public Notice disclosing names of persons notified by him and explained the effect of such notification under the provisions of the Torts Act and a copy of this Public Notice is enclosed at Exhibit- "J" The public was called upon to disclose and handover the attached properties to the Custodian but yet till date Respondent Nos. 5 to ~~9~~<sup>9.1</sup> have consciously failed to handover the subject shares and accruals to the Custodian and thereby violated Sections 3(3), 3(4) and 9-A of the Torts Act. The Applicant states that in the above Public Notice the Custodian informed the third parties that they cannot undertake any transactions in attached properties without the permission of this Hon'ble Court and it is settled law that such transactions would be illegal and void *ab-initio* and the purchasers of such attached properties would not get any title since such third parties themselves have no right, title and interest in the attached shares which belong to Mehtas. The Applicant states that therefore the subject shares and the accruals on them continue to remain under attachment and the Applicant can recover the same from wherever they are presently lying and in whosoever's name they are presently held.

26. The Applicant states that in fact judicial notice has been taken by this Hon'ble Court that third parties holding the assets have not been discharging their *onus* of disclosing and handing over the attached property to the Custodian and has therefore laid down that such dishonest third parties should be made to pay high rates of interest and actual costs for illegally dealing with



the attached property. In support of the above contentions the Applicant is pleased to enclose at Exhibit- "K" a copy of order dated 28.03.1995 in MA 400 of 1994 in the case of Standard Chartered Bank vs. Canbank Financial Services Ltd. and Ors. The Applicant is also pleased to enclose at Exhibit- "L" a copy of order dated 24/25 February 1999 in Suit 2 of 1995 in National Housing Bank vs. State Bank of Saurashtra and Ors. wherein this Hon'ble Court has once again taken judicial notice of the tendencies of parties holding attached properties to hold on to them by adopting false and frivolous litigation.

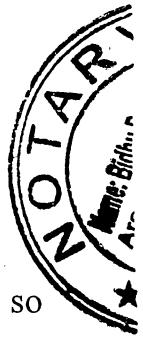
*W.W.* 27. The Applicant states that to dissuade parties from resisting attachment and recovery of attached property Sections 3(3) and 13 of the Torts Act contains non-obstante clauses so that the attachment and handing over of the attached assets cannot be resisted by third parties through defenses available to them if any, under the general law as the provisions of the Torts Act have an overriding effect over all other statutes if they are in conflict with the provisions of the Torts Act. The Applicant states that despite above, Respondent Nos.5 to <sup>9,1</sup>9 as also Respondent No.2 are creating impediments in the recovery of the subject attached shares and accruals completely disregarding the binding law and the express provisions of the Torts Act and the law laid down thereunder by Hon'ble Supreme Court through several of its judgments a list in which regard is enclosed at Exhibit- "M" The Applicant in support of above contentions also relies upon the law laid down by this Hon'ble Court and precedents set by it under its following orders/ judgments:

- i) Order dated 21.06.1993 in MA 40 of 1993 in the case of A.K. Menon, Custodian vs. Uttam Galva Steels Ltd.
- ii) Order dated 19.10.1993 in MA 184 of 1993 in the case of A.K. Menon,

Custodian vs. Spic Ltd.

iii) Orders dated 21.12.2017, 02.02.2018, 08.02.2018 09.02.2018, and 13.02.2018 in MA 89 of 2016 in the case of Custodian vs. Suresh D. Chandak.

**28.** The Applicant states that a statutory duty is cast upon the Custodian to trace and recover the attached property from the hands of third parties and the objects of the Torts Act can be achieved even if the notified person for one or the other reason and due to the legal disability cast upon him is not able to assist in the attachment and recovery of attached properties from third parties. The Applicant states that so far as she is concerned, despite facing several insurmountable problems for past 30 years her husband Shri Harshad Mehta and after his sudden demise she has strived and put in enormous efforts in tracing and recovering the attached properties lying in the hands of third parties whenever the facts relating to them have come to their knowledge. The Applicant states that it is an admitted position that a notified person suffers legal disability due to notification and consequent attachment of their assets. The Applicant states that besides above, a notified person like the Applicant has also suffered at the hands of Custodian due to several precipitative steps taken by him including the notification of the Applicant. The Applicant states that the Custodian has got sold all the offices of the Applicant and all other associate entities even before establishing and crystallization of their liabilities, have for several years illegally seized the computers and the books of account and the supporting records thereby depriving the Applicant and her family members of an opportunity to defend their legal interest of contesting false claims and of causing recovery of attached properties lying in the hands of third parties like in the present case. The Custodian has always acted high handedly and as an adversary and in fact took away all the staff to report and



work in his office and thereafter immediately dispensed with their services so as to paralyze the Mehtas. The Applicant states that the cumulative effect of the coercive and illegal steps taken by the Custodian have been such that the Applicant and her organization witnessed a complete breakdown.

**29.** The Applicant states that in fact even the Hon'ble Supreme Court in para 35 of its judgment in the case of Harshad Shantilal Mehta vs. Custodian reported as **(1998) 5 SCC 1** has taken judicial notice of the peculiar facts and circumstances which governs such notified persons due to their notification and the same is reproduced below:

**Para 35 :** “.....*The assessee who is before the Special Court, is a person liable to be charged with an offence relating to transactions in securities. He may not, in these circumstances, explain transactions before the Income Tax authorities, in case his position is prejudicially affected in defending criminal charges. Then, on account of his property being attached, he may not be in a position to deposit the tax assessed or file appeals to further proceedings under the relevant tax law which he could have otherwise done*”. (Emphasis supplied)

**30.** The Applicant states that the Income Tax department has likened the condition of a notified person to that of a person who has met with civil death as the Act does not even provide for the maintenance and the livelihood of a notified person. The Applicant states that notification also deeply affected all income earning activities which came to an abrupt and complete halt as has happened in the case of Mehtas ever since their notification since the bank accounts got attached and several other proceedings got initiated against them. The Applicant states that besides suffering the drastic consequences of notification the Mehtas have also suffered several coercive actions at the hands of the Custodian, CBI and the Income Tax department who have carried out



raids and seized vast quantities of shares and other records all of which had a debilitating effect including on the morale of the staff who have deserted and abruptly left the employment without even handing over the charge.

**31.** The Applicant states that with the assistance of her family members and in particular from her brother-in-law Shri Ashwin Mehta she started taking steps to restore normalcy but has yet not succeeded in effectively coping up with the huge amount of litigation involved in the case and yet vast amounts of attached properties remain pending to be recovered which is cumulatively valued at thousands of crores. The Applicant states that ever since 2007 onwards she has filed several proceedings before this Hon'ble Court to seek disclosure of facts and evidence and status Report on compliance made by the Custodian and has also filed several applications to cause recovery of the attached assets wherever the same was found to be pending to be recovered by the Custodian and through her vigorous efforts has till date already recovered attached assets of hundreds of crores. The Applicant states that she has also been recovering assets from third parties which were not to the knowledge of the Custodian so that all assets get accounted for and thereafter complete recovery of every attached asset is caused from third parties. The Applicant has thus discharged the statutory obligations which the Custodian is required to discharge under the Torts Act so that the objects of the Torts Act are achieved quickly and the name of her late husband gets cleared quickly.

**32.** The Applicant states that the primacy given to the recovery of attached assets by this Hon'ble Court and the Hon'ble Supreme Court gets established even from the law laid down in the case of L S Synthetics vs. FFSL reported as **(2004) 11 SCC 456** wherein the provisions of the Torts Act have been analyzed and it is laid down as under:



- a. That monies belonging to notified person lying in the hands of third party gets simultaneously attached u/s 3(3) of the Torts Act upon notification of a person.
- b. That both the Custodian and the notified person has *locus* to bring the facts relating to attached properties lying in the hands of third parties to the knowledge of this Hon'ble Court.
- c. That once the facts relating to attached assets lying in the hands of third parties are brought to the knowledge of this Hon'ble Court then it becomes the duty of this Hon'ble Court to recover such assets. That this Hon'ble Court can even *suo moto* recover the attached assets from third parties.
- d. That the law of limitation is not applicable to any proceedings under the Torts Act which involves recovery of attached assets from such third parties.
- e. That once the assets get automatically attached u/s 3(3) of the Torts Act then such attachment continues until an order is passed by this Hon'ble Court for lifting it.
- f. That this Hon'ble Court can levy interest on such third parties who have enjoyed the attached property belonging to the notified person even if there was no agreement to pay interest.

The Applicant therefore relies upon the law laid down by Hon'ble Supreme Court in the above judgment and humbly prays to this Hon'ble Court to recover the attached shares and accruals of Hero MotoCorp in terms of the reliefs prayed for by the Applicant in the present application.

**33.** The Applicant states that she has filed the present application in terms of the *locus* as laid down in the aforecited judgment in the case of L.S.

Synthetics and humbly prays to this Hon'ble Court to take every step to ascertain the complete facts from the Respondents and thereafter appropriately order recovery of the attached property from Respondent Nos. 2 to 9 or from whosoever's hand it is presently lying. The Applicant is also pleased to place on the record of the present proceeding all the facts and evidence that have been gathered and ascertained by her. The Applicant states that the subject shares and the accruals belong to the Applicant and the same constitutes attached property in terms of Section 3(3) of the Torts Act. The Applicant states that the Mehtas have an established track record of past 30 years in bringing to the notice of the Custodian and this Hon'ble Court each and every fact of pending recovery of attached properties lying in the hands of third parties and in each and every case such assets have thereafter been virtually recovered by this Hon'ble Court and even in view of the same the reliefs prayed for by the Applicant in the present application may kindly be granted in the interest of justice. In support of above contentions the Applicant also relies upon the affidavits filed by Shri Harshad Mehta in MA 194 of 1993 and MA 53 of 1994 wherein he disclosed vast quantities of benami shares and thereafter handed over the subject shares to the Custodian. The Applicant states that based upon the disclosures made by Shri Harshad Mehta in his affidavits this Hon'ble Court declared the benami shares disclosed by him as attached property u/s 3(3) of the Torts Act as belonging to Mehtas and even therefore the disclosure being made by the Applicant through the present application may be accepted following the above precedent so that the recovery of the subject attached shares and accruals can take place and thereby the objects of the Torts Act can be achieved. The Applicant in support of her contention also relies upon the fact that the benami shares declared by this Hon'ble Court whether disclosed by the Income Tax department, Custodian or Shri Harshad



Mehta the same has not been disputed by such benami shareholders by making any claims on the subject shares and which is also a testimony of the fact that the subject benami shares always belonged to Mehtas in each and every case of the disclosure.

**34.** The Applicant is pleased to narrate the facts and adduce the supporting evidence thereof leading to the filing of the present application as under:

- i) That as stated before Mehtas came to be notified by the Custodian on 08.06.1992 through a Gazette Notification dated 08.06.1992 issued by the Custodian. With their notification the shares belonging to Mehtas as on that date in Respondent No.2 company including those lying in the possession of third parties like <sup>9.1</sup> Respondent Nos.5 to ~~9~~ got simultaneously attached u/s 3(3) of the Torts Act. These shares got attached because they were purchased by Mehtas prior to 08.06.1992 and which facts can be ascertained by full and proper disclosure of facts and evidence in possession of the company and Respondent Nos.5 to ~~9~~. Such evidence would constitute the copies of the share certificates and the transfer forms lodged for transfer of the subject shares in the names of Jobalias and if the Jobalias can establish through contemporary evidence the purchase and proof of payment of purchase consideration by them and such a procedure has been followed by this Hon'ble Court in tracing and recovering vast quantities of benami shares including those held in adverse possession. The Applicant therefore humbly prays to this Hon'ble Court to direct Respondent Nos. 5 to <sup>9.1</sup> ~~9~~ to establish their ownership of the subject shares failing which these shares may be declared as attached properties belonging to Mehtas



by following several precedents already set by this Hon'ble Court.

- ii) That the Income Tax Department in the year 1993 onwards carried out extensive investigation in respect of the benami shares and filed numerous applications/petitions before this Hon'ble Court the particulars in which regard are already provided earlier. That in these proceedings Shri Harshad Mehta also filed 2 affidavits disclosing vast quantities of benami shares and handed them over to the Custodian which were not yet identified by the Income Tax department. The shares were recovered from several benami shareholders and their details were compiled on computers which were also made available by Shri Harshad Mehta to the Custodian. However, several parties could not be identified and many who could be identified did not surrender the benami shares to the Income Tax department, Custodian or to Shri Harshad Mehta and only therefore this Hon'ble Court passed orders directing recovery of such unrecovered benami shares. It is significant to note that this Hon'ble Court has already accepted both the findings given by the Income Tax department in their applications as also accepted the disclosures made by Shri Harshad Mehta in the 2 affidavits filed by him and thereafter declared all such shares as attached property belonging to Mehtas. The Applicant states that extreme care is exercised by the Applicant and all her family members before making any claim in regard to ownership of properties lying in the hands of third parties and the record of more than 30 years will bear this out. The Applicant states that whenever such claims have been lodged by them the same have invariably led to recovery of such claimed properties.



- Mur.*
- iii) The Applicant states that in the present case Respondent No.2 has not notified the benami shareholding of Jobalias in their company even after being informed about 800 benami shares held by Shri Nilesh D Jobalia that the recovery of the subject shares and accruals thereon have remained pending for more than 30 years. That the subject shares are held benami by Respondent Nos.5 to ~~9~~ gets established by their own conduct till last year since they have never made a claim on the shares or dividends and only because they were unclaimed properties that Respondent No.2 have transferred the dividends and the shares to the "Government of India" and in later years into the IEPF. The Applicant states that despite being given complete details and ignoring the contumacious conduct of Jobalias Respondent No.2 company is acting illegally and helping the Jobalias in taking possession of attached properties from IEPF and taking adversarial stand against the Applicant without examining or appreciating the provisions of the Torts Act and the law laid down thereunder which make it obligatory for the company to come before this Hon'ble Court and the Custodian for determining the issue of ownership and in any case before dealing with the attached property. That since this Hon'ble Court has already found Jobalias to be benami shareholders of Mehtas in several companies and since it has declared Shri Nilesh D Jobalia as benami shareholder in respect of 800 shares of Respondent No.2 company it is humbly prayed by the Applicant that the reliefs sought for by her in the present application may kindly be granted. The Applicant therefore humbly prays to this Hon'ble Court that directions may be issued to the Custodian, Hero MotoCorp and
- 3.1

IEPF to bring on record of the present proceedings all the facts and evidence in their possession in respect of shareholdings of Respondent Nos.5 to <sup>9.1</sup>9 in Hero MotoCorp.

- Muz
- iv) The Applicant states that directions may also be given to Respondent Nos.2 and 3 to place all the facts and records relating to the shareholdings of notified entities in the family of late Shri Harshad Mehta in regard to which it has transferred any dividends or shares to the Government of India and to the IEPF and tender their explanation for dealing with the attached properties in complete violation of the provisions of the Torts Act and the law laid down thereunder.
  - v) That on 19.10.1993 this Hon'ble Court passed an order in MA 194 of 1993 filed by the Income Tax department in regard to the benami shares and a copy of the same is enclosed at Exhibit-“N” The above order was passed in terms of the Minutes of the Order. It was held that instead of attaching and proceeding against *bona fide* purchaser for value without notice of the benami shares the aim would be to locate the monies which has passed on to the notified persons through benami transactions in shares. The interim order dated 23.09.1993 was vacated on the attachments levied by the I.T. department on shares which were registered by companies in the name of benamidars. The attachment order passed by the I.T. department on 21.09.1993 on shares of 17 companies was raised to the extent of certification of shares. The I.T. department was given a liberty to investigate further and to establish linkages with benamidars. The I.T. department was directed to inform the



Custodian the details and particulars of scrips on which the attachment was to be raised. The Custodian was to take steps with the assistance of the I.T. department and stock exchange authority to trace the first person who has acquired the shares before they were placed in the market. A scheme of certification for benami shares was devised to work under the concerned stock exchange in consultation with the Custodian.

- Dhawal* vi) That on 09.03.1994 Custodian addressed a letter to Hero MotoCorp providing the details in regard to 20,170 benami shares in that company and copy of the said letter is enclosed at Exhibit- "O" It can be seen from the above letter that Custodian has already conveyed the stand taken by Shri Harshad Mehta that the disclosure of shares was not exhaustive as some more shares/debentures which have remained unregistered the details of which are under compilation and will be submitted at a later date. The Custodian has clearly set out the true legal position to the company that in terms of Sec.3(3) and 3(4) of the Torts 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 vest with the Special Court. The Custodian has further communicated and directed the company as under:

*"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."*

- vii) Thus, when a claim was made by the Applicant on the subject shares of Jobalias on the basis that they belonged to Mehtas the

same constituted attached property and such an attachment came into effect simultaneously upon notification of Mehtas and in case Hero MotoCorp wanted to dispute this factual position then instead of dealing with the attached property it had an obligation to first seek permission of this Hon'ble Court u/s 3(4) of the Torts Act instead of itself adjudicating on the issue of ownership in violation of Sec.9A of the Torts Act. That Hero MotoCorp is aware since 23.03.1994 about existence of vast quantities of such attached benami shares standing registered in several names and in fact 800 shares already stood registered in the name of Nilesh D. Jobalia under Folio No.136971. In respect of the other shares standing registered in the names of Jobalias Hero MotoCorp had no means to find out whether they belonged to Mehtas or not and taking into account the above legal position once the claim was received by the company from Mehtas it became its legal obligation to cause enquiry and ascertain facts and seek from Jobalias complete proof of ownership such as copies of contract notes, evidence on payment of purchase consideration falling in period prior to the date of registration of the shares. That even these minimal steps have not been taken by Hero MotoCorp and thereby assisted Jobalias in usurping the attached shares and accruals which never belonged to them. In fact, Hero MotoCorp is already in possession of the crucial evidence of transfer forms and the share certificates which were received by it for effecting transfer in the names of Jobalias. The legal position explained by the Applicant along with the details of binding law have been conveniently ignored by Hero MotoCorp and in this manner it has colluded with the Jobalias to confer



monetary benefits onto them and therefore the company has become liable to make good the subject benami shares and accruals on them which are parted by it in favour of Jobalias.

- viii) Hero MotoCorp has also grossly violated the binding law laid down by Hon'ble Supreme Court in Paras 5 and 6 of their judgment in the case of Tejkumar Balakrishna Ruia Vs A.K. Menon and Anr. Reported as (1997) 9 SCC 123 wherein it is laid down that the words "*on and from the date of notification*" indicate the point of time at which the attachment takes effect; this is reiterated by the words "*shall stand attached simultaneously with the issue of the notification*". This also indicates that no separate notification or order in regard to the attachment is necessary. The Applicant states that despite above, the company repeatedly called upon the Applicant to produce an order of attachment of the subject shares though they got automatically attached on 08.06.1992 when Mehtas were notified by the Custodian. The Applicant states that in view of Sections 3(3), 3(4), 9A and 13 of the Torts Act, Hero MotoCorp could not have taken and canvassed the interest of Jobalias by hurting the interest of true onus of the shares being the Applicant and her family members. The Applicant states that u/s 9A of the Torts Act, only this Hon'ble Court has exclusive jurisdiction to adjudicate on the issue of ownership of the shares. The Applicant states that by dealing with the attached shares and accruals in gross violation of above provisions of the Torts Act the company has rendered itself liable to make good the shares and accruals which it has released in favour of Jobalias and others. The Applicant states that in fact till date Hero MotoCorp has

participated in numerous proceedings before this Hon'ble Court and is thus fully familiar with the provisions of the Torts Act which it has consciously chosen to violate in the present case.

- ix) That on 26.11.1996 the Custodian issued a Public Notice in newspapers and called upon the companies to disclose in a format designed by the Custodian complete details of shareholdings of notified entities and accruals paid on them. A copy of this Public Notice with the format is enclosed alongwith the letter addressed to Hero MotoCorp on 30.09.2020 which is cited hereinafter. The Applicant states that Respondent No.2 had an obligation to disclose the entire shareholdings of shares standing registered in the name of Mehtas and also Jobalias to the Custodian when it filed its reply to the above Public Notice of the Custodian. The Applicant does not have copies of correspondence exchanged by the Custodian with Respondent No.2 in regard to the above Public Notice and therefore this Hon'ble Court may be pleased to direct the Custodian and the company to bring on record of the present proceedings the copies of the said correspondence. The Applicant states that the object of seeking disclosure of shareholdings and the payment of accruals was clearly to put the Custodian in complete state of awareness about the shareholdings and the accruals but it is surprising that despite undertaking such an exercise vast amounts of dividends running into crores on the shareholdings of Mehtas had remained unpaid or was paid over to the Government of India and the IEPF and now it is discovered that even vast quantities of shares have been deposited by Respondent No.2 company in the IEPF the facts relating to which are set out herein after.



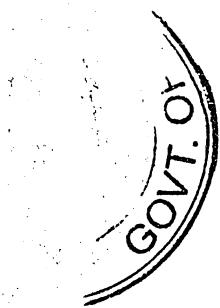
- Muz*
- x) That on 04.12.1998 Respondent No.2 addressed a letter to the Custodian with respect to benami shares which was in reply to Custodian's letter dated 13.11.1998 wherein Custodian asked Respondent No.2 to provide the complete details in respect of payment of accruals on the benami shares. The Applicant is pleased to enclose the above letter of Respondent No.2 dated 04.12.1998 at **Exhibit- "P"** The above letter was forming part of the proceedings in MA 217 of 2010 in MA 83 of 2006 as well as the Report filed by the Custodian opposing the reliefs and the Applicant craves leave of this Hon'ble Court to refer to and rely upon the aforesighted proceedings when produced. The above facts are cited to establish that the Respondent No.2 company had always been aware in respect of proceedings of benami shares as also the requirement for a third party claiming the shares to come before this Hon'ble Court under a certification procedure devised by it for lifting of attachment and therefore in the case of Respondent Nos.5 to 9<sup>31</sup> it cannot by itself decide the issue of ownership in favour of the Jobalias as is sought to be done by it.
  - xi) That Shri Harshad Mehta suddenly expired on 30.12.2001 in judicial custody at the age of 47 years without any prior history of heart ailment but his complaint was neglected by the jail authorities for several hours and therefore due to gross negligence he expired in judicial custody.
  - xii) That on 12.03.2007 a letter was addressed by the Mehtas to all the companies including Hero MotoCorp calling upon it to furnish complete details of their shareholdings and payment of accruals

thereon and a sample copy of such letter is enclosed with letter dated 30.09.2020 addressed by the Applicant.

- xiii) That on 15.06.2007 the Custodian has addressed a letter to Hero MotoCorp calling upon it to furnish complete particulars on the shareholdings of notified entities, the payment of accruals thereon and a sample copy of which letter is enclosed with letter dated 30.09.2020.
- xiv) That on 11.11.2010 and 21.12.2010 letters were addressed by Smt Rasila Mehta and Smt Rina Mehta to Hero MotoCorp making a grievance that the company had deposited Rs.3.10 Crores and Rs.5.52 Crores respectively being dividends covering several years with the IEPF and copies of these letters are enclosed at Exhibit-Q and Exhibit-“R” respectively. The Applicant states that for recovery of these dividends the above 2 notified entities had to then file MA 87 of 2011 before this Hon’ble Court for recovery of their dividends and while the dividends were recovered the claim of interest made against the company is presently a subject matter of Civil Appeal 9880 of 2016 which is pending adjudication before Hon’ble Supreme Court. The Applicant craves leave of this Hon’ble Court to refer to and rely upon the above proceedings when produced.
- xv) That in the proceedings in MA 87 of 2011 Hero MotoCorp disclosed that it had deposited Rs.1.20 Crores with IEPF even in the case of Shri Harshad Mehta and therefore on 09.07.2012 the company addressed a letter to IEPF to refund this amount to the Custodian and a copy of this letter is enclosed at Exhibit-“S”



- xvi) That on 05.05.2012 the Advocate representing the Applicant addressed a letter to the Company Secretary of Hero MotoCorp stating that on 09.08.1994 Shri Harshad Mehta had filed an affidavit in MA 194 of 1993 and MA 53 of 1994 disclosing 20,170 benami shares and under a combined order dated 13.03.1997 these shares were declared as benami shares and the copy of this letter dated 05.05.2012 is enclosed at Exhibit- "T" A copy of above order dated 13.03.1997 in MA 194 of 1993 and MA 53 of 1994 is enclosed at Exhibit- "U"
- xvii) However, one Ketan Mathuradas Chatwani had sold 3588 bonus benami shares which were purchased by SBI Capital Markets Ltd. and Hero MotoCorp retained the shares. Shri Ketan Chatwani thereupon filed MA 83 of 2006 and MA 217 of 2010 before this Hon'ble Court to seek the relief of lifting of the attachment on these shares. However, the Custodian in Report dated 31.01.2011, a copy of which is enclosed at Exhibit- "V" opposed the said relief to the Applicant. The Applicant states that in compliance with the order passed by this Hon'ble Court on 16.06.2011 the copy of the above Report of Custodian was served upon Hero MotoCorp and it was called upon to file its Affidavit immediately. That in compliance of the above on 02.04.2011 Hero MotoCorp filed an Affidavit-in-reply in MA 217 of 2010, a copy of which is enclosed at Exhibit- "W" It can be seen from the above Affidavit that Hero MotoCorp opposed the Application inter alia on the ground that the claimant had lodged its claim without producing copies of contract notes and proof of purchase of the shares and other supporting documents and therefore found the said claim as baseless. The Applicant states that



even in the present case Hero MotoCorp was similarly liable to call upon the Jobalias the copies of the contract notes and proof of purchase of shares taking into account the revelations made by the Applicant and substantial material provided in support of it. The Applicant craves leave of this Hon'ble Court to refer to and rely upon the proceedings in MA 217 of 2010 and MA 83 of 2006 when produced. It is significant to note that even the Applicant, Shri Ketan Mathuradas Chatwani despite being given several opportunities failed to establish his claim on the shares. The Applicant states that Hero MotoCorp has instead and without ascertaining facts or causing any enquiries has supported the false claim of Jobalias.

- xviii) That the Applicant filed MA 18 of 2014 before this Hon'ble Court to claim interest @ 24% from Hero MotoCorp on the unpaid dividend to Shri Harshad Mehta and the Applicant craves leave of this Hon'ble Court to refer to and rely upon these proceedings when produced.
- xix) That on 18.08.2016 this Hon'ble Court by its order in MA 24 of 2016 passed in MA 244 of 2003 laid down the law that the company cannot deposit any attached property attached under the Torts Act with the IEPF and also directed IEPF to transfer such attached shares and monies to the Custodian. This Hon'ble Court also observed that these notified parties were incapable of personally claiming these amounts and there was legal bar against the amount being collected or appropriated by the notified parties. It is also observed that the notified parties were incapable of claiming these



amounts owing to their disability upon their notification which entails automatic attachment of the assets. It is laid down that it was the bounden duty of the companies holding the attached assets to have approached the Custodian and sought clarification if they were in any doubt as to the effect of the promulgation of the Ordinance, the notification of parties and the Torts Act.

- xx) That on 30.09.2020 Shri Ashwin Mehta on behalf of the Applicant and other notified entities addressed a letter to Hero MotoCorp Ltd. for recovery of 3875 shares deposited by it standing registered in 3 Folios being 2000 and 625 shares in the name of Harshad Shantilal Mehta and 1250 shares standing registered in the name of Pratima H Mehta with accruals thereon and a copy of this letter is enclosed at Exhibit- “X” These shares have been transferred by Hero MotoCorp to IEPPF and copy of the above letter was also marked to the Custodian and KFin Technologies Pvt. Ltd. (**KFin**). That Respondent No.2 was also called upon to disclose the names of the entities in respect of 2,04,790 shares kept under abeyance cases since Mehtas had also suffered several orders passed by CBI, Income Tax, Custodian and BSE to keep their shares and payment of accruals in abeyance and therefore it was reasonably suspected that their shares could be included even in the above category of shares. The company was called upon to disclose all the facts relating to transfer of 3875 shares and the benami shares failing which the company would be liable for all the costs and consequences.
- xxi) That on 04.10.2020 a letter was addressed by Mehtas to Chairman,

IEPF with a copy marked to the Custodian and a copy of which is enclosed at Exhibit- “Y” (With all Annexures, except copy of letter dated 30.09.2020, which is annexed at Annexure- “G” to the letter). IEPF was informed of the names of the notified entities and the provisions of the Torts Act and the law governing it. It was also informed of the past proceedings conducted before Hon’ble Special Court and further appraised of the likely cases where the companies have transferred the attached shares including benami shares and dividends on them and was requested to provide details of such cases citing the example of 3875 shares of Hero MotoCorp transferred to it. IEPF was requested to extend cooperation in recovery of attached shares and accruals on them.

- xxii) That on 22.10.2020 Custodian addressed a letter to Hero MotoCorp for recovery of 3875 shares and a copy of it is enclosed at Exhibit- “Z” Hero MotoCorp was also called upon to disclose particulars in regard to 2,04,790 shares kept in abeyance which were transferred to IEPF and a copy of this letter was marked to KFin and notified entities.
- xxiii) That on 27.11.2020 a letter was addressed by Applicant to Respondent No.2 for recovery of 32,480 benami shares deposited with IEPF standing registered in 6 names of Jobalias and a copy of this letter is enclosed at Exhibit- “AA” and a copy of it was forwarded both to the IEPF and the Custodian. The company was called upon to disclose complete facts and evidence about registration of these benami shares and payment of accruals thereon.



- xxiv) That on 03.12.2020 the Applicant addressed a letter to ACC for recovery of 8024 benami shares of ACC which the company has similarly transferred to IEPF and copy of which letter was marked to the Custodian and IEPF and the same is also enclosed at Exhibit-“BB”
- xxv) That on 07.01.2021 Hero MotoCorp replied to letters dated 27.11.2020 and 02.12.2020 and a copy of it is enclosed at Exhibit-“CC” which was also marked to the Custodian and IEPF. Hero MotoCorp confirmed that 20,270 benami shares declared as benami shares were already transferred to the Custodian A/c. Harshad Mehta Group Benami Shares and were later dematerialized by the Custodian in the year 2003. It confirmed that only 800 shares of Nilesh D Jobalia were benami shares as per its records. It called for the basis of identifying 36,295 shares as benami shares and called upon copy of the order under which they were declared as benami. It denied that the shareholders were not taking any action and informed that most of these shareholders are already in contact with the company to claim the shares and in some cases the process to transfer the shares from IEPF to their respective Folios had already been initiated. It called for the copy of the order failing which it will not be able to provide any detail relating to them.
- xxvi) That on 14.01.2021 a letter was addressed by Applicant to Hero MotoCorp in respect of 36,295 benami shares in reply to letter of Hero MotoCorp dated 07.01.2021 and features of automatic attachment u/s 3(3) and the overriding nature of the provisions of

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the Torts Act was explained. That the company was informed of the names of all benami shareholders by the Income Tax department and the Custodian and the subject shares were covered and the orders already passed by the Special Court. That the company was already guilty of even transferring the registered shareholdings of Mehtas into IEPF. The details of declaration of Jobalias as benami shareholders of several companies was also furnished. That therefore these benami shareholders should be conveyed the claim of Mehtas on the subject shares but if the company still proceeds to release the shares it would do so at its costs and consequences. Copy of the above letter is enclosed at Exhibit- “DD” and the same was duly marked to both the Custodian and Chairman, IEPF.

xxvii) That on 20.01.2021 Custodian addressed a letter to ACC in respect of 8024 benami shares of ACC calling upon the company to furnish complete particulars in regard to the said shares and a copy of the same is enclosed at Exhibit- “EE” This letter is adduced to establish that the Custodian has not taken any such steps so far as the shares of Respondent No.2 are concerned.

xxviii) That on 10.02.2021 Hero MotoCorp replied to the letter dated 14.01.2021, a copy of which is enclosed at Exhibit- “FF” It stated that it had never received copy of letter dated 04.10.2020. It denied the allegation and challenged that 36,295 benami shares were attached property as no order was produced. Referring to letter dated 05.05.2012 it was stated that even under that letter status for transfer of 20,170 shares only was sought and therefore the



company had rightly transferred 36,295 shares to IEPF. That unless an order of the Court was produced the company was legally authorized to deal with 36,295 shares as per applicable law and the copy of this letter was also marked to the Custodian and Chairman, IEPF.

- xxix) That on 23.03.2021 a letter was addressed by Applicant to Hero MotoCorp in reply to its letter dated 10.02.2021 and a copy of this letter is enclosed at Exhibit- “GG” which was also marked to Custodian and IEPF. It was explained that since the members of the Jobalia family were declared as benamidars in respect of shares in several companies, the companies were directed to handover shares and accruals standing in the names of Jobalias. The fact that the Jobalias had not claimed the Hero MotoCorp shares for 2 decades also established that the subject shares were held benami on behalf of Mehtas.
- xxx) That on 11.05.2021 a letter was addressed by the Applicant to the Custodian pointing out that while the Custodian had addressed 2 letters to ACC and United Phosphorus in regard to the recovery of the benami shares but had not taken similar steps for recovery of 36,295 benami shares of Respondent No.2 company even though the value of the same was substantially higher. The copy of the above letter is enclosed at Exhibit- “HH”
- xxxi) That on 19.05.2021 the Custodian addressed a letter to Respondent No.2 with reference to several letters addressed by the Applicant in regard to pending recovery of 36,295 benami shares and a copy of this letter is enclosed at Exhibit- “II” It can be seen that the

Custodian called upon the company to provide details in respect of the subject shares. The company was also called upon to furnish information and revealed in its letter dated 07.01.2021 regarding shareholders who have claimed the shares from the IEPF and the present status of the same.

xxxii) That on 23.06.2021 and for the first time Respondent No.2 replied to letter of Custodian dated 27.05.2021 and a copy of the same is enclosed at Exhibit- “JJ” It can be seen that only when Custodian took up the matter that the company started disclosing the facts while it had adopted a completely adversarial stand against the Applicant while replying to her letters. The company for the first time disclosed that it had already transferred and released 11,870 benami shares in 4 cases being 10,000 shares involving Nirav D. Jobalia and 1,870 shares involving Rekha Dinesh Shah and Rita H. Shah. The Applicant states that after receiving the above reply from Respondent No.2 the Custodian ought to have taken the following steps:

- a. Immediately inform the company and the IEPF not to part with or transfer and release any shares or accruals in favour of the benami shareholders.
- b. Proceeded against Shri Nirav D. Jobalia, Rekha Dinesh Shah and Rita H. Shah for recovery of the shares already secured by them.
- c. Filed an application before this Hon'ble Court to place all the facts before it and seek appropriate orders from this Hon'ble Court including interim orders to maintain the *status quo*.

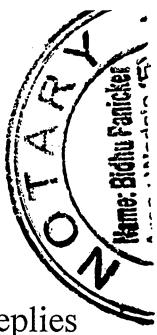


- d. The Custodian is aware that in terms of law laid down by Hon'ble Supreme Court in aforecited L.S. Synthetics case a duty is cast upon this Hon'ble Court to recover every attached asset from third parties at the instance of the Custodian or even *suo motu*. The Custodian is also aware that this Hon'ble Court can exercise its powers and discharge the above duty only provided the Custodian brings the facts to the knowledge of this Hon'ble Court but it has been the experience of Mehtas that the Custodian without having any independent powers have always been dealing with the attached properties all by himself either by not placing the facts of pending recovery before this Hon'ble Court or by not complying with the orders passed by this Hon'ble Court directing the Custodian to recover the attached assets from third parties. In respect of benami shares this Hon'ble Court has already passed orders on Custodian to trace and recover benami shares wherever they remain pending to be traced and recovered but in gross violation of these orders in the present case now for almost 21 months after receiving the letter from Hero MotoCorp dated 23.06.2021 the Custodian has not taken any steps whatsoever which conduct conclusively establishes all the allegations made by the Applicant and her family members against the Custodian. In the aforesaid facts and circumstances the Applicant humbly prays that the Custodian may be called upon to tender his explanation for failure to act in respect of recovery of benami shares starting from the letters addressed by the Applicant on 27.11.2020 onwards. The Custodian may also be directed to disclose the

name of the dealing officials who have failed to take the above actions.

xxxiii) That on 05.07.2021 Custodian addressed a letter to Respondent No.2 with a copy marked to the Applicant in regard to recovery of shares of the company transferred to IEPF with accruals and a copy of it is enclosed at Exhibit- “KK” The Custodian called upon the company to provide the details regarding 2,04,790 shares in the same format as furnished earlier giving it a priority but till date the company has failed to make the same available. The Custodian also asked the Applicant to take action in respect of recovery of benami shares as per the company letter dated 23.06.2021. The Applicant is aggrieved that under the orders passed by this Hon’ble Court on 13.03.1997 in MA 424 of 1994 and 08.04.2003 in MP 99 of 1998 it is the obligation of the Custodian to trace and recover the benami shares and therefore he could not have asked the Applicant to take action regarding the recovery of the same. This was in clear violation of the above orders as also in violation of the statutory duty cast upon the Custodian under the Torts Act to trace and recover every attached property. The above advice given by the Custodian to the Applicant clearly establishes that he is deliberately avoiding both recovery of attached properties and also in making compliance with the express orders passed by this Hon’ble Court. The Applicant states that the Custodian ought to appreciate the efforts put in by the Applicant in tracing the above shares by making the efforts as are narrated earlier.

xxxiv) That on 10.07.2021 the Applicant addressed a letter to the



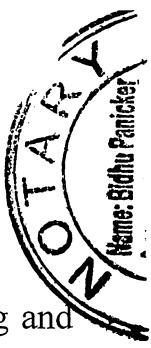
Custodian with reference to the previous letters and the replies received from Respondent No.2 on 07.01.2021 and 10.02.2021. The Applicant placed complete facts of 11,870 shares released by Respondent No.2 and IEPF in favour of 3 benami shareholders and a copy of this letter is enclosed at Exhibit- "LL" The Custodian was also informed of the facts and evidence which was yet to be disclosed by Respondent No.2 and sought compliance with the law laid down by this Hon'ble Court in its order dated 18.08.2016 passed in MA 24 of 2006 in matter of recovery of attached property deposited with IEPF. The Custodian was called upon to recover 11,870 shares which were released as also balance 24,425 shares which were yet lying in the custody of IEPF. A request was once again made to Custodian to also secure details and break-up of 1,86,040 shares and 18,750 shares lying under two suspense folios in respect of shares kept in abeyance by the company. In fact, under letter dated 24.11.2020 Respondent No.2 already admitted that 3,750 shares belonging to notified entities were lying under the same folio in which 1,86,040 shares were kept by the company. The Applicant apprehends that there could be further attached shares which may be forming part of the above 2 folios and the company had an obligation to provide the necessary details after having hosted the data on its website regarding transfer of shares and dividends into IEPF.

xxxv) That on 04.09.2021 a letter was addressed by Applicant to Respondent No.2 narrating the facts regarding its failure in disclosing the facts and evidence regarding the claim made by benami shareholders for recovering their shares from IEPF and a

copy of the same is enclosed at Exhibit- “MM” A grievance was made that Respondent No.2 was canvassing the legal interest of the benami shareholders and resisting the attachment and recovery and handing over of the attached properties which had made the company liable for making good the subject shares with accruals thereon. Attention was drawn to the letter of Custodian addressed to Respondent No.2 on 19.05.2021 and the reply given by it on 23.06.2021.

xxxvi) That on 08.09.2021 Respondent No.2 replied to Applicant's letter dated 04.09.2021, a copy of which is enclosed at Exhibit- “NN” Respondent No.2 denied its obligation to make available the documents as they were received in confidence and the company once again asked for copy of order from this Hon'ble Court. The company stated that Hon'ble Court had only declared 20,270 shares as benami and forwarded a copy of the letter to Custodian, IEPF and Kalpana Jobalia.

xxxvii) That on 16.09.2021 a letter was addressed by the Applicant to the Custodian with a copy to Respondent No.2 in regard to delayed payment of dividend of Rs.5,64,000/- on the shareholdings of Shri Harshad Shantilal Mehta under Folio No.HML0124720 for the period 2013-14 to 2016-17 and a copy of this letter is enclosed at Exhibit- “OO” It was also pointed out that the company had transferred the dividend for 4 years of an amount of Rs.7,48,000/- covering 2017-18 to 2020-21 with IEPF in gross violation of order passed by this Hon'ble Court on 18.08.2016 in MA 24 of 2016. A grievance was also made that the Custodian despite having made



the commitment had failed to devise a system of monitoring and timely collection of accruals on the attached shares which had also been a root cause for several transfer of shares and dividends to the Government of India and IEPF.

- xxxviii) That on 28.09.2021 Respondent No.2 replied to the letter of the Applicant dated 16.09.2021 regarding unpaid dividend in the case of Shri Harshad Shantilal Mehta and a copy of the same is enclosed at Exhibit- “PP” The company denied its liability to pay interest on the delayed payment of dividend and defended its action which are patently illegal as it has disregarded the express provisions of the Torts Act, a special statute containing non-obstante clauses and its overriding nature on all other law.
- xxxix) That on 30.09.2021 Applicant addressed a letter to the Custodian in continuation of letter dated 04.09.2021 and a copy of the same is enclosed at Exhibit- “QQ” It was urged that it is the statutory duty of the Custodian to recover the attached assets and he had already set a number of precedents in this regard. Since the attached shares and accruals have been transferred into IEPF the Custodian had the obligation to take steps for recovery of the same. It was pointed out that despite addressing 7 letters starting from 30.09.2020 the Custodian had failed to take any action for recovery of 36,295 benami shares. The Custodian was once again called upon to recover the attached property.

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35. The Applicant states that Respondent Nos. 5 to 9 have been waiting for past several years to usurp the benami shareholdings of the Mehtas after

ensuring by waiting to see if they get traced and recovered failing which they can usurp the same. In support of her contentions the Applicant states:

- (a) That Respondent Nos.5 to 7 have already been declared by this Hon'ble Court as benami shareholders of Mehtas in several companies and they have handed over the shares to late Shri Harshad Mehta in several companies which in turn were disclosed and handed over by him to the Custodian after this Hon'ble Court declared the same as attached property. Thus large quantity of benami shares already stand recovered from these Respondents.
- (b) That Respondent Nos. 5 to 7 has never contested declaration of their names and the shares held by them as benami shareholdings of Mehtas in past 28 years even after their names were published in media as benami shareholders of Shri Harshad Mehta which is liable to be treated as their admission of the fact that they have lent their names and addresses for registration of attached shares in their names and now they are estopped from contesting their benami shareholdings in Hero MotoCorp Ltd.
- (c) That Shri Harshad Mehta in his affidavit dated 25.02.1994 filed in MA 194 of 1993 and MA 53 of 1994 has already disclosed 800 benami shares of Hero MotoCorp Ltd. standing registered in the name of Nilesh D Jobalia which were handed over to the Custodian and the same already stands recovered and a copy of the said affidavit with the relevant page is enclosed at Exhibit- "RR" It can be seen that 750 shares were standing registered in Folio No.136971 and 50 were standing registered in Folio No.H136971. Thus even Hero MotoCorp is aware about the benami shareholdings of one of

*The affidavit  
being large  
would be  
produced  
in some  
time*



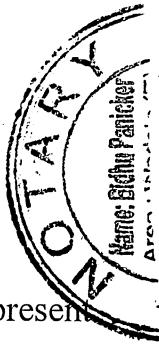
the Jobalia's in their company and would have certainly seen the Public Notice which came to be issued under the orders of this Hon'ble Court declaring the names of all the other Jobalias as benami shareholders but yet it is acting as an adversary in my efforts to recover the attached property.

- (d) That the Jobalias have never sought any certification of benami shares in any of the companies identified to be standing registered in their names as per list disclosed earlier since they know that they had lent their names for registration of shares in their names and they had never purchased the subject shares. Even the applications filed by the Income Tax department joining the benami shareholders have been returned in most cases as per the affidavits filed by the Assessing Officer (AO).
- (e) That during past more than two decades Jobalias have also not taken steps for recovery of the subject shares of Hero MotoCorp or dividends paid on them nor have they got the physical shares in their possession dematerialized and the Jobalias have also allowed the shares and dividends to be deposited by Hero MotoCorp with the IEPF as unclaimed shares and dividends. Thus until recently they have not treated the subject shares and dividends as their own property. The neglect and complete non-action by Jobalias for more than 2 decades itself establishes that the subject shares are benami shareholdings of Shri Harshad Mehta.
- (f) That the Applicant has addressed letters to Respondent Nos. 5 to 7 laying the claim on the subject shares but the same have not been replied to by them till date.

(g) That all the benami shares including Hero MotoCorp have come to be registered in the name of Jobalias around the same period.

**36.** The Applicant is praying for recovery of all shares which were transferred by Hero MotoCorp into IEPF together with all the accruals thereon since they constitute attached assets belonging to Mehtas. The Applicant is also seeking facts and evidence in regard to release of certain shares and accruals by Respondent Nos.2, 3 and 4 out of IEPF to the Jobalias to enable recovery of the same from them. The Applicant states that if any of the Jobalias have sold the attached shares of Hero MotoCorp then to that extent the Applicant seeks the relief against them to make good the same and the dividends with interest on it at not less than 18% p.a. leviable for the period the attached dividends have been enjoyed by any of the Jobalias. The Applicant is seeking relief against Respondent Nos.2 to 4 to disclose complete particulars in regard to 2,04,790 shares of Hero MotoCorp transferred to IEPF under consolidated folios as shares in abeyance so that the attached shares transferred under this category can be traced and recovered by the Applicant. The Applicant also seeks a relief against Respondent No.4 to disclose all facts relating to transfer of attached shares and accruals belonging to Mehtas including in the form of benami shares since a number of cases have already emerged and this Hon'ble Court has already passed an order in regard to such cases being order dated 18.08.2016 passed in MA 24 of 2016 so that the same is fully complied with and all the attached shares and accruals are forthwith recovered from IEPF and transferred to the Custodian on behalf of the Applicant and her family members.

**37.** The Applicant has filed the present application as this Hon'ble Court has exclusive Civil jurisdiction u/s 9A of the Torts Act. The Applicant has not filed



any other application seeking similar reliefs as are prayed for in the present application. The Applicant has filed the present application since the Custodian is not discharging his statutory obligations of recovering the attached assets and of making compliance with the orders of this Hon'ble Court wherein the Custodian is already directed to trace and recover benami shares wherever they remain pending to be recovered. The Applicant states that due to failure of the Custodian in acting in a timely manner third parties holding attached properties are taking advantage of the same and it is apprehended that such third parties having dishonestly withheld the attached property would now sell the same and divert the sale proceeds thereby jeopardizing the recovery attached properties from them. The Applicant has acted diligently despite the fact that she is a widow, a housewife and also a notified person suffering acute legal disability. The Applicant has been taking steps to trace and recover attached properties running into hundreds of crores even covering those cases where this Hon'ble Court had already directed the Custodian to do so only because he is deliberately not making compliance with these orders. The Custodian wants to somehow falsely claim that the liabilities of late Shri Harshad Mehta are greater than his assets so that he can then persecute all his family members. The Applicant states that on one hand the Custodian is not recovering the attached assets and on the other hand opposing tooth and nail the recovery being done by the Applicant and her family members as he has been opposing tooth and nail release of any monies required by Mehtas to contest false claims on them and to recover their attached properties from third parties. The Custodian has been opposing release of monies even though Mehtas have already performed and brought down the false claims by several thousands of crores, that refunds of several thousand crores are already due because of their efforts, that refunds of Rs.814.33 Crores are already secured from the I.T.

department and despite the fact that they have recovered till date attached properties of more than Rs.2000 Crores. As against the above, the amount sought to meet the legitimate and actual expenses constitutes only less than even .05% of the actual gains already secured and this conduct of the Custodian conclusively establishes that he has been acting *mala fide* against the Applicant and her family members.

**38.** The Applicant states that in terms of Article 12 of the Constitution of India the Custodian falls in the definition of “**State**” and is expected to act fairly, reasonably and legally. The Applicant states that in case of other notified entities the Custodian has been causing recovery of even small amounts running into few lakhs but in the case of the Applicant and her family members the Custodian has not recovered attached assets running into a few thousand crores and in support of the above contention a chart is enclosed at Exhibit-“SS” giving particulars of recoveries made by the Custodian on behalf of other notified entities. The Custodian is therefore patently discriminating against the Applicant and her family members and in this manner even violating the fundamental rights of Mehtas guaranteed to them under Articles 14, 19 and 21 of the Constitution of India. The Applicant states that in the present case, under his letter dated 05.07.2021 cited earlier, the Custodian asked the Applicant to cause the recovery of attached benami shares even after seeking disclosure of facts and evidence in their regard from Hero MotoCorp under the same letter. That admittedly, till date Hero MotoCorp has not provided the above facts and details sought by the Custodian from them but yet the Custodian has abandoned even the enquiry initiated by him in the matter.

**39.** The Applicant states that numerous proceedings have already been initiated by her before this Hon’ble Court during past 15 years starting from



2006 being MA 107 to 113 of 2007, MA 13 and 14 of 2011 and MA 8 of 2016 in which applications the deliberate failures of the Custodian to comply with the orders of this Hon'ble Court and his failure in causing recovery of attached property have been placed before this Hon'ble Court. The Applicant states that Custodian filed false and misleading affidavits in MA 13 and 14 of 2011 stating that he has complied with all the orders and recovered all the assets but his explanation was rejected by this Hon'ble Court under an order dated 04.01.2013, a copy of which is enclosed at Exhibit- "TT" It can be seen from the order that the Custodian was expressly directed by this Hon'ble Court to comply with all its past orders and cause recovery of shares of Rs.700 Crores. The Custodian was also directed to take into consideration the suggestions that may be given to it by the notified entities in matter of recovery of attached shares and accruals and yet the Custodian has been acting as an adversary in all matters relating to recovery of attached assets initiated by the Applicant. In fact, this Hon'ble Court constituted a committee of 3 executives from Custodian's office to make compliance with all the pending orders. The Applicant states that a period of more than 10 years have elapsed from the passing of the above order but yet recovery of attached properties is pending in several cases.

**40.** The Applicant states that even in the proceedings in MA 8 of 2016 filed by Mehtas for seeking compliance by the Custodian, false and misleading affidavits were filed and this Hon'ble Court passed adverse orders against the Custodian. That the said application was withdrawn only after the Custodian gave an undertaking to this Hon'ble Court that he would make compliance with all the orders and also cause recovery of each and every attached property wherever it remains to be recovered but even this undertaking has not been complied with by the Custodian for past 6 years. The Applicant craves leave

of this Hon'ble Court to refer to and rely upon all the aforecited proceedings filed by the Applicant before this Hon'ble Court when produced.

**41.** The Applicant states that while assets are not being recovered but the Custodian somehow has all the resources to persecute Mehtas by taking several high-handed, patently illegal and unjustified coercive measures. The Custodian filed MP 41 of 1999 as a first Petition seeking sale of the only residential flats of Mehta family to bring them on the road. Similarly, Custodian also filed a Petition to seek sale of all the office premises to uproot the Mehta family and to paralyze their organization so that they are unable to defend themselves. The said MP 41 of 1999 was relentlessly pursued by the Custodian for 18 years by presenting false assets and liabilities picture and canvassing Harshad Mehta Group theory. The Applicant states that therefore a grievance was made even before the Hon'ble Supreme Court in the third round that before the residential flats are sold the Custodian should cause recovery of attached properties of thousands of crores and Mehtas may be allowed to contest false claims on them. The Applicant states that Hon'ble Supreme Court granted reliefs under its orders dated 02.05.2017 and 08.05.2017 in CA 6326 of 2010 and also directed Custodian to recover the attached properties from third parties and copies of above orders are enclosed at Exhibit- "UU" and Exhibit- "VV" respectively. The Applicant states that even the above directions given by Hon'ble Supreme Court are yet to be complied with by the Custodian as vast recovery of attached assets still remain pending. The Applicant states that since directions have been given to the Custodian under numerous orders passed by this Hon'ble Court and Hon'ble Supreme Court to recover the attached assets from third parties it is not in fitness of things for the Custodian to ask the Applicant to recover the subject benami shares.



42. The Applicant states that the present application has been filed by her in time from the time she discovered the facts of pending recovery of benami shares of Hero MotoCorp and not only she addressed several letters to all concerned but she also called upon the Custodian to take immediate steps since it is his statutory duty to recover the attached property. The Applicant states that yet from the date of her knowledge the present application has been filed by her in time which is stated without prejudice to the facts that the period of limitation cannot run against the Applicant in the present case but can run only against the Custodian.

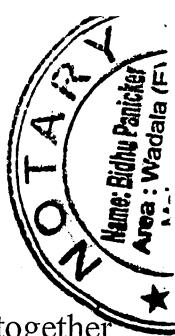
43. The Applicant without prejudice to above states that in terms of the law laid down by Hon'ble Supreme Court in the case of L.S. Synthetics Vs Fairgrowth Financial Services Ltd. reported as **(2004) 11 SCC 456** limitation is not applicable in regard to recovery of attached assets. The Applicant also relies upon the said judgment to humbly pray to this Hon'ble Court to cause recovery of the attached shares of Hero MotoCorp with accruals thereon in the interest of justice and as per the prayers made by the Applicant in this regard.

44. The Applicant has also made a claim against Respondent No.2 for recovery of the benami shares and accruals thereon which were released by it after the Applicant addressed a letter on 27.11.2020 which is forming part of Exhibit AA of the present application. The Applicant sought recovery of 36,295 attached benami shares with accruals thereon but disregarding the claim of the Applicant Respondent No.2 chose to consciously deal with the attached shares and accruals in violation of orders passed by this Hon'ble Court in regard to benami shares as also provisions of the Torts Act in particular Sec.3(3), 3(4), 9A and 13 of the Torts Act. The Applicant states that this Hon'ble Court has already laid down the law that if any party deals with any

attached property under the Torts Act without seeking prior permission of this Hon'ble Court then such transactions are *void ab initio* and such party has to make good the attached property and monies together with interest. The Applicant states that despite put to notice, Respondent No.2 has consciously chosen to commit illegality and violate the orders of this Hon'ble Court and the above provisions of the Torts Act and thereby has incurred liability to make good such attached shares and accruals with interest from the time it has been put to notice by the Applicant under her letter dated 27.11.2020 and further letters addressed thereafter.

**45.** The Applicant states that in view of what is stated above, the Applicant humbly prays to this Hon'ble Court to be pleased to:

- a. Direct Respondent Nos.2, 3 and 4 to transfer all the shares and accruals held by Respondent Nos.5 to <sup>g.1</sup> Respondent No.2 company to the Custodian for and on behalf of the estate of late Shri Harshad Mehta by declaring them to be his attached property u/s 3(3) of the Torts Act.
- b. ~~Direct Respondent Nos.2, 3 and 4 to place before this Hon'ble Court in the present proceedings all the facts and evidence in regard to the shares and accruals of Respondent No.2 company as claimed and released to Respondent Nos.5 to 9.~~
- c. ~~Direct Respondent Nos.2, 3 and 4 to place on record of this Hon'ble Court in the present proceedings all the facts and evidence in regard to the shares and accruals of Respondent No.2 company transferred to Respondent No.4 and forming part of 2,04,790 shares stated to be kept under the "abeyance category".~~
- d. Direct Respondent Nos.5 to <sup>g.1</sup> handover to the Custodian on behalf of late Shri Harshad Mehta all benami shares and accruals received by them



in all the companies and including in Respondent No.2 company together with interest leviable on them @ 18% p.a. for enjoying any attached dividends payable from the date of receipt of such dividends till its payment to the Custodian.

- Muz Jhuz*
- Muz* ~~a. Direct Respondent No.5 to place on record of this Hon'ble Court in the present proceedings all the facts and evidence relating to the applications filed by him for seeking release of shares and dividends in Respondent No.2 company and the manner in which he has kept / deployed the shares and dividends released to him by Respondent Nos. 2 to 4.~~
  - Muz* ~~b. Direct Respondent No.2 to make good the attached shares and accruals of its company released by it to Respondent Nos.5 to <sup>g.1</sup> together with interest @ 18% p.a. on the dividends paid by it after the Applicant addressed the letter to it on 27.11.2020 annexed at Exhibit AA.~~
  - Muz* ~~c. For such other and further reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.~~

### BEFORE ME

Solemnly affirmed at Mumbai  
dated this 27<sup>th</sup> February 2023

**BIDHU PANICKER** H. Mehta  
B.Com., LL.B. (Jyoti H Mehta)  
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.

*Muz*  
**(Mr. Ashwin S Mehta)**

Advocate Applicant

32, Madhuli, Dr. A B Road,  
Worli, Mumbai-400 018.

Code No. I 22110, Regd. OS No. 17189



VERIFICATION

I, Smt Jyoti H Mehta, Hindu, Adult, Indian Inhabitant, residing at 32, Madhuli, Dr. Annie Besant Road, Worli, Mumbai 400 018, do hereby declare that what is stated in the foregoing Affidavit in reply in Para Nos. 1 to 45 are true to my own knowledge.

Solemnly declared at Mumbai )  
Dated this 27 February 2023 )

*J.H.Mehta*  
Before me,

*Worli*  
**(Mr. Ashwin S Mehta)**

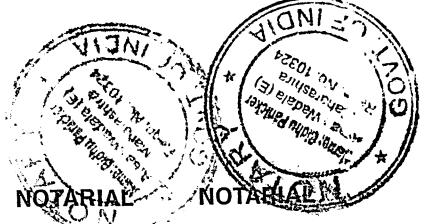
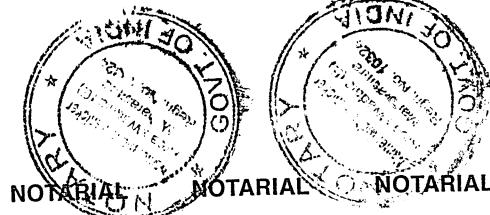
Advocate for Applicant  
32, Madhuli, Dr. A B Road,  
Worli, Mumbai-400 018.  
Code No. I 22110, Regd. OS No. 17189  
Mobile 9819917118. Email:asm55@yahoo.com

**BEFORE ME**

*B.Sidhu*  
**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.

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No. 85490044746  
Notary Reg. Sr. No. 1768/2023  
In Book No. II

27 FEB 2023



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

**MISC. APPLICATION NO. 10 OF 2023**

Smt Jyoti H Mehta )  
 As sole legal heir of late Harshad S Mehta residing )  
 at 32, Madhuli, Dr. Annie Besant Road, Worli, )  
 Mumbai 400 018. ) ...APPLICANT

Versus

1. The Custodian having their Office at )  
     221 Nariman Bhavan, 10th Floor, )  
     Nariman Point, Mumbai 400 021. )
2. Hero MotoCorp Ltd. having its office )  
     at the Grand Plaza, Plot No.2, )  
     Nelson Mandela Road, Vasant Kunj )  
     Phase II, New Delhi – 110 070. )
3. KFin Technologies Pvt. Ltd. )  
     having its office at Selenium, Tower B, )  
     Plot Nos.31 and 32, Financial District, )  
     Nanakramguda, Serlingampally Mandal, )  
     Hyderabad 500 032. )
4. Chairman, Investor Education & Protection )  
     Fund (IEPF) having its office at Ground )  
     Floor, Jeevan Vihar Building, 3, Sansad )

Marg, New Delhi – 110 001. )

5. Nirav D. Jobalia residing at C/o. Bella )  
Electronics, 5/6 Sevashram Shopping )  
Centre, 5 Bati Bharuch 392001 )

*Muz* 6. Late Nilesh D. Jobalia )

6.1. Alpa N. Jobalia )  
6.2. Aditi N Jobalia )

*6*  
Respondents no. ~~6.1 & 6.2~~ is represented by )

*6.1 & 6.2*  
Legal Heirs of respondents No. 6 )  
residing at C/o. Bella )  
Electronics, S/6 Sevashram Shopping )  
Centre, 5 Bati Bharuch 392001 )

*Muz* 7. Alpa N. Jobalia )

residing at C/o. Bella )  
Electronics, S/6 Sevashram Shopping )  
Centre, 5 Bati Bharuch 392001 )

*Muz* 8. Late Dalichand Jhoothalal Jobalia )

8.1. Shri Nirav D Jobalia )  
Respondents no. ~~8.1~~ is represented by *Sole* )

Legal Heir of respondent No. 8.1 )  
residing at Flat No.B-801, Arihant )  
Avenue-C, Jamnagar Road, )  
Ghanteswar, Rajkot, Gujarat 360006. )

*Muz* 9. Late Smitaben Dalichand Jobalia )

9.1. Shri Nirav D Jobalia )  
Respondents no. ~~9.1~~ is represented by *Sole* )

Legal Heir of respondent No. 9.1 )  
residing at Flat No.B-801, Arihant )  
Avenue-C, Jamnagar Road, )  
Ghanteswar, Rajkot, Gujarat 360006. )

) ... RESPONDENTS

V A K A L A T N A M A

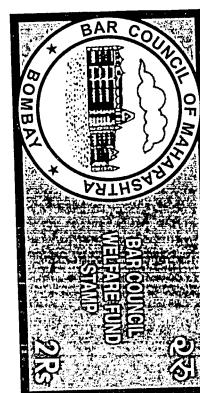
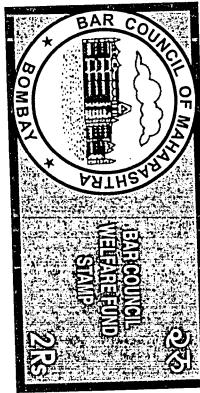
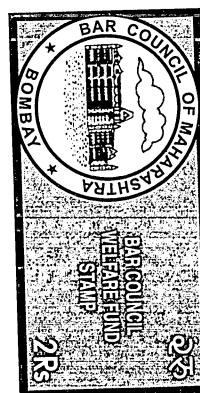
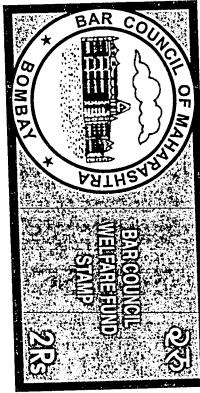
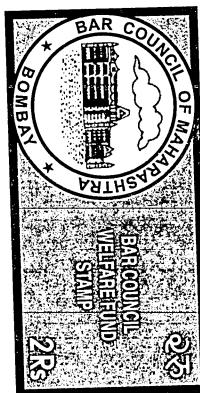
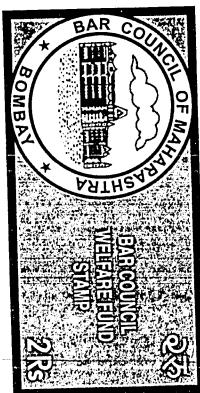
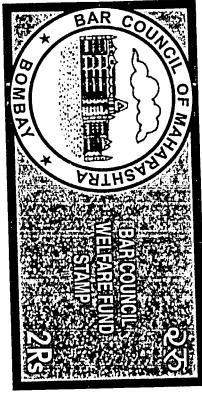
I, Smt Jyoti Mehta, Applicant in the above matter do hereby appoint Shri Ashwin Mehta, Advocate, High Court to act, appear and plead on my behalf in the above matter.

In witness whereof I have set my hands to this writing on this 27<sup>th</sup> day of February 2023.

J H Mehta  
(Jyoti H. Mehta)  
Applicant

  
**(Mr. Ashwin S Mehta)**

Advocate for Applicant  
32, Madhuli, Dr. A B Road,  
Worli, Mumbai-400 018.  
Code No. I 22110, Regd. OS No. 17189  
Mobile 9819917118. Email:asm55@yahoo.com



**BEFORE THE SPECIAL COURT (TRIAL OF  
OFFENCES RELATING TO TRANSACTIONS  
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**MISC. APPLICATION NO. 10 OF 2023**

Smt Jyoti H. Mehta ... Applicant

Vs

Custodian & Ors. ... Respondents

**MEMORANDUM OF REGISTERED ADDRESS**

**(Mr. Ashwin S Mehta)**

Advocate for Applicant

32, Madhuli, Dr. A B Road,

Worli, Mumbai-400 018.

Code No. I 22110, Regd. OS No. 17189

Mobile 9819917118. Email:asm55@yahoo.com

Advocate For Petitioner / Respondent / Applicant



**BEFORE THE SPECIAL COURT (TRIAL OF  
OFFENCES RELATING TO TRANSACTIONS  
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**MISC. APPLICATION NO. 10 OF 2023**

Smt Jyoti H. Mehta ... Applicant

Vs

Custodian & Ors. ... Respondents

**LIST OF DOCUMENTS ON WHICH THE APPLICANT WILL RELY**

1. Exhibits annexed to the application
2. Other relevant correspondence prior to the application.



Advocate For Petitioner / Respondent / Applicant



रोजस्ट्री सं. दौ.एक.-33004/92



2/17/92



# भारत का राजपत्र

## The Gazette of India

असाधारण  
EXTRAORDINARY

भाग III—खण्ड 4  
PART III—Section 4

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 23]

नई दिल्ली, सोमवार, जून 8, 1992/ज्येष्ठ 18, 1914

No. 23]

NEW DELHI, MONDAY, JUNE 8, 1992/JYAISTHA 18, 1914

इस भाग में भिन्न पाँड संख्या वाली हुई जिससे एक यह अलग संक्षेपन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

विशेष न्यायालय (प्रतिभूति संव्यवहार संबंधी अपराध विचारण) अध्यादेश,  
1992 की धारा 3(1) के अन्तर्गत स्थापित अधिकारक का कार्यालय  
अधिकृतमन

नई दिल्ली, 8 जून, 1992

सं. प्रभिरक्षक/1/92—भारत सरकार, वित्त मंत्रालय (बैंकिंग  
प्रमाण) द्वारा आरी तारीख 8 जून, 1992 की अधिसूचना सं. 6/2/92-  
खत(ii) द्वारा मैं, ए. के. मेनन, विशेष न्यायालय (प्रतिभूति संव्यवहार  
संबंधी अपराध विचारण) अध्यादेश 1992 भी धारा 3(2) के अन्तर्गत  
अधिकारक नियुक्त किया गया हूँ। मैं, निम्नलिखित नामों को, उक्त  
अध्यादेश की धारा 3(2) के द्वारा मुझे दी गई शक्तियों के प्रदर्शन  
मुद्रे दी गई जामानार्थी के आधार पर, यह सुनिश्चित कर लेने के पश्चात्  
कि निम्नलिखित अधिकृत प्रतिवेदन, 1991 से पश्चात् इस उक्त अध्यादेश आरी  
हूँते की तारीख को और उसके पहले, प्रतिभूतियों के संव्यवहार से संबंधित  
प्राप्तालय में समिलित पाये गये हैं, भारत के राजपत्र में अधिसूचित  
करने का आदेश देता हूँ:—

1. मैसर्ज हर्षद एस. मेहता,
2. मैसर्ज प्रियंका एस. मेहता,

3. मैसर्ज जे. एच. मेहता,
4. श्री हर्षद एस. मेहता, पुत्र श्री शान्तिनाल मेहता
5. श्री अश्विन एस. मेहता
6. श्री हितेश एस. मेहता
7. श्री चृष्णीर एस. मेहता
8. श्रीमति ज्योति एच. मेहता, अम. म. 4 की पत्नी
9. श्रीमति दीपिका प. मेहता, अम. म. 5 की पत्नी
10. श्रीमति प्रसिद्धा एच. मेहता, अम. म. 6 की पत्नी
11. हर्षक एस. मेहता, हिन्दू संयुक्त परिवार
12. प्रसिद्ध एस. मेहता, हिन्दू संयुक्त परिवार
13. हितेश एस. मेहता, हिन्दू संयुक्त परिवार
14. मेसर्ज सनराईज एंटरप्राइज
15. श्रोमोर रिसर्च एण्ड एरेंट्रेज मैनेजमेंट टि.
16. श्रोमोर लीजिंग एण्ड होटेल्स प्रा. टि.
17. श्रोमोर एक्सपोर्ट प्रा. टि.
18. श्रातूर होल्डिंग्स प्रा. टि.
19. हर्ष हस्टेट्स प्रा. टि.

20. एमीनेंट होल्डिंग्स प्रा. लि.  
 21. ऑनिट इंवेस्ट्मेंट प्रा. लि.  
 22. फारक्स होल्डिंग्स प्रा. लि.  
 23. ट्रैफिक होल्डिंग्स प्रा. लि.  
 24. बेल्टेट होल्डिंग्स प्रा. लि.  
 25. एमीनेंट होल्डिंग्स प्रा. लि.  
 26. परस्थी होल्डिंग्स प्रा. लि.  
 27. जेस्ट होल्डिंग्स प्रा. लि.  
 28. टोपाज होल्डिंग्स प्रा. लि.  
 29. डिवाइस होल्डिंग्स प्रा. लि.

उपरोक्त के पासे, मुझे दी गई जानकारी के प्रत्युत्तर निम्न हैः—

**आफिस:** 1. लेस्टिन चैम्बर्स,  
                 4 थी मंजिल,  
                 दलाल स्ट्रीट, फोर्ट,  
                 मुम्बई-400023  
 2. 1205/6, मेकर चैम्बर्स 5,  
                 नरीमन प्लाईट,  
                 मुम्बई-400 021

**प्रावास:** भाष्टुली,  
                 एसी बेसेन्ट रोड,  
                 वर्दी, मुम्बई-400 025

**उठ:** श्री अशय घरमसिंह मराठा  
 (श्री घरमसिंह नोरसाम के पुत्र)  
 पता : 1. टॉबल नं. 1, पृष्ठ पारा  
                 फायां विलिंग, भाऊण्ड का  
                 फोर्ट, मुम्बई, मुम्बई-400 023  
 2. रिजेन्ट चैम्बर्स  
                 2 री मंजिल  
                 208, अमनालाल भजाऊ भार्ग,  
                 नरीमन प्लाईट, मुम्बई-400 020

**प्रावास:** 186, आरकेश्वर रोड  
                 भासाधार हिल्ले,  
                 मुम्बई-400 006

**उठ:** श्री हितेन प्रसन खदाल  
 (श्री प्रसन जयन्तीलाल दशाल के पुत्र)

पता : आफिस: कमरानं 11/2,  
                 आम्बे म्यूचुअल विलिंग,  
                 19/21, हमाम स्ट्रीट, मुम्बई

**प्रावास:** देव छाया,  
                 7 वीरोड़, मात्ताकुज (पूर्व)  
                 मुम्बई.

ए. के. मेनन, अधिकारक

OFFICE OF THE CUSTODIAN SET UP UNDER SECTION 3(1) OF THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES), ORDINANCE, 1992

#### NOTIFICATION

New Delhi, the 8th June, 1992

No. Custodian/1/92.—I, A.K. Menon, have been appointed Custodian under Section 3(1) of the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992 vide Govt. of India Ministry of Finance, Banking Division notification No. 6/2/92/Vig.(ii) dated 6-6-1992.

Under the functions entrusted to me vide Section 3(2) of the above mentioned Ordinance, having been satisfied on information received that the below-mentioned persons have been involved in offences relating to transactions in securities after the 1st day of April, 1991 and on and before the promulgation of this Ordinance, I hereby order that their names shall be notified in the Official gazette as follows:

1. M/s. Harshad S. Mehta, Proprietary concern.
2. M/s. Ashwin S. Mehta, Proprietary concern.
3. M/s. J.H. Mehta, Proprietary concern.
4. Mr. Harshad S. Mehta, son of Shantilal Mehta
5. Mr. Ashwin S. Mehta.
6. Mr. Hitesh S. Mehta.
7. Mr. Sudhir S. Mehta.
8. Mrs. Jyothi H. Mehta, wife of Sr. No. 4.
9. Mrs. Deepika A. Mehta, wife of Sr. No. 5.
10. Mrs. Pramila H. Mehta, wife of Sr. No. 6.
11. Harshad S. Mehta, H.U.F.
12. Ashwin S. Mehta, H.U.F.
13. Hitesh S. Mehta, H.U.F.
14. M/s. Sunrise Enterprises.
15. Growmore Research & Assets Management Ltd.
16. Growmore Leasing & Investment Pvt. Ltd.
17. Growmore Exports Pvt. Ltd.
18. Aatur Holdings Pvt. Ltd.,
19. Harsh Estates Pvt. Ltd.,
20. Cascade Holding Pvt. Ltd.,
21. Orion Travels Pvt. Ltd.,
22. Fortune Holdings Pvt. Ltd.,
23. Treasure Holding Pvt. Ltd.,
24. Velvet Holding Pvt. Ltd.,
25. Eminent Holding Pvt. Ltd.,
26. Pallavi Holding Pvt. Ltd.,
27. Zest Holding Pvt. Ltd.,
28. Topaz Holding Pvt. Ltd.,
29. Divine Holding Pvt. Ltd.,

Addresses of the above, as communicated to me, are as under :

Office: 1. Lentin Chambers,  
                 4th Floor,  
                 Dalal Street,  
                 Fort, Bombay-400 023.

2. 1205/6, Maker Chambers V,  
Nariman Point,  
Bombay-400021

**Residence:** 186, Walkeshwar Road,  
Malabar Hill,  
Bombay-400 006

**Residence:** 1. Madhuli,  
Annie Besant Road,  
Worli,  
Bombay-400 025

81. Shri Hiten Prasan Dalal,  
(Son of Shri Prasan Jayantilal Dalal)

**Address:**

30. Shri Abhay Dharamsinh Narottam  
(Son of Shri Dharamsinh Narottam)

**Address:** 1. Table No. 1, Rear Side,  
Cama Building, Ground Floor,  
Dalal Street,  
Fort, Bombay-400023

**Office:** Room No. 11/2,  
Bombay Mutual Building,  
19/21, Hornam Street,  
Bombay.

2. Regent Chambers,  
2nd Floor,  
208, Jamnalal Bajaj Marg,  
Nariman Point,  
Bombay-400020

**Residence:** Dev Chhaya,  
7th Road, Santacruz (East)  
Bombay

A. K. MENON, Custodian





**ROLE, RESPONSIBILITIES, DUTIES AND FUNCTIONS OF  
CUSTODIAN.**

**(1997) 10 SCC 488**

**BOI Finance Ltd. Vs Custodian.**

**Para 11 :** At this stage, it will be relevant to see as to what is the position of Custodian.

**Para 12 :** Section 4 of the Act gives the Custodian the power to cancel such contracts or agreements which have been entered into fraudulently. That apart, he is merely a custodian of the properties of the notified persons which stand attached under the Act and such properties are to be dealt with by him in such a manner as the Special Court may direct.

**Para 13 :** The Act shows that the Custodian has three main functions to perform. Firstly, he has the authority to notify a person under Section 3(2) who has been involved in any offence relating to transactions in securities during the period 1.4.1991 to 6.6.1992. Secondly, he has been given the authority by Section 4 to cancel contracts or agreements relating to the properties of the notified persons which, in his opinion, have been entered into fraudulently or for the purpose of defeating the provisions of the Act. Lastly, he is required to deal with properties in the manner as directed by the Special Court. To put it simply the Custodian is required to assist in the attachment of the notified person's property and to manage the same thereafter. The properties of the notified persons, whether attached or not, do not at any point of time, vest in him. He is

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*[Signature]*  
Advocate For P. S. Chidambaram / Alphcart

merely a Custodian and his position is not like that of a Receiver under the Civil Procedure Code (Section 94 Order 44) or an Official Receiver under the Provincial Insolvency Act or Official Assignee under the Presidency Insolvency Act. There is no vesting of the attached properties of the notified persons in the Custodian. This is in contrast with Section 28(2) of the Provincial Insolvency Act and Section 17 of the Presidency Insolvency Act. There is the vesting in the Official Receiver or Official Assignee. He is also not in a position of an Official Liquidator under the Companies Act in whom not only the property vests but who is also in control thereof. This being so there is considerable force in the contention of the counsel of the appellant that, except for the power exercisable under Section 4, the position of the Custodian is the same as that of the notified person himself.

**(1998) 5 SCC 1**

**Harshad Shantilal Mehta v/s Custodian & Ors**

**Para 5(5) :** The Custodian has, therefore, the power to notify the names of persons involved in any offence relating to transactions in securities after 1.4.1991 and on or before 6.6.1992. On such notification all properties of the notified person stand attached. Under Section 4, the Custodian is given the power, if he is satisfied that any contract or agreement entered into at any time after 1.4.1991 and on or before 6.6.1992 in relation to any property of the person notified has been entered into fraudulently or to defeat the provisions of this Act, to cancel such contract or agreement. On such cancellation the property shall stand attached. Both Sections 3

and 4, therefore, deal with the Custodian's powers relating to transactions in securities entered into during a very specific period, namely, 1.4.1991 and on or before 6.6.1992.

**Para 12 :** The only right which the Custodian has, in respect of the rights of third parties in such properties, is conferred by Section 4 under which, if the Custodian is satisfied that any contract or agreement which was entered into by the notified party within the "statutory period" in relation to an attached property, is fraudulent or entered into for the purpose of defeating the provisions of the Special Courts Act, he can cancel such contract or agreement. There is no other provision under the Special Court Act which affects the existing rights of a third party on the date of attachment, in the property attached. The attached property also does not vest in the Custodian. In this regard, the position of a Custodian is different from that of an official liquidator of a company in winding up. Had the Act provided for the extinguishment of any subsisting rights of other persons in the attached property, the Act could well have been considered as arbitrary or unconstitutional (vide C B Gautam V. Union of India).

**(2004) 8 SCC 355**

**Canbank Financial Services Ltd v/s Custodian & Ors.**

**Para 69 :** The Custodian has three main functions to perform:

- i) He has the authority to notify a person in the Official Gazette, on being satisfied on information received that he

has been involved in any offence relating to transactions in securities during the period 1.4.1991 to 6.6.1992.

- ii) He has the authority to cancel any contract or agreement relating to the properties of the notified persons which, in his opinion, has been entered into fraudulently or for the purpose of defeating the provisions of the Act as specified in Section 4.
- iii) He is required to deal with the properties in the manner as directed by the Special Court.

**Para 70 :** The properties of a notified person do not vest in the Custodian. He is not a Receiver within the meaning of the provisions of the Code of Civil Procedure or an Official Receiver or an Official Assignee under the insolvency laws. He is also not an Official Liquidator under the Companies Act. His right is the same as that of the notified person. Only when the notified person has a subsisting right in a property, the same being subject to statutory attachment, can the Custodian approach the Special Court for an appropriate direction in relation thereto. In other words, the Custodian is not permitted to deal with any property which did not belong to the notified person on the relevant date.(Emphasis supplied)

**Para 80 :** The said decision is also an authority for the proposition that the position of the Custodian is same as that of the notified person himself. If by any law Respondent 2 was not precluded from transferring the shares held by him, the transfer thereof in favour of the appellants was legal. The transaction

took place on 6.2.1992 i.e. much prior to 6.6.1992 when Respondent 2 became a notified person. If on or after 6.2.1992, Respondent 2 had no interest in the CANCIGOs, the same could not have been the subject matter of attachment of the custody. The Custodian could attach the property only when the right, title and interest thereto remain in Respondent 2 and not otherwise.

**(2004) 11 SCC 456**

**L S Synthetics Ltd Vs Fairgrowth Financial Services Ltd & Ors.**

**Para 16 :** In terms of the provisions of the said Act, the Custodian has three functions to perform.

- i) To notify a person in the Official Gazette, on being satisfied on information received that he has been involved in any offence relating to transactions in securities during the period specified therefor.
- ii) He has the authority to cancel any contract or agreement relating to the properties of the notified persons which, in his opinion, has been entered into fraudulently or for the purpose of defeating the provisions of the Act as specified in Section 4.
- iii) He is required to deal with the properties in the manner as directed by the Special Court.

**(2004) 12 SCC 570**

**Asea Brown Boveri Ltd Vs. Indl Finance Corp'n of India.**

**Para 20 :** However, so far as the Act is concerned, we have to go by the provisions of the Act, keeping in view the real nature of the transaction ascertaining the real intention of the contracting parties in the light of the facts and circumstances of a given case. Once a party has been notified under sub-section (2) of Section 3 of the Act then under sub-section (3), notwithstanding anything contained in any other law for the time being in force with effect from the date of notification under sub-section (2), any property, movable or immovable or both belonging to notified party stands attached simultaneously with the issue of the notification and becomes liable to be dealt with by the custodian in such manner as the Special Court may direct. A person is liable to be notified by reference to transaction in securities between 1.4.1991 and 6.6.1992. Any contract or agreement entered into between 1.4.1991 and 6.6.1992, in relation to any property of the notified party is liable to be cancelled, if found to have been entered into fraudulently or to defeat the provisions of the Act. Analysing the provisions of the Act, it was held in B.O.I Finance Ltd Vs. Custodian and Others (1997) 10 SCC 488, that the custodian under the Act is required to assist in the attachment of the notified person's property and to manage the same thereof. The properties of the notified persons, whether attached or not, do not at any point of time, vest in him. He is merely a custodian and not a receiver nor is he a final liquidator so as to enjoy control over the properties. In other words, the position of the custodian is the same as that of the notified person himself. We

are, therefore, of the opinion that the custodian remains bound by the obligations incurred by the notified party itself, if not incurred fraudulently or to defeat the provisions of the Act.  
 (Emphasis supplied)

**(2012) 1 SCC 83**

**Ashwin Mehta & Anr V/s Union of India Ors.**

**Para 30 :** Section 3 of the Special Court Act relates to the appointment and functions of the Custodian. Sub-section (2) thereof clothes the Custodian with the power to notify in the official gazette, the name of a person, who has been involved in any offence relating to transactions in securities during the period as mentioned therein. Sub-sections (3) and (4) of Section 3 stipulate that with the issue of the aforesaid notification, properties, movable or immovable or both, belonging to the notified person shall stand attached, and such properties are to be dealt with by the Custodian in such manner as the Special Court may direct.

**Para 34 :** It is also clear that the Custodian has to deal with the attached properties only in such manner as the Special Court may direct. The Custodian is required to assist in the attachment of the notified person's property and to manage the same thereafter. The properties of the notified persons, whether attached or not, do not at any point of time, vest in him, unlike a Receiver under the Civil Procedure Code or an official Receiver under the Provincial Insolvency Act or official Assignee under the Presidency Insolvency Act (See : B.O.I. Finance Ltd. Vs. Custodian & Ors.13). The statute also mandates that the

Special Court shall be guided by the principles of natural justice. (Emphasis supplied)

**Para 36:** Therefore, the stand of the Custodian that inviting Apollo to make the bid was necessarily in compliance of the scheme/condition of sale, cannot be accepted inasmuch as it was for the Special Court to take such a decision at the appropriate time and not the Custodian. The Custodian could not have foreseen that the Special Court would not accept the bid of the sole bidder viz. Punjab National Bank. (Emphasis supplied)

**Para 38 :** As aforesaid, so far as issue of notification in terms of Section 3(2) is concerned, the Custodian derives his power and authority from the Special Court Act but his jurisdiction to deal with property under attachment, flows only from the orders which may be made by the Special Court constituted under the said Act. It is obligatory upon the Custodian to perform all the functions assigned to him strictly in accordance with the directions of the Special Court. In the present case, although we do not find any material on record which may suggest any malafides on the part of the Custodian yet we are convinced that by inviting Apollo to bid, vide letter dated 28th April, 2003, the Custodian did exceed the directions issued to him by the Special Court. (Emphasis supplied)

**Para 43 :** In fact, by his letter dated 29th April, 2003 addressed by the Custodian to the notified parties, including the appellants, the right of the appellants to bring better offer was

foreclosed by the Custodian, which evidently was without the permission of the Special Court. (Emphasis supplied)

**Order dated 20.02.1995 of Hon'ble Special Court in M.A No. 107 of 1993**

**Para 83:** There is no vesting of properties in the Custodian. The Custodian is neither an agent, nor a guardian, nor a manager, nor an administrator, nor a trustee of the Notified Parties. The Custodian does not become the owner of the Property, nor does he step into the shoes of a Notified Party. The Custodian is merely an officer of this Court and nothing more. He has to deal with the property as per the direction of the Court. ....”

**Para 100 :** This answers all question. To this Court it is clear that these are vital questions. These answers vitally affect bankers / financial institutions, revenue and notified parties. In the not too distant future distribution of the assets of Harshad Mehta Group and of Fairgrowth Financial Services Pvt. Ltd. is to take place. It would be advisable that these questions get settled by the Supreme Court. The Court has noticed that in all matters the Custodian, has correctly, been only placing legal positions before this Court and accepting the Judgments of this court. The Custodian being an Officer of this Court, is taking no contentious attitude. These being important questions, I direct the Custodian to file an Appeal in the Supreme Court within time. I also direct the Custodian to appear and make submissions in the Appeals, if any, filed by any party. It is clarified that the Custodian is not to merely support this Ruling. The Custodian must canvas such legal submissions, including

what was canvassed before this court, as his legal adviser deems fit and proper.

**Order dated 19.04.1995 of Hon'ble Special Court in MA No. 585 of 1994.**

**Para 9 :** I have considered these rival submissions. I see no reason to differ from what is already held in Order dated 20<sup>th</sup> February 1995. In my view Mr. Mistry and Mr. Joshi are absolutely correct. Section 160(1) (iii) of the Income Tax Act can only apply provided the person is appointed by and under any Order of the Court. The Custodian is not appointed by the Court. The Custodian is appointed by the Central Government by virtue of the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act. The custodian does not manage any of the properties or assets of the Notified parties. In fact all Notified parties continue to use some assets in as much as they continue to reside in their flats, use their offices, cars etc. All that has happened is that by virtue of the Statutory Attachment they cannot dispose or alienate their properties and assets. The Custodian is therefore, neither a Administrative General nor a Official Trustee nor a person who is managing properties on behalf of another. Undoubtedly what one has to see is the substance of the Section. However even then it is clear from the wording of Section 160(1)(iii) of the Income Tax Act that persons proposed to be included are only those who have been appointed by and under the order of a Court and who are managing the property and/or receiving income under some Order or right. A mere incidental receipt of income or merely acting as a post office is not sufficient. Even if

some debtors send monies or dividends to the Custodian, it is always in the name of Notified Parties. The same is then mechanically put into Bank Accounts maintained by the Notified party. If payments have to be made, the Notified Party makes out and signs a cheque. The Court then directs the concerned Bank to release payments. The Custodian merely forwards the order of the Court to the Bank. The Custodian does not fulfill any of the conditions of Section 160(1) (iii). I therefore still maintain the earlier ruling that the Custodian is not a Representative Assessee.

**Order dated 12.02.1996 in M.P No.215 of 1995 in the case of  
Growmore Research & Assets Management Ltd. V/s. Custodian.**

**Para 84 :** In all civil cases where some question of law and / or complicated facts are involved the Custodian would be a party. The Custodian is always represented by an Advocate. If the matter pertains to preservation, protection and /or augmentation of the attached assets of a Notified Party, the Custodian always supports such Petitions / Applications. In fact at one stage, the custodian was filing Applications for such purposes and for recovery of assets. In such case, there is no conflict of interest between the Custodian and the Notified Party. It must be mentioned that when the Custodian started filing such Applications, this Court frowned upon the Custodian. This Court made it clear that it was for the Notified Party to file such Applications and that the Custodian may, if he was so advised support the Notified Party. At that time the question of Advocates fees was not before the Court. The Court had not considered what was to happen if the Notified Party

could not afford to pay legal fees. Now that the question has arisen, in my view, there is nothing wrong in the Notified Party getting the Custodian to file or defend Applications / Petitions which are for preservation, protection, augmentation and / or recovery of attached assets. This provided the assets are not sufficient to meet the liabilities. Clarified that the Court is not saying that the Custodian must so file or defend. It is open to the Custodian to do as advised by his lawyers. If the Custodian chooses not to assist the Notified Party can then personally approach this Court. Simple matters can then be disposed off without intervention of lawyers. In cases where it is necessary the Court will try and provide legal assistance. In cases which are for recovery of assets in the hands of third parties also, provided there is no conflict of interest the Notified Party, could always brief the Advocates of the Custodian in the same manner as they would brief their own counsel. This would ensure that the Notified party gets proper legal assistance / representation. Here also if the Custodian does not agree then the Notified Party can approach the Court and the Court will try and provide legal assistance.

**Order dated 19.11.1999 of Hon'ble Special Court in MP No. 123 of 1995 [Custodian V/s. Harshad Mehta & Ors.] Alongwith MA No.475 of 1996 [Custodian V/s. CBI & Ors.].**

**Para 11 :** In the present matter, the facts show that the Notification was issued under the said Act, 1992 on June 8, 1992. In large number of matters, including the present one, this Court finds that with the passage of time, duplicate shares are likely to be introduced in the market. The company is required to declare dividends, bonus, rights etc. from time to

time. Further, delay leads to issue of duplicate shares. The company is required to dispatch these accruals to the registered owners / holders of shares. In the present matter, the record shows that rights and dividends amounting to Rs.21.63 crores (approximately) arising out of the Petition-shares have been lost. The Custodian is required to trace the parties to whom bonus, rights and dividends have been dispatched. These are required to be recovered by the Custodian.

**Order dated 10.6.2003 of Hon'ble Special Court in MP 112 of 2000 [Oswal Agro Mills Ltd. V/s. The Custodian and Ors] alongwith other Misc. Petitions.**

**Para 11 :** Under the Special Courts Act the Custodian has no power to pass any order in the nature of a decree directing payment by any party to the notified party. If the notified party is entitled to recover something from any other party then the Custodian has to approach the Special Court with a petition or suit. Mr. A. M. Setalwad, learned Counsel appearing for the Custodian, clearly conceded that the Custodian has no such powers of passing an order in the nature of a decree of Civil Court and therefore, during the course of argument it was suggested to the learned Counsel that these orders of the Custodian can at the most be treated as demand notices claiming various amounts form the parties with interest as a result of cancellation of contract and on failure of the parties to comply with the same, even if notices are justified, the only remedy available to the Custodian is to approach the Special Court by filing petition or suit for recovery of the said amount. The above issues are therefore answered accordingly.

**Judgment dated 31.7.2013 in Civil Appeal No.2155 of 1999, 2294  
of 1999 and 3647 of 1999 - State Bank of India Thr. General  
Manager Vs National Housing Bank & Ors.**

**Para 59 :** Unfortunately, even the custodian himself did not choose to prove the various letters alleged to have been received by him from various parties involved in the transaction, though the entire written statement of the custodian is based on such correspondence.

**AFFIDAVIT IN REPLY FILED BY CUSTODIAN IN MA 71 OF 2015 IN  
CASE OF SMT. RASILA S MEHTA V/S. THE CUSTODIAN & ANR.**

**Para-14:** I say that main object of the said Act is to recover public money lost by Banks / Financial Institutions in the securities scam and since there are huge liabilities payable by the Harshad Mehta Group to these Banks u/s 11(2) (b), the release of money to Income Tax on behalf of the individual / entities u/s.11(2) (c) by passing the order of priorities under distribution, as laid down in section 11(2) of the said Act, would deprive Banks of their due share of liquid assets available with the Custodian which would be payable to Banks in priority over release of moneys sought u/s.11(2)(c).

The Banks in fact have a grievance that they are being deprived of their due share of assets due to large demands raised by Income Tax u/s. 11(2)(a) and the Banks have, therefore, requested for scaling down of such Income Tax dues to enable them to get their dues under decrees held by them u/s.11(2) (b).

Hence, release of money to Income Tax U/s. 11(2)(c) on interim basis on behalf of individual entities in Harshad Mehta Group ought not be considered by this Hon'ble Court as these reliefs are being claimed under the present application in violation of directions of this Hon'ble Court to treat all the members and entities of Harshad S. Mehta as one Group and in violation of distribution norms set by this Hon'ble Court u/s 11(2) of the said Act and order of priorities.

**JUDGEMENT AND ORDER DATED 31.01.2019 IN SUIT NO.1 OF 2017 IN THE CASE OF SMT. JYOTI MEHTA V/S. SHRI KISHORE JANANI & ORS.**

**Para-44.** It is a matter of record, as disclosed through affidavit-in-reply of Defendant No.1 that the 'Custodian' has, at the behest of the three Firms of the Chartered Accountants, written a letter dated 11<sup>th</sup> September 2001 to Defendant No.1, calling upon him to pay a sum of Rs.1,52,17,000/-, together with interest @ 24% p.m. Defendant No.1 has not sent reply to this letter denying the said claim, which liability now he is denying after more than two decades. It was the duty of the 'Custodian' to place the matter before this Court, as stated in the letter, but the 'Custodian' has not done so. However, the fact remains that, Defendant No.1 has not sent reply to the 'Custodian', but now he is producing the letter dated 8th October 2001, in which he allegedly requested Harshad S. Mehta to inform the 'Custodian' about settlement of accounts. The authenticity of this letter is thus in question.

**Para-58.** In the instant case, therefore, it becomes the duty of the 'Custodian' to recover this amount from Defendant Nos.1 and 2, respectively.

**Para-73.** As a matter of fact, it was the duty of the 'Custodian' himself to recover these assets and it was also the duty of Defendant No.2 to inform the 'Custodian' about these assets. Even in case of doubt as to whether they belong to 'Notified Party' or not, as per the 'Circular' issued by the RBI, such third-party was required to approach the 'Custodian' to get the doubt clarified. Here in the case, when the amount was suddenly credited into the account of Defendant No.1 and two Pay Orders were issued within two days therefrom and one was not encashed, it was necessary for Defendant No.2 also, to get the things clarified. Defendant No.2 has not done so on the spacious plea that, the Pay Order was issued in the name of MILL, which was not a 'Notified Party', and it was issued by Defendant No.1, who was also not a 'Notified Party'. But then, the amount, which came to the account of Defendant No.1 for the issuance of this Pay Order being received from the 'Notified Person', the least expected from Defendant Nos.1 and 2 was to inform the 'Custodian' about these assets. They have not done so and now, by taking advantage of the said fact, they cannot contend that there is delay in filing of this claim. It was for the 'Custodian' to do so and if a 'Notified Party' has done so, then the same explanation is applicable to him, as is applicable to the 'Custodian'. It is also the duty of this Court to ensure that the assets, which stood attached immediately on the date on which Plaintiffs were declared as 'Notified Entity', should be brought before this Court for distribution to the lawful

claimants. Hence, it cannot be held that this claim is barred by limitation.

**Para-74.** To sum up, therefore, it has to be held that, so far as the claim of Plaintiff No.1 towards the Pay Order of Rs.4 Crores, as it is proved on record that the said Pay Order was purchased from the amount parked or advanced by Late Harshad S. Mehta with Defendant No.1, the said amount becomes the asset of Harshad S. Mehta, who was a 'Notified Party', in the hands of Defendant No.1. Defendant No.1 has failed to explain that the said amount was advanced for a particular purpose and it was utilized for the said purpose. Now the said amount is, admittedly, lying with Defendant No.2-the Federal Bank and hence, Plaintiff No.1 is entitled to recover this amount of Rs.4 Crores, along with interest @ 18% p.a., from Defendant No.1 and from Defendant No.2, with whom the said amount is lying. It is necessary, therefore, to direct the 'Custodian' to recover this amount, along with the stipulated interest, for its distribution amongst the 'Debtors', as per Section 11 of the Special Court Act.

**Para-75.** As regards the claim of Plaintiff No.3-M/s. Zest Holdings Private Limited for the amount of Rs.1,52,00,000/-, again the payment of which is accepted by Defendant No.1, Defendant No.1 is bound to repay the said amount, as it is proved to be the assets of the 'Notified Party' i.e. Defendant No.3-M/s. Zest Holdings Private Limited. The Custodian is to recover this amount from Defendant No.1, along with interest @ 18% p.a., and to utilize the same towards the liability of Plaintiff No.3-M/s. Zest Holdings Private Limited.

**Para-76.** As regards the amount of Rs.1.08 Crores, again though Defendant No.1 contends that he has settled the accounts thereof with Late Harshad S. Mehta, in the absence of convincing evidence on record to that effect, Defendant No.1 is liable to pay the said amount to Plaintiff No.1, with interest @ 18% pa., and the Custodian is to recover the said amount and utilize the same towards satisfying the liability of Late Harshad S. Mehta.

**Order of Hon'ble Special Court dated 19.09.2007 in MA 61 of 2006:**

**Para-7-** It has to be borne in mind that it is the duty of the custodian to ensure that the assets or the Notified Party have to be attached and recovery has to be made in respect of all monies that are paid by the Notified Party which are not properly accounted. At the same time, if certain amounts are paid as a result of the lawful contract entered by the Notified Party. It would be unjust and unfair to ask such a person who has received amount as lawful consideration to the contract and to return this amount with exorbitant rate or interest at the rate of 24% p.a. I am satisfied in the facts and circumstances of the case that the amount was lawfully paid towards the contract and therefore, in these circumstances, the interest is reduced from 24% p.a. to 6% p.a.

**Custodian Affidavit dated 12.01.2017 in MA No. 8 of 2016:**

**Statutory duties of the Custodian**

**Para-4-** That the Custodian is appointed by the Central Government under Section 3 (1) of the said Act and his functions are governed mainly through the following Sections of the Act :-

Section 3(2): Power to notify any person in the official gazette, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after 1 April 1991 and on or before 6 June 1992. The sources of information, conditions for notifying etc. are further governed by the Special Court (Trial of offences relating to transactions in securities) Rules, 1992 which were framed under Section 14 of the Act.

Section 3 (3) : Attachment of all properties – movable and immovable belonging to the notified person on the date of notification.

Section 3(4) : Deal with the attached property, in such manner as the Special Court may direct.

Section 11(1): Dispose any attached property as per the directions of the Special Court.

Section 11(2): Discharge of liabilities in full, as far as may be, in the order following to (i) Governments for revenues due from notified person, (ii) banks/financial institutions for amounts due from notified persons and (iii) any other liability as specified by the Special Court.

### **Major aspects of functioning of the Custodian**

**Para-6-** That the duties and responsibilities cast on the Custodian under the Act can be further categorized under the following heads: (i) Quasi-judicial functions, (ii) financial functions, (iii) Legal functions, and (iv) Administrative functions

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#### **6.1 Quasi-judicial functions**

- (i) Notification of persons/entities suspected to be involved in the securities scam.
- (ii) Cancellation of contracts entered into fraudulently by persons in relation to any property of notified persons.

#### **6.2 Financial Functions**

##### **6.2.1 Management of assets of Notified Parties**

Attachment of assets post notification, based on available information received from IT/CBI, declaration of assets by notified parties before the Special Court and its subsequent management.

##### **6.2.2 Augmentation of attached assets**

That the Custodian tries to augment the attached assets of the notified parties with a view to enable discharge of liabilities of notified persons towards the Government, Banks/FIs and others, to a larger extent which includes the following actions :

- (i) Recovery of all attached shares and other securities of notified parties held by other notified / non-notified parties through Share Transfer Agents / Companies.
- (ii) Recovery of lost, stolen or missing shares.
- (iii) Registration of unregistered shares in favour of notified parties which are presently held in the names of third parties.
- (iv) Follow-up with Companies for ascertaining corporate action including merger, demerger, splitting / consolidation of shares and arranging for issue of fresh share certificates in such cases.
- (v) Recovery of accruals on registered and unregistered shares including Dividend, Bonus, Rights, etc.,
- (vi) Recovery from Debtors of Notified Parties.
- (vii) Reconciling receipt of all accruals and accounting for it.

### **6.3 Legal Functions**

That post notification of person under the Act, all subsequent actions undertaken by the Custodian in relation to notified parties like attachment, disposal and liquidation of assets, investment of funds, distribution of funds, de-notification and subsequent closure (return of attached records) etc. are done only after first completing the appropriate legal and administrative procedures and obtaining appropriate orders of this Hon'ble Special Court. For suits/petitions/applications etc. filed by notified parties, Banks and other in this Hon'ble Special Court, Bombay the Custodian files its pleadings as directed and as appropriate before this Hon'ble Special Court, Additionally, the Custodian also, at times, files various applications/ Status reports/ compliance reports to fulfill its assigned duties under

the Act. The Custodian also contests in the Supreme Court where appeals are filed by parties against the orders of this Hon'ble Special Court. The various types of cases dealt by the Custodian are (i) Miscellaneous Applications, (ii) Miscellaneous Petitions, (iii) Suits, (iv) Garnishee notices, (v) Chamber Summons (vi) Execution applications to enforce decrees ordered, (vii) Certification reports to certify genuineness of transaction relating to purchase of shares by persons, (viii) Distribution reports to enable distribution of funds to Government, banks and others, (ix) Miscellaneous Reports for disposal of assets and other reports for information and / or seeking directions of the Special Court and (x) Contempt Petitions, etc.

#### **Maintenance of Records in the office of Custodian**

**Para-8-** The monitoring and control to ensure compliance to the orders of Hon'ble Special Court are mainly done through individual case files by officials / OSDs of the Custodian Office at Mumbai, Bengaluru and Delhi dealing with cases related to specific notified parties. Additionally, the Delhi office exercises overall oversight functions on these offices. The compliance to Hon'ble Special Court orders and the progress of the case are also monitored through cause list, appropriate pleadings before this Hon'ble Court assisted by Counsels and AOR, who advise the correct legal course of action at various stages of the case, wherever appropriate.

It is only when the complete compliance is ensured to the orders of this Hon'ble Special Court in a case, the matter is closed, otherwise, follow up action thereon continues in association with advise of counsels / Advocate-on-Record by filing either

execution applications or Contempt Petitions or other appropriate pleadings before this Hon'ble Court praying for directions to notified parties, companies and other parties to comply with the orders of the Hon'ble Special Court.





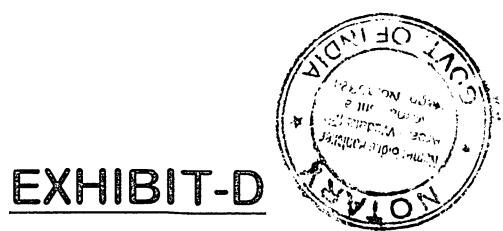
CHART SHOWING PARTICULARS OF PROCEEDINGS IN  
BENAMI  
SHARES BEFORE THE SPECIAL COURT, MUMBAI.

Sr. No	Misc. Application/ Petition	Applicant/ Petitioner	Matters Related to	Order Date	Affidavits /Letters Filed By HSM / Other notified entities
1	M A No. 194 of 1993	Assistant Commissioner of Income Tax	Benami Shares	10.11.1993 19.10.1993 13.03.1997	25.02.1994 09.08.1994
2	M A No. 282 of 1993	A K Menon V/s. Harshad S Mehta & Ors.	Benami Shares	11.01.1994 13.03.1997	
3	M A No. 53 of 1994	Assistant Commissioner of Income Tax	Benami Shares	02.03.1994 13.03.1997	25.02.1994 09.08.1994
4	M A No. 92 of 1994	Assistant Commissioner of Income Tax	Benami Shares	13.03.1997	
5	M A No. 93 of 1994	Assistant Commissioner of Income Tax	Benami Shares	13.03.1997	
6	M A No. 297 of 1994	Assistant Commissioner of Income Tax	Benami Shares	13.03.1997	
7	M A No. 424 of 1994	Assistant Commissioner of Income Tax	Benami Shares	13.03.1997	
	M P No. 99 of 1998	The Custodian	Benami Shares	08.04.2003	
9	MA No. 66 of 1998	ACC Vs. The Custodian	Benami Shares	10.9.2003	

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





## **EXHIBIT-D**

### **Miscellaneous Application No. 24 of 2016**

**Custodian v. Investor Education & Protection Fund Department of Company Affairs**

**2016 SCC OnLine Bom 11057**

**In the High Court of Bombay**

**In the Special Court (Trial of Offences Relating to Transactions in Securities)  
Act, 1992 at Bombay  
(BEFORE A.K. MENON, J.)**

The Custodian .... Applicant

v.

The Chairman of the Committee Investor Education & Protection  
Fund Department of Company Affairs & Ors. .... Respondents  
Miscellaneous Application No. 24 of 2016

In

Miscellaneous Application No. 244 of 2003  
Decided on August 18, 2016

Mr. J. Chandran a/w Ms. Shilpa Bhate i/b. Leena Adhvaryu & Associates for the  
applicant.

Mr. Anil Singh, ASG, a/w Suresh Kumar for respondent no. 1.

Ms. M. D'Souza i/b. Partners Asso. for respondent no. 5

Mr. Pankaj Uttaradhi i/b. S.R. Legal for respondent no. 7.

Mr. V.K. Nair for respondent no. 8.

Mr. D.P. Kamat for respondent no. 14.

Mr. Ashwin Mehta for respondent no. 15 & 16.

#### **P.C.:**

**A.K. MENON, J.:**— This is an application taken out on behalf of the Custodian  
seeking the following reliefs:—

"(a) *This Court be pleased to direct the respondent no. 1 i.e. Investor Education and Protection Fund, Ministry of Corporate Affairs, New Delhi to release the unclaimed principal amounts and interest warrants of respondent nos. 2 to 8, 10 and Bombay Stock Exchange belonging to the notified parties viz. Shri Hiten P. Dalal, late Shri Abhay D. Narottam and Mrs. Rasila S. Mehta and Mrs. Rina S. Mehta as listed in Annexure A to this application to the applicant Custodian for crediting in the attached Bank Account of the notified parties.*

(b) *This Court be pleased to direct the respondent no. 9 i.e. U.P. Rajya Utpadan Nigam Ltd. to remit a sum of Rs. 9.85 lakhs with interest to the attached A/c of Shri Hiten P. Dalal as mentioned at Annexure B.*

(c) *Any other order this Court may deem fit and proper in the interest of justice."*

2. Mr. Chandran, the learned counsel appearing for the Custodian states that all the respondents have been served. Respondent nos. 1 and 11 have been incorrectly described. Respondent no. 1 is intended to be the Investor Education and Protection Fund, Department of Company Affairs. Respondent no. 11 is intended to be the Bombay Stock Exchange Ltd. In this Order reference to Respondent no. 11 will mean the Bombay Stock Exchange Limited. Respondent no. 12 is a share transfer agent and Respondent nos. 13 to 16 are notified parties. An affidavit of service dated 16 th June, 2016 has been filed. However, only respondent nos. 1, 5, 7, 8, 14, 15 & 16 are

**TRUE COPY**

*Muz*  
Advocate for ~~Custodian / Respondent / Applicant~~

represented by Advocates. The contesting respondent is only Respondent No. 1 being the Investor Education and Protection Fund, Department of Company Affairs, Ministry of Corporate Affairs. No relief is sought against the others.

**3.** On behalf of respondent no. 1 an affidavit of Shri A.K. Chaturvedi opposing the grant for reliefs has been filed. On behalf of respondent no. 5 the affidavit-in-reply indicates that they are willing to submit to the orders of the Court. Respondent no. 15 and 16 have filed a common affidavit dated 29<sup>th</sup> June, 2016 in effect supporting the application.

**4.** Mr. Chandran, submits that the respondent no. 2 to 8 and 10 and 11 have deposited the maturity value of various bonds, deposits, debentures, dividend and interest warrants and proceeds such as interest in respect of various investments made ("Maturity Proceeds") due to the notified parties with the Respondent no. 1. Respondent no. 9 is believed to be still holding on to Maturity Proceeds despite being called upon to pay over the same to the Custodian. Since all properties belonging to the notified parties stood automatically attached, the Custodian is entitled to receive the same. It appears that by virtue of operation of Section 205C of the Companies Act, 1956 the Maturity Proceeds have been paid over by respondent nos. 2 to 8, 10 and 11 to respondent no. 1.

**5.** Mr. Chandran further states that the applicant had issued letters dated 17<sup>th</sup> November, 2003 to respondent nos. 2 to 11 requesting them to deposit the Maturity proceeds with the applicant. However, the said request has not been complied with. By a letter dated 28<sup>th</sup> January, 2004 the respondent no. 11 confirmed having transferred the said Maturity Proceeds to respondent no. 1 pursuant to aforesaid Section 205C of the Companies Act. Respondent no. 2, 3, 4, 5, 6, 7, 8 and 10 have vide various letters written between 21<sup>st</sup> December and 30<sup>th</sup> December, 2003 being Exhibits "C" to "J" to the application informed the Custodian that the Maturity Proceeds have been deposited with respondent no. 1. Respondent no. 9 vide its letter dated 11<sup>th</sup> March 2005 being Exhibit "K" addressed to the State Bank of India contended that the maturity value of bonds were being held by the said Bank. A copy of the said letter is marked to the Custodian alluding to the fact that the said Bank may act as required by the Custodian. Mr. Chandran submitted that although the respondent nos. 13 to 16 were notified on 8.6.1992 and respondents 15 and 16 were notified on 4.1.2007, the Custodian was unaware of these investments and the maturity proceeds till the Central Bureau of Investigation handed over the relevant evidence in this respect after the Order dated 20<sup>th</sup> September 2003 passed by the Special Court in M.A. No. 244 of 2003 (Exhibit A to the Application). It is only after this information was received that the letters dated 17<sup>th</sup> November, 2003 were addressed to the respondents 2 to 11.

**6.** Mr. Chandran submitted that the funds comprising Maturity Proceeds are attached properties and as such the Custodian was bound to bring back these funds so as to deposit the same with the Custodian to augment the assets of the notified parties. The attached monies belonging to notified parties are in fact Custodia Legis and this Court alone has the jurisdiction to entertain and dispose of the present application. He therefore prayed for the relief as aforesaid. Mr. Chandran also relied upon the order of the Special Court in Misc. Petition No. 285 of 1995 dated 2<sup>nd</sup> August, 1996 and he relied upon the observations in paragraph 14, 18 and 19 of the said order. He submitted that it is already well settled that limitation cannot be a ground on which the present relief could be opposed.

**7.** On behalf of respondent no. 1 Mr. Anil Singh, the learned Additional Solicitor General opposed the application. Mr. Singh contended that the application is not maintainable. He relied upon the provisions of Section 205C of the Companies Act and submitted that the explanation to the said Section clearly provided that no claim shall

lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

**8.** Mr. Singh therefore submitted that the present application is liable to be dismissed in limine. In support of his contention, Mr. Singh relied upon the provisions under Section 205C and submitted that the proceeds of unpaid dividends, matured deposits, matured debentures and interest from the aforesaid would all have to be deposited with the first respondent fund if they were unclaimed and/or unpaid for a period of seven years from their respective due dates. In support of this contention Mr. Singh relied upon the two decisions in the case of *R. Rajgopal Reddy v. Padmini Chandrasekharan* (1995) 2 SCC 630 and *R.S. Raghunath v. State of Karnataka* (1992) 1 SCC 335. In the judgment of *Rajgopal Reddy* (supra) Mr. Singh relied upon paragraph 11 and submitted that the applicant's right to apply for the reliefs in this application had been taken away by virtue of Section 205C of the Companies Act and that no suit, claim or other action to enforce any right to claim the maturity proceeds could now lie. He relied upon the definition of word "lie" forming part of the explanation to Section 205C which was dealt with in the said judgment. The Collins English Dictionary defined "lie" as meaning "for an action, claim, appeal etc. to subsist; be maintainable or admissible." He therefore submitted that the present action will not lie and the application is therefore not maintainable.

**9.** Relying upon the observation of the Supreme Court in paragraph 13 of the judgment in the case of *Raghunath* (supra), the learned Additional Solicitor General submitted that there is no inconsistency between the Companies Act and the Special Courts (Trial of Offences relating to Transactions in Securities) Act and the non-obstante clause forming part of the Special Courts Act does not entitle the applicant to any relief in the present application. Mr. Singh further contended that as observed by the Supreme Court in *Raghunath* (supra) before giving effect to the overriding nature of a non-obstante clause, one must ascertain whether there is a clear inconsistency between the two enactments. According to Mr. Singh there is no inconsistency the relevant provisions of the Companies Act and the Special Courts Act and therefore the non-obstante provisions of the Act do not come into play. According to Mr. Singh the Companies Act clearly intends to protect the rights of the investors by utilizing the funds which are unclaimed and once the period of seven years has passed, the claimant cannot access these amounts.

**10.** Mr. Ashwin Mehta appearing for the Respondents 15 and 16 supported the Applicants and contended that the application may be allowed. Mr. Chandran in rejoinder reiterated the applicant's case and relied upon the Order dated 1<sup>st</sup> February 2013 in MA no. 87 of 2011 a similar issue had arisen and by the said Order the Special Court had directed the Respondent No. 1 - Union of India to pay over the relevant amount to the Custodian. He further reiterated the fact that the amounts lying with Respondent Nos. 2 to 11 stood attached upon notification and the said respondents ought not have paid over the Maturity Proceeds to the Respondent No. 1. In other words, if any Maturity Proceeds remained with the Respondent Nos. 2 to 11 and had not been paid to the rightful owner for a period of seven years from their respective due dates or if after the dues were offered for payment or payments were attempted to be remitted but remained unclaimed with the said respondent companies, these amounts would have to be transferred to the Fund. He therefore submitted that in the present case by operation of law these amounts have been transferred to the fund and therefore could not be claimed by respondent no. 1. More so because the Companies Act deal with the specific provisions for protection of investors and it is not subservient to the provisions of the Special Courts Act.

**11.** Having heard the parties, I do not find any merit in the first respondent's case. Section 205C of the Companies Act 1956 is relied upon by the first respondent is

reproduced below for ease of reference:

**"205C. Establishment of Investor Education and Protection Fund.-**

- (1) *The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").*
- (2) *There shall be credited to the Fund the following amounts, namely:—*
  - (a) *amounts in the unpaid dividend accounts of companies;*
  - (b) *the application moneys received by companies for allotment of any securities and due for refund;*
  - (c) *matured deposits with companies;*
  - (d) *matured debentures with companies;*
  - (e) *the interest accrued on the amounts referred to in clauses (a) to (d);*
  - (f) *grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and*
  - (g) *the interest or other income received out of the investments made from the Fund:*

*Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.*

*Explanation.— For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.*

- (3) *The Fund shall be utilised for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.*
- (4) *The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.*
- (5) *It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established".*

**12.** In my view, Section 205C of the Companies Act was intended to protect funds which are not claimed by any party but does not cover Maturity Proceeds which parties could not claim by virtue of operation of the Special Courts Act. The Maturity Proceeds came to be transferred as a result of the inability of notified parties to claim those amounts. These notified parties were incapable of personally claiming these amounts. There was a legal bar against the amount being collected or appropriated by the notified parties. The Special Courts Act was enacted after investigations by the Reserve Bank of India revealed large scale irregularities and malpractices in transactions in securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions leading to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers. The Act is thus intended inter alia to ensure recovery of the amounts involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions.

**13.** I do not see any reason why the maturity proceeds transferred to the fund

cannot be held by the Custodian. The Custodian could not have made this application earlier for want of knowledge. The Companies Act, 1956, provides for establishment of the fund to be utilised for protection of the interests of the investors in accordance with rules that may be prescribed. The committee appointed under Section 205C(4) is empowered to spend monies out of the fund for carrying out objects for which the fund was established. It was contended by the learned Additional Solicitor General that there is no provision that enables the amount to be returned but the notified parties were incapable of claiming these amounts owing to their disability upon their notification which entails automatic attachment of the assets. The funds, therefore, stood attached in the hands of respondent nos. 2 to 11. The fact of attachment was publicly notified and all concerned including respondent nos. 2 to 11 were expected to be aware of the fact that the Maturity Proceeds had been attached. It was the bounden duty of all these entities i.e. respondent nos. 2 to 11 to have approached the Custodian and sought clarification if they were in any doubt as to the effect of the promulgation of the ordinance, the notification of parties and the Act.

**14.** In the circumstances, the said respondent ought not to have paid over the Maturity Proceeds to respondent no. 1 but should have entrusted the same with the Custodian. It has been repeatedly emphasised that debtors must find the creditors and the respondent nos. 2 to 11 were bound to approach the Custodian if they were in doubt and seek its clarifications as to the fate of the maturity proceeds. This not having been done, resulting in the amounts being paid over to the Fund, the first Respondent cannot now be heard to say that the Maturity Proceeds which stood attached upon notification cannot be paid over to the Custodian.

**15.** The attachment of these assets was in furtherance of the objects of the Special Courts Act. In this respect, the Special Court is bound to pass appropriate orders. In *L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd.* in Civil Appeal No. 4268 of 2003 the Supreme Court reiterated that the provisions of the Act required the Custodian, *inter alia*, deal with the properties in the manner as directed by the Special Court and that the debt in question is capable of being attached if it is a property belonging to the notified party. The Special Court has the requisite jurisdiction to deal with the property attached. The Supreme Court observed as follows—

*".... .... As the Special Court had the requisite jurisdiction to deal with the attached property, it is immaterial whether the factum of the statutory provisions is brought to its notice by the notified party himself or by the Custodian. The Court has the requisite jurisdiction nay a duty to apply itself to the said question once the matter is brought to its notice."*

**16.** The Supreme Court in *L.S. Synthetics* (*supra*) *inter alia*, clarified that the provisions of the Limitation Act could only be apply when a suit is filed and the proceeding is initiated for a recovery of amount and not where liberty is required to be applied towards claims pending before the Tribunal for the purpose of discharge of liabilities of a notified person. In the circumstances, the Maturity Proceeds stood attached upon a notification of the parties concerned and the respondent nos. 2 to 11 were bound to approach the Custodian to seek appropriate directions if in doubt and in the facts of this case the said amounts could not have been utilized by the Fund for any of the purposes set out in Section 205-C. For the aforesaid reasons, the application is required to be allowed.

**17.** I therefore, pass the following Order:—

- (i) The Investor Education and Protection Fund, Ministry of Corporate Affairs, New Delhi, shall release the amount of maturity value of bonds, debentures, deposits, unpaid dividends and interest warrants which were due to the notified parties viz. Hiten P. Dalal, late Shri Abhay D. Narottam and Mrs. Rasila S. Mehta and Mrs. Rina S. Mehta from Respondent Nos. 2 to 11 and which were remitted to the

Investor Education and Protection Fund by the aforesaid Respondents and the Bombay Stock Exchange Ltd. within a period of four weeks from today.

- (ii) Respondent No. 9 shall remit the maturity proceeds of 7.25% U.P.S.E. Bonds 1996 under certificate nos. 743, 744, 745, 746, 747, 864, 861, 862, 863, 865, 866, 867 and 868 as detailed in letter dated 11.3.2005 from Respondent No. 9 to Deputy General Manager, State Bank of India, Kanpur also within a period of four weeks from today.
- (iii) To facilitate compliance, the first Respondent Investor Education and Protection Fund is directed to disclose on oath within a period of two weeks from today particulars of all remittances received from respondent nos. 2 to 8, 10 and the Bombay Stock Exchange Ltd.
- (iv) Application disposed off in the above terms.

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## STATEMENT OF SHARES OF HERO HONDA LTD. LYING WITH I.E.P.F.

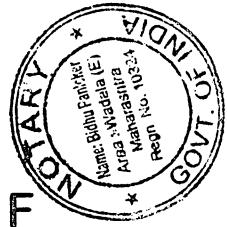
SR. NO.*	FOLIO NO.	NAME OF SHAREHOLDER	NO. OF SHARES
1432	HML0124720	HARSHAD SHANTILAL MEHTA	2,000
1449	HML0125774	HARSHAD SHANTILAL MEHTA	625
1536	HML0132001	PRATIMA H. MEHTA	1,250
		TOTAL	

\* This represents the Serial No. disclosed in the website of the company disclosing above particulars.

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*[Signature]*  
Applicant





**LIST OF BENAMI SHARES HELD BY JOBALIA FAMILY AS PER MP NO. 99  
OF 1998**

Name of the Company	Name of the Shareholder	Qty.	Folio No.
BSES Ltd.	Jayesh D. Jobalia	500	32566
BSES Ltd.	Nilesh D. Jobalia	500	32567
BSES Ltd.	Nirav D. Jobalia	500	32565
		1,500	
Burroughs Wellcome	Alpa N. Jobalia	1,200	60049
Burroughs Wellcome	Kalpana D. Jobalia	1,200	60053
Burroughs Wellcome	Kalpana H. Jobalia	1,200	60054
		3,600	
Chowgule Steamships	Nirav D Jobalia	500	N3544
		500	
Essar Gujarat	Jayesh D Jobalia	700	J71314
Essar Gujarat	Nilesh D Jobalia	1,000	N71339
Essar Gujarat	Nirav D Jobalia	1,000	N71329
		2,700	
Essar Gujarat (DEB)	Jayesh D Jobalia	250	M902565
Essar Gujarat (DEB)	Nirav D Jobalia	250	M903379
		500	
G E Shippings	Alpa N Jobalia	2,000	A50907
G E Shippings	Alpa N Jobalia	2,000	A51546
G E Shippings	Jayesh D Jobalia	2,000	J46001
G E Shippings	Nilesh D Jobalia	4,600	N47222
G E Shippings	Nirav D Jobalia	4,600	N478060
G S F C Ltd.	Alpa N Jobalia	850	205183
G S F C Ltd.	Jayesh D Jobalia	850	205179
G S F C Ltd.	Kalpana D Jobalia	850	205180
G S F C Ltd.	Nirav D Jobalia	850	205182
		18,600	
Hero Honda	Nilesh D Jobalia	800	136971
		800	
Indo Ashahi Glass	Jayesh D Jobalia	1,500	J1065
Indo Ashahi Glass	Nilesh D Jobalia	1,500	N1183
Indo Ashahi Glass	Nirav D Jobalia	1,500	N1182
		4,500	
ITC Bhadrachalam	Alpa N Jobalia	500	A2274
ITC Bhadrachalam	Jayesh D Jobalia	500	J952
ITC Bhadrachalam	Nilesh D Jobalia	1,000	N1388
ITC Bhadrachalam	Nirav D Jobalia	500	N1389
		2,500	
ITC Classic	Jayesh D Jobalia	1,600	J2288
ITC Classic	Nilesh D Jobalia	1,600	J2245
ITC Classic	Nirav D Jobalia	100	J2262
ITC Classic	Nirav D Jobalia	3,000	J2273
		6,300	

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 Advocate For Plaintiff / Respondent / Applicant

J. C. T. Ltd.	Alpa N Jobalia	1,000	62924
J. C. T. Ltd.	Jayesh D Jobalia	1,050	62862
J. C. T. Ltd.	Kalpana Dn Jobalia	1,000	62925
J. C. T. Ltd.	Nirav D Jobalia	1,050	62864
		4,100	
Larsen & Toubro	Jayesh D Jobalia	1,200	J76459
Larsen & Toubro	Kalpana N Jobalia	200	K83541
Larsen & Toubro	Kalpana N Jobalia	1,100	K83543
Larsen & Toubro	Nilesh D Jobalia	1,000	N77708
Larsen & Toubro	Nirav D Jobalia	1,350	N77709
		4,850	
Mahindra & Mahindra	Alpa N Jobalia	1,700	J4203
Mahindra & Mahindra	Nilesh D Jobalia	1,000	J4204
		2,700	
Mazda Industries	JD Jobalia	2,100	J5365
Mazda Industries	Kalpana J Jobalia	2,000	K7439
Mazda Industries	Nirav D Jobalia	870	N5980
Mazda Industries	Nirav D Jobalia	400	N5981
		5,370	
Mysore Cement	A J Jobalia	3,000	J2906
Mysore Cement	D N Jobalia	3,000	J29072
Mysore Cement	Jayesh D Jobalia	2,700	J2908
Mysore Cement	Jayesh D Jobalia	3,000	J2909
Mysore Cement	Kalpana N Jobalia	4,000	J2910
Mysore Cement	Kalpana N Jobalia	2,000	J2911
Mysore Cement	N D Jobalia	3,000	J2912
Mysore Cement	Nilesh D Jobalia	3,000	J2913
Mysore Cement	Nirav D Jobalia	3,000	J2914
		26,700	
PEICO Ltd.	Jayesh D Jobalia	500	103103
		500	
SRF Nippon Denso	Jayesh D Jobalia	500	34116
		500	
Vam Organic	A J Jobalia	875	A5387
Vam Organic	A J Jobalia	1,700	A5388
Vam Organic	Kalpana Jobalia	1,500	K5287
Vam Organic	K N Jobalia	900	K5285
Vam Organic	N D Jobalia	1,000	N3506
Vam Organic	N D Jobalia	1,000	N3515
		6,975	



IN THE SPECIAL COURT [CONSTITUTED UNDER THE (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992] AT BOMBAY.

MISC. PETITION NO.99 OF 1998

Custodian ..... Petitioner

vs.

Mrs. Jyoti Mehta & Ors. .... Respondents

Mr. G.R. Joshi with Mr. Leena Adharvaryu and Mr. Y.M. Mithi i/b M/s. P.M. & Mithi & Co. for the Petitioner.

Mr. Ajay Khandar with Ms. U.K. Sahani for Respondent Nos.1(d), (f), (i), (c), (l), (m), (n), (o), (q) and (y).

Mr. R.V. Desai, senior counsel with Mr. R.S. Mhamane i/b R.N. Bandopadhyay for Income-tax Department (Respondent No.2).

Mr. P.N. Modi with Mr. S.S. Kalambi i/b Federal Rashmikant for Respondent No.4.

Mr. Shailesh Dalvi i/b M/s. M & M Legal Venture for Respondent Nos.13 and 34.

Mr. A.D. Patil i/b Manesha Sethna for Respondent No.37.

Mr. R.S. Tripathi i/b S. Misquitta for Respondent No.40.

Mr. Faisal Sayyed i/b M.K. Ambalal for Respondent Nos.55, 66 and 77.

Mr. Kairavi Kantol i/b A. Ankhad & Associates for Respondent No.90.

Mr. C.S. Balsara i/b A.S. Dayal & Associates for Respondent No.95.

Mr. R.K. Thakkar for Respondent No.110.

Mr. Anil Tambe i/b Desai & Diwanji for Respondent No.128.

Mr. Harish Pandya with Mr. Sagar Divekar i/b Wadia Gandhy for Respondent No.131.

Mr. A.K. Handa, Commissioner of Income-tax, Central-II, Mumbai present.

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MM

Applicant / Applicant



: 2 :

Ms. Pratima Mehta and Sudhir Mehta - Respondent Nos. 1(j) and (h) present in person.

CORAM : S. H. KAPADIA, J.  
JUDGE, SPECIAL COURT.

DATED : 8TH APRIL 2003.

ORAL ORDER

1. On 8/6/1992 late Mr. Harshad S. Mehta was notified under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992. Large number of his shares were seized by the Income-tax Department. Large number of his shares stood attached in the hands of the Custodian. In this lot of shares, the Custodian, till date i.e. about ten years down the line, has located 78,80,187 benami shares. During this period, despite repeated reminders, Mr. Harshad S. Mehta did not name the entities in whose favour these benami shares were to be transferred. On 31/12/2001, Mr. Harshad S. Mehta died.
2. The Custodian has evolved a Scheme for transfer of attached shares to the "Custodian A/c. - Harshad Mehta Group - Benami Shares" (hereinafter referred to, for the sake of brevity, as "the said Custodian A/c.").
3. At the outset, it may be mentioned that by this

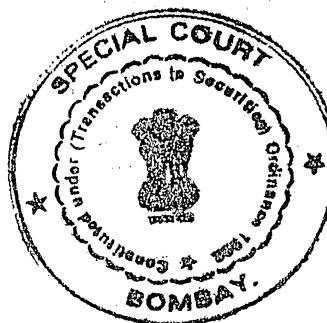


Petition, the Custodian also seeks a declaration from the Court that 60,88,232 shares be declared as attached as benami shares. On this point, there is no opposition. Therefore, I declare 60,88,232 shares as attached as benami shares.

4. The next point which the Court has to consider is to approve the Scheme proposed by the Custodian vis-a-vis transfer of attached and non-attached shares, the particulars of which are given hereinbelow:

	Physicals with the Custodian	Physicals not with Custodian	Total
Attached	976689	815266	1791955
Not Attached	5218665	869567	6088232
	6195354	1684833	7880187

5. As can be seen from the above statement, 8,15,266 shares out of 17,91,955 attached shares are not in possession of the Custodian. Hence, for this category of shares, I am directing the concerned Companies to rectify their Register, cancel the existing Share Certificates and dematerialise the shares in demat form into the Depository Account of the Custodian. For that purpose, the Demat Account shall be opened with the Stock Holding Corporation Limited in the name of

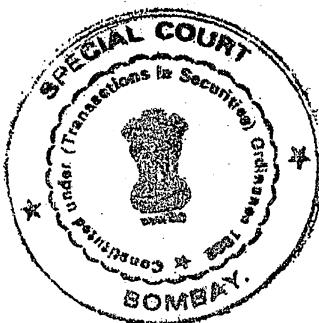


"Custodian A/c. - Harshad Mehta Group - Benami Shares". Since the Register is being rectified and since the shares are directly being transferred to the Demat Account, issuance of duplicate shares in physical form is dispensed with.

6. Under the next category of shares, we are concerned with 8,69,567 shares, the physicals of which are not with the Custodian. To this category of shares also my above directions apply. It is not necessary to repeat the directions which are given in the preceding paragraph.

*SK*

7. Now coming to the Third Category of shares numbering 9,76,689, it may be mentioned that ~~although~~ <sup>and</sup> these shares stood attached earlier, the physicals thereof are in possession of the Custodian. Hence, I order rectification of the Register of Members by substituting the name "Custodian, Harshad Mehta Group - Benami Shares" in place of the existing benami entities. Here also, a Demat Account is directed to be opened with the Stock Holding Corporation Limited in the name of "Custodian A/c. - Harshad Mehta Group - Benami Shares". The said shares will be submitted by the Custodian to the concerned Companies for rectification of the Register of Members and for dematerialisation.

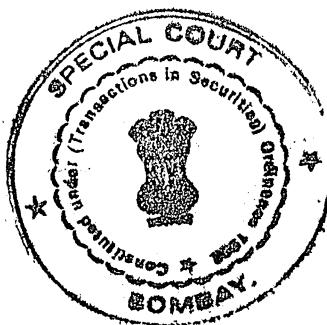


8. Now coming to the next category of shares, they number 52,18,665 out of 60,88,232 shares which today, I have declared as attached as benami shares. The physicals of these 52,18,665 shares are with the Custodian as of date. Accordingly, I direct rectification of the Register of Members by the concerned Companies by substituting the name "Custodian, Harshad Mehta Group - Benami Shares" in place of existing benami entities. Here also a Demat Account is ordered to be opened with the Stock Holding Corporation Limited in the name of "Custodian A/c. - Harshad Mehta Group - Benami Shares". The Custodian shall submit the shares to the concerned Companies for rectification of the Register of Members and for dematerialisation.

9. The Custodian has prayed for various directions against the Stock Exchanges, Harshad Mehta Group, and various Companies in prayers (a), (b), (c), (d), (f)(iii), (f)(iv) and (g). These prayers are also granted.

CLARIFICATIONS:

10. The Directions given hereinabove will not affect shares transferred by the benamidars to innocent third parties prior to 9/7/1999. 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 dividend before 9/7/1999 to the benamidars, the Company will not be asked to pay the dividends twice over.

11. Prayer (f)(iii) stands granted subject to Supreme Court Order dated 23/8/2001 in the case of Apollo Tyres Limited vs. The Custodian.

12. As regards the above shares, whose physicals are not in possession of the Custodian, it is clarified that in the event of the concerned Companies receiving physicals from persons lodging the said shares or from any other person, the concerned Company shall not return the same. However, if requested, the Company may give xerox copies thereof to the persons who have lodged the shares with the Company for transfer. Further, on receiving such physicals, the concerned Company will intimate the Custodian.

13. Gujarat Ambuja Cement Limited (Respondent No.40) has pointed out that in respect of 29381 shares, the Company has not received the call money. Respondent

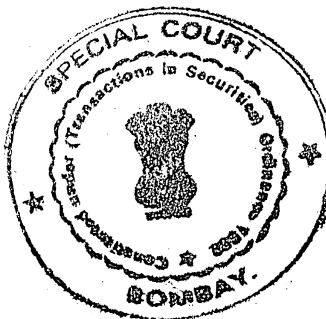


No.40 has no objection to dematerialisation of shares. However, they submit that the shares should be dematerialised subject to the Custodian paying the <sup>balance</sup> call money as the above shares remained partly paid. In this connection, I direct the Custodian to pay the balance call money with interest at 15% per annum to Respondent No.40. The interest <sup>amount</sup> 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. The balance call money shall be paid from the above mentioned benami account.

14. The following shares forming part of revised Ex-G, where discrepancies are pointed out by various Companies will not form the subject matter of the present Order and liberty is granted to the Custodian to file a fresh application if necessary. The particulars of such shares are as follows :

(a) 300 shares of  
Apollo Tyres Ltd. : Certificate Nos. 556534-39  
(duplication in  
the Exhibit) 256534-39

Distinctive Nos. 26733514-26733663  
16994839-16994988

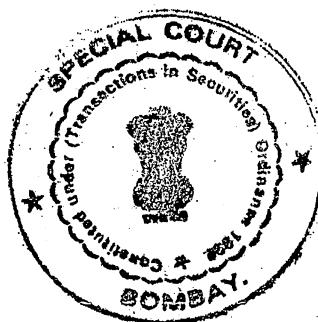


- (b) 5009 shares of Reliance Industries Ltd. which are more than the number shown in column 4 of Exhibit-G as pointed out by the Company vide their letter dated 31/03/2003 (Distinctive Nos. not supplied by the Company.)

Folio No.	Excess number of shares.
24899349	50
23877368	40
38430114	5
42209228	440
42160318	50
42212121	100
42158810	500
42239658	100
24707423	1724
42228044	1600
4211923	300
63591033	50
42211711	50
Total	5009

15. Public Notice shall be issued by the Custodian in the Economic Times at Mumbai, Delhi and Calcutta listing the names of entities now declared as benamis along with the folio number and the number of shares as per Ex-H(1). Consequently, notice in respect of other shares now declared as attached stands waived.

16. All costs charges and expenses in respect of rectification of Register of aforestated shares, dematerialisation thereof and issuance of public notice shall be borne from the attached account being "HMG - Benami Share Account" bearing No.01000040117 with State Bank of Mysore, Dalal Street Branch, Mumbai.



17. Costs of the Custodian in respect of the present Petition including out of pocket expenses, counsel fees and fees of advocate on record shall also be paid out of "Harshad Mehta Group - Benami Share Account" mentioned above.

18. Accordingly, the following order is passed:

O R D E R

Petition stands allowed in terms of prayer clauses (a), (b), (c), (d), (f)(iii), (f)(iv), (g) read with specific directions given hereinabove. For the sake of clarity, the prayers are quoted hereinbelow:

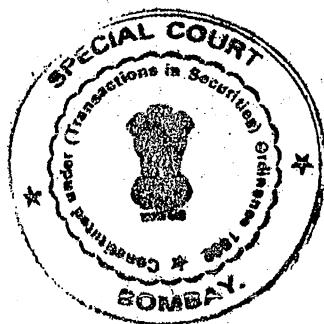
"(a) that the said shares listed in column No.7 of Ex-G be declared as Benami shares of the Respondent No.1(a to z) herein and therefore attached.

(b) that the Respondent Nos.131 to 134 be permitted to carry on the certification process for a period



of six months in respect of the aforesaid shares.

- (c) that all rights, bonus and Dividend accruing on the aforesaid shares set out in column Nos.6 and 7 of Ex-G herein issued after 8/6/1992 be also treated as attached.
- (d) that the Respondent No.1(a to z) be ordered and directed to disclose on Affidavit as to which entity of his Group the said shares mentioned in Ex-G hereto belong.
- (f)(iii) that the said shares be permitted to be de-materialised wherever applicable and sold by following the procedure laid down in the order dated 17/8/2000 passed by this Hon'ble Court in Misc. Petition No.64 of 1998.
- (f)(iv) all expenses for such transfer, dematerialisation and sale be released and be debited to the attached account of late Mr. Harshad



S. Mehta being Current Account No. 1/135 with the State Bank of Mysore, Dalal Street Branch and later on reimbursed from the sale proceeds of the shares.

(g) that the Petitioner be permitted to meet all the fees, cost and incidental expenses relating to the present Petition from the attached account of Respondent No. 1(a to z) herein."

Subject to above, the Petition is disposed of.

[S.H. KAPADIA, J.]

Applied on 9/4/03  
Pages 15  
Examined by Mr. T. Ichhar  
Copied with Mr. A. Pekar  
Ready on 16/4/03  
Delivered on 22/4/03



~~Certified to be a true copy~~  
*Mur 16/4/03*  
OFFICER ON SPECIAL DUTY  
Office of the Special Court  
Bombay.

*SP*  
16/4/03





**RELEVANT EXTRACTS OF JUDGMENTS OF HON'BLE SUPREME COURT OF INDIA AND HON'BLE SPECIAL COURT ON AUTOMATIC ATTACHMENT OF ASSETS U/S.3(3) OF TORTS ACT UPON NOTIFICATION OF A PERSON U/S. 3(2) OF THE ACT AND THAT ANY TRANSACTION ENTERED INTO BY A THIRD PARTY IN SUCH ATTACHED PROPERTY WITHOUT OBTAINING A PRIOR ORDER FROM SPECIAL COURT WILL BE NULL AND VOID.**

**(1994) 4 SCC 246**

**KUDREMUKH IRON ORE CO. LTD.**

**V/S**

**F.F.S. LTD & ANR.**

**Para 7:** Indeed, Section 11 of the Act exclusively empowers the Special Court to give directions in the matter of the property of a notified person. The foundation for the jurisdiction under Section 11 to deal with any such property is that it should have been a property under attachment. Section 3(3) of the Act provides that attachment of property, whether moveable or immovable, or both, belonging to the notified person becomes effective simultaneously with the issue of the notification under Section 3(2) of the Act.

It is with respect to this attached property that powers under Section 11 of the 'Act' could be exercised. We might, here, take a look at Section 11 of the Act .

**TRUE COPY**

*Wm*  
Advocate For Petitioner / Respondent / Applicant

**(1997) 9 SCC 123**

**TEJKUMAR BALAKRISHNA RUIA**

**V/S.**

**A.K. MENON, CUSTODIAN & ANR.**

**Para-5 :** In our view, the terms of sub-section (3) of Section 3 are clear. By reason thereof, the property that belongs to a notified person stands attached simultaneously with the issue of the notification that makes him a notified party. The words "on and from the date of notification" indicate the point of time at which the attachment takes effect; this is reiterated by the words "shall stand attached simultaneously with the issue of the notification". This also indicates that no separate notification or order in regard to the attachment is necessary.

**Para-9 :** It is perhaps necessary to make clear that the income or usufruct of attached property is also attached property. Thus, if the property be shares, dividends and bonus and rights shares thereon would also be attached property. It is only income generated by a notified person by dint of his own labour which falls outside the net of Section 3(3). In respect of such income, the attachment under Section 33) does not operate.

**(2001) 3 SCC 71**

**SOLIDAIRE INDIA LTD.**

**V/S.**

**FAIRGROWTH FINANCIAL SERVICES LTD.**

**Para-10.** ----- Under Section 3 of the 1992 Act, all property of notified persons is to stand attached. Under Section 3(4), it is only the Special Court which can give directions to the Custodian in respect of property of the notified party. Similarly, under Section 11(1),

the Special Court can give directions regarding property of a notified party. Under Section 11(2), the Special Court is to distribute the assets of the notified party in the manner set out thereunder. Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand attached. These are assets which have to be collected by the Special Court for the purposes of distribution under Section 11(2). The distribution can only take place provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are siphoned off from banks and financial institutions into private pockets are returned to the banks and financial institutions. The time and manner of distribution is to be decided by the Special Court only. Under Section 22 of the 1985 Act, recovery proceedings can only be with the consent of the Board for Industrial and Financial Reconstruction or the appellate authority under that Act. The Legislature being aware of the provisions of Section 22 under the 1985 Act still empowered only the Special Court under the 1992 Act to give directions to recover and to distribute the assets of the notified persons in the manner set down under Section 11(2) of the 1992 Act. This can only mean that the Legislature wanted the provisions of Section 11(2) of the 1992 Act to prevail over the provisions of any other law including those of the Sick Industrial Companies (Special Provisions) Act, 1985.

**(2004) 11 SSC 456**  
**L S SYNTHETICS LTD**  
**V/S**  
**F.F.S. LTD**

***Attachment***

**Para-14:** It is not in dispute that Respondent 1 herein has advanced loan to the appellant by different cheques amounting to Rs 14.25 lakhs which were to be repaid at the interest rate of 21% per annum, the details whereof are as under:

<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>
234285	28-1-1992	1,50,000
244746	27-4-1992	3,50,000
244825	6-5-1992	1,00,000
246029	25-5-1992	1,00,000
246038	25-5-1992	75,000
246159	9-6-1992	6,50,000"

**Para-19:** In this case, the notified person himself had disclosed that a sum of Rs 14.25 lakhs is owing and due to it from the appellant. The debt at the hands of the appellant payable to the respondent being admitted, we have no hesitation to hold that the same would be the subject-matter of attachment.

**Para-20:** The debt in question is capable of being attached, being a property belonging to the notified party and upon such attachment the consequences provided therefrom would ensue and in that view of the matter, the Special Court will have jurisdiction to pass an appropriate order in relation thereto by issuing appropriate directions in terms of the provisions of the said Act. As the Special Court had the requisite jurisdiction to deal with the attached property, it is immaterial whether the factum of the statutory provisions is brought to its notice by the

notified party himself or by the Custodian. The court has the requisite jurisdiction; nay a duty to apply itself to the said question once the matter is brought to its notice.

**Para-21 :** The jurisdiction of the Special Court, it is not correct to contend, is confined only to illegal transactions in securities and properties acquired by the notified person out of the same. Once the properties are attached under sub section (3) of Section 3, the Custodian has no other option but to apply the same in such a manner as the Special Court may direct.

**Para-37 :** We may, however, add that the attachment of the properties of the notified party being for specific purposes i.e. for the purpose of discharging his liabilities, the Special Court is bound to pass appropriate orders in relation thereto. A property once attached shall remain under attachment till an appropriate order is passed. It is, therefore, idle to contend that even in respect thereof the provisions of the Limitation Act would apply. The court while issuing directions to the Custodian in relation to the attached property for the purpose of discharge of the liability of the notified person must pass an appropriate order. So long the claims or other proceedings initiated before the Special Court as regards discharge of liability of the notified person continue, the attachment remains in force. A proceeding before the Special Court is not a suit for recovery of an amount. The proceedings before the Special Court are extraordinary in nature. Distribution of the assets of a notified person may take a long time but it would bear repetition to state because all the claims filed before the Special Court are disposed of, the property of the notified person stands attached. In other words, the provisions of the Limitation Act would inter alia apply only when a suit is filed or a proceeding is initiated for recovery of any amount and not

where a property is required to be applied towards the claims pending before the Tribunal for the purpose of discharge of the liabilities of the notified person in term of Section 11 of the said Act.

**Para-45 :** We, therefore, hold: (i) A notified party has the requisite locus to bring the fact to the notice of the Special Court that certain sum is owing and due to him from a third party whereupon a proceeding can be initiated for recovery thereof by the Custodian and consequent application thereof in discharge of the liability of the notified person.

(ii) Sub-section (3) of Section 3 should be literally construed and so construed, all properties belonging to the notified person shall be subject to attachment which may, consequently, be applied for discharge of his liabilities in terms of Section 11 of the said Act.

(iii) The provisions of the Limitation Act, 1963 have no application in relation to the proceedings under the said Act.

**(2006) 2 SSC 385**

**ASHWIN MEHTA & ORS**

**V/S**

**CUSTODIAN & ORS**

**Para-26 :** The appellants herein are notified person in terms of the provisions of the Act. Therefore, all the properties belonging to them stand attached. Such attachment being automatic, no finding was required to be arrived at that the same had been acquired either during the notified period or the appellants were involved in offences in transactions in securities

(2009) 10 SCC 564

**JYOTI MEHTA & ORS**

**VS**

**CUSTODIOAN & ORS**

**Para-32 :** Section 3 of the Special Act, on the other hand, postulates automatic statutory attachment of the properties of the notified party. The acquisition of the properties whether prior to the window period or during the window period or thereafter can be attached for the discharge of liabilities

**Para-47 :** In our opinion the arguments advanced on behalf of the appellants need to be rejected at the outset because a plain reading of the sections of the Special Act would clearly point otherwise. In our opinion the attachment of all the properties in terms of sub- section (3) of Section 3 of the Special Act is automatic. The attachment restricts sale of the properties which have been acquired from illegal securities transaction. The sub-section specifically mentions that on and from the date of the notification, any property, movable or immovable, or both, belonging to any person notified under the Act shall stand attached. The said sub- section does not provide for any qualification that the properties which are liable to be attached should relate to the illegal securities transactions in respect of which the Act was enacted. Had the intention of the Parliament been so, it would have clearly mentioned it.

**Para-54 :** We must place emphasis on a plain reading of the said section. Had it been the intention of the legislature to attach only those properties acquired within the statutory period, it would have clearly said so. The statutory window period is only a relevant criterion for

application of Section 3(2) and therefore has no bearing on the application of Section 3(3). A plain reading of Section 3(3) would suggest that all properties of the notified persons on the date of the said notification would automatically stand attached irrespective of the fact as to whether they had been acquired before, during or even after the statutory period.

**Para-55 :** A logical corollary of this would be that all income accruing or arising from the said property even after the date of attachment would also automatically stand attached. However property acquired by a notified person after the notification under the Special Act cannot be attached. That property does not come within the purview of the Section 3(3). [See Tej Kumar Balakrishna Ruja v. A K Menon, (1997) 9 SCC 123 para 6]

56. The cut-off date for the attachment of the property accordingly is the date of notification. All properties of the persons on the said date automatically stand attached. The statutory window period is irrelevant for the attachment of the property. It would have no bearing on the said attachment. It is true that to such an extent all properties would be liable to be sold which are needed for redemption and not beyond the same. What should be kept uppermost in the mind of the Court is to see that the liabilities are discharged and not beyond the same. It is with that end in view that the powers of the Special Court contained in Sections 9A and 11 must be construed.

**Para-56.** The cut-off date for the attachment of the property accordingly is the date of notification. All properties of the persons on the said date automatically stand attached. The statutory window period is irrelevant for the attachment of the property. It would have no bearing on the said attachment. -----.

**(2011) 6 SCC 220**

**RASILA MEHTA & ANR**

**VS**

**CUSTODIAN & ORS**

**Para-29 :** The attached properties can be dealt with by the Special Court under sub-Sections (3) and (4) of Section 3, sub-Section (2) of Section 4, Sections 9-A and 11 of the Act. Section 3(3) of the Act provides for an automatic attachment of all properties as a consequence of Notification. The object provides the attachment of all properties of the offender with a view to prevent diversion of such properties. The said provision is a preventive provision.

**Para-42 :** Section 3(3) postulates that on and from the date of notification all properties movable, immovable or both, belonging to the notified party on and from the date of the notification stand attached. Attachment of all the properties in terms of Section 3(3) of the Act is automatic. The said section does not provide any qualification that the properties which are liable to be attached should relate to the illegal transactions in securities in respect of which the Act was brought in force. Had the Parliament intended otherwise it would have specifically provided for the same as was done under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

Application No.40 of 1993Mr. A.K. Menon, Custodian V/s. Uttam Galwa Steels Ltd. & Ors. –Order dated 21<sup>st</sup> June, 1993

It is next submitted that the Court has no jurisdiction to direct Respondents No. 1 to bring in monies. I am unable to accept this submission. Under the Special Court (Trial of Offences) Act, this Court has been established for the purposes not just for trying offences, but also for ultimate distribution of assets of various Notified persons in the manner set out in Section 11 of the Act. Also all properties of Notified persons stand attached. The Custodian is to act, in respect of attached properties under the direction of the Court. This Court therefore has complete superintendence over all attached properties. This would include passing of Orders against third parties, in respect of attached properties or income or gain from attached properties as well as recovering loss caused by wrongfully dealing with attached properties. To be noted that the provisions of this Act prevail over all other law. I thus see no substance in this argument.

Application No.184 of 1993Mr. A.K. Menon, Custodian V/s. Southern PetrochemicalsIndustries Corporation Ltd. & Ors. – Order dated 19<sup>th</sup> October, 1993

**Para -4 :** ..... It is settled law and needs no great elaboration that once property stands attached, no party can deal with that property or dispose off that property without Orders of the Court. Any such transaction would, in law, be null and void.

**Para -6 :** ---- To be noted that till date no intimation is sent to the Custodian. ----- The Custodian by his letter dated 6<sup>th</sup> November 1992 rightly informed the 1<sup>st</sup> Respondent that these Bonds stand attached and that the 1<sup>st</sup> Respondent can now only hold them as Trustees.

**Para - 7 :** One would have expected that on receipt of the Custodian's letter better sense would have prevailed. They now know that these Bonds are attached. They now know that in law there can be no private dealings. Unfortunately the 1<sup>st</sup> Respondent proceeded to deal with the attached bonds dis-regarding the provisions of the Special Court Act.

**Para - 8 :** Instead of approaching this Court, which in law was the only thing which the 1<sup>st</sup> Respondent could have done, the 1<sup>st</sup> Respondent purported to cloak their actions with semblances of supposed good faith.

**Para- 9 :** ----- The 1<sup>st</sup> Respondents have therefore dealt with the attached Bonds with full knowledge that these were attached Bonds.

**Para -10 :** He submitted that the 1<sup>st</sup> Respondent even intimated the Custodian. He submitted that it is only because of lack of action on the part of the Custodian, as well as Respondent Nos.2 to 5, that the 1<sup>st</sup> Respondents were constrained to take the steps which they have taken. All these arguments of Mr. Simhan overlook the fact in law, no matter how bonafide ones action may be, nobody can privately deal with properties which stand attached. In law any such dealing is void, illegal and unenforceable. Undoubtedly, Respondent Nos.2 to 5 could have approached this Court and obtained appropriate orders for release of monies. However, the fact that Respondent Nos.2 to 5 did not do so gave no right to Respondent No.1 to deal with Bonds which stood attached.

**Para -13:** None of these authorities deal with a situation where there is an attachment by Court or a statutory attachment. These are all cases where under the general law the companies had a right of forfeiture and validly exercised that right. They deal with the consequences which follow from a valid exercise of such a right. In fact these very authorities lay down that if a right of forfeiture has not been validly exercised then the Company is bound to re-compense the shareholder. In cases where there is an attachment there can be no valid forfeiture. Any forfeiture after attachment would be illegal and invalid. ----- . There may be certain contractual obligations which were required to be performed by Respondents 2 to 5. However, even on a failure of Respondents 2 to 5 to so perform, after notification and after attachment of their properties, the contractual rights could only be enforced after first obtaining sanction of this Court, particularly so when property of Notified party is sought to be forfeited. ----- . However, there can be no forfeiture after a statutory attachment. Undoubtedly the contract and the Companies Law permit forfeitures.

**Para - 14 :** The provisions of The Special Court Act deals with just such a situation. It is to meet just this sort of situation that there is an automatic attachment of all properties without anything further being done. To accept the arguments of Mr. Simhan would be to defeat the very purpose of the Act. The Act was enacted, in view of the situation prevailing whereby large amounts of public monies had been siphoned off into private pockets and then diverted into various other fields. The Special Court Act was enacted not just for purposes of punishing the offenders, but also for a collection and systematic distribution of the assets of Notified persons. Once properties stand attached under Section 3 of the Special Courts Act, no person can deal with the

property, no matter what contractual or other rights he may have. Once the property stands attached it can only be dealt with under the directions of the Special Court. This under Section 3(4) and Section 11 of The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. Not only that under Section 13 of The Special Court (Trial of Offences Relating to Transactions in Securities) Act 1992 the provisions of this Act prevail over any other law. This would also include Companies Act. The provisions of the Special Court Act also prevail over any contract. This would also include the terms of the Letter of Offer relied upon by Mr. Simhan. Therefore neither the provisions of the Companies Act nor the Letter of Offer give any right, to the 1<sup>st</sup> Respondent, to ignore the provisions of the Special Court Act. They did not enable Respondent No.1 to ignore the statutory attachment and deal with the Bonds without direction of the Special Court. If this is permitted then all parties, particularly notified parties, would set up contracts and / or other rights like lien, set off etc. in order to get over the attachments under the Special Court Act. Of course under Section 4 existing contracts remain valid. However, the scheme of the Act makes it clear that Section 4 deals with contracts which are already executed prior to the notification. So far as executory contracts, like the present are concerned, rights under them could only be exercised after obtaining permission of the Special Court. This particularly so when property belonging to a notified party is sought to be taken away or forfeited. It will thus have to be held that the bonds were properties belonging to Respondents No.2 to 5 and stood attached. Any dealings with the Bonds is illegal and void. Respondent No.1 are bound to bring back into Court the Bonds or to compensate for the loss caused.

**Para – 16 :** In my view, these are submissions which merely need to be stated to be rejected. This court, apart from the trial of offence, is also

entrusted with the task of dealing with property which stands attached. This under Section 3(4) and Section 11. Under Section 11 this Court has ultimately to distribute the property. Whilst dealings with properties which stand attached this Court will necessarily have to deal with questions as to whether or not the properties stand attached. This Court will necessarily have to decide on rights of parties in respect of properties. These are all claims which are civil in nature and which arise under the provisions of this Act. Once the property stands attached, it is only this Court which can pass directions in respect of that property. In fact, in respect of attached properties even the company court cannot deal with those properties. Thus, it is this Court and only this Court which would have jurisdiction in respect of attached property. It is property of the Notified party which stands attached. Therefore there is no substance in the contention that this court can deal with or decide questions only if the 3<sup>rd</sup> person has committed an offence in respect of a transaction in Securities. Once it is held that a property belongs to a Notified party, in this case Respondent Nos.2 to 4, it then stands statutorily attached. The 1<sup>st</sup> Respondent could then never have privately dealt with the property. They necessarily had to first come to this Court and ask for permission to deal with the property. It is no excuse for the 1<sup>st</sup> Respondent to say that they called upon the Respondent Nos.2 to 4 to approach this Court. It is no excuse to say that they informed the Custodian. The Custodian in fact informed the 1<sup>st</sup> Respondent that was attached property. Even if the Custodian and / or Respondent Nos. 2 to 4 did nothing, the 1<sup>st</sup> Respondent could also have done nothing without first approaching this Court. They could only have stood in line under Section 11. In my view, by dealing with the property which stood attached and which was under the custody of this Court, strictly speaking Respondent No.1 is guilty of contempt of this Court. However, for the present, I do not propose to take any action in

contempt a sin my view, the order which I now propose to pass, will be sufficient to discourage the 1<sup>st</sup> Respondent or others from taking law into their own hands in future.

**Para – 17** : It is thus held that the dealings by the 1<sup>st</sup> Respondent with the Bonds is illegal, null and void. Respondent No.1 would therefore have to cancel their forfeiture of the Bonds. However, the 1<sup>st</sup> Respondents have already re-issued the Bonds. The person/ Company who have now taken the bonds are innocent third parties without notice of the illegality. It would be unfair to call upon them to bring back the Bonds. The 1<sup>st</sup> Respondents must be asked to compensate for the loss. The loss would be the sum of Rs.3.58 lacs plus interest. Accordingly Respondent No.1 are called upon to pay to the Custodian within three weeks from today a sum of Rs.3.58 lacs which they purported to forfeit along with the interest @ 24 % per annum from the date of alleged forfeiture till payment.





IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 6326 OF 2010

JYOTI H. MEHTA &amp; ORS.

Appellant(s)

VERSUS

THE CUSTODIAN AND ORS

Respondent(s)

O R D E R

Learned Senior Counsel/Counsel appearing for the parties mentioned this matter today and submit that in the order passed by this Court on 02.05.2017 in para 3 after '18%' the word 'p.a.' may be added and in para 5 last line the word 'Assessing' may be deleted and the sentence "The Custodian is directed to take appropriate steps to recover the assets of the appellants" may be incorporated in the said order.

In view of the submissions made, the order dated 02.05.2017 passed by us in paras 3 and 5 are modified and a new para (9A) is incorporated as under:

"3) Therefore, we direct the Income Tax Authorities to pay the said amount of Rs.192.54 crores to the Custodian with interest at the rate of 18% p.a. from the date of passing of the refund order within a period of 12 weeks from today.

5) The orders (Ninety) which have already been passed by the ITAT directing the Revenue to re-frame the assessment by taking into account the evidence of books of accounts should be decided by the Authority within a period of 12 weeks from today.

9A) The Custodian is directed to take appropriate steps to recover the assets of the appellants.

Signature Not Verified  
Digitally Signed by  
PINAKI CHANDRA GHOSH  
Date: 2016-05-11  
11:05:05 IST  
Reason:

..... J.  
(PINAKI CHANDRA GHOSE)

TRUE COPY

*MM*  
Advocate for ~~Jyoti H. Mehta & Ors.~~ Applicant

..... J.  
(ROHINTON FALI NARIMAN)

New Delhi;  
May 08, 2017.

ITEM NO.804

COURT NO.6

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6326/2010

JYOTI H.MEHTA &amp; ORS.

Appellant(s)

VERSUS

THE CUSTODIAN AND ORS

Respondent (s)

Date : 08/05/2017 This appeal was orally mentioned today.

## CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Ms. Kamini Jaiswal, AOR

For Respondent(s) Ms. Ramni Taneja, Adv.  
Mr. Anil Shrivastav, AOR

Mr. Jaideep Gupta, Sr. Adv.  
Ms. Vijayalakshmi Menon, Adv.  
Mr. Anuj Shah, Adv.  
Mr. Dhritiman, Adv.

Mr. Arvind Kumar Tewari, AOR

UPON hearing the counsel the Court made the following  
O R D E R

In view of the submissions made by the learned Senior Counsel/Counsel, the order dated 02.05.2017 passed by us in paras 3 and 5 are modified and a new para (9A) is incorporated in terms of the signed order.

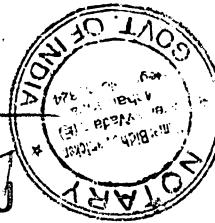
(R. NATARAJAN)  
Court Master

(Signed order is placed on the file)

(SNEH LATA SHARMA)  
Court Master



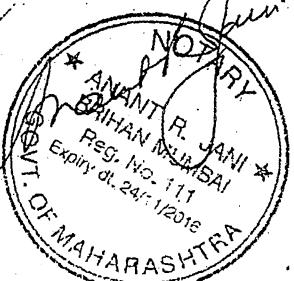
EXHIBIT-J

PUBLIC NOTICE

Office of the Custodian appointed under Special Court (Trial of Offences relating to transactions in securities) Act, 1992.

1. This is to inform all concerned that under the Special Court Trial of Offences relating to the transactions in securities) Act, 1992 Section 3(2) names of persons/companies who have been notified by the Custodian appointed under Section 3(1) of the Act are given at the concluding part of this notice.
2. Under Section 3(3) of the said Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973 and any other law for the time being in force on and from the date of notification any property moveable or immovable or both, belonging to any person so notified shall stand attached simultaneously with the issue of the notification.
3. Further, under Section 3(4) of the said Act, the property attached shall be dealt with by the Custodian in such manner as the Special Court may direct.
4. Under Section 13 of the said Act, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith

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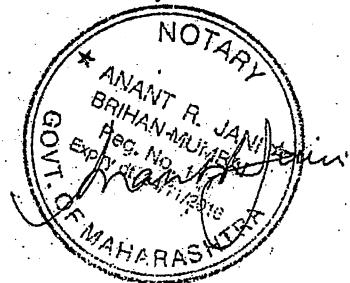
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Advocate For [Redacted] / American

## Names of persons/companies notified by the Custodian:

Notification No. and date	Name of the person/company notified
1. Custodian/1/92 dated 8.6.92	1. M/s Harshed S Mehta, proprietor concern
	2. M/s Ashwin S Mehta, proprietor concern
	3. M/s J H Mehta, proprietor concern
	4. Mr. Harshed S Mehta, son of Shantilal Mehta
	5. Mr. Ashwin S Mehta
	6. Mr. Hitesh S Mehta
	7. Mr. Sudhir S Mehta
	8. Mrs. Jyoti H Mehta, wife of Sl.No.4
	9. Mrs. Deepika A Mehta, wife of Sl.No.5
	10. Premila H Mehta, wife of Sl.No.6
	11. Harshed S Mehta, H U F
	12. Ashwin S Mehta, H U F
	13. Hitesh S Mehta, H U F
	14. M/s Sunrise Enterprises
	15. Growmore Research & Assets Management Ltd
	16. Growmore Leasing & Investment Pvt. Ltd.
	17. Growmore Exports Pvt. Ltd.
	18. Aatur Holdings Pvt. Ltd.
	19. Harsch Estates Pvt. Ltd.
	20. Cascade Holding Pvt. Ltd.
	21. Orion Travels Pvt. Ltd.
	22. Fortune Holdings Pvt. Ltd.
	23. Treasure Holdings Pvt. Ltd
	24. Velvet Holding Pvt. Ltd.

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25. Eminent Holding Pvt. Ltd.  
 26. Pallavi Holding Pvt. Ltd.  
 27. Zest Holding Pvt. Ltd.  
 28. Topaz Holding Pvt. Ltd.  
 29. Divine Holding Pvt. Ltd.

Addressess of the above, as communicated, are as under:

- Office: 1. Lentin Chambers  
     4th Floor,  
     Dalal St.  
     Fort, Bombay 400 023.
2. 1205/6, Makor Chambers V  
     Nariman Point  
     Bombay 400 021

Residence: Madhuli  
     Annie Besant Road  
     Worli  
     Bombay 400 025.

30. Shri Abhay Dheremsinh Narottam  
     son of Dheremsinh Narottam

Addressess:

Office: 1. Table No 1, Rear Side  
     Came Building,  
     Ground Floor  
     Dalal Street,  
     Fort, Bombay 400 023

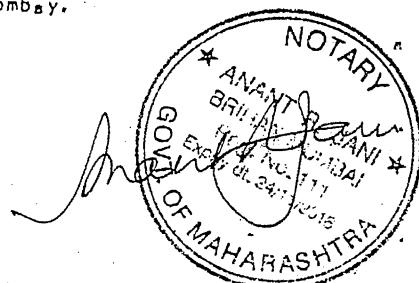
2. Regent Chambers  
     2nd Floor  
     208 Jamanil Bajaj Marg  
     Nariman Point  
     Bombay 400 020

31. Shri Hiten Prasan Dalal  
     son of Shri Prasan Dayantilal  
     Dalal

Addressess:

Office: Room No. 11/2  
     Bombay Mutual Building  
     19/21 Hemam St.  
     Bombay

Residence: Dav Chhaya  
     7th Road, Santacruz(East)  
     Bombay.



(ii) GA, Samundra Gurav  
Worli Seaface  
Bombay -

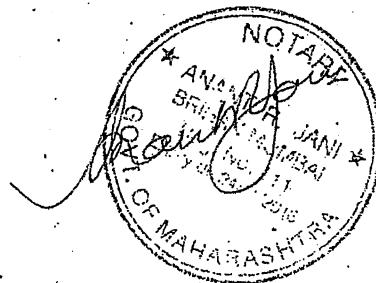
4. Custodian/d/92 1. Fairgrowth Financial  
dated 2.7.92 Services Limited  
Fairgrowth House  
Vittal Mallaya Road  
Mysore 560 001

2. Shri R Ganesh  
Assistant Vice President  
Fairgrowth Financial  
Services Ltd.,  
Vittal Mallya's Road  
Bangalore 560 001

5. Custodian/5/92 . 1. M/s Dhanraj Mills Pvt.  
dated 5.8.1992 Limited  
Sitaram Jadhav Marg  
Lower Parel  
Bombay 400 013

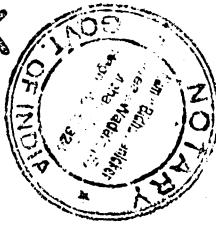
Dated the 10<sup>th</sup> September 1992

AS MEAN  
CUSTODIAN



IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO  
TRANSACTIONS IN SECURITIES) AT BOMBAY

MISC. APPLICATION NO. 400 OF 1994



Standard Chartered Bank.

Applicants.

Vs.

1. Canbank Financial Services Ltd.,
2. Harshad S. Mehta,
3. Custodian,
4. C. B. I.,
5. Fairgrowth Finance Services Ltd.

Respondents.

Mr. E. P. Bharucha i/b Gagrat & Co. for Applicants.  
Mr. Pradeep Sancheti i/b Mulla & Mulla for 1st Respondents.  
Mr. M. R. Jethmalani i/b Mahimtura & Co. for 2nd Respondent.  
Mr. G. R. Joshi i/b P. M. Mithi & Co. for 3rd Respondent.  
Mr. P. R. Namjoshi for 4th Respondents.

CORAM: HON'BLE MR. JUSTICE  
S. N. VARIAVA.  
28TH MARCH 1995.

ORAL ORDER:

1. Mr. Bharucha asks for time to take inspection of certain Bankers Receipts which are in custody of C. B. I. Mr. Namjoshi states that inspection will be granted. He however points out that the documents are in Bangalore. He states that the documents will have to be brought to Bombay. Mr. Namjoshi asks for 4 weeks time.
2. Mr. Jethmalani points out that on the averments of the Applicants in paras 10 to 15 of their Affidavit dated 14th December 1994, the Applicants have to deliver to the 2nd Respondent 13% NPC Bonds of face value of Rs. 3 crores.
3. Mr. Bharucha submits that this also arises from the initial transaction which forms the subject matter of the Application. Mr. Bharucha submits that the 1st Respondents

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*W.W.*

Advocate

for Plaintiff / Applicant

admit that they have to deliver 13% NPC Bonds of face value of Rs. 5.5 crores to the Applicants. He submits that the Applicants have no objection to 1st Respondents handing over Bonds worth Rs. 3 crores to the 2nd Respondent.

4. Mr. Sancheti states that the 1st Respondent admit that they have to deliver to the Applicants 13% NPC Bonds of face value of Rs. 5.5 crores. He submits that that can only be if the Bankers Receipt is handed back to the 1st Respondents duly discharged and/or the Court grants to the 1st Respondents a discharge. He submits that without the discharged Bankers Receipt and/or a discharge from Court, the 1st Respondents are not willing, at this stage, to bring in the Bonds.

5. Mr. Jethmalani points out that the C. B. I. has filed an Affidavit objecting to release of the 1st Respondents' Bankers Receipt. This because there is a pending prosecution. Mr. Jethmalani points out that the liability of the Applicants to deliver Bonds of the face value of Rs. 3 crores is independent of and not dependent upon the Bankers Receipt of the 1st Respondents. He submits that the attempt to link the two is merely a ruse to delay performance of their own obligation.

6. In my view, at this stage these questions do not arise in this Application. However it does prima facie appear to Court that Applicants have a liability to deliver 15% NPC Bonds of the face value of Rs. 3 crores to 2nd Respondent. It prima facie appears that these should have been

delivered as far back as 1992. Prima facie it does appear that this liability is independent of and not connected to the delivery by 1st Respondents under their Bankers Receipt.

7. Court is noticing that many parties including big Banks, are not performing their obligations. After Notification, all properties of Notified Parties stand attached. The Custodian has issued Public Notices calling upon all parties to inform him if any thing is owed to Notified Parties. Many parties have not replied. They have kept quiet. This probably in the hope that if things do not come to light, they might escape liability. Many of them may ultimately succeed, inasmuch as limitation is fast running out. If the Custodian does not learn of the claim, he cannot file an Application to recover. Parties, including Notified Parties, do not inform the Custodian. It is possible that there is an understanding between them. Presumably at some stage, after known assets are distributed, there will be adjustment between them and the Notified Party.

8. In my view, Court must take serious note of this tendency to not to disclose. In my view, if it comes to attention of Court that a party has not disclosed for the last over 2/3 years and that it is holding attached assets, then that party must be made to pay a high rate of interest and high costs.

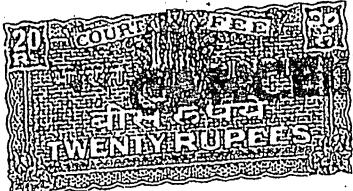
9. As stated earlier, at this stage and in this Application, Court cannot call upon Applicants to bring in Bonds of face value of Rs. 3 crores. It is for Applicants to

decide what they want to do. Applicants have recently been a beneficiary of Court's view that high interest and high costs must be awarded under some circumstances. They therefore, more than anybody else are aware of Court's view in these matters. They more than anybody else know that if it is found that they have not disclosed and not honoured their independent obligation, they may end up paying high interest and costs.

10. As this has now come to the notice of the Court, I direct the Custodian to look in this aspect. If he finds that 2nd Respondent's claim is correct and genuine, then he must take out an Application for recovery of these Bonds.

11. This Application is adjourned for four weeks.

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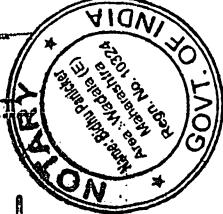


M.P.D.

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## EXHIBIT-L

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO  
TRANSACTIONS IN SECURITIES) AT BOMBAY

SUIT NO. 2 OF 1995

National Housing Bank

Plaintiffs

Vs.

1. State Bank of Saurashtra
2. Harshad S. Mehta
3. C. Ravi Kumar
4. S. Suresh Babu
5. A. K. Menon, Custodian

Defendants

Mr. Aspi Chinoy with Mr. S. J. Vajifdar i/b M/s. Desai & Diwanji for the Plaintiffs.

Mr. K. N. Bhatt with Mr. Milind Sathe i/b M/s. Bachubhai Junim & Co. for Defendant No. 1.

Mr. Mahesh Jethmalani with Mr. A. D. Chaugule, Mr. Ajay Khandhar i/b Chaugule & Co. for Defendant No. 2.

Ms. Manjari Shah with R.A.K. Najam Es Sani for Defendant No. 3.

Defendant No. 4 in person present in Court.

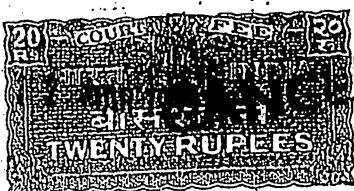
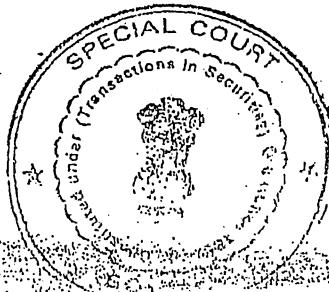
Mr. G. R. Joshi with Mr. S. Rustomjee and Mr. J. Chandran i/b M/s. P. M. & Mithi & Co. for Defendant No. 5.

CORAM: HON'BLE MR. JUSTICE  
S. N. VARTAVA,  
JUDGE, SPECIAL COURT.

24th & 25th February 1999.

ORAL JUDGMENT :

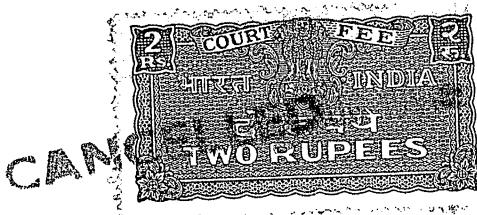
The Plaintiffs are a body corporate constituted under the National Housing Bank Act, 1987. The 1st Defendant is a body corporate constituted under the Saurashtra State Bank (Amalgamation) Ordinance, 1950. The 2nd Defendant is a share broker, who is now a Notified Party under the



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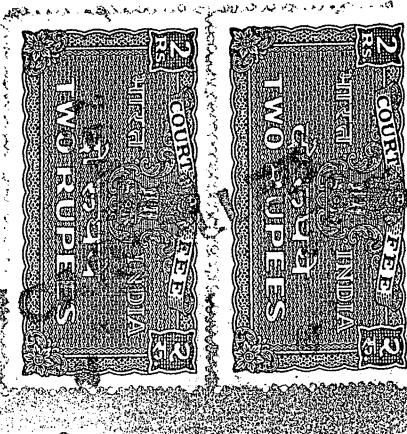
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provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter called the said Act). Defendants Nos. 3 and 4 were, at all the material times, employees of the Plaintiffs. Defendant No. 3 was the Assistant General Manager and Defendant No. 4 was the Assistant Manager. Defendant No. 5 is the Custodian appointed under the said Act.

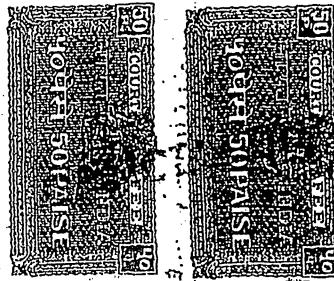
2. As is being set out in greater detail hereafter, even though there are so many Defendants, the main claim of the Plaintiff is against the 1st Defendant. Both the Plaintiff and the 1st Defendant are Nationalised Banks. Had their dispute been sorted out there would have been no necessity to file this Suit or make an alternate claim against the other Defendants.

3. The Central Government has set up a Committee to go into and resolve disputes between Government departments and bodies. The Supreme Court has, by its Order dated 7th January 1994 in Civil Appeal No. 2058-59 of 1988, directed that all disputes and differences between Government departments and bodies should first be referred to this Committee. The Central Government has issued a Memorandum dt. 24th January 1994 circulating the directions of the Supreme Court. Yet this Court has found in a number of matters that Nationalised banks/financial Institutions are, without permission of the Committee litigating before this Court. Whenever this Court has inquired, as in this Suit, Court is informed that as Notified parties are involved the Committee



has opined that it is only the Special Court who can decide the result in that Nationalised Banks are locked in unnecessary litigation which apart from bringing them into disrepute, as a result of adverse publicity, is exceedingly expensive. As is indicated hereafter nowadays litigation is prohibitively expensive. Banks/financial institutions are wasting large amounts of public monies in costs of litigation which could have been avoided. Undoubtedly claims or dispute against Notified parties can only be decided by this Court. However even if Notified parties are involved the dispute between the Nationalised banks/financial institutions can still be resolved by the Committee. It is only the claim against the Notified party or an individual or non governmental body which need come before this Court.

4. Between the Plaintiffs (herein) and the 1st Defendant (herein) there has already been one more Petition. Both these matters were ideally suited for being referred to and sorted out by the Committee. This Court had asked whether this and the earlier Petition between these two Banks had been referred to the Committee. The Court was informed that as Notified Parties were involved the Committee would not take up the matters. In both these matters the real dispute was only between Nationalised Banks. Even if Notified Parties are involved there is no reason why the dispute between these two Nationalised Banks could not have been not resolved by the Committee. In the other matter i.e. Misc. Petition No. 72 of 1994 there was no claim against the



Notified person even though he was a party to the Petition. In this Suit the claim of the Bank against Notified Party is only in the alternative. If the main claim was resolved this alternate claim did not survive. Even if it survived this claim could always be resolved separately by this Court. As is set out in greater detail hereafter the 1st Defendant has had virtually no defence. However the 1st Defendant (herein) had a claim against the Plaintiffs (herein) in the earlier Petition i.e. Misc. Petition No. 79 Of 1994. Had the Committee taken up the differences and disputes between these two Nationalised Banks it could have easily resolved them. Expensive litigation resulting in adverse publicity could have been avoided.

5. It is time that the Central Government again issue directions to all banks/financial institutions to strictly comply with its Memorandum dt. 24th January 1994 and the directions of the Supreme Court contained therein. The Central Government should call upon all Nationalised banks/institutions who have pending litigation before this Court, in which there is a claim against another Nationalised bank/institution, to immediately refer that dispute to the Committee. The Committee should then resolve the dispute between these bodies leaving the claim, if any, against the Notified party or non Notified parties/bodies for this Court to decide. Officer on Special Duty is directed to send a copy of this Judgment to the Ministry of Law and the Ministry of Finance and the Governor, Reserve Bank of India with a



request to take action on this and on the aspect set out in paras 27, 73, 74, 108 and 114 hereafter.

6. Facts and averments are as follows:-

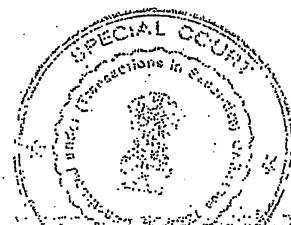
The Plaintiffs aver that part of their business was to deal in money market operations i.e. lending of monies at call or short notice; rediscounting of bills of exchange on purchase/sale of securities either on a Ready Forward Basis or an Outright Basis. The Plaintiffs aver that at all time material the business of money market operation was entrusted to Funds Management Group which consisted Defendant Nos. 3 and 4.

7. The Plaintiffs aver that a cheque bearing No 173756 dated 3rd January 1992 was drawn by the Plaintiffs to the Reserve Bank of India. The Plaintiffs aver that the cheque was originally drawn in the name of State Bank of India, but the same was altered to the name of the 1st defendant. The Plaintiffs aver that the said cheque was for the sum of Rs. 95,39,78,082.17p. The Plaintiffs aver that the 1st defendant received the said cheque. The Plaintiff aver that the record maintained by the Funds Management Group did not show a similar corresponding correction and continues to show as if the deal was between the Plaintiff and the State Bank of India.

8. The Plaintiffs aver that towards the end of April 1992, there were certain press reports which indicated that there were serious irregularities in security transactions of the State Bank of India. The Plaintiffs aver that there were some market reports that other Banks/Institutions also have



similar irregularities. The Plaintiffs aver that the Plaintiffs and other Banks and Institutions scrutinised their records and on such scrutiny the Plaintiffs found that in their records certain transactions were entered into and were still outstanding but the Plaintiffs did not have any Bankers Receipt or supporting documents or any securities in respect of such transactions. The Plaintiffs aver that initially the Plaintiffs thought that the transaction between the Plaintiffs and the 1st Defendant was outstanding and that the 1st Defendant had not delivered securities or BRs. The Plaintiffs aver that therefore they addressed letters to the 1st Defendant requesting the 1st Defendant to deliver the BR or the security or for return of the money. The Plaintiffs aver that the 1st Defendant admitted that the proceeds of the cheque drawn in its favour were credited into their account with the Reserve Bank. The Plaintiffs aver that the 1st Defendant however denied the existence of any transaction and also denied that the cheque was related to any transaction between the Plaintiffs and the 1st Defendant. The Plaintiffs aver that the 1st Defendant claimed that the amount of the said cheque was received by them on account and for the benefit of the 2nd Defendant. The Plaintiffs aver that the 1st Defendant claimed that crediting the proceed of the said cheque to the account of the 2nd Defendant was justified by certain market/banking practice. The Plaintiffs aver that the 1st Defendant claimed that on the basis of instructions of the 2nd Defendant, against the



said cheque of the Plaintiffs, the 1st Defendant issued Cheques on behalf of the 2nd Defendant in favour of certain third parties.

9. The Plaintiffs then refer to the correspondence exchanged between the 1st Defendant and themselves. The Plaintiffs set out that in the correspondence the 1st Defendant try to connect up the said cheque with a transaction which the Plaintiffs had had with one Canbank Financial Services Limited (hereinafter called Canfina). The Plaintiffs aver that the 1st Defendant claim that there was no liability to repay the sum or furnish Banker Receipt & security as the Plaintiffs had received back their Bankers Receipt duly discharged from Canfina. The Plaintiffs aver that their transaction with Canfina is independent of and unconnected to the present transaction and does not discharge the 1st Defendant's liability to the Plaintiffs.

10. The Plaintiffs aver that they are entitled to recover the amount of the said cheque with interest from the 1st Defendant on the following amongst other grounds :

(a) That the said cheque was an Account Payee Cheque payable to the 1st Defendant only. The 1st Defendant duly realised the said cheque in accordance with the mandate thereof. That the 1st Defendant had no authority from the Plaintiffs to utilise the monies of the said cheque for anyone else. In view of the absence of any transactions between the Plaintiffs and the 1st Defendant in respect of the first cheque, the 1st Defendant was bound to hold the



said monies with itself until it received further instructions from the Plaintiffs and not part with the monies to any third party without the express authority from the Plaintiffs. The Plaintiffs aver that if the 1st Defendant has paid the money to the 2nd Defendant, it has done so as a separate act of its own volition and at its own risk and peril. The Plaintiffs aver that under the circumstances the 1st Defendant is liable for conversion of the cheque and/or it is liable to repay the amount on the basis of the monies had and received without any consideration.

(b) That the said cheque was paid to the 1st Defendant by the Plaintiffs not intending to do so gratuitously and the 1st Defendant was bound to repay the monies to the Plaintiffs.

(c) That the 1st Defendant having credited the proceeds of the said cheque into its own account without authority from the Plaintiffs disbursed the same as per the instructions of the 2nd Defendant in disregard of its fiduciary obligations which the 1st Defendant had with it. The Plaintiffs aver that as there was fiduciary obligation, the 1st Defendant is liable to reimburse the sum to the Plaintiffs.

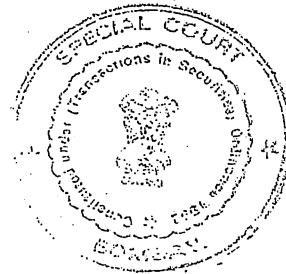
(d) That the 1st Defendant was grossly negligent in the discharge of its duties. The Plaintiffs aver that the 1st Defendant had failed to exercise due care that was required of a Banker. Plaintiffs aver that the 1st Defendant acted contrary to law, settled banking practice and the



mandate of the cheque. The Plaintiffs aver that the 1st Defendant had no right to presume that a persons physically being in a crossed account payee Cheque not drawn in favour of such person, had the beneficial ownership thereof, in the absence of a letter of authorisation from the drawer for that purpose. The Plaintiffs aver that the 1st Defendant did not have any authority to confirm ownership on any other person. The Plaintiffs aver that if the Plaintiffs intended the proceeds of the cheque to be credited to the 2nd Defendant, it would have given a letter of authority to the 1st Defendant. The Plaintiffs aver that the 1st Defendant ought to have made necessary enquiries with the drawer of the cheque i.e. the Plaintiffs in regard to the purpose of the cheque. The Plaintiffs aver that the 1st Defendant made no enquiries and therefore there was want of banker's care and negligence. The Plaintiffs aver that by such want of banker's care and negligence, the 1st Defendant has squandered away the effective opportunity to prevent the act culminating in the amounts being taken away by the 2nd Defendant. The Plaintiffs aver that the 1st Defendant acted carelessly, recklessly, negligently and wrongly.

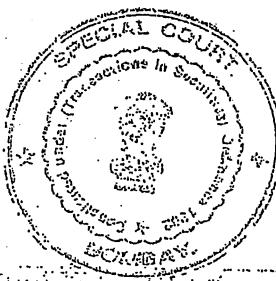
ii. Without prejudice to the above and in the alternative the Plaintiffs submit that Defendant Nos. 1 to 4 are jointly and severally bound and liable to pay to the Plaintiffs the sum of Rs. 95,39,78,082.19/- on the following amongst other grounds :-

(a) As no transaction existed, Defendant Nos. 3 and 4

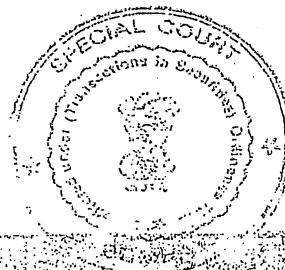


had colluded with the 2nd Defendant and/or that the 1st Defendant had acted to so arrange affairs in such a manner that the crossed cheque drawn on Reserve Bank of India in favour of the 1st Defendant appeared on the record of the Plaintiffs as having been issued in respect of an alleged security transaction without there being any such transaction. The Plaintiffs aver that the 2nd Defendant got possession of the cheque and arranged to get the proceeds thereof credited to his account with the 1st Defendant.

(b) That the 1st Defendant had neither the right nor the authority to credit the account of the 2nd Defendant with the proceeds of the said cheque. The Plaintiffs aver that the 1st Defendant as a banker had a duty to act prudently and exercise due diligence and care expected of a banker in the conduct of the business. The Plaintiffs aver that the circumstances under which the proceeds of the Account Payee cheque drawn in its favour on the Reserve Bank of India was sought to be realised and proceeds thereof diverted to the account of the 2nd Defendant were such that they should have aroused suspicion of the 1st Defendant to make proper enquiries with the Plaintiffs. The Plaintiffs aver that the cheque was a high value cheque; that the cheque did not contain any direction on its face nor was it accompanied by any letter of authority authorising the payment of the proceeds of the cheque to any third party. The Plaintiffs aver that the 1st Defendant's officials found that the cheque did not relate to any transaction with the 1st Defendant.

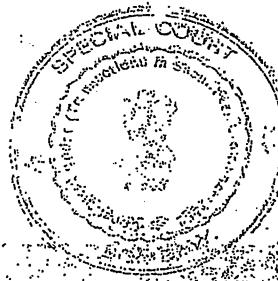


The Plaintiffs aver that these facts either collectively or by themselves would have indicated to any prudent and reasonable banker that in the absence of any transaction the cheque should be returned to the Plaintiffs. The Plaintiffs aver that the least that was expected of any banker in the position of the 1st Defendant was to make or to cause to be made proper enquiries with the Plaintiffs to satisfy itself of the bona fides and the representations made by the 2nd Defendant before realising the said cheque from the Reserve Bank of India or diverting the proceeds thereof to the account of the 2nd Defendant, an act which was impermissible in law, against settled banking practice and against the usage of the cheque. The Plaintiffs aver that the circumstances of crediting the proceeds of the said cheque so readily to the account of the 2nd Defendant are so revealing and telling that an inference must necessarily be drawn that the 1st Defendant or its officers willingly and knowingly co-operated and conspired in the fraud to oblige the 2nd Defendant. The Plaintiffs aver that this is a patent case of wilfully shutting one's eyes to the obvious, clearly manifesting fraud on the part of the 1st Defendant. The Plaintiffs aver that the fraud on the part of the 1st defendant is reinforced by its conduct in wilfully and recklessly failing to make such enquiries as an honest and reasonable person in the position of a banker would make in such a situation, more so when it involved a high value cheque. The Plaintiffs aver that the 1st Defendant was not



only aware of the fraudulent acts of its concerned officers in the matter but has supported them on the basis of a so called market practice. The Plaintiffs aver that the 1st Defendant has adopted the actions of its employees and has thus become a party to the fraud. The Plaintiffs aver that the 2nd Defendant was a highly valued constituent of the 1st Defendant. The Plaintiffs aver that the 2nd Defendant was an approved broker of the 1st Defendant and was extensively employed by the 1st Defendant for handling securities transactions on its behalf.

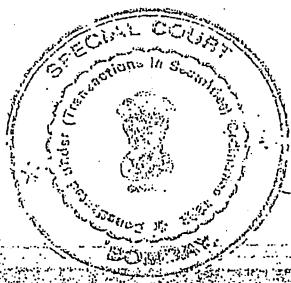
(c) The Plaintiffs aver that the encashment of the cheque drawn by the Plaintiffs in favour of the 1st Defendant resulted in the monies of the Plaintiffs lying in its account with the Reserve Bank of India being credited to the account of the 1st Defendant with the Reserve Bank of India. The Plaintiffs aver that the monies now rested in the account of the 1st Defendant. The Plaintiffs aver that even at this stage it was possible for the 1st Defendant and the 1st Defendant was duty bound, as a prudent banker, to make necessary enquiries with the Plaintiffs before disposing of the proceeds of the cheque. The Plaintiffs aver that the 1st Defendant made no enquiries and instead of its own volition and by its own acts transferred the monies to the account of the 2nd Defendant. The Plaintiffs aver that this amounts to an act of gross negligence on the part of the 1st Defendant. The Plaintiffs aver that this negligence was the proximate cause of the loss to the Plaintiffs of these amounts. The



Plaintiffs aver that the 1st Defendant also had an opportunity to effectively avert the fructification of the fraud by the 2nd Defendant.

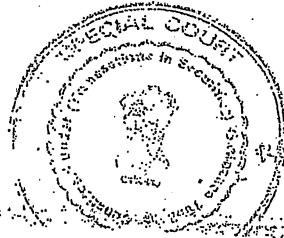
(d) The Plaintiffs aver that the 1st Defendant has pleaded justification of its action in crediting the proceeds of the said cheque in the account of the 2nd Defendant on the ground of an alleged market or banking practice of crediting a customer presenting a high value cheque even though there was no underlying transaction between the drawer bank and the payee bank. The Plaintiffs deny that there is any such market/banking practice. The Plaintiffs aver that if such a practice exists the same would be illegal and would defeat the provisions of law besides being uncertain, unreasonable and against public policy. The Plaintiffs aver that in any case the Plaintiffs are not bound by any such practice. The Plaintiffs aver that if the 1st Defendant acted on the alleged banking practice, it did so without due care and caution and with gross negligence and at its own risk and responsibility. The Plaintiffs aver that any such alleged market/banking practice set up by the 1st Defendant is absolutely inconsistent with prudent precautions against known risks. The Plaintiffs aver that such an alleged market/banking practice is an open invitation for perpetration of fraud by unscrupulous persons. The Plaintiffs aver that no such practice can exist or survive in law.

(e) The Plaintiffs aver that Defendant Nos. 2, 3 and



4 colluded with one another to make wrongful gain for themselves and wrongful loss to the Plaintiffs. The Plaintiffs aver that the Plaintiffs were under no obligation to issue a cheque to Defendant No. 2. The Plaintiffs aver that Defendant Nos. 3 and 4 caused the cheque to be issued in favour of Defendant No. 1 with a view to cause wrongful loss to the Plaintiffs. The Plaintiffs aver that Defendant No. 2 was not entitled to receive any amount from the Plaintiffs and by reason of the aforesaid collusion and concert between Defendant Nos. 2, 3 and 4 got the said cheque issued and the proceeds of the said cheque was ultimately utilised by Defendant No. 2. The Plaintiffs aver that Defendant No. 2 had no right to receive the proceeds of the cheque or receive any amounts from the Plaintiffs for any reason whatsoever. The Plaintiffs state that Defendant Nos. 3 and 4 were in charge of the Funds Management Operation and of issuance of the cheque. The Plaintiffs aver that Defendant Nos. 2, 3 and 4 have colluded with one another and thereby caused loss to the Plaintiffs by their fraud. The Plaintiffs aver that therefore they are entitled to recover from Defendant Nos. 2, 3 and 4 the aforesaid amounts.

(f) The Plaintiffs aver that the diversion of the amount of the cheque in total contravention of the banking law, norms and practice was due to the aforesaid conspiracy, fraud and collusion. The Plaintiffs aver that the action of Defendant No. 1 clearly indicates conspiracy, collusion and fraud not just between Defendant Nos. 2, 3 and 4 but between



Defendant Nos. 1 to 4, the Plaintiffs aver that Defendant Nos. 1 to 4 having caused loss to the Plaintiffs, the Plaintiffs are entitled to recover the same from these Defendants.

(a) The Plaintiffs aver that Defendant No. 2 has conspired and colluded and received the sale proceeds of the cheque into his account. The Plaintiffs aver that the Plaintiffs are therefore entitled to recover this amount from all these Defendants.

(b) The Plaintiffs aver that in any event the Plaintiffs are entitled to recover the amount from the 2nd Defendant, inasmuch as the amount of the said cheque has been received by Defendant No. 2 unauthorisedly, illegally and without any legal basis. The Plaintiff avers that no consideration has passed between the Plaintiffs and Defendant No. 2 to justify or entitle Defendant No. 2 to realise the proceeds of the cheque and appropriate the same to himself. The Plaintiffs aver that the 2nd Defendant has unjustly enriched himself and caused a wrongful loss to the Plaintiffs. The Plaintiffs aver that therefore they are entitled to recover the amount from the 2nd Defendant as the monies have been paid to the 2nd Defendant without having intended to do so gratuitously. The Plaintiffs aver that the

that there is now due and payable to them by the 1st Defendant a sum of Rs. 164,11,61,079.59p. with interest at the rate of 24% from the date of the Suit till payment. In the alternative, the Plaintiffs claim the above amount from Defendant Nos. 1 to 4 jointly and severally.

13. It is thus to be seen that the claim of the Plaintiffs is mainly against the 1st Defendant on the basis of the cheque dated 3rd January 1992 bearing No. 173756 in a sum of Rs. 95,39,78,082.19p. The cheque was an Account Payee cheque which has been received by the 1st Defendant and encashed by the 1st Defendant. The claim against the 1st Defendant is in (a) conversion of cheque, (b) monies had and received, (c) monies having been paid not intending to do so gratuitously and (d) fiduciary obligations. It is also claimed that the 1st Defendant had acted negligently and not exercised due care as required of a banker. In the alternative to the above, the Plaintiffs claim from all the Defendants on the basis of fraud and/or collusion resulting in diversion of monies to the 2nd Defendant.

14. The 1st Defendant, in its Written Statement, does not admit that the Plaintiffs records show that the said cheque was issued in respect of sale by this Defendant to the Plaintiffs of 98 IRFC Bonds face value Rs. 100 crores. The 1st Defendant avers that there was no transaction between the Plaintiffs and the 1st Defendant with regard to IRFC Bonds as alleged or at all. The 1st Defendant avers that the cheque for Rs. 95,39,78,082.19p. dated 3rd January 1992 was to the



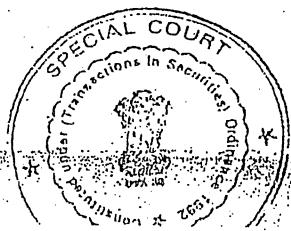
knowledge of the Plaintiffs issued for the sole benefit of defendant No. 2.

13. The 1st Defendant avers that under cover of letter dated 3rd January 1992 the 2nd Defendant delivered the said cheque to the 1st Defendant. The 1st Defendant avers that pursuant to the instructions contained in the said letter, as varied by the subsequent oral instructions of the 2nd Defendant, this Defendant issued four cheques as follows :

Particulars	Amount (Rs.)
1. Bankers Cheque No. 202667 dated 3-1-92 in favour of Canara Bank.	79,79,49,041.09
2. Bankers Cheque No. 202660 dated 3-1-92 in favour of State Bank of India.	5,01,56,904.18
3. Bankers Cheque No. 202668 dated 3-1-92 in favour of ANZ Grindlays Bank.	5,37,00,000.00
4. Bankers Cheque No. 202670 dated 3-1-92 in favour of Bank of India.	4,10,00,000.00
Total	<u>94,28,27,945.27</u>

The 1st Defendant avers that by a letter dated 6th January 1992 the 2nd Defendant requested this Defendant to issue a Bankers cheque in favour of ANZ Grindlays Bank for Rs. 4,10,00,000/- and debit his Current Account No. 2230 for the said sum. The 1st Defendant avers that they carried out the aforesaid instructions.

14. The 1st Defendant avers that no amount was due and payable by the Plaintiffs to the 1st Defendant. The 1st



Defendant avers that the proceeds of the said cheque were intended for the benefit of the 2nd Defendant. The 1st Defendant avers that the cheque was, in fact, handed over to the 2nd Defendant. The 1st Defendant avers that the said cheque was drawn in favour of the 1st Defendant in order to facilitate Defendant No. 2 to obtain same day credit of the proceeds of the said cheque. The 1st Defendant avers that the 2nd Defendant was the intended beneficiary and real owner of the proceeds of the said cheque.

17. The 1st Defendant relies on the correspondence exchanged between the Plaintiffs and the 1st Defendant and repeats and reiterates what is stated in the said correspondence. The 1st Defendant avers, that Defendant No. 2 had large dealings by resorting to use of inter-bank cheques drawn on Reserve Bank of India for the purposes of his own transaction. The 1st Defendant avers that the Plaintiffs are aware that the 1st Defendant had not received nor was it entitled to any benefit of the proceeds of the said cheque and the said cheque was issued for the benefit of the 2nd Defendant.

18. In para 11 of the Written Statement the 1st Defendant avers that the proceeds of the said cheque belonged to the 2nd Defendant and that this is borne out by the following facts :-

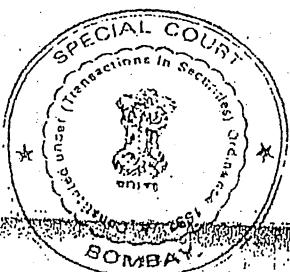
- "(a) 9% IRFC Bonds of the face value of Rs. 100 Crores were sold on 3rd January, 1992 by the Plaintiff to Canbank Financial Services ("CANFINA") for a sum of Rs. 95,43,78,082.19.



- (b) In respect of the aforesaid sale the Plaintiff issued a bankers receipt ("BR") in favour of CANFINA.
- (c) The said BR has been duly discharged by CANFINA and returned to the Plaintiff who is holding the same.
- (d) Defendant No. 2 discharged the obligation of the Plaintiff to CANFINA under the said BR by delivering the said IRFC Bonds to CANFINA. The delivery to and receipt of the said IRFC Bonds by CANFINA has been admitted by CANFINA in an affidavit dated 10th July, 1995 of Mr. S. A. P. Prabhu in Misc. Petition No. 79 of 1994 filed by this Defendant in this Hon'ble Court. This Defendant craves leave to refer to and rely upon the said affidavit when produced.
- (e) In consideration for this, the Plaintiff issued the said cheque for the benefit of Defendant No. 2."

At this stage it is to be noted that the statement that the said cheque had been issued for the benefit of the 2nd Defendant is on the footing that the Plaintiffs had a transaction with CANFINA and CANFINA had delivered back Plaintiffs' BR duly discharged. At this stage it must be noted that the 1st Defendant's case in pleadings is that this constituted consideration for the Plaintiffs issuing the cheques for the benefit of the 2nd Defendant. To be noted that the case is not that 1st Defendants liability to Plaintiff is discharged/satisfied by the 2nd Defendant.

19. The 1st Defendant avers that the Plaintiffs are guilty of suppressing the aforesaid material and facts. The 1st Defendant denies that the Plaintiffs are entitled to recover the amount from this Defendant with interest as



alleged or at all. The 1st Defendant denies that it had no authority to utilize the monies of the cheque for any one else. The 1st Defendant avers that it did not require any authority from the Plaintiffs. The 1st Defendant denies that it was bound to hold the said monies until further instructions from the Plaintiffs. The 1st Defendant denies that they could not part with the monies to any third party without any express authority of the Plaintiffs. The 1st Defendant denies that the monies paid by the 1st Defendant to the 2nd Defendant has been done as a separate act of this Defendant of its own volition or at its own risk and peril. The 1st Defendant denies that it is liable for conversion for the reasons as alleged or at all. The 1st Defendant avers that it acted in good faith and without negligence in realising the proceeds of the said cheque to the 2nd Defendant. The 1st Defendant avers that it owes no duty to the Plaintiffs of any nature whatsoever. The 1st Defendant avers that its actions were proper and correct. The 1st Defendant avers that under these circumstances the question of payment of the said cheque by the Plaintiffs to them either gratuitously or otherwise does not arise. The 1st Defendant avers that the Plaintiffs claim, if any, can only be against the 2nd Defendant.

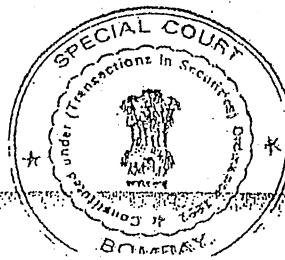
20. The 1st Defendant denies that there is any fiduciary obligations to the Plaintiffs or that it acted in disregard of the fiduciary obligations. The 1st Defendant avers that it required no authority from the Plaintiffs. The



1st Defendant denies that it had no right to disburse the proceeds of the said cheque as per the directions of the 2nd Defendant.

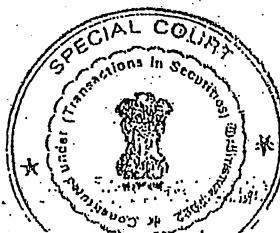
21. The 1st Defendant avers that at all times it has acted in good faith and without negligence. The 1st Defendant denies that it has been negligent in the discharge of its duties and/or that it has failed to exercise the due care a banker had to or was expected to exercise. The 1st Defendant denies that it had acted contrary to law or settled banking practice or the mandate of the cheque. The 1st Defendant denies that it had no right to presume that a person physically bringing an Account Payee cheque not drawn in favour of such person had the beneficial ownership thereof in the absence of a letter of authorisation. The 1st Defendant denies that it has conferred ownership on that person. The 1st Defendant denies that it should have made necessary enquiries.

22. The 1st Defendant denies that there was any collusion or connivance between the Defendants or any of them. The 1st Defendant avers that the allegations of collusion are vague and devoid of any particulars and such a plea of collusion cannot suffice. The 1st Defendant denies that there was any fraudulent act on the part of any officer of this Defendant and/or that this Defendant was aware of the same or that this Defendant has supported them as alleged or at all. The 1st Defendant denies that this Defendant has adopted the actions of its employees and is



thus or otherwise itself a party to the said alleged fraud.

23. The 1st Defendant denies that Defendant No. 2 was its highly valued constituent. The 1st Defendant denies that the 2nd Defendant had considerable influence with the 1st Defendant. The 1st Defendant denies that the 2nd Defendant was in a position to obtain special accommodation from the 1st Defendant. The 1st Defendant avers that Defendant No. 2 had considerable influence with the Plaintiffs and obtained considerable favours from the Plaintiffs. The 1st Defendant further denies that the Plaintiffs were defrauded as alleged or at all. The 1st Defendant avers that by reason of delivering the said cheque to the 2nd Defendant, the Plaintiffs are (a) guilty of contributory negligence and (b) estopped from contending that the proceeds of the said cheque did not belong to the 2nd Defendant and/or that the 1st Defendant has wrongly given benefit to the 2nd Defendant and/or that the 1st Defendant is liable to refund the same to the Plaintiffs. The 1st Defendant denies that the money rested in their account with the Reserve Bank of India. The 1st Defendant denies that it became their duty as prudent bankers to make necessary enquiries with the Plaintiffs before disposing of the proceeds of the cheque. The 1st Defendant denies that it transferred the money into the account of defendant No. 2 save and except an amount of Ru. 1,11,50,136.92. The 1st Defendant denies that there were any acts of negligence on their part and/or there was any loss to the Plaintiffs and/or that the alleged negligence was the



alleged proximate cause of the loss. The 1st Defendant denies that there was any fraud on the part of the 1st Defendant and the question of opportunity to effectively avert the fructification of the fraud does not arise.

24. The 1st Defendant denies that the practice prevalent at the time was illegal and/or would defeat the provisions of law or was uncertain or unreasonable or against public policy as alleged or at all. The 1st Defendant denies that the Plaintiffs are not bound by the practice. The 1st Defendant denies that the market practice is inconsistent with prudent precautions against known risks. The 1st Defendant denies that the market practice is an open invitation for perpetration of fraud. The 1st Defendant avers that in any event, no such alleged fraud could have been perpetrated, if the Plaintiffs had not delivered the said cheque to Defendant No. 2. The 1st Defendant avers that the Plaintiffs acted negligently and without care and caution which resulted in the perpetration and fructification of the fraud.

25. The 1st Defendant denies that the Plaintiffs are entitled to recover from them the sum of Rs. 164,11,61,079.59/- or any other amount with interest as claimed or at all.

26. At this stage, it must be seen that the 1st Defendant is claiming that there was no fraud on the part of its employees and that the action of crediting the proceeds of the Account Payee cheque drawn in its favour and



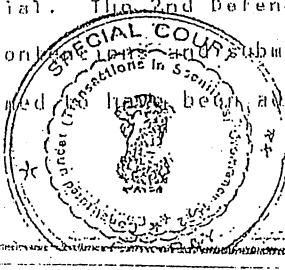
thereafter passing on the proceeds to the 2nd Defendant was a valid act. The 1st Defendant is claiming that it was the 2nd Defendant who was entitled to the cheque and the proceeds of the said cheque. The 1st Defendant is, in its Written Statement, not making any distinction between the cheque and the proceeds of the cheque. The 1st Defendant is averring that the cheque had been drawn in favour of the 1st Defendant merely in order to enable the 2nd Defendant to get same day value for their cheque.

27. It must be mentioned that this is the second case in which this Court has noticed that the 1st Defendant is taking contrary stands in various matters even before the same Court. Earlier in Misc. Petition No. 79 of 1994 the 1st Defendant (herein) had claimed that two of their transactions with the Plaintiffs (herein) were genuine transactions and claimed specific performance of those transactions. During trial it was shown to Court that to the knowledge of the 1st Defendant (herein) the first transaction in Misc. Petition No. 79 of 1994 was a non genuine security transaction which had been entered into merely for the purposes of diverting monies to the 2nd Defendant (herein). The 1st Defendant (herein) had therefore made a complaint to C.B.I. to that effect. They had given sanction for prosecution. The 1st Defendants (herein) had lodged with the Custodian a claim in respect of the first transaction in Misc. Petition No. 79 of 1994. Thus the 1st Defendants (herein) knew that the first transaction in Misc. Petition No. 79 of 1994 was a non genuine security transaction. Yet they file a Suit for specific performance as is set out in greater detail in paras 73, 74, 108 and 114 hereafter in .



respect of the transaction in this Suit i.e. Suit cheque the 1st Defendants have also filed a complaint to C.B.I. against their own Employees and the 2nd Defendant claiming that a fraud has been perpetrated. On the basis of that complaint, C.B.I. has filed a case against the employees of the 1st Defendant and the 2nd Defendant. The 1st Defendant has given sanction for prosecution of its own employees. Yet in this case the 1st Defendant is claiming that no fraud has been perpetrated. In this case the 1st Defendant is claiming that what has been done has been done genuinely. This is undoubtedly being done because if it was admitted that there was a fraud then the 1st Defendant would be liable in conversion and/or may also become liable vicariously. Thus rather than admit the truth the 1st Defendant takes a contrary case before this Court. It is a pity that a Nationalised body, which is wholly owned subsidiary of the State Bank of India, consistently takes before a Court of Law stands which to its knowledge are false. It is time the Law Ministry and the Finance Ministry advise such Nationalised bodies and particularly the 1st Defendant that before a Court of Law the truth has to be stated even if it is against the interest of such body.

28. The 2nd Defendant, in his Written Statement, claims that as the suit transaction is a subject matter of investigation by Central Bureau of Investigation, he is advised not to deal with the same as it would vitiate his defence in the criminal trial. The 2nd Defendant states that none of the statements, ~~confessions~~<sup>and submissions</sup> of the Plaintiffs should be deemed to have been admitted by this Defendant.



29. The 2nd Defendant avers that the Suit is bad for non-joinder and/or misjoinder of the necessary parties namely Canfina.

30. The 2nd Defendant claims that the Plaintiffs have not come to Court with clean hands and have not disclosed true and complete facts and have suppressed material facts from this Court.

31. The 2nd Defendant avers that the Plaintiffs have not made out any cause of action against the 2nd Defendant.

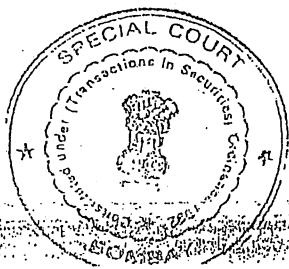
32. The 2nd Defendant avers that on 3rd January, 1992, the Plaintiffs undertook a set of two transactions in respect of 9% IRFC Bonds, with a view to make an assured profit, without outlay of any funds of the Plaintiffs. The 2nd Defendant avers that the Plaintiffs purchased 9% Tax-free Indian Railways Finance Corporation (IRFC) Bonds face value Rs. 100 crores at Rs. 93.08 from Defendant No. 1 and sold the same at Rs. 93.12, under instructions of the 2nd Defendant, to Canfina. The 2nd Defendant states that accordingly the Plaintiffs delivered a Bankers Receipt to Canfina and received a Bankers Receipt from Defendant No. 1. At this stage it must be stated that admittedly the 1st Defendant did not deliver any Bankers Receipt to Plaintiffs. In fact according to the 1st Defendant there was no such transaction. The 2nd Defendant avers that the terms of the said transaction have been duly recorded in the computerised data of the 2nd Defendant and a copy of the said data seized by the I.T. Department is also available with the Office.



Defendant No. 5. The 2nd Defendant craves leave to refer to and rely upon the same as and when produced.

33. The 2nd Defendant avers that the sale of 9% IRFC Bonds face value Rs. 100 crores by Defendant No. 1 to the Plaintiffs, as stated hereinabove, was on behalf of this Defendant under the routing facility offered by Defendant No. 1 as a customer to the 2nd Defendant. The 2nd Defendant avers that the sale proceeds of the above bonds under the routing facility were therefore received by Defendant No. 1 from the Plaintiffs and were credited into its own account maintained by it with the Reserve Bank of India. The 2nd Defendant avers that as the sale proceeds were due to the 2nd Defendant they were credited to the 2nd Defendant's current account maintained with Defendant No. 1.

34. The 2nd Defendant then claims that sometime in the month of March 1992 i.e. before the interest payment date fell due on 1st April, 1992, the 2nd Defendant initiated the process of liquidating the outstanding Bankers Receipts issued by both the Plaintiffs and Defendant No. 1. The 2nd Defendant avers that the 2nd Defendant arranged for physical delivery of 9% Tax-free IRFC Bonds face value Rs. 100 crores directly to Canfina and instructed Canfina to tender the discharged Bankers Receipt to the Plaintiffs so that the Plaintiffs could return to the 1st Defendant their Bankers Receipt duly discharged. The 2nd Defendant avers that it is an admitted position that Canfina have received delivery of 9% IRFC Bonds face value Rs. 100 crores and that Canfina



have discharged the Plaintiffs from all their liabilities under the Bankers Receipt. The 2nd Defendant avers that 9% IRFC Bonds face value Rs. 100 crores covered by the Bankers Receipt issued by the 1st Defendant are now attached properties of the 2nd Defendant together with all accruals thereon. The 2nd Defendant avers that the Plaintiffs should be called upon to surrender 9% IRFC Bonds face value Rs. 100 crores together with accrued tax free benefits and interest on the same to the Custodian.

35. To be noted that in the Written Statement the 2nd Defendant has made a guarded statement. Whilst the 2nd Defendant claims that 9% IRFC Bonds face value Rs. 100 crs. are delivered to Canfina, he does not state to whom they belonged. The 2nd Defendant does not claim, in his Written Statement, that he had delivered to Canfina 9% IRFC Bonds face value Rs. 100 crores belonging to him. The 2nd Defendant nowhere claims that the liability of the 1st Defendant to the Plaintiffs stands discharged. On the contrary, the 2nd Defendant is claiming that the 9% IRFC Bonds face value Rs. 100 crores, which the 1st Defendant has to deliver to the Plaintiffs, are attached properties and they should be handed over to the Custodian.

36. Defendant Nos. 3 and 4 have also filed their Written Statements. In their Written Statements Defendant Nos. 3 and 4 deny that they were in charge of and/or that they constituted the Funds Management Group. They claim that they only acted under instructions of their superiors and



that they themselves are not personally liable. Defendant Nos. 3 and 4 aver that there has been no fraud and claim that they entered into the transactions under instructions.

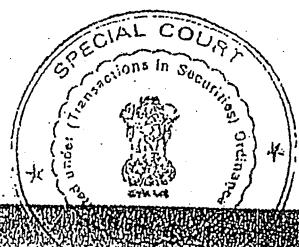
37. The 5th Defendant i.e. the Custodian avers that he is filing the written statement only for the purpose of placing facts before the Court. The 5th Defendant clarifies that the facts placed before the Court are on the basis of the correspondence carried out by the Custodian with the Plaintiffs, Standard Chartered Bank and Canfina.

38. The 5th Defendant avers that from the correspondence the position which emerges is as follows :

(a) According to the Plaintiffs, on 3rd January 1992 they had issued the cheque to the 1st Defendant for purchase of 9% IRFC Bonds face value Rs. 100 crs. on the Ready Forward basis. No BR was received by the Plaintiffs from the 1st Defendant.

(b) On the same day the Plaintiffs had a back to back deal with Canfina for sale of 9% IRFC Bonds face value Rs. 100 crores. For this sale the Plaintiffs received a cheque for Rs. 95,48,78,082.19p. which was encashed by the Plaintiffs. In respect of this transaction the Plaintiffs issued a BR in favour of Canfina. The BR has been returned discharged by Canfina, apparently as physical delivery of the bonds was made by Defendant No. 2.

(c) Standard Chartered Bank in its letter has informed the Custodian that it had purchased 9% IRFC Bonds face value Rs. 100 crores from Citibank on 26th March 1992 and had



subsequently sold these Bonds to various parties. Standard Chartered Bank has claimed that all its transactions were executed through Defendant No. 2. Standard Chartered Bank has claimed that one of the deals was a deal for sale of bonds of the face value Rs. 61.25 crores to the Plaintiffs for a sum of Rs. 55,18,439,657.07p. According to Standard Chartered Bank they had delivered, on instructions of the 2nd Defendant, 9% IRFC Bonds face value Rs. 80 crores to Canfina. According to Standard Chartered Bank this included bonds face value Rs. 61.25 crores which were delivered to Canfina for and on behalf of the Plaintiffs.

(d) The Custodian points out that Canfina has by its letter stated that the BR issued by the Plaintiffs was discharged on 31st March 1993. Canfina has stated that the securities i.e. 9% IRFC Bonds face value Rs. 100 crores have been delivered by Defendant No. 2 on behalf of the Plaintiffs. Canfina has stated that the Bonds face value Rs. 100 crores which had been delivered to it, included Bonds face value Rs. 61.25 crores delivered by Standard Chartered Bank to Canfina.

39. The Custodian points out that when these facts were brought to the notice of the Plaintiffs, the Plaintiffs confirmed that Defendant No. 2 had delivered Rs. 100 crore Bonds to Canfina and got the Plaintiffs' BR discharged.

40. The Custodian avers that from the correspondence it emerges that the Plaintiffs paid the amount to the 1st Defendant without any documentary evidence underlying the



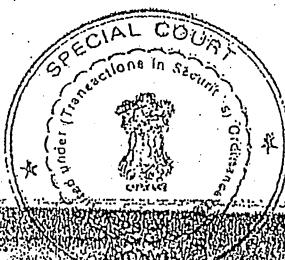
transaction. The Custodian avers that the Plaintiffs had entered into the purchase and sale transaction on the same day, received monies from Canfina and paid the same to the 1st Defendant after keeping a profit of app. Rs. 4 lakhs. The Custodian avers that the Plaintiffs have received back their BR from Canfina duly discharged even though they have not delivered any Bonds. The Custodian however fairly points out that the Plaintiffs have made payment to Standard Chartered Bank of a sum of Rs. 55,18,43,657.07p. and that Standard Chartered Bank had delivered to Canfina Bonds face value Rs. 61.5 crore on behalf of the Plaintiffs. The Custodian avers that therefore the 2nd Defendant appears to have discharged the Plaintiffs' liability to Canfina at least to the extent of Rs. 38.75 crores. The Custodian avers that therefore the liability of the 2nd Defendant, if any, in terms of money is only to the extent of Rs. 40.22 crores.

41. On the above mentioned averments and facts, the following issues were raised and answered accordingly :

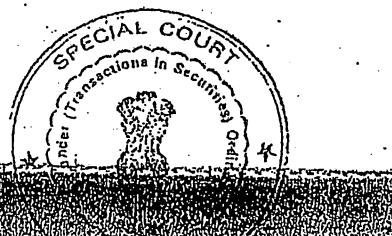
ISSUES BETWEEN THE PLAINTIFFS  
AND THE 1ST DEFENDANT.

ANSWERS

1. Whether this Hon'ble Court has no jurisdiction to entertain and try this suit ? Already answered by Order dated 22/1/99.  
It is held that this Court has jurisdiction.
2. Whether the suit is barred by limitation as contended by Defendant No. 1 in para 3 of Additional Written Statement ? Not pressed.



3. Whether the suit is liable to be dismissed for reason of the Plaintiffs having suppressed material facts & having suggested a false case as alleged in para 5 of the Additional Written Statement?
- In the Negative.  
All necessary facts have been disclosed.
4. Whether the said cheque for Rs. 95,39,78,082.19 was issued for the benefit of Defendant No. 2 as alleged in para 8(a) of the Written Statement?
- Not proved.
5. Whether the Plaintiffs obligation to Canfina under the Bankers Receipt was discharged by Defendant No. 2 in the manner as alleged in para 11(d) of the Written Statement?
- In the affirmative to the extent of Bonds face value Rs. 38.75 crs.
6. If the answer to issue no 5 is in the affirmative, whether Plaintiffs have issued the said cheque for the benefit of Defendant No. 2 and in consideration of such discharge?
- In the Negative.
7. Whether 1st Defendant is liable for conversion of the cheque as alleged in para 13 of the Plaintiff?
- In the Affirmative.
8. Whether the 1st Defendants acted in good faith and without negligence as alleged in paras 13 & 16 of the Written Statement?
- In the Negative.
9. Whether the Defendant No. 1 had received the amount of cheque and they are liable to refund the same to the Plaintiff?
- In the Affirmative.  
On basis of conversion, fiduciary obligation and money paid not intending to do so gratuitously
10. Whether the 1st Defendants had any fiduciary obligation and that in disregard of such obligation they disbursed the proceeds of cheque of Rs. 95,39,78,082.19 as alleged in para 13 of the Plaintiff?
- In the Affirmative
11. Whether the cheque for Rs. 95,39,78,082.19 was issued in favour of Defendant No. 1 as a result of fraud, collusion and
- There has been fraud. However, collusion and conspiracy on part of Defendant

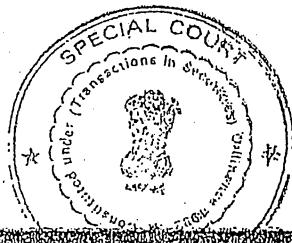


- conspiracy between Defendant Nos. 2, 3 & 4 as alleged in para 14 of the Plaintiff?
12. If Issue No. 11 is answered in the affirmative, whether the 1st Defendant willingly and knowingly connived in fraud and are accordingly liable for the amount as alleged in para 14 of the Plaintiff?
13. Whether the 1st Defendant had no right to deal with the proceeds of the cheque after it was credited to their account in view of the mandate of the cheque as alleged in para 13 of the Plaintiff?
14. Whether the 1st Defendant have derived any benefit on receipt of the proceeds of the cheque for Rs. 95,39,78,082.19?
15. Whether the Defendants are liable to pay the sum of Rs. 164,11,61,079.59 or any part thereof as alleged in para 14 of the Plaintiff?
16. What reliefs, if any is Plaintiff entitled to?
- Nos. 3 and 4 have not been proved.
- By adopting the action of their officers, the 1st Defendant are willingly conniving in the fraud.
- In the Affirmative.
- Not necessary to answer in view of the fact that it is already held that the 1st Defendant is bound to repay the amount.
- As per the final Order.
- As per the final Order.

ISSUES BETWEEN THE PLAINTIFFS  
AND THE 2ND DEFENDANT.

ANSWERS

1. Whether the Suit is bad for non-joinder of Canfina and/or Standard Chartered Bank as a necessary and/or proper parties?
2. Whether the Suit is properly verified?
3. Whether the Plaintiffs have suppressed material facts?
4. Whether the claim of the Plaintiffs is mischievous, false or frivolous?
- In the Negative.
- Not pressed.
- In the Negative.
- In the Negative.



5. Whether the Plaintiffs were assured a profit of Rs. 4 lacs without outlay of funds ? In the Affirmative, but of no consequences.
6. Whether the sale of 9% IRFC Bonds of the face value of Rs. 100 crores by the Defendant No. 1 to the Plaintiffs was on behalf of the Defendant No. 2 under a routing facility ? Not proved.
7. Whether the Defendant No. 2 delivered to Canfina bonds worth Rs. 100 crores belonging to M/s. Harshad S. Mehta ? In the Affirmative, to the extent of Bonds face value Rs. 38.75 crs.
8. Whether the Plaintiffs should be called upon to surrender 9% IRFC bonds of the face value of Rs. 100 Crores with earned tax benefits and interest ? In the Affirmative to extent of Bonds, f.v. Rs. 38.75 crs. In the terms of money, in a sum of Rs. 40.22 crores.
9. What order, if any ? As per final Order.

ISSUES BETWEEN THE PLAINTIFFS  
AND THE 3RD DEFENDANT.

ANSWERS

1. Whether deals were finalised by Shri S. D. Honsangadi and Shri P. K. Parthasarthy, as stated in paras 5 and 8 of the Written Statement ? Not proved
2. Whether Defendant No. 3 could issue a cheque to an outside party only on the specific instructions of Shri S. D. Honsangadi and Shri P. K. Parthasarthy as alleged in para 5 of the Written Statement ? Not proved
3. Whether the Defendant No. 3 was required to take only two precautions while signing a cheque:  
(i) to make it payable to a bank or Financial Institutions and  
(ii) to make it crossed account payee as alleged in para 7 of the Written Statement ? Not proved
4. Whether the S. D. Honsangadi and P. K. Parthasarthy and V. R. Karla In the Negative.



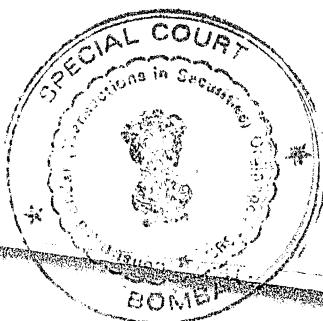
are necessary parties and the suit is liable to be dismissed for their own joinder as alleged in paras 9 and 15 of the Written Statement ?

5. Whether the Defendant Nos. 3 and 4 colluded with Defendant Nos. 1 and 2 and arranged records so that the cheque appeared to be drawn for a transaction without there being any transaction as alleged in para 14 (a) of the Plaintiff ?
- Not proved that this was done by Defendants 3 and 4
6. Whether the cheque for Rs. 95,39,78,082.19 was issued in favour of Defendant No. 1 as a result of fraud, collusion and conspiracy between Defendant Nos. 2, 3, and 4 as alleged in para 14 of the Plaintiff ?
- There was a fraud but collusion and conspiracy of Defendant Nos. 3 and 4 is not proved.
7. Whether the Plaintiffs are estopped from pleading that Defendant Nos. 3 and 4 who had entered into the transaction and issued the cheques are guilty of colluding with the other Defendants to perpetrate a fraud as alleged in para 14 of the Written Statement ?
- Does not arise.
8. Whether the Defendant Nos. 2, 3 and 4 colluded with each other to make wrongful gain for themselves and wrongful loss to the Plaintiff as alleged in Para 14 (e) of the Plaintiff and denied in para 15 of the Written Statement ?
- Collusion of Defendant Nos. 3 & 4 not proved.
9. Whether the 3rd Defendant is liable to pay the sum of Rs. 164,11,61,079.59 or any part thereof as alleged in para 14 of the Plaintiff ?
- In the Negative.
10. What reliefs ?
- As per final Order.

ISSUES BETWEEN THE PLAINTIFFS  
AND THE 4TH DEFENDANT.

ANSWERS

1. Whether the suit suffers from misjoinder of parties ?
- In the Negative.



2. Whether Defendant Nos. 3 and 4 were in charge of Funds Management as alleged in para 4 of the Plaintiff and denied in para 6 and 7 of the Written Statement ? Not proved.
3. Whether Defendant Nos. 3 and 4 colluded with Defendant Nos. 1 and 2 and arranged records so that the cheque appeared to be drawn for a transaction without there being any transaction as alleged in para 14(a) of the Plaintiff ? Collusion of Defendant Nos. 3 & 4 not proved.
4. Whether the Defendant Nos. 2, 3 and 4 colluded with each other to make wrongful gain for themselves and wrongful loss to the Plaintiff as alleged in Para 14(e) of the Plaintiff and denied in para 8(p) of the Written Statement ? Collusion of Defendant Nos. 3 & 4 not proved.
5. Whether the cheque for Rs. 95,39,78,082.19 was issued in favour of Defendant No. 1 as a result of fraud, collusion and conspiracy between Defendant Nos. 2, 3, and 4 as alleged in para 14 of the Plaintiff ? Collusion of Defendant Nos. 3 & 4 not proved.
6. Whether the 4th Defendant is liable to pay the sum of Rs. 164,11,61,079.59 or any part thereof as alleged in para 14 of the Plaintiff ? In the Negative.
7. What reliefs ? As per final Order.

ISSUES BETWEEN THE PLAINTIFFS AND THE 5TH DEFENDANT. ANSWERS

1. Whether on 3.1.1992 the Plaintiffs had a back to back deal with Canfina for sale of 9% IRFC Bonds of the face value of Rs. 100 crores ? In the Affirmative but of no consequence.



2. Whether the Plaintiffs received from Canfina the consideration for the sale of IRFC Bonds of the face value as 100 crores ? In the Affirmative but of no consequence.
3. Whether the B.R. issued by the Plaintiffs to Canfina was returned as duly discharged ? In the Affirmative
4. Whether the Plaintiffs had received the B.R. back from Canfina as duly discharged, without delivering any bonds ? Plaintiffs had received from Canfina their B.R. duly discharged but on the delivery of Bonds f.vi Rs. 61.25 crores on their behalf.
5. Whether the Defendant No. 2 had inter alia delivered bonds worth Rs. 38.75 crores for discharging the Plaintiffs liability to Canfina ? In the Affirmative
6. Whether the Plaintiffs have suffered any loss and to what extent ? From whom are the Plaintiffs entitled to recover the aforesaid amount ? As per final Order.
7. Whether the Plaintiffs are liable to pay to the Defendants No. 2 a sum of Rs. 40.22 crores or any part thereof with interest at 24% p.a. from 31.3.1992 ? As per final Order.
8. What order if any, ought to be passed in favour of the Plaintiffs ? As per final Order.

R.E.A.S.O.N.S.

42. This Suit indicates one of the methods which had been used by the 2nd Defendant to siphon out public monies



belonging to Banks and Financial Institutions, into his pocket. In Misc. Petition No. 79 of 1994 which has been disposed off, Court has seen that the 2nd Defendant used exactly the same method for siphoning out public monies. The modus operandi of the 2nd Defendant, as disclosed from these two cases, was to get two Banks to enter into security transactions with each other. Then 2nd Defendant would get the Bank receiving the money i.e. the purchasing Bank to enter into an ostensible back to back security transaction of purchase with another Bank. The word "ostensible" is used because in effect there was never any delivery of securities. However money would be paid over to the third Bank. The transaction would be only on paper and sometimes, as in this case, even on paper there was no transaction in the records of the third Bank. Thus in the record of the Payee Bank a security transaction in a particular security would be disclosed. On that basis a cheque would be issued by the Payee Bank in the name of some other Bank. In the record of that other Bank there may or not be a security transaction. Even if the security transaction was recorded it may not be in the same security as in the records of the Payee Bank. The receiving Bank then received a cheque drawn in its favour and obligingly handed over the proceeds to the 2nd Defendant. Sometime such transactions would be routed through more than one bank. The modus operandi would be that the 2nd Defendant would thus receive a large amount from the Banks and Financial Institutions without there being any genuine security transaction in respect of which the cheque/Pay Order was issued. He would use those amounts for a few days/months



and thereafter return the amounts by reversing the transaction/s in the records of all the Banks. In the process the Banks who lent monies received some commission or a small profit, but large amounts were successfully diverted to the 2nd Defendant. Once the scam broke out the 2nd Defendant could not retain the monies diverted by him into his private pocket. Thus Banks and Financial Institutions lost a very large amount. This Court has seen, during the last six years, that the 2nd Defendant had used mainly the Plaintiff Bank, the 1st Defendant Bank, the State Bank of India and ANZ Grindlays Bank for such transactions.

43. In this case the admitted facts are that on 3rd January 1992 the Plaintiffs entered into back to back transactions. Plaintiffs sold to Canfina 9% IRFC Bonds face value Rs. 100 crores for a sum of Rs. 95,43,78,082.19p. Plaintiffs delivered a BR to Canfina and received a cheque for Rs. 95,43,78,082.19p. Plaintiffs ostensibly purchased from the 1st Defendant 9% IRFC Bonds face value Rs. 100 crores at Rs. 95,39,78,082.19p and paid to the 1st Defendant, by an Account Payee Crossed Cheque drawn in the name of the 1st Defendant, a sum of Rs. 95,39,78,082.19p. Thus the money received from Canfina was passed on to the 1st Defendant after keeping a sum of Rs. 4 lakhs as their profit. The Plaintiffs gave the cheque to the 1st Defendant, without receiving a Bankers Receipt or any other document like a Contract Note or a Cast Memo. In the records of the 1st Defendant there was no transaction with the Plaintiffs. No amounts were due and payable by the Plaintiffs to the 1st Defendant. Yet the 1st Defendant encashes the cheque and



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thereafter issues four cheques to four different parties under instructions of Defendant No. 2. The 1st Defendant also credits the balance amount of Rs.1,10,00,000/- into the Account of Defendant No. 2.

44. That large sums of monies have been siphoned out by the 2nd defendant is catalogued by the Janakiraman Committee. The Janakiraman Committee had been appointed by the Reserve Bank of India to inquire into the various transactions undertaken by the Banks. It is pertinent to mention at this stage what is set out in the Second Interim Report published in July 1992. The Janakiraman Committee notes that the total value of investments made by Banks and Financial Institutions for which they do not either hold securities, SGL Transfer Forms or Bankers Receipts was in a large amount. Janakiraman Committee notes that in transaction worth Rs. 1271.20 crores, the Plaintiffs do not hold securities, SGL Transfer Forms or Banker Receipts. Janakiraman Committee notes that out of this a sum of Rs. 707.56 crores was diverted to the 2nd Defendant through State Bank of India, Rs. 506.55 crores was diverted to the 2nd Defendant through ANZ Grindlays Bank, a sum of Rs. 55.18 crores was diverted to 2nd Defendants firm Growmore Research and Asset Management Co. Ltd. through the Standard Chartered Bank and a sum of Rs. 1.91 crores was paid to Canfina. The transaction in which the amount was paid to Canfina was still under investigation. Similarly the 1st Defendant had undertaken transaction worth Rs. 174.93 crores without having received any securities, SGL Transfer Forms or Banker Receipts. Out of this a sum of Rs. 99.11 crores had gone to the 2nd Defendant through State Bank of India and Rs.



75.82 crores had gone to the 2nd Defendant through the Plaintiffs. It must be mentioned that in respect of Rs. 75.82 crores the 1st Defendant has filed Misc. Petition No. 79 of 1994 claiming specific performance of the underlying securities transaction by the Plaintiffs (herein). It must also be mentioned that in respect of Rs. 92.11 crores the 1st Defendant (herein) has made no claim against the State Bank of India to whom it had paid the monies but have filed Suit No. 52 of 1993 against the 2nd Defendant (herein) claiming that monies were diverted to the 2nd Defendant (herein) in non genuine securities transactions. Both Misc. Petition No. 79 of 1994 and Suit No. 52 of 1993 have been disposed off by this Court. In both those matters this Court has had occasion to adversely comment on the conduct of the 1st Defendant.

45. In respect of the Suit transactions the Janakiraman Committee notes that on 3rd January 1992 the Plaintiffs had entered into back to back transactions to purchase 9% IRFC Bonds face value Rs. 100 crores from the 1st Defendant and sell the same to Canfina. The Janakiraman Committee notes that the Plaintiffs' Bankers Receipt to Canfina stands discharged without the Plaintiffs having made any delivery whatsoever. The Janakiraman Committee notes that the Plaintiffs' Bankers Receipt stood discharged by Canfina on 31st March 1992 by taking physical delivery of the Bonds from Defendant No. 2 (herein). The Janakiraman Committee notes that for the amounts paid to the 1st



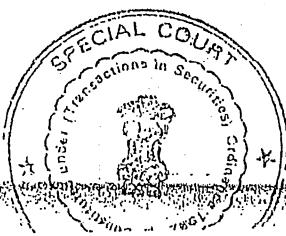
Defendant, the Plaintiffs (herein) have made a claim which claim is being disputed by the 1st Defendant (herein).

46. The Plaintiffs have led no oral evidence. The Plaintiffs merely tendered documents. The 1st Defendant attempted to lead evidence of a witness from Canfina. However, the witness had no personal knowledge. 2nd Defendant then led no further oral evidence. It also merely tendered some documents. The 2nd Defendant has led evidence of his dealer at the relevant time and tendered documents. The 3rd and 4th Defendants have led no oral evidence, but merely tendered documents. At the time when these documents were being tendered it was clarified to all parties that mere tendering of documents would only establish that there was in existence such a document and that it stated what it stated. It was clarified that the contents of the documents would not be deemed to have been proved. It was clarified that any party who wanted to prove the truth of the contents had to do so by positive evidence. As stated above, except for 2nd Defendant, no other party has led any oral evidence.

47. 2nd Defendant's witness has deposed that he was the dealer of the 2nd Defendant at the relevant time. He has deposed that he got Plaintiff to enter into the back to back transactions i.e. to sell 9% IRFC Bonds f.v. Rs. 100 Crores to Canfina and purchase the same from 1st Defendant. According to this witness 1st Defendant was to deliver a Bankers Receipt. Thus, according to this witness there was a transaction between Plaintiffs and 1st Defendant whereby the



1st Defendant were to sell to Plaintiffs 9% IRFC Bonds f.v. Rs. 100 Crores. According to the witness the suit cheque was delivered for that transaction. According to the witness the 2nd Defendant had purchased 9% IRFC Bonds f.v. Rs. 200 crores from Citibank. According to the witness Bonds f.v. Rs. 100 crores were placed with Standard Chartered Bank on a Ready forward basis. According to the witness, subsequently 2nd Defendant made payment for these Bonds f.v. Rs. 100 crore from several of his accounts. According to the witness 2nd Defendant paid for the other bonds f.v. Rs. 100 crore from his account in State Bank of India. According to the witness the Bonds placed with Standard Chartered Bank were ultimately delivered to Canfina in discharge of Plaintiff's liability to Canfina under their Bankers Receipt. According to the witness Standard Chartered Bank had delivered back Bonds f.v. Rs. 20 crs. to the 2nd Defendant which 2nd Defendant then delivered to Canfina. According to the witness 2nd defendant then arranged for standard Chartered Bank to deliver Bonds f.v. Rs. 80 crs. to Canfina. As stated above, according to the witness 2nd defendant had paid for these 9% IRFC bonds f.v. Rs. 100 crs. However, when called upon to prove that 2nd Defendant had paid for 9% IRFC Bonds f.v. Rs. 200 crores or even Rs. 100 crores, the witness could not do so. He ends up by admitting that he was presuming that 2nd Defendant had paid for the said Bonds. Thus except for presumption of the witness, there is no proof that 2nd Defendant paid for 9% IRFC Bonds f.v. Rs. 100 crores or Rs. 200 crores.



48. Apart from this oral evidence, Court has before it the evidence of what was claimed by the parties in correspondence. The truth of what was claimed in the correspondence and in the various documents has not been proved. However, in the absence of any contrary evidence Court is proceeding on footing that what parties have stated to the Custodian is true.

49. In light of above now let us deal with the Issues.

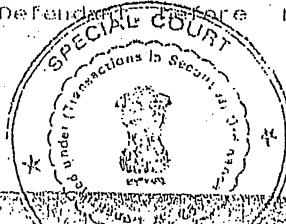
50. Issue No. 1, between Plaintiffs & Defendant No. 1 has already been answered by Order dated 22nd January 1999. It is held that this Court has jurisdiction.

51. Issue No. 2 between Plaintiffs & Defendant No. 1 and Issue No 2 between Plaintiff & Defendant No. 2 were not argued or pressed.

52. Issue No. 3 between Plaintiffs & Defendant No. 1, Issues Nos. 1 and 3 between Plaintiffs & Defendant No. 2 can be taken together. This Suit is to recover monies received by the 1st Defendant by encashing the suit cheque. As set out hereinafter the transaction with Canfina has nothing to with delivery of the cheque to the 1st Defendant and encashment thereof by the 1st Defendant. The 1st Defendant does not accept that there was any transaction of sale of 9% IRFC Bonds f.v. Rs 100 crs. by them to the Plaintiffs. 1st Defendant admits that no monies were payable by the Plaintiffs to them. Thus the claim against the 1st Defendant is in conversion and/or fiduciary liability or on basis of monies paid not intending to do so gratuitously or on basis



of monies had and received. Alternatively the case is in fraud. In my view for determination of such claims Canfina and Standard Chartered Bank are neither necessary nor proper parties. Even if there were back to back transactions, still each transaction remains separate and independent. The rights and liabilities in Plaintiffs transaction with Canfina are separate and independent from the right and liabilities in Plaintiffs transactions with 1st Defendant. The principle that rights and liabilities, in back to back transactions, are separate and independent has been laid down by this Court in a Judgment dated 11th March 1996 in Suit No. 33 of 1995. It must be stated that this was a suit against 1st Defendant (herein) for specific performance of a transaction in securities. The 1st Defendant (herein) claimed that the transaction in that suit was a back to back transaction with a transaction they had had with Plaintiffs (herein). In respect of that transaction with Plaintiffs (herein) 1st Defendant had filed Misc. Petition No. 79 of 1994. The 1st Defendant (herein) claimed that as Plaintiffs (herein) had not performed, they i.e. 1st Defendant (herein) were not bound to perform. This was negatived and it was held that as liabilities were separate and independent. It was held that 1st Defendant (herein) 1st defendant (herein) was bound to perform its obligation under its transaction. In this suit Plaintiffs have disclosed the transaction with Canfina. Plaintiffs have placed all material facts, including claim of 1st Defendant before the



Court. Plaintiffs have correctly claimed that their transaction with Canfina is independent of and unconnected with the suit claim/transaction. As that transaction is independent and unconnected Plaintiffs arrangement with Standard Chartered Bank cannot be questioned in this suit. Thus it is held that Canfina and Standard Chartered bank are neither necessary nor proper parties to this suit. Thus the Issues are answered in the Negative.

-53. Issue No. 1 of the Issues between the Plaintiff and Defendant No. 4 has not been argued at all. It is not shown how there is misjoinder or who has been wrongly joined. It must be stated that it was submitted that Defendants 3 and 4 were wrongly joined as they were not responsible or liable. But that is on merits of the matter. Plaintiffs are claiming that Defendants 3 and 4 have colluded and connived with Defendants 1 and 2. On this case defendants 3 and 4 are necessary parties. Even if on merits it is held that Defendants 3 and 4 are not liable yet it cannot be said that there is misjoinder. Accordingly the Issue is answered in the negative.

54. Now let us consider Issue Nos. 4, 5, 6, 7, 8, 9, 10, 13 & 14 of Issues between Plaintiffs and 1st Defendant, Issues Nos. 4, 5, 6, 7 & 8 of the Issues between the Plaintiffs & Defendant No. 2, Issues Nos. 1, 2, 3, 4, 5, 6 & 7 of Issues between Plaintiffs & Defendant No. 5. These can be taken together.

55. As seen above, it is an admitted fact that the



Plaintiffs have issued an Account Payee, crossed and order Reserve Bank of India Cheque drawn in favour of the 1st Defendant. 1st Defendant claims that there was no transaction between the Plaintiffs and the 1st Defendant. 1st Defendant admits that no monies were due and payable by the Plaintiffs to the 1st Defendant. It is an admitted fact that there was no directions or authority from the Plaintiffs to hand over proceeds to the 2nd Defendant. Yet the 1st Defendant received the cheque, encashed the cheque and thereafter disbursed the proceeds as per the instructions of the 2nd Defendant.

561. This Court had an occasion to consider the law and consequences of a Bank receiving an Account Payee, crossed and order Cheque drawn in its favour, encashing it and handing over proceeds to a third party. The law on the subject has been laid down in the Judgment delivered by this Court in the case of National Housing Bank Vs. ANZ Grindlays Bank PLC reported in 1998 (2) L. J. pg. 153. The facts in that case were that the Plaintiffs (herein) had issued nine Account Payee cheques drawn on Reserve Bank of India in favour of ANZ Grindlays Bank. There were no transactions between the Plaintiffs (herein) and ANZ Grindlays Bank. No monies were due and payable by the Plaintiffs to ANZ Grindlays Bank. ANZ Grindlays Bank encashed all the cheques and gave the proceeds thereof to the 2nd Defendant (herein). Plaintiffs (herein) claimed the amounts of all the cheques from ANZ Grindlays Bank. The dispute was referred to



Arbitration of three Arbitrators. The question before the Arbitrators was whether ANZ Grindlays Bank was liable to repay those amounts to the Plaintiffs (herein). Two of the Arbitrators gave an Award in favour of the ANZ Grindlays Bank. One of the Arbitrators gave an Award against ANZ Grindlays Bank. The majority Award was challenged before this Court. This Court by its Judgment reported in 1998 (2) L. I. pg. 153 set out the law on the subject. The principles laid down by this Court are as follows :

1. The general proposition of law is that where there is no fraud or theft or lack of consideration the true owner of the cheque is the drawer till lawful delivery and thereafter the payee becomes the true owner. (para 91 Pg. 204) Thus if any of the elements exist i.e. there is fraud or theft or lack of consideration then the drawer will continue to be the owner of the cheque and no title will pass.
2. In India a collecting banker could also be a payee. But whether by virtue of being a payee an absolute title to the cheque as well as the proceeds of the cheque vests in the bank would depend on the facts and circumstance of each case. (Para 91 Pg. 204).
3. Even though generally on delivery the payee becomes the true owner of the cheque, if in pleadings the payee disowns title to the cheque, then the drawer does not need to show that he is the true owner. If the payee even after lawful delivery, disclaims title in the cheque, then the drawer remains the true owner. (Para 91 Pg. 204).
4. The submission that on collection the cheque exhausts itself and that there can be no conversion of the proceeds i.e. money in the hands of the bank is not correct. This submission ignores the legal fiction of what is conversion of a cheque. It was to get over such an argument that the legal fiction of conversion of the chattel i.e. the cheque was developed. In all such cases it is the money i.e. the proceeds of the cheque which is converted. Law calls it conversion of the cheque and not the cheque.



damages are the value of the cheque. (Para 92 Pg. 204).

5. The Person entitled to the cheque would be the person entitled to the proceeds. The owner of the monies will be the person who had title to the cheques. Disowning title to the monies is in effect disowning title to the cheques. This is because the tort of conversion is conversion of the proceeds. (Para 97 Pg. 206).

6. As all the cheques were marked Account Payee ANZ Grindlays, as per the mandate of the instrument HSM (2nd Defendant [herein]) could make no claim to the cheque or the proceeds thereof. As an intended beneficiary, presuming that third party consideration is permissible in law, HSM could possibly make a claim. But then it must be proved by ANZ that HSM was the intended beneficiary. (Para 131 Pg. 219).

7. Even if ANZ Grindlays as Payee were entitled to encash the cheques, the proceeds did not belong to them as admittedly there were no transactions between the Petitioners and ANZ Grindlays. Admittedly the cheques were made out in the ANZ Grindlays name as payee only for the purpose of ensuring same day value. ANZ Grindlays thus collected the monies only for purposes of passing it on. They acted as collecting bankers. They have not claimed ownership in the monies. (Para 133 Pg. 220).

8. Admittedly the ANZ Grindlays is a payee only to make available same day value to the person entitled to the proceeds. Even though in India a payee is also a holder in due course, it does not mean that such a payee can after encashment become entitled to keep the proceeds. For example, the ANZ Grindlays could not have kept the proceeds and refused to return them to the Petitioners. Thus after encashing the cheques the proceeds could only be held, till further instructions were received, or parted with to a person entitled to them. (Para 133 Pg. 221).

9. As the presumption of Sec 118(a) does not apply to third party consideration, ANZ Grindlays have failed to establish consideration. When burden is on ANZ Grindlays to show third party consideration, the Petitioners do not have to explain or show with whom the alleged transactions were particularly as they are claiming fraud. ANZ Grindlays claim that transactions were with  
*(Signature)*



HSM, they were setting up a special plea, which they had to prove. Thus unless there was a categorical finding that the alleged transactions in respect of the nine cheques were with HSM, it could not be said that the cheques were issued for consideration. In that case the Petitioners remained the true owners of the cheques also. (Para 134 Pg. 221).

10. Implicit in the averment that ANZ Grindlays duly realised the cheques in accordance with their mandates, is the fact that there was lawful delivery. (Para 146 Pg. 227).

11. In this case ANZ Grindlays encashed the cheques by getting credit into their account with the RBI. Thus ANZ Grindlays actually received the monies. Having received the monies they cannot seek to be absolved merely on the ground that they passed the monies on to a person not entitled to them. If that be so the obligation to repay is that of ANZ Grindlays. (Para 147 Pg. 227).

12. The Petitioners having made out a case of conversion and/or monies had and received, ANZ Grindlays would be liable to refund the monies unless they showed good faith and lack of negligence. (Para 150 Pg. 228).

13. The law is that the test of negligence for the purpose of Sec 131 of the Act is whether the transaction of paying in any given cheque coupled with the circumstances antecedent and present is so out of the ordinary course that it ought to arouse doubts in the bankers mind and cause him to make inquiries. (Para 150 Pg. 230).

14. The law also is that failure to pay attention to the tenor of the cheque is *prima facie* negligence. Thus if the tenor of the cheque does not show that the customer is entitled to the proceeds of the cheque and there is no authority from the drawer to give to the bearer the proceeds of the cheque, then payment to the customer without inquiry would show lack of good faith and negligence. This of course is subject to there being circumstances antecedent or present available at time of paying proceeds which would enable the banker to come to the conclusion that the person presenting the cheque is entitled to the proceeds thereof. (Para 150 Pg. 230).

15. The law also is that not following rules and regulations is *prima facie* negl-



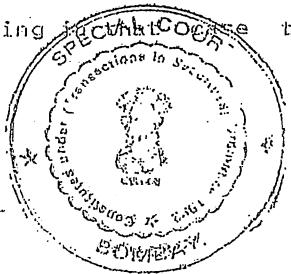
(Para 150 Pg. 230).

16. ANZ Grindlays cannot be absolved by virtue of circumstances and facts of which they were not aware at the time they gave the proceeds of the cheques to HSM..... There would have to be evidence that ANZ Grindlays were at the time when they gave the proceeds of the cheques to HSM aware of facts and circumstances which absolved them.  
(Para 153 Pg. 234).

57. This case being on identical facts would be covered by that Judgment and the law laid down therein. On the basis of that law, the 1st Defendant has no defence to this Suit. Thus Mr. Bhatt has been at pains to try and differentiate the facts of this case from the facts in ANZ Grindlays case.

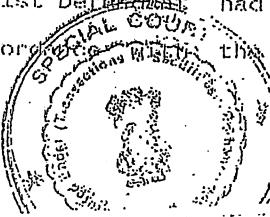
58. Mr. Bhatt submitted that ANZ Grindlays Bank had given credit to Defendant No. 2 (herein). He submitted that Court was laying down above principles in respect of a case where the account of the third party had been credited <sup>will</sup> / the amounts of the cheques. Mr. Bhatt submitted that in this case except for the sum of Rs. 1,10,00,000/-, the 2nd Defendants' account had not been credited with the balance amount of the suit cheque. He submitted that in the present case the 1st Defendant had issued their own cheques in favour of four different parties under the instructions of the 2nd Defendant. He submitted that this would be a very major factor which would distinguish this case from ANZ Grindlays case.

59. Mr. Bhatt next submitted that the other differences would be that on the pleading <sup>fact that COC</sup> the



Court has held that ANZ Grindlays Bank had categorically disowned title as a Payee of the cheque. He submitted that on the basis of the pleadings in that case the Court held that ANZ Grindlays Bank's had made no claim as Payee. Mr. Bhatt submitted that in the present case the pleadings are different. He submitted that the 1st Defendant have not disowned title as a Payee. He submitted that in this case the 1st Defendants are accepting title as Payee. He submitted that in this case the 1st Defendant was accepting the Plaintiffs' claim that as Payee the 1st Defendant had encashed the cheque as per the mandate of the cheque. Mr. Bhatt submitted that in ANZ Grindlays case the Court was considering the duties of a collecting bankers whereas in this case the 1st Defendant had not acted as a collecting banker. Mr. Bhatt submitted that in this case the question of duties of a collecting bank and the protection under Section 131 of the Negotiable Instruments Act did not arise at all. Mr. Bhatt stated that the 1st Defendant is not claiming any protection under Section 131 of the Negotiable Instruments Act. Mr. Bhatt stated that the 1st Defendant has not acted as a collecting banker. Mr. Bhatt submitted that therefore the ratio laid down in ANZ Grindlays case had no application to the facts of this case. He submitted that this case must be decided on the facts and material of this case.

60. Mr. Bhatt submitted that as the 1st Defendant had acted as a Payee of the cheque and in accordance with the

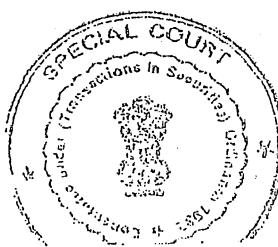


mandate of the cheque, the 1st Defendant could never be made liable for conversion. Mr. Bhatt further submitted that the 1st Defendant could also not be made liable for monies had and received, as according to the Plaintiffs, there was a fraud. He submitted that if the Plaintiffs claim that there was a fraud then it automatically follows that the Plaintiffs could not claim that the monies had been lawfully delivered. He submitted that the Plaintiffs are bound by their own case. He submitted that it made no difference whether or not the 1st Defendant or Court accepted Plaintiffs case that there was a fraud.

61. In support of this last submission Mr. Bhatt relied upon the Judgment of this Court dated 30th/31st March and 1st/2nd/3rd April 1998 in Misc. Petition No. 79 of 1994 wherein it is inter-alia held as follows :

"174. The last issue which has to be considered is Issue No. 13. This is a claim based on monies had and received. Mr. Chinoy, on receiving instructions from the 1st Respondents, makes a statement that the 1st Respondents are willing to deposit the amount of both the transactions in Court together with interest at 12% from the date that they received the amount from State Bank of India until they so deposited. He clarifies that this deposit is made, subject to the claim made by the State Bank of India in Suit No. 35 of 1995 and that if the State Bank of India obtains a Decree for return of the amounts then the 1st Respondents should be entitled to get back this amount. He also submits that this is also subject to the 1st Respondents claim against the Petitioners in Suit No. 2 of 1995.

175. The Court can understand an apprehension of the 1st Respondents regarding the claim of State Bank of India. So far as that is



concerned, it is absolutely correct that 1st Respondents cannot be made liable for the same amount twice over. Thus, their deposit would have to be subject to the claim of the State Bank of India in Suit No. 35 of 1995. However, if they succeed in their Petition they will get a Decree. In that event, obviously the Petitioners would have to pay the amount to the 1st Respondents under that Decree. At this stage, it cannot be said with absolute certainty that 1st Respondents are bound to succeed in their Suit. Also these amounts have nothing to do with claim in Suit No. 2 of 1995. Thus the deposit cannot be subject to that Suit.

176. On the question of interest Mr. Doctor submits that the interest should be @ 24% p.a. as the Petitioners had received monies from State Bank of India and had still not paid the amounts to the Petitioners.

177. As the 1st Respondents are willing to bring back the entire amount, in my view, it does not become necessary to consider whether the Petitioners are entitled to return of monies on the basis of monies had and received. However, it is clear that in respect of the first transaction the Petitioners would not otherwise have been entitled to maintain any claim on the basis of monies had and received.

178. As held by the Supreme Court in the case of Union of India Vs. Sitaram Jaiswal reported in A.I.R. (1977) S.C. Pg. 329 before such a claim can be maintained three conditions are required to be fulfilled viz: a) that the goods were delivered lawfully or anything has been done for another person lawfully; b) that the thing done or delivered is not done or delivered intending to do so gratuitously and c) the person to whom goods are delivered enjoys the benefit thereof. The same principles are reiterated in the case of Devi Sahai Paliwal Vs. Union of India reported in A.I.R. (1977) S.C. Pg. 2082.

179. As the Petitioners themselves consider that in the first transaction the monies have been siphoned out in pursuance of a crime conspiracy to commit criminal breach of trust and offences under the Prevention of Corruption Act, it could not even be argued



that the monies had been given lawfully. Also in such a case the benefit would have gone to the 2nd Respondent. Thus the first and third conditions of Section 70 are not fulfilled. In the first transaction on the suit as framed the Petitioner's would thus not be entitled to any relief."

Mr. Bhatt submitted that this Ruling of the Court must also be applied to the facts of this case.

62. I am unable to accept the above submissions of Mr. Bhatt. I see no difference between the facts of this case and the facts in ANZ Grindlays' case. Undoubtedly in their Written Statement the 1st Defendant has denied that they had credited the entire amount into the account of the 2nd Defendant. However 2nd Defendant in their written statement admit that the amount was credited into their account. If 1st Defendant claimed that the amount of the cheque was not credited into 2nd Defendant's account they had to prove it. Very conveniently this fact has not been proved. Even though a number of documents were tendered across the bar, the statement of account of the 2nd Defendant has not been tendered in evidence. Also it must be noted that as per the normal banking practice, if cheques were issued as per the instructions of the 2nd Defendant, the amounts of those cheques are bound to be debited into the account of the 2nd Defendant. That the amounts must have been credited/debited into the Account of the 2nd Defendant is also clear from Exhibit 1 (collly.). In Ex. 1 (collly.) is the letter dated 3rd January 1992 addressed by the 2nd Defendant to the 1st

(X)



Defendant. This is the letter with which the Plaintiff's cheque was forwarded by the 2nd Defendant to the 1st Defendant. It is as per the directions contained in this letter that the 1st Defendants issued four cheques in favour of other Banks. This letter makes it clear that the amount of this cheque and the amounts of the four cheques were to be debited and credited into the 2nd Defendant's Account. Thereafter by another letter dated 6th January 1992, (which is also part of Ex. 1 (coll.),) the 2nd Defendant calls upon the 1st Defendant to issue a cheque in favour of ANZ Grindlays Bank for Rs. 1,10,00,000/- and to debit to his Account with that cheque. The 1st Defendant by their letter dated 1st October 1992, addressed to the 2nd Defendant, state that they issued four cheques, as per the instructions of the 2nd Defendant and that the 'balance amount' of Rs. 1,11,50,136.92 was also deposited in the Current Account of the 2nd Defendant (emphasis supplied). By this letter the 1st Defendant claims that there has been misappropriation of funds by the 2nd Defendant. This letter clearly indicates that all the amounts had been debited and credited into the Account of the 2nd Defendant with the 1st Defendant. In this Suit, the 1st Defendants have tendered and relied upon portions of the Second Interim Report of the Jankiraman Committee. This is marked as Ex. 3. As this document is tendered and relied upon by the 1st Defendants they are bound by what it contains. The Report (Ex. 3) is reproduced in greater detail hereafter. At this stage it is sufficient to set out that on page 40 under item 5(c)(i) & (ii) it is set out as follows :

"5(c)(i) On 3 January 1992, as per NHB books, it purchased 9% IRFC bonds of the face value of Rs. 100 crores from SBI and sold the same to Canfield. It made payment of Rs. 95.40 crores by cheque to SBI but on inspection of the discharged cheque it was noticed that the cheque was later altered.



favour of SBS.

(iii) The records of SBS show that on 13 January 1992, Shri Harshad Mehta wrote to SBS requesting SBS to receive on his behalf a cheque for Rs. 95.40 crores (drawn in favour of SBS) and to issue on his behalf cheques to the undermentioned banks :

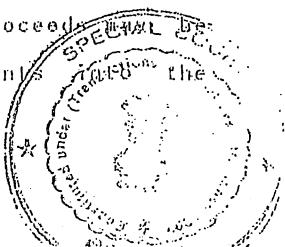
(Rs. in crores)

Canara Bank	79.80
SBI	5.01
Grindlays	6.37
Bank of India	4.10
	-----
	95.26

These receipts and payments were to be made by credit and debit to his current account No. 2230 with SBS. The bank complied with the above instructions except that the payment to Grindlays was made for Rs. 5.37 crores and not Rs. 6.37 crores. In the process, the residual amount of Rs. 1.12 crores stands automatically credited to his current account."

Thus I see no substance in the submission of Mr. Bhatt that in this case the amounts of the cheques had not been credited into the Account of the 2nd Defendant.

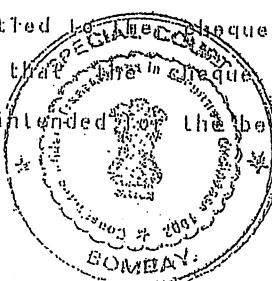
63. Even presuming that the amounts of the four cheques had not been credited into the Account of the 1st Defendant the position would have been no different. Admittedly the 1st Defendant has issued, as per the instructions of the 2nd Defendant, four cheques in favour of the four different Banks and credited a sum of Rs. 1,10,00,000/- into the Account of the 2nd Defendant. The 1st Defendant has therefore made available to the 2nd Defendant the entire proceeds of the suit cheque. The manner in which the 1st Defendant made available to the 2nd Defendant the proceeds of the suit cheque is irrelevant. Proceeds will be made available either by crediting the amounts under the



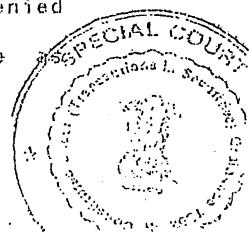
Account of the 2nd Defendant or by issuing cheques to other parties under instructions of the 2nd Defendant. In either event the fact is that the proceeds are made available to the 2nd Defendant.

64. In this case, unlike ANZ Grindlays' case, it is not even claimed that there was any consideration. Plea of third party consideration is not taken. Thus admittedly there was no consideration. Also as is set out hereafter there has been fraud. As there was no consideration and there was fraud the drawer i.e. the Plaintiffs remained the true owner of the cheque. Thus in this case clearly there has been conversion.

65. I also see no substance in the submission of Mr. Bhatt that in pleadings the 1st Defendant has claimed to be a Payee Bank. In my view, in this case also the 1st Defendant has specifically disclaimed title as a Payee. In this case also the 1st Defendant, in its pleadings is only claiming protection under Section 131 of the Negotiable Instruments Act i.e. as a collecting banker. This is very clear from para 8(a) of the Written Statement. In this case also the defence is that the said cheque for Rs. 95,39,78,082.19p. dated 3rd January 1992 was to the knowledge of the Plaintiffs issued for the sole benefit of Defendant No. 2. It is also averred that the Plaintiffs are aware that the 1st Defendant had not received nor was it entitled to any benefit of the proceeds of the said cheque and the said cheque was issued for the benefit of Defendant No. 2. Thus to be seen that the claim is not only that the 2nd Defendant was entitled to the proceeds of the cheque but also that the 2nd Defendant was entitled to the cheque itself. In the pleadings the claim is that ~~intended to be in cheque~~ and the proceeds of the said cheque were intended for the benefit of



Defendant No. 2. It is claimed that the said cheque was handed over by the Plaintiffs to Defendant No. 2 and that the said cheque was drawn in favour of the 1st Defendant to facilitate the 2nd Defendant to obtain same day credit of the proceeds of the said cheque. It is pleaded that Defendant No. 2 was the intended beneficiary and real owner of the proceeds of the said cheque. It is admitted that on 3rd January 1992 no amount was payable by the Plaintiffs to the 1st Defendant and that there was no transaction, in respect of the said cheque, between the Plaintiffs the 1st Defendant. Also it is claimed that Defendant No. 2 was the intended beneficiary and the real owner of the proceeds of the cheque. As set out in ANZ Grindlays' case it is the owner of the cheque who will be the owner of the proceeds. If the 1st Defendant were the owners of the cheque as Payees then the 2nd Defendant could never be the intended beneficiary or the real owner of the proceeds of the cheque. Thus it is to be seen that the 1st Defendants are claiming that they had not received and were not entitled to the cheque and/or the proceeds of the cheque. If as now argued the 1st Defendants were claiming as Payees then they would be entitled to receive the proceeds of the cheque. The only circumstance in which the 1st Defendants would not be entitled to receive the proceeds of the cheque is if they were disowning rights as Payees and were merely acting as a Collecting Banker. That the claim is on the footing of collecting Banker is clear from the fact that in the Written Statement it is averred that the 1st Defendant acted in good faith and without negligence. In the Written Statement it is denied that the 1st Defendant had been negligent in the discharge of its duties as alleged or at all. It is denied that the 1st Defendant had failed to exercise due care.

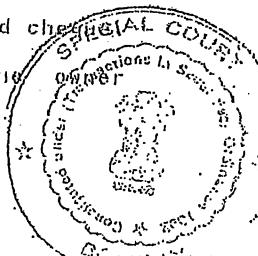


required by a Banker or as expected to be exercised by a Banker. If the 1st Defendants were acting as Payees then they would be liable in conversion even if they acted in good faith and without negligence. The question of good faith and negligence can only arise provided protection under Section 131 of the Negotiable Instruments Act was being claimed.

66. That the claim is not as a Payee is also clear from para 20 of the Written Statement. In this para the 1st Defendant denies that the money rested in the account of the 1st Defendant with the Reserve Bank of India. If as claimed the 1st Defendant is acting as Payee then the money would have rested in their Account. Then they would be disbursing their own amounts. Such a denial could only be made if the claim is only as a Collecting Banker.

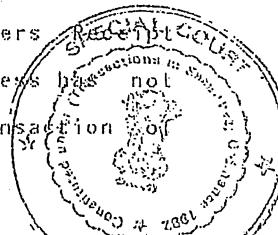
67. Thus even in these pleadings the 1st Defendant has denied claim as Payee of the cheque and has based their claim only as a Collecting Banker. It is thus not possible to accept the submissions of Mr. Bhatt that the 1st Defendant merely acted as Payee. Such a case is contrary to the pleadings. No issue has been raised in respect thereof. Undoubtedly such a submission is being made at the stage of arguments as it found that there is no other defence.

68. Even otherwise the 1st Defendant can never have any title to the cheque or the proceeds. To be remembered that it is an admitted position that there was no transaction between the Plaintiffs and the 1st Defendant in respect of the said cheque. It is an admitted position that no amount was due and payable by the Plaintiffs to the 1st Defendant on the date when the said cheque was issued. It is an admitted position that there was no consideration for the said cheque. As there was no consideration the Drawer remained the



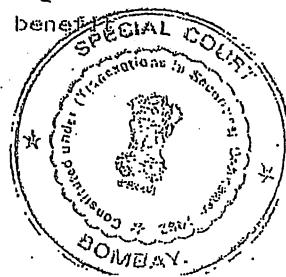
of the cheque and no title passed to the 1st Defendant even though they are named as Payee. As no title passed to the 1st Defendants they were not entitled to encash and/or to deal with the proceeds.

69. Thus it will have to be held that the "facts" of this case are almost identical to those in ANZ Grindlays' case i.e. in both cases A/c. Payee cheque/s were received and encashed even though there were no transactions between the drawer and the Bank named as Payee. In both cases no amounts were payable by the drawer Bank to the Payee Bank. Yet the cheque/s are encashed and proceeds handed over to a third party (in both cases the 2nd Defendant (herein)). As set out in ANZ Grindlays' case this would amount to conversion. In this case there is an additional fact. In this case admittedly there is no consideration for the suit cheque. Thus the drawer i.e. the Plaintiffs remained the owners of the suit cheque. By encashing the cheque and definitely by then passing on or distributing the proceeds of the cheque as per instructions of the 2nd Defendant, without any authority or instruction from Plaintiffs, the 1st Defendants are guilty of conversion. Having converted they are liable in damages. The damages being the amount of the suit cheque. The 1st Defendant have to repay the amount to the Plaintiff.

70. There is absolutely no evidence to show that the cheque or the proceeds were meant for Defendant No. 2. On the contrary the evidence of Defendant No. 2's witness has been that the cheque was issued for a transaction of sale by the 1st Defendant to Plaintiffs of 9% IRFC Bonds face value Rs. 100 crores. The evidence of 2nd defendants witness has been that the 1st Defendants were to issue a Bankers  in favour of the Plaintiffs. 2nd Defendant's witness has claimed that the suit cheque was issued for a transaction of

the 2nd Defendant. There is no evidence that the 2nd Defendant enjoyed any routing facility or that the suit cheque was accepted by the 1st Defendant as part of the routing facility. There is no evidence that the suit cheque was issued in favour of the 1st Defendant only to enable 2nd Defendant to get same day value. Also there is no evidence that the suit cheque was issued in consideration of Defendant No. 2 discharging Plaintiffs' liability to Canfina.

71: As stated above Mr. Bhatt has given up, during arguments, the claim to protection under Section 131 of the Negotiable Instruments Act. Undoubtedly this was given up because it is clear that the 1st Defendant acted without good faith and negligently in encashing the cheque and then giving proceeds of the suit cheque to the 2nd Defendant. The cheque was a high value cheque in a very large amount. The cheque was an Account Payee cheque drawn in the name of the 1st Defendant. At the time that the cheque was received, the 1st Defendant knew that they had no transaction with the Plaintiffs in respect of that cheque. At that time the 1st Defendant knew that no monies were due and payable by the Plaintiffs to the 1st Defendant. There was no endorsement on the cheque in favour of the 2nd Defendant. There was no letter of authority from the drawer of the cheque to deal with the cheque and give proceeds to a third party. These are circumstances which should put any prudent person and certainly a banker on notice. Inquiry should have been made as to why the cheque had been issued and for whose benefit.



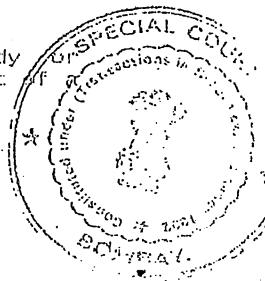
No such inquiry is made. Without any such inquiry the cheque has been encashed and the proceeds disbursed as per the directions of the 2nd Defendant. There cannot be a clearer case of negligence and lack of care.

72. That there was negligence and lack of care is also clear from the fact that the 1st Defendant has acted contrary to their own Book of Instructions. The 1st Defendant has a Book of Instructions. This is marked as Ex. E. Under Chapter 4 of that book, it is provided as follows :

"(j) Conversion:"

Conversion may be defined as unlawful taking using, disposing or destroying of goods, which is inconsistent with the owner's right of possession. The following are common cases of conversion which must be strictly guarded against :-

- (1) Failure to notice where the endorsement was irregular.
- (2) Collecting a cheque crossed "Account Payee" for a person other than the named payee.
- (3) Failure to notice where a material alteration was not attested by all the drawers (in case where the cheque has been drawn by more than one person).
- (4) Collecting for the credit of an agent's private account cheques payable to his principal.
- (5) Crediting a cheque payable to a partnership into the private account of one of the partners.
- (6) Crediting an employee's account with cheques drawn on employer's account payable to third party.
- (7) Any instrument payable to a public body or public official collected for the account of another.



— 5 —

private persons.

- (8) Cheques payable to a Limited Company and placed to the credit of the personal account of one of the directors or employees.
- (9) Failure to make enquiries into any unusual operations in an account.
- (10) Placing cheques into private account of a person signing under a Power of Attorney for the drawer without full enquiry as to his authority to do so."

It is to be seen that even as per this Book of Instructions unlawfully taking, using, disposing or destroying of goods which is inconsistent with the owner's right of possession is conversion. According to the Book of Instructions the common cases of conversion which must be strictly guarded against are (a) collecting a cheque crossed "Account Payee" for a person other than the named payee. In this case the 1st Defendant collected this cheque for and on behalf of the 2nd Defendant when the 2nd Defendant was not named payee of the cheque and (b) any instrument payable to a public body or public official collected for the account of a private person. In this case the instrument was payable to Nationalised Bank viz. the 1st Defendant. Yet it is collected for the Account of a private person i.e. the 2nd Defendant. Thus, as per their own Book of Instructions, the 1st Defendant is guilty of conversion. In spite of such clear instructions to the contrary the 1st Defendant still proceeded to encash the cheque and hand over the proceeds to the 2nd Defendant.



73. In this behalf it is relevant to note that the 1st Defendant has not pleaded or claimed that fraud had been played upon it by its employees. Obviously such a defence has not been taken because the 1st Defendant would, very likely have become vicariously liable. If such a case had been pleaded then conversion would have been established. Thus, the 1st Defendant adopts the actions of their employees and justifies them as being correct. This is in spite of the fact that in respect of a number of transactions the 1st Defendant had made a complaint to the C.B.I. against their employees. The 1st Defendants have on the basis of their complaint got launched a criminal case against their employees. For the purposes of that criminal case and in their complaint to the C.B.I. the 1st Defendant is claiming that the fraud had been played upon them. In the complaint to C.B.I., which is marked as Ex. G, 1st Defendants inter-alia state as follows:

"11. During our enquiry, we have found that Current Account No. 2230 in the name of M/s. Harshad Mehta (Sole Proprietor Shri Harshad Mehta) was opened on 10-6-1991 with our Fort Branch in Bombay on the introduction of Shri Srinivasan. The transactions put through this account show that a number of cheques for large amounts payable to our Bank from various banks were credited to the broker's accounts. Against these credits, either on the same day or after a gap of one or two days, bankers' cheques were issued by our bank in favour of the same bank and in a few cases in favour of other banks. We have reasons to believe that these irregular transactions were put through the said account with a view to camouflage the source of payments in so far as the other banks are concerned. Full details of the transactions in the said account would be furnished during the investigation.

12. In the circumstances <sup>connections</sup> submit that Mr. Srinivasan who was at the relevant time in charge of the Funds Management Cell of our Bank and was thus



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being entrusted with our Bank's funds or with dominion over the said funds and who was required to utilise the said funds in relation to only genuine banking transactions, contrary to same, and in criminal conspiracy with the said Harshad Mehta and others, dishonestly and willfully misappropriated and/or allowed to be misappropriated our Bank's funds to the tune of Rs. 174.95 crores and thus committed an offence of criminal breach of trust punishable under Sections 406, 409 read with Section 120-B of the Indian Penal Code. In acting as he did, the said Shri Srinivasan, who is a public servant, had by corrupt or illegal means or by abusing his official position, caused wrongful loss to the bank to the tune of Rs. 174.95 crores and corresponding pecuniary advantage to others. He has thereby also committed, in pursuance of the criminal conspiracy, offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1908."

On record there is also Exs. F and H (Colly). Ex. F is a Resolution passed by the Executive Committee of the Board of Directors of the 1st Defendant. Ex. H (Colly) are the Sanction Orders dt. 6th July 1995 and 26th August 1995, issued by the Chief General Manager to prosecute Mr. V. C. Narsimha Rao and Mr. D. P. Dash resp. The Resolution reads as follows :

"The Executive Committee carefully considered the matter and after detailed discussion of all relevant aspects of the case, it is found that Shri D. P. Dash afforded credits of substantial funds to the account of Shri Harshad Mehta in the absence of any disposal instructions from respective Banks/Financial Institution. The action of Shri Dash enabled Harshad Mehta to misappropriate substantial funds. The Executive Committee, therefore, felt that there are sufficient grounds for according sanction for prosecution of Shri Dash as suggested by CRI."

In the Sanction Order dt. 6th July 1995 it is inter-alia



stated as follows:

"6. Whereas, it is further alleged that in pursuance of the aforesaid criminal conspiracy, Shri V. C. Murlikrishna on receipt of a RBI cheque No. 173756 dated 03-01-1992 for Rs. 95,39,78,082.19 which was initially issued by NHB in favour of SBI and the payee's name was altered to SBS at NHB fraudulently and dishonestly deposited in RBI on 03-01-1992 for crediting to the account of SBS knowing fully well that there was no transaction between SBS and National Housing Bank (NHB) for receipt of the said amount from NHB which manifestly indicated that it was done only to accommodate Shri Harshad S. Mehta in whose account an amount of Rs. 1,11,50,136.92 was credited after issuing 4 Banker's cheques aggregating to Rs. 94,28,27,945.27 with State Bank of Saurashtra, Fort Branch, Bombay under the order of Shri D. P. Dash.

7. .....

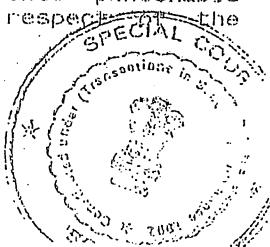
8. .....

9. .....

10. Whereas, the aforesaid acts of Sh. V. C. Murlikrishna constitute offences punishable under section 120-B IPC r/w 420 IPC, 477-A IPC and 13(2) r/w 13(1) (c) and (d) of P.C.Act, 1988 and also for the commission of substantive offences under Sec. 409 IPC 477-A IPC and 13(2) r/w 13(1) (c) and (d) of P.C.Act, 1988.

11. And whereas, I, Surajmal Birdichand Kucheria, Chief General Manager, State Bank of Saurashtra, Head Office, Bhavnagar (Gujarat), being the authority competent to remove the said Shri V. C. Murlikrishna from office after fully and carefully examining the materials before me in regard to the said allegations and circumstances of the case consider that Shri V. C. Murlikrishna should be prosecuted in the court of law for the said offences.

12. Now, therefore, I, Surajmal Birdichand Kucheria, Chief General Manager, State Bank of Saurashtra, Head Office, Bhavnagar, hereby accord sanction under Sec. 19(1) (c) of the Prevention of Corruption Act, 1988 (No. 49 of 88) for the prosecution of the said Shri V. C. Murlikrishna for the said offences and any other offence punishable under other provisions of law in respect of the



acts aforesaid and for the taking of cognizance of the said offences by a Court of Competent Jurisdiction."

In the Sanction Order dt. 26th August 1995 it is inter-alia stated as follows:

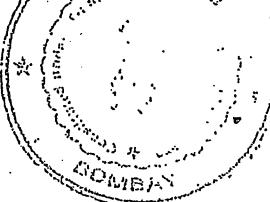
4. Whereas, it is further alleged that in pursuance of the aforesaid Criminal Conspiracy, Shri D. P. Dash on receipt of a RBI cheque No. 173756 dated 03-01-1992 for Rs. 95,39,78,082.19 issued by National Housing Bank (NHB) in favour of SBS forwarded by Shri Harshad S. Mehta through a letter dated 03-01-1992 requesting for acceptance of the said cheque and issuance of four Banker's Cheques, dishonestly accepted the said RBI cheque even though no disposal instructions to this effect was received from NHB and he knew fully well that the said RBI cheque could not be accepted for credit to third party account (M/s. Harshad S. Mehta) and against the credit allowed by him in the aforesaid manner, he had himself allowed issuance of four Banker Cheques for Rs. 79,79,69,041.09 in favour of Canara Bank, for Rs. 15,01,58,904.18 in favour of SBI, Rs. 5,37,00,000.00 in favour of ANZ Grindlays Bank and for Rs. 4,10,00,000.00 in favour of Bank of India and further allowed the balance amount of Rs. 1,11,50,136.92 credited to the said account of M/s. Harshad S. Mehta on 03-01-1992 by passing all the relevant credit and debit vouchers.

5. ....

6. ....

7. Whereas the aforesaid acts of Shri D. P. Dash, constitute offences punishable under section 120-B IPC r/w 420 IPC, 477-A IPC and 13(2) r/w 13(1) (c) and (d) of P.C.Act, 1988 and also for the commission of the substantive offences punishable under Sec. 409 IPC 13(2) r/w 13(1) (c) and (d) of P.C.Act, 1988.

8. And whereas, the Executive Committee of the Bank's Board of Directors, State Bank of Saurashtra, Head Office, Bhavnagar (Gujarat) being the authority competent to remove the said Shri D. P. Dash from office after fully and carefully examining the materials placed before them <sup>in their</sup> meeting held on 26-04-95 in regard to the said allegations and circumstances of the case.

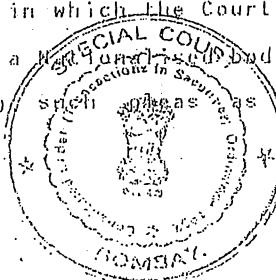


considered that Shri D. P. Dash should be prosecuted in the court of law for the said offences.

9. AND now, therefore, the Executive Committee of the Bank's Board of Directors of State Bank of Saurashtra hereby accord sanction u/s 19(1)(c) of the Prevention of Corruption Act, 1988 (No. 49 of 1988) for the prosecution of the said D. P. Dash for the said offences and any other offence punishable under other provisions of law in respect of the acts aforesaid and for the taking of cognizance of the said offence by a court of competent jurisdiction."

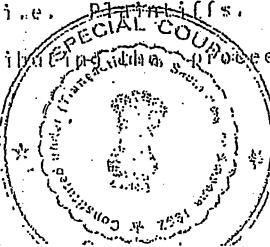
The Complaint Ex. G is dt. 6th July 1992. Thus from 1992 1st Defendants have considered that there has been collusion, conspiracy and misappropriation. The Sanction Orders Ex. H (Colly) are dt. 6th July 1995 and 26th August 1995. The Sanction Order dt. 26th August 1995 part of Ex. H (Colly) is issued pursuant to a Resolution dt. 26th June 1995 (Ex. F). The Resolution Ex. F is the opinion of the Executive Committee of the Board of Directors. Thus till 26th June 1995 1st Defendants are of the opinion that there is collusion, connivance and misappropriation. The 1st Defendants have also made a claim for Rs. 95,39,78,082.19 with the Custodian. Yet in the written statement, which is affirmed on 17th June 1996, the 1st Defendant denies that there is any fraud or collusion or connivance. In para 19 of the written statement the 1st Defendant goes to the extant of denying that there were any fraudulent acts on the part of their officers. Thus 1st Defendant is now justifying the act of their employees and adopting the same.

74. This is not the first suit in which the Court has seen that the 1st Defendant, which is a ~~Non-Governmental Body~~, is adopting such defences and taking such steps as are



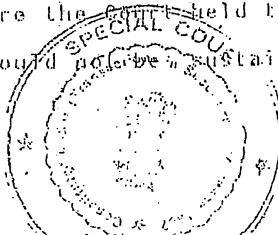
convenient to it. In doing so it is not hesitating in taking contrary stands in different matters even before the same Court. It is not hesitating in taking false stands before a Court of Law. Such conduct on the part of a Nationalised body must be, to say the least, condemned. It is surprising that a wholly owned subsidiary of a major bank like the State Bank of India behaves in such a manner. It appears to Court that whosoever is taking the decision to act in this manner must have no basic morals or scruples and are person/s who do not know the basic principle that in a Court of law the correct stand has to be adopted no matter how inconvenient it may be. This would be the least to be expected from a Nationalised body. It has also been found by this Court that decisions against the interest of the 1st Defendants are being taken. Court has repeatedly commented adversely against the 1st Defendants (herein) in Judgment of this Court dated 11th March 1996 in Suit No. 33 of 1995; Judgment dated 30th, 31st March, 1st, 2nd and 3rd April 1996 in Misc Petition No. 79 of 1994 and Judgment dated 10th January 1999 in Misc. Petition No. 52 of 1993. Yet adverse comments of this Court and the adverse publicity received have had no effect on the 1st Defendants. They are persisting in their repugnant behaviour and continue to take contrary and false stands.

75. As no title in the cheque or the proceeds had passed to the 1st Defendants and as Plaintiffs remained the true owners of the cheque and the proceeds thereof it follows that on receipt of the proceeds there was a fiduciary obligation on the part of the 1st Defendant to hold the proceeds on behalf of the true owners i.e. Plaintiffs. By handing over the proceeds and/or distributing the proceeds,



as per the direction of the 2nd Defendant, the 1st Defendants have committed a breach of that fiduciary obligation also. For that reason also the 1st Defendant is liable to repay the amount. In any event it is clear that the monies were received by the 1st Defendant from the Plaintiffs without intending to do so gratuitously. On that ground also the 1st Defendant must return the monies to the Plaintiff.

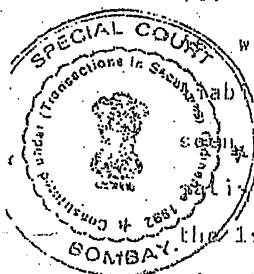
76. So far as the case of monies had and received is concerned, I am not in agreement with the submission of Mr. Bhatt that the ratio laid down in Misc. Petition No. 79 of 1994, as quoted in para 61 above, applies to this case also. That was a case where the 1st Defendant (herein) were the Petitioners. It was shown and proved to Court that the 1st Defendants (herein) always considered the first transaction in that Petition to be a non genuine security transaction. It being a non genuine security transaction 1st Defendant (herein) would have been entitled to return of monies. Instead of claiming for return of monies and in spite of the 1st Defendant (herein) considering the transaction to be a non genuine security transaction, they filed Misc. Petition 79 of 1994 for specific performance of that contract. In that case also the Court has noted that the 1st Defendant (herein) is taking contrary stands as are convenient to it before the same Court. In that case as the 1st Defendant themselves considered the concerned transaction to be a non genuine security transaction, the first condition, as laid down by the Supreme Court in Union of India v/s Sitaram Jaiswal's and Sahai Palliwal v/s Union of India's cases (supra) was not fulfilled. Therefore the ~~court~~ held that the case for monies had and received could ~~not~~ be sustained in



respect of the first transaction in Misc. Petition No. 79 of 1994.

77. In this case the Plaintiffs are not seeking specific performance of any contract. They are honestly admitting that what is recorded in their books does not appear to be correct. They are honestly accepting that there is no such transaction. This Suit is for return of monies. In this case the claim that there was a fraud is an alternate claim. The ratio laid down in Misc. Petition No. 79 of 1994 would apply only if the alternate case was accepted. That ratio would not have applied if the alternate case had not been accepted. However, as set out in greater details hereafter, it is clear to Court that there has been a fraud. If there has been a fraud then there is no lawful delivery. Also it is already held that there is conversion. On such findings it cannot be said that there is lawful delivery. Thus the first condition laid down by the Supreme Court in Union of India v/s Sitaram Jaiswal's and Sahai Palliwal v/s Union of India's cases (*supra*) is not fulfilled. Thus on that ground it will have to be held that the claim for monies had and received would not be maintainable.

78. The next question which arises for consideration whether there has been discharge or satisfaction of the liability of the 1st Defendant to the Plaintiffs. As been seen in the pleadings, there is no case of discharge or satisfaction. In the pleadings all that has been claimed by the 1st Defendant is that the consideration for the issuance of the suit cheque was the discharge of the Plaintiffs' liability to Canfina by the 2nd Defendant. Even presuming the 2nd Defendant had discharged the Plaintiffs' liability to



Canfina, one fails to understand how that could be consideration for the cheque. The cheque was issued on 3rd January 1992. The discharge of liability to Canfina was sometime in March 1992. It is nobody's case, in pleadings or in evidence that on 3rd January 1992 it was agreed that the 2nd Defendant will satisfy Plaintiff's liability to Canfina and that in anticipation of such discharge the suit cheque was issued. Such a case is not pleaded. No evidence has been led in support of such a case. On the contrary the 2nd Defendant's witness, has deposed that the suit cheque was issued, for a transaction of sale by the 1st Defendant to Plaintiffs of 9% IRFC Bonds f.v. Rs. 100 crores. In the absence of an Agreement to that effect, a subsequent discharge could never have been considered on 3rd January 1992.

79. Realising that the case pleaded could not be proved, no attempt was made to prove it. During arguments it is urged that by virtue of the 2nd Defendant having discharged the Plaintiff's liability to Canfina the 1st Defendant stands discharged. To be noted that this case is not supported by the 2nd Defendant. Even though the 2nd Defendant claims that he discharged the Plaintiff's liability to Canfina, the 2nd Defendant is now claiming that 9% IRFC Bonds face value Rs. 100 crores belong to him. The 2nd Defendant is claiming that the Plaintiff should be called upon to hand over those 9% IRFC Bonds f.v. Rs. 100 crores to the Custodian. Thus the 2nd Defendant is not claiming that he has discharged the 1st Defendant's liability to the Plaintiff.

80. The evidence of the 2nd Defendant's witness, as



well as the correspondence, shows that on 3rd January 1992 the Plaintiffs had a back to back transaction under which they sold to Canfina 9% IRFC Bonds face value Rs. 100 crores and received from Canfina a cheque in the sum of Rs. 95,43,78,082.19. In respect of this transaction the Plaintiffs issued a Bankers Receipt to Canfina. In their record the Plaintiffs had a back to back transaction with the State Bank of India under which they purchased from the State Bank of India 9% IRFC Bonds face value Rs. 100 crores at a price of Rs. 95,39,78,082.19. Even though in their records the transaction was with the State Bank of India, a cheque in the sum of Rs. 95,39,78,082.19 is issued in favour of the 1st Defendant. Of course the suit cheque is first drawn in favour of the State Bank of India and then changed into name of the 1st Defendant. As stated above, the 1st Defendant accepted the cheque and encashed it even though they had no transaction with the Plaintiffs and no monies were payable by the Plaintiffs to the 1st Defendant.

81. Strong reliance was placed upon the correspondence by Mr. Bhatt. Mr. Bhatt submitted that in the Suit the claim against the Defendants is on the basis of joint and several liability. He submitted that therefore if it is shown to Court that any of the Defendants has satisfied the claim then no cause of action would exist on the date of the Suit.

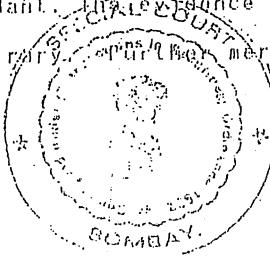
82. I am unable to accept this submission. In the Plaintiff the main claim is not on the basis of joint and several liability. The main claim in the Plaintiff is only against the 1st Defendant alone. The claim is on the basis of an Account Payee cheque ~~and~~ <sup>SPECIAL CPU</sup> and encashed by the 1st Defendant. It is only under the ~~and~~ <sup>in some cases</sup> alternate case of fraud that



a joint and several liability has been claimed. Even in cases of joint and several liabilities discharge by one would not fully absolve the others. The others would remain liable to contribute.

63. Mr. Bhatt relied upon Section 41 of the Contract Act. He submitted that under Section 41 when a promisee accepts performance from a third person, he cannot afterwards enforce it against the promisor. Mr. Bhatt submitted that the Plaintiffs had a liability to Canfina. He submitted that Canfina accepted performance from the 2nd Defendant who delivered 9% IRFC Bonds face value Rs. 100 crores. He submitted that now Canfina had no claim against the plaintiffs. He submitted that once Canfina's liability to plaintiffs stood discharged, it was entirely irrelevant as to who was the owner of the 9% IRFC Bonds f.v. Rs. 100 crores which were received by Canfina. He submitted that under Section 59 of the Contract Act where a debtor makes a payment with express intimation of discharge of a particular debt, then it is only that liability which stands discharged. He submitted that Canfina's liability having stood discharged, now the Plaintiffs cannot seek to reopen the transaction and make a claim against the 1st Defendant.

64. I am unable to understand these submissions of Mr. Bhatt or to accept them. One fails to understand how 1st Defendant stands discharged even if Canfina has accepted performance from the 2nd Defendant. Also there is no evidence or proof that delivery to Canfina was with intention of discharging 1st Defendant. The evidence of 2nd Defendants witness is to the contrary merely because there



were back to back transactions does not mean that there was only one transaction. As stated above this Court has already held that even though there may be back to back transactions each transaction remains an independent transaction and has to be performed on its own. Thus even in cases of back to back transactions rights and liabilities in each transaction are independent and unconnected. Merely because the Plaintiffs' obligation to Canfina stands discharged, does not absolve the 1st Defendant of their liability to the Plaintiffs. The 1st Defendant would still have remained liable to perform. However in this case 1st Defendant is claiming that there is no transaction between them and the Plaintiffs. Thus on their own case there is no back to back transaction. Having received and encashed Plaintiffs cheque without there being any transaction the 1st Defendant is now liable to refund the monies on basis of conversion, fiduciary obligation and monies paid without intending to do so gratuitously. At the highest the 1st Defendant may then be entitled to make a claim against the 2nd Defendant and/or the other Banks to whom they made payment at the behest of the 2nd Defendant. In fact the 1st Defendant has filed Suit No. 3 of 1995 against the 2nd Defendant and the four Banks for refund of monies. That Suit is pending and will be decided on its merit.

Q5. Mr. Bhatt relied on the correspondence between the parties. Therefore it may be advisable to set out, at this stage, what is stated by the parties in the correspondence.

Ex. "D" (contd.) is correspondence between the Plaintiffs and the 1st Defendant. By their letter dated 25th May 1992 the Plaintiffs called upon the 1st Defendant to arrange for delivery of 9% IRFC Bonds in respect of which their cheque for Rs. 95,39,78,082.19/- had been paid. The 1st Defendant by their letter dated 26th May 1992 point out that in their records there is no such purported sale of 9% IRFC Bonds. The Plaintiffs therefore by their letter dated 8th June 1992 point out that they paid this cheque on 3rd January 1992 and the same has been encashed by the 1st Defendant. The Plaintiffs then call upon the 1st Defendant to return the money with interest at call money rates. The 1st Defendant by their letter dated 15th June 1992 again reiterates that there is no such sale transaction. They deny any liability to return the money. The 1st Defendant states that in the ordinary course of their business a cheque issued by the Plaintiffs had been credited to the 1st Defendant's account even without a purchase and sale transaction. The Plaintiffs thereafter reiterate their demand by their letter dated 17th June 1992. The 1st Defendant by their reply makes a claim in respect of two other transactions which formed the subject matter of Misc. Petition No. 72 of 1994. The 1st Defendant by their telex dated 16th July 1992 refer to certain discussions which they had with the Managing Director of Canfina wherein Canfina confirmed that they had no claim on the Plaintiffs. The 1st Defendant by their letter dated 4th August 1992 claim that as Canfina has no claim against the

Plaintiffs and therefore the Plaintiffs should make no claim against the 1st Defendant. The Plaintiffs by their letter dated 14th August 1992 confirm the discussions which the Plaintiffs and the 1st Defendant had with the Managing Director of the Canfina and state that they are waiting for a written confirmation. This letter would indicate that at one stage the Plaintiffs were considering absolving the 1st Defendant from liability in the event of Canfina not making a claim. However it is clear that as yet no agreement, absolving the 1st Defendant, is arrived at. The Plaintiffs would probably have absolved the 1st Defendant except that the Plaintiffs subsequently learnt that out of the 9% IRFC Bonds f.v. Rs. 100 crores delivered to Canfina, Bonds f.v. Rs. 61.25 crores belonged to them i.e. they had paid for the same. Naturally the Plaintiffs could not then absolve the 1st Defendant of their liability. The correspondence then proceeds on the same lines. The 1st Defendant claims that as Canfina had no claim the Plaintiffs could make no claim against them. The Plaintiffs correctly repudiate such an argument.

86. The correspondence between the Plaintiffs and the Custodian is annexed as Ex. "A" (colly.). This correspondence indicates what seems to have happened. Even though the Plaintiffs had issued a Bankers Receipt to Canfina and received the cheque for Rs. 95,43,78,082.19p. f.v. Rs. 100 crores They had not delivered any 9% IRFC Bonds to Canfina. The correspondence suggests that Canfina received 9% IRFC



Bonds f.v. Rs. 100 crores from the 2nd Defendant. Having received 9% IRFC Bonds f.v. Rs. 100 crores, Canfina discharged Plaintiffs' Bankers Receipt and handed it back to the Plaintiffs. The Plaintiffs were thus initially inclined not to make a claim against the 1st Defendant. However it then turns out that the Plaintiffs had on 30th March 1992 issued a R.B.I. cheque in the name of Standard Chartered Bank in a sum of Rs. 55,18,43,657.07. The said cheque had been accepted and encashed by the Standard Chartered Bank. In the Plaintiffs' records there is no clear indication as to for what transaction this cheque had been issued. The Plaintiffs were therefore not sure for what this cheque had been issued. Thus at different times they claim/specify different securities. The Janakiraman Committee Report indicates that Standard Chartered Bank has given credit of the proceeds of this cheque to one Growmore Research and Asset Management Company Limited. This is one of the group companies run by the 2nd Defendant. It must be mentioned that Growmore Research and Asset Management Company Limited is also a Notified Party. The Plaintiffs therefore made a claim against Standard Chartered Bank for the sum of Rs. 55,18,43,657.07. Standard Chartered Bank then claimed that, at the behest of the 2nd Defendant, they had delivered to Canfina 9% IRFC Bonds f.v. Rs. 60 crores. Standard Chartered Bank claimed that out of these 9% IRFC Bonds f.v. Rs. 60 crores they had delivered 9% IRFC Bonds f.v. Rs. 61.25 crores to Canfina on behalf of the Plaintiffs. Initially the Plaintiffs dispute

(d)



this claim. Initially they claim that in their record there was no such transaction and they had never authorised Standard Chartered Bank to make any such delivery. Canfina however confirmed that out of the 9% IRFC Bonds f.v. Rs. 100 Tors. received from 2nd Defendant they had received 9% IRFC Bonds f.v. Rs. 80 crores from Standard Chartered Bank. Canfina confirms that these had been received towards Plaintiffs' liability under their Bankers Receipt. Thus, it would appear that the amount of Rs. 55,18,43,657.07 received by Standard Chartered Bank was set-off by Standard Chartered Bank against 9% IRFC Bonds f.v. Rs. 61.25 crores which it had delivered to Canfina. Of course as pointed out by Mr. Joshi, Mr. Bhatt and Mr. Jethmalani the rates at which the sum of Rs. 55,18,43,657.07 is adjusted against 9% IRFC Bonds f.v. Rs. 61.25 crores varies and does not tally with rate under Plaintiff's transaction with Canfina or in other transactions. Mr. Bhatt has submitted that the Plaintiffs could not have accepted case of Standard Chartered Bank and should have proceeded against Standard Chartered Bank for recovery of Rs. 55,18,43,657.07. What Mr. Bhatt is suggesting amounts to 1st Defendant dictating what Plaintiffs should do. 1st Defendant has no right to so dictate. What is more important is that the suggestion is without any merit and would not have absolved 1st Defendant in any case. How impractical the suggestion is can be seen from what would happen if Plaintiffs had refuted the claim of Standard Chartered Bank and insisted upon delivery of the sum of Rs.

~~100~~

Rs. 18,657.07. Had the Plaintiffs persisted in their money claim against Standard Chartered Bank and Standard Chartered Bank been forced to return the sum of Rs. 55,18,43,657.07 it would have claimed back 9% IRFC Bonds f.v. Rs. 61.25 crs. from Canfina. In that event Canfina would have to return to Standard Chartered Bank 9% IRFC Bonds f.v. Rs. 61.25 crores. Canfina would then have claimed 9% IRFC Bonds f.v. Rs. 61.25 crs. from Plaintiffs. In that event Plaintiffs liability to Canfina would not stand discharged. Plaintiffs would then have to deliver to Canfina 9% IRFC Bonds f.v. Rs. 61.25 crs. Thus even presuming 1st Defendants' liability to Plaintiff was linked to Plaintiffs liability to Canfina, which it is not, 1st Defendant would still not stand discharged. What Mr. Bhatt is in effect submitting is that even if Plaintiffs liability to Canfina is not fully discharged, Plaintiffs must absolve/discharge 1st Defendant from their liability. Mr. Bhatt's submission amounts to saying that Plaintiffs must discharge 1st Defendant even if Plaintiffs suffer a loss of 9% IRFC Bonds f.v. Rs 61.25 crs. and/or Rs. 55,18,657.07. These are submissions which are merely required to be stated to be rejected. Plaintiffs cannot be faulted in adopting a practical approach and accepting delivery by Standard Chartered Bank of 9% IRFC Bonds f.v. Rs. 61.25 crores on their behalf to Canfina.

87. Thus to sum up the correspondence and evidence of 2nd Defendants witness discloses that the 2nd Defendant had delivered to Canfina 9% IRFC Bonds f.v. Rs. 100 crores. Out

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of these 9% IRFC Bonds f.v. Rs. 80 crores came from Standard Chartered Bank. 9% IRFC Bonds f.v. Rs. 20 crores were directly delivered by the 2nd Defendant to Canfina. Out of 9% IRFC Bonds f.v. Rs. 80 crores delivered by Standard Chartered Bank to Canfina, Bonds f.v. Rs. 61.25 crores were allegedly for and on behalf of the Plaintiffs. Thus even though the Plaintiffs made no delivery to Canfina, Canfina had received, 9% IRFC Bonds f.v. Rs. 100 crores. In such delivery Plaintiffs' money i.e. Rs. 55,18,43,657.07, paid to Standard Chartered Bank, has been adjusted. Undoubtedly the 2nd Defendant witness claims that the 2nd Defendant had made payment for all the 9% IRFC Bonds f.v. Rs. 100 crores to Canfina. However when called upon to prove payment, no proof could be produced. The witness ends up by stating that he presumed that the 2nd Defendant had made payment for the 9% IRFC Bonds f.v. Rs. 100 crores. Thus this Court has no proof that the 2nd Defendant paid for all the 9% IRFC Bonds f.v. Rs. 100 crores which were delivered to Canfina. The Court however has before it the fact that 9% IRFC Bonds worth Rs. 20 crs. were delivered to Canfina by the 2nd Defendant. Court has before it fact that 9% IRFC Bonds f.v. Rs. 80 crores came to Canfina from Standard Chartered Bank. Court has before it fact that Plaintiffs money i.e. Rs. 55,18,43,657.07, which was paid to Standard Chartered Bank, has been adjusted against 9% IRFC Bonds f.v. Rs. 61.25 crores. Thus Court will have to proceed on the basis that, until proved otherwise in separate proceedings which may be adopted by the Cusodian or



2nd Defendant, out of the 9% IRFC Bonds f.v. Rs. 100 crores delivered to Canfina, Bonds f.v. Rs. 61.25 crores were paid for by the Plaintiffs themselves. On this basis it is clear that the Plaintiffs' liability to Canfina has not been fully discharged by the 2nd Defendant. Of course to the extent of 9% IRFC Bonds f.v. Rs. 38.75 crores Plaintiffs liability to Canfina has been discharged without the Plaintiffs having paid any amounts. So far as the Court can see the delivery to Canfina of 9% IRFC Bonds f.v. Rs. 38.75 has been by the 2nd Defendant. The value of 9% IRFC Bonds f.v. Rs. 38.75 crores, at the rate at which the transaction took place on 3rd January 1992, comes to Rs. 40.22 crores. The Plaintiffs have hung on to this Rs. 40.22 crores and not paid the same to the Custodian even though the Custodian demanded the same from the Plaintiffs.

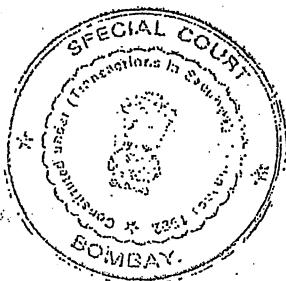
88. On the basis of the above correspondence, Mr. Bhatt submitted that admittedly it is the 2nd Defendant who had delivered the Bonds to Canfina. He submitted that it was absolutely unnecessary to try and find out who had paid for these 9% IRFC Bonds f.v. Rs. 100 crores which had been delivered to Canfina. Mr. Bhatt submitted that the presumption is always that title follows possession. He submitted that it is an admitted position that Canfina received the Bonds f.v. Rs. 100 crores from the 2nd Defendant. He submitted that it must therefore be presumed that it is the 2nd Defendant who owned all the Bonds. He submitted that it must be held that the 2nd Defendant has



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fully discharged Plaintiffs' liability to Canfina. He submitted that thus Plaintiffs could have no claim against the 1st Defendant. He submitted that the 9% IRFC Bonds f.v. Rs. 100 crs. having been appropriated in discharge of the 1st Defendant's liability, it was not open for the Plaintiffs to now reappropriate in a different manner by giving credit to Standard Chartered Bank for Bonds f.v. Rs. 38.75 crores.

I am unable to accept the submission of Mr. Bhatt. Even presuming that the 9% IRFC Bonds f.v. Rs. 100 crores, which were delivered to Canfina, belonged to the 2nd Defendant the only result would be that it would be the 2nd Defendant who would be entitled to receive from the Plaintiffs 9% IRFC Bonds f.v. Rs. 100 crores or their value. The 2nd Defendant and his witness do not claim that they have discharged the 1st Defendant's liability. The action of the 2nd Defendant in discharging the Plaintiffs' liability to Canfina can in no way discharge the 1st Defendants of their liability to the Plaintiffs. It is an independent liability unconnected with the Plaintiffs' transaction with Canfina. Even if the proceeds of the suit cheque have been taken away by the 2nd Defendant, at the highest 1st Defendant would have a claim against the 2nd Defendant. 2nd Defendant is a Notified party. Anybody who has a claim against the 2nd Defendant can only be paid at time of distribution under Section 11 of the said Act. Also under the said Act the Court is duty bound to recover, for purposes of distribution all assets of Notified parties. Thus even if 2nd Defendant had



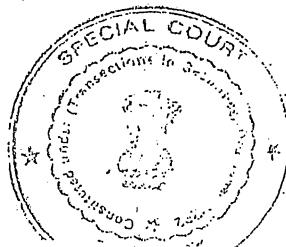
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discharged fully Plaintiffs liability to Canfina, the Plaintiffs would then have had to hand over 9% IRFC Bonds f.v. Rs. 100 crs. or their equivalent in cash to the Custodian. 1st Defendant would have to make a claim in distribution. 1st Defendants is seeking to adjust their claim, presuming one exists, against the 2nd Defendant in precedence over all other creditors by trying to adjust their liability to Plaintiffs against Plaintiffs supposed liability to 2nd Defendant. This can never be permitted.

90. As stated above there is no substance in contention that appropriation by Canfina has been towards discharge of the 1st Defendants liability. There is no evidence to that effect. The evidence is to the contrary. The evidence and case-of 2nd Defendant's witness is that Plaintiffs now owe 9% IRFC Bonds f.v. Rs. 100 crores to the 2nd Defendant. 2nd Defendant is not supporting the 1st Defendant's case that their liability stands discharged. The correspondence also does not disclose any final agreement or understanding by which the 1st Defendant's liability stands discharged. The 1st Defendant's liability to Plaintiffs has nothing to do with discharge of Plaintiffs' liability to Canfina. Thus, it will have to be held that the 1st Defendant is liable to the Plaintiffs in the sum of Rs. 95,37,73,082.19.

91. On the above facts and for reasons set out above these issues have been answered as above.

92. In view of these findings, it is absolutely



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unnecessary to decide the alternate case whether there has been any fraud or not. However, as the matter has been fully argued, Court is merely indicating what its view, on the alternate case, would have been. The Issues in this behalf would be Issue Nos. 11 and 12 of Issues between Plaintiffs and Defendant No. 1, Issue Nos. 1, 2, 3, 4, 5, 6, 7 and 8 of Issues between Plaintiffs and Defendant No. 3, Issue Nos. 2, 3, 4 and 5 of Issues between Plaintiffs and Defendant No. 4. On the case of fraud, no party has led any oral evidence. The burden of proving fraud always lies on the party who alleges it. The witness of the 2nd Defendant has deposed that he had entered into this transaction with the 3rd defendant. This is the only evidence available before the Court. The only other piece of evidence relied upon, in support of the case of fraud, is the Second Interim Report of the Janakiraman Committee Report. This has been marked as Ex. 3. Undoubtedly the Janakiraman Committee Report is a public document. The Second Interim Report (Ex. 3) sets out on page 29 a tabular statement which shows what monies have been siphoned out from which Bank and to whom. The tabular statement reads as follows :

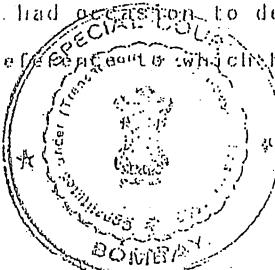


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Bank/ Institution	Acquisition cost	Bank/Institution to whom payment was made.	(Rs. in crores)	Account to which amount received was credited.
1. National Housing Bank	1271.20	i) State - 707.56 Bank of India (SBI) ii) ANZ - 506.55 Grindlays Bank iii) Standard - 55.18 Chartered Bank (Stanchart) iv) Canfina - 1.91	1271.20	Shri Harshad Mehta Shri Harshad Mehta Growmore Research and Asset Manage- ment Co. Ltd. Under invest- igation.
2. State Bank of Saurashtra (SBS)	174.93	i) SBI - 99.11 ii) NHB - 75.82	174.93	Shri Harshad Mehta Shri Harshad Mehta (through SBI).
3. SBI Caps	121.36	SBI	121.36	Shri Harshad Mehta
4. Stanchart*	400.35	-Under investigation -		
		1967.84		

\* As indicated by the bank.

93. From this tabular statement it is to be seen that the Plaintiffs have lost Rs. 1271.20 crores of which Rs. 707.56 were diverted to the 2nd defendant through the State Bank of India; Rs. 506.55 crores have been diverted to the 2nd defendant through the ANZ Grindlays Bank. In respect of these Rs. 506.55 crores this Court had occasion to deal with the Award of the Arbitrators, a reference to which has been



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made earlier. Rs. 55.10 crores have been received by Growmore Research and Asset Management Company Limited through the Standard Chartered Bank. This is the money given to Standard Chartered Bank, which has adjusted by then against against 9% IRFC Bonds f.v. Rs. 61.25 crores. The relevant portion of the Report (Ex. 3) also reads as follows:

"8. The preliminary finding that there has been a systematic diversion of funds from the banking system to the individual accounts of certain brokers has been confirmed by the further scrutiny. The Interim Report had detailed three main devices through which this diversion had taken place. These were :

(i) purchases made by banks/institutions where the counterparty was ostensibly another bank but in reality the proceeds were directly or indirectly credited to broker's accounts."

"13. A statistical study of the total securities contracts entered into by banks (even though the required data has not been received from some banks) shows that :

(i) During a period of about 14 months between 1 April 1991 and 23 May 1992, the contracts entered into by banks exceeded 58,000 in number and Rs. 9,00,000/- crores in face value of the underlying securities.

(ii) .....

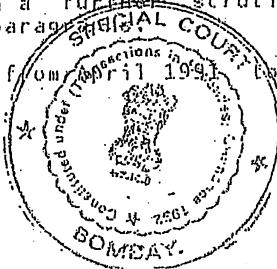
(iii) The securities transactions entered into by the banks have been predominantly on ready forward basis."

94. In respect of the Plaintiff Bank the Report reads as follows :-

#### "VI. National Housing Bank (NHB)

In our Interim Report we have given the findings based on a preliminary scrutiny of the NHB's records made by the officials of the RBI. The findings based on a further scrutiny are given in the following para

2. During the period from April 1991 to April



1992, NHB entered into 1332 money market transactions for an aggregate value of over Rs. 26400 crores. These are summarised below :-

Nature of Transaction	No. of trans- actions.	Total Debits	(Rs. in crores.) Total Credits
Call Money	434	10033.57	10033.57
Bills Rediscounted	183	2914.29	2914.29
Government securities (including treasury bills)	20	715.32	715.32
Special Rural Housing Debentures (SRHDs) of State Agricultural & Rural Development Banks (ARDBs)	45	529.68	545.68
PSU Bonds	314	6137.28	6177.07
Units (1964 Scheme) of UTT	298	5450.62	5673.03
Sale of Bills (including sale of CDs)	23	630.52	630.52
Certificates of Deposit	15	57.70	31.43
	1332	26470.98	26720.91

Most of the security transactions were back to back transactions on a ready forward basis not involving deployment of NHB's own funds.

3. NHB is a 100 per cent subsidiary of the RBI and was established in July 1988. Until April 1992 it had no Board of Directors but was headed by a full-time Chairman and Managing Director till January 1991 and a part-time Chairman and Managing Director from April 1991 onwards, aided by an Executive Director. Authority for undertaking money market transactions was given to the dealer Shri C. Ravikumar initially for call money operations and later for placement of "very very short-term surplus funds (one/two days) in other money market instruments like treasury bills, purchases of public sector bonds/units on a buy-back basis...". This authority was however permitted to be exercised only as an exception when NHB funds could not be profitably deployed in other avenues like call money or bills rediscounting. In April 1991 Shri Ravikumar requested and was granted authority to enter into ready forward deals as and when required especially around banking Fridays.



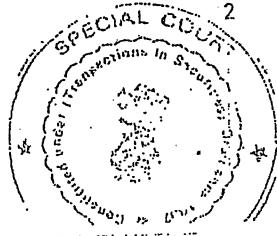
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This was approved by senior management, including the Chairman. (Emphasis supplied). In February 1992, Shri C. Ravikumar had prepared a note which stated that "any change in the investment practices have been done in consultation (formal/informal) with the top management" and that "it is felt that under the circumstances and also as expressed in the note on yield... the two way trading in assets be regularised and allowed within the overall investment framework of the bank keeping in view low risk, high yield and high profitability". There is no evidence on the note to show that it has been seen by the higher authorities."

95. At this stage to be noted that the Report does not mention as to whether any inquiry was made with the higher authorities as to whether they had seen this Note. The Report only proceeds on the footing that there is no evidence on the Note. If this Note was seen by higher authorities it would show that they had authorised what happened and were aware of what was going on. The fact remains that trading in assets did thereafter take place on a large scale. This could not be done without authority from or knowledge of higher ups. Thus in this Suit it was necessary for the higher authorities to step into the witness box and subject themselves to cross-examination. The Report then proceeds to state.

"4(a). As on 22 June 1992, NHB has 32 outstanding contracts for purchases for an aggregate value of Rs. 1458.73 crores for which it does not hold securities, SGL transfer forms or BRs. A summarised position of these contracts is as under:

Counterparty	No. of contracts	(Rs. in crores.)	
		Amount	
State Bank of India (SBI)	10	707.56	
ANZ Grindlays Bank (Grindlays)	15	511.66	
State Bank of Saurashtra (SBS)	1	95.39	
BOI Finance Ltd. (BOIF)	2	58.68	



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Standard Chartered Bank (Stanchart)	1	55.18
Fairgrowth Financial Services Ltd. (Fairgrowth)	2	20.35
Canbank Financial Services Ltd. (Canfina)	1	9.91
	32	1458.73
		<u>xxxxxx</u>

(b) In respect of the contracts with SBI and Grindlays, the counterparties have claimed that the payments made were credited to the current accounts of Shri Harshad Mehta and have denied liability except for a contract of Rs. 5.11 crores where Grindlays claims that delivery of the securities was effected. Though there is no record of securities having been received by NHB, there is a BR for an equivalent amount issued by NHB to another bank for which there is no claim on NHB. Presumably delivery was effected by the broker to that bank.

(c) In respect of the contract with SBS, NHB had sold the securities to Canfina and issued a BR. Though no delivery was effected by NHB, the BR duly discharged is with NHB.

(d) In respect of the contracts with BOIF, the claim has been accepted by BOIF to be set off against the liability of NHB for a larger amount in another contract.

(e) In respect of the contracts with Stanchart, the matter is under discussion.

(f) In respect of the contracts with Fairgrowth, securities have since been recovered. However, consequent on the notification issued by the Custodian on 3 July 1992 attaching the assets of Fairgrowth under the Special Court (Trial of Offences relating to transactions in securities) Ordinance, 1992, legal issues relating to the passing of ownership of these securities to NHB have to be resolved.

(g) In respect of the contract with Canfina, it is claimed by Canfina that the contract is for DVC bonds of the face value of Rs. 10 crores (present estimated value Rs. 8 crores) whereas NHB claims the contract is for Units.

(h) The total exposure of NHB in respect of the outstanding purchase contracts can therefore be estimated at Rs. 1271.20 crores completed COURT



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(Rs. in crores.)

Total outstanding contracts	1458.73
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Less :

Contract with Grindlays where delivery is claimed to have been effected.	5.11
Contract with SBS, for which discharged BR from Canfina is available.	25.32
Contract with BOIF where claim is accepted.	58.68
Contracts with Fairgrowth where securities are subsequently received.	20.35*
Contract with Canfina where liability for DVC bonds is accepted.	8.00
	187.53
	1271.20*

(c)(i) On 3 January 1992, as per NHB books, it purchased 9% IRFC bonds of the face value of Rs. 100 crores from SBI and sold the same to Canfina. It made payment of Rs. 95.40 crores by cheque to SBI but on inspection of the discharged cheque it was noticed that the cheque was later altered in favour of SBS.

(ii) The records of SBS show that on 3 January 1992, Shri Marshed Mehta wrote to SBS requesting SBS to receive on his behalf a cheque for Rs. 95.40 crores (drawn in favour of SBS) and to issue on his behalf cheque to the undermentioned banks:

	(Rs. in crores.)
Canara Bank	79.80
SBI	5.01
Grindlays	6.37
Bank of India	4.10



95.28

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These receipts and payments were to be made by credit and debit to his current account No. 2230 with SBS. The bank complied with the above instructions except that the payment to Grindlays was made for Rs. 5.37 crores and not Rs. 6.37 crores. In the process, the residual amount of Rs. 1.12 crores stands automatically credited to his current account.

(iii) The amount received by Canara Bank from SBS was appropriated towards amounts due to Canfina for purchases made by Growmore Research and Assets Management Ltd. (a group concern of Shri Harshad Mehta). In the other three banks, the amounts received from SBS have been credited to Shri Harshad Mehta's account.

(iv) For the sale to Canfina, NHB received Rs. 95.44 crores from Canfina and issued its BR. It appears that the BR was discharged by Canfina on 31 March 1992 by taking physical delivery of the bonds from Shri Harshad Mehta. For the purchase from SBS, NHB has not received the bonds or a BR and has made a claim (included in paragraph 4 above) which SBS has disputed.

12. As mentioned in our Interim Report, there were serious deficiencies in the control systems regarding the transactions in money market instruments and in the record keeping for the same. Some of these are mentioned below :

(a) All the funds management operations were centralised with Shri C. Ravikumar, Assistant General Manager. He was not only the dealer but was also one of the signatories to the cheques. The back-up functions were with Shri S. Suresh Babu, Assistant Manager who reported to Shri Ravikumar and acted under his instructions. These two officers, between themselves, were responsible for all the functions including (i) making the deal, (ii) recording the same, (iii) preparing the vouchers, (iv) preparing the cheques, (v) signing the cheques (as one of two signatories), (vi) preparing and signing BRs, (vii) custody of BRs received from counterparties, (viii) issuing and receiving SGL transfer forms and lodging the same with the RBI, and (ix) maintaining the account with the RBI and reconciling the same.

(b) Even in the dealing transactions no proper



procedures appear to have been laid down. Thus,

(i) no deal tickets were prepared and the only record is a rough diary maintained by Shri Ravikumar;

(ii) no confirmations of deals were called for or issued;

(iii) there is no record of BRs issued or BRs received;

(iv) The BRs issued are only on NHB's letterhead but are not serially numbered.

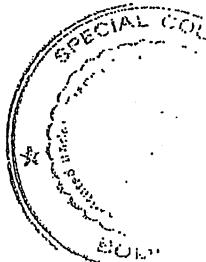
(c) There are serious deficiencies in the accounting records maintained. Thus,

(i) The writing of day books and General Ledger appears to have been in arrears for several months. There is also evidence of Cash Book entries being posted out of order. It was also noticed that funds transactions for an aggregate value of Rs. 171.73 crores pertaining to 19 July 1991 were accounted in the General Ledger and Cash Book only on 27 September 1991.

(ii) No attempt was made to reconcile the balance in the RBI as appearing in the General Ledger with the balance as appearing in the statement received from RBI. In fact in August and September 1991, the balance with RBI as appearing in the General Ledger showed an overdraft running into several crores of rupees.

(d) There does not appear to have been any reporting system prescribed for the transactions entered into by the Funds Management Group. Upto October 1991, vouchers for individual deals were put upto the General Manager (now Chief General Manager). Thereafter, daily statements of deals were put up to the General Manager, but in early January 1992 this was also stopped. A weekly statement was also put up to the General Manager but this was also stopped in December 1991. Occasionally, a statement was put up to the top management including the Chairman but this was not done on a regular basis. In both these statements only the outstanding position of investments was shown and therefore the back-to-back transactions which did not result in any change in the outstanding balance were not reflected in the statements.

13.(a) As NHB is not a bank within the meaning of



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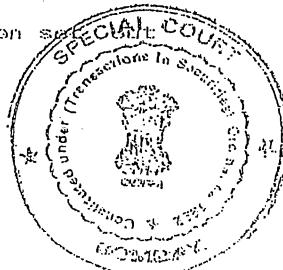
the Banking Regulation Act, 1949 its operations were not subject to inspection by the Department of Banking Operations and Development of the RBI. NHB had statutory auditors who examined the books of NHB. Its accounting year ends on 30 June in every year. Therefore the last audit was for the year ended 30 June 1991. The bulk of the transactions have been after the date and therefore have not been subject to scrutiny either by the statutory auditors or an independent inspection agency.

(b) At the initiative of the late Chairman, a firm of Chartered Accountants was appointed in July 1991 to conduct an internal audit. The objective of the audit as mentioned in the letter of proposed appointment was to "ensure that the accounting system presently followed in our offices at Bombay and Delhi particularly checks and cross checks are working satisfactorily, changes if any needed in the system and additional safeguards that may be built in to strengthen it further." The internal auditors have submitted two reports.

(c) In the first report dated December 19, 1991, the internal auditors have stated that "a thorough review and change in maintaining call money receipts is called for." The General Manager wrote to the internal auditors on January 30, 1992 for "specific suggestions as to what sort of records/registers you suggest so as to set right the position." No further action appears to have been taken. The second report dated March 30, 1992 makes no mention regarding money market operations.

14. It would therefore appear that there has been a total abdication of responsibility by top management regarding the fund management in NHB. The operations were centralised in an individual, no exposure limits were prescribed, the most elementary control procedures were not imposed nor was there any worthwhile system of reporting. No doubt, internal auditors were appointed to look into some of these aspects but unfortunately they have not brought out any deficiencies to the attention of the management on which basis remedial action could have been taken."

96. Strongly relying upon this Report Mr. Chinchy submitted that there has been a large scale fraud and diversion of funds. He submitted that, as has been seen



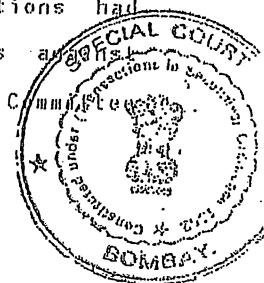
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in the Report, Defendant Nos. 3 and 4 were in total charge of affairs of the Plaintiffs. He submitted that Defendant Nos. 3 and 4 in conspiracy and collusion with the 2nd Defendant and the 1st Defendant had diverted Rs. 95,39,78,082.19 and have thus caused a loss to the Plaintiffs. He submitted that thus all the Defendants are liable in fraud and are liable to repay the amounts to the Plaintiffs.

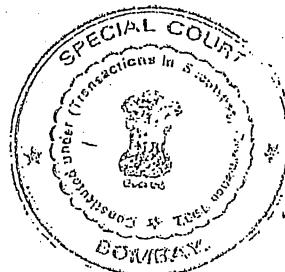
97. Mr. Chinoy relied upon ANZ Grindlays case where this Court has held, relying upon a Judgment of the Supreme Court, that in civil matters fraud can be proved by a preponderance of probabilities. There can be no dispute with this legal proposition.

98. I am unable to fully accept the submissions of Mr. Chinoy. Janakiraman Committee Report does show that there has been a fraud and large scale diversion of public monies into private pockets. Undoubtedly Janakiraman Committee Report is a Public Document. However, in my view, it would not be sufficient to foist any liability on individuals only on the basis of this Report. One has to look at the Public Document to see what for purpose it was created. The Public Document must not be used or allowed to be used for a purpose for which it was not prepared. The Janakiraman Committee was looking into irregularities in Securities transactions by Banks. Before the Report was made records of Banks and Financial Institutions were looked into. Banks & Financial Institutions were heard, their explanations considered. Banks and Financial Institutions had an opportunity to make representations and findings in the Report. The Janakiraman Committee



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was not looking into culpability or liability of individuals. Individuals have had no opportunity to make representations against the findings in the Report. In fact there is no findings against any individual. The observations and paragraphs relied upon by Mr. Chinoy are also in the context of what was happening in the Plaintiff Bank. Also to be seen that para 14 of the Jankiraman Committee Report (Ex. 3) talks of abdication of responsibility by the top management. Abdication of responsibility necessarily means knowing what is going on but not interfering. There can be no abdication of responsibility if you do not know what is going on. To be noted that the period considered by Jankiraman Committee is from April 1991 to April 1992. As has been set out by the Jankiraman Committee in the Plaintiff Bank there have been over 1332 Contracts the value of which has been over Rs. 26400 crores. During the period the Plaintiff's loss has been in the region of Rs. 1271.20 crores. It is significant to note that the Report of Jankiraman Committee (Ex. 3) nowhere specifically states that the top management was not aware of what was happening. It is impossible to believe that, when there has been such a large volume of transactions over such a long period, the top management did not know what was happening. It appears to Court that the top management were aware but were turning a blind eye/abdicating their responsibility, as profits were being made. Of course it must immediately be mentioned that top management cannot be equated with the Plaintiff Bank. Even if top management was



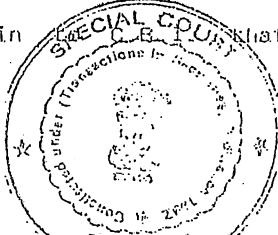
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In the know. There is fraud on the Plaintiff Bank. Rs. 1271.20 crores of Plaintiff's monies have been diverted into private pocket. This court has in a judgment dated 10th/13th April 1995 in Special Case No. 1 of 1993 held that top management cannot be equated with the Bank. The Appeal against that judgment is dismissed by Supreme Court. The ratio of that judgment applies here also. Thus whilst there is fraud in the Plaintiff Bank there is no proof or evidence that it is by Defendants 3 & 4. If it is claimed that Defendants 3 & 4 are responsible then that had to be proved by independent evidence. Plaintiffs should have led evidence. In that case Defendants 3 & 4 would have had an opportunity to cross examine the witnesses and show that they are not responsible. The burden to prove fraud on part of Defendants 3 & 4 was on the Plaintiffs. That burden could not be discharged by merely tendering and relying on the Janakiramji Committee Report. To allow Plaintiffs to do so is to deny Defendants 3 & 4 an opportunity to bring out facts by cross examining Plaintiff's witnesses. Also to allow such a course of action would be to allow a public document to be used for a purpose for which it was not prepared and which it does not deal with. How dangerous this would be can be seen from fact that the said cheque is also signed by one Mr. Katre. It is not even alleged that he has played a fraud or that he has colluded with Defendant No. 2. One does not know on what basis Plaintiffs have concluded that Mr. Katre is not responsible but that Defendants 3 & 4 are.



— (b) —

with this situation Mr. Chinoy submitted that Mr. Katre only signed because Defendant No. 3 had first signed. He relies on Exhibits 9 to show that Mr. Katre was not authorised to transact securities business. This submission merely needs to be stated to be rejected. There is no evidence that Mr. Katre only signed because Defendant No. 3 had first signed. For all Court knows Mr. Katre may have signed first. Also the purpose of having two signatories is that more than one person satisfies himself that the amount is payable. The normal presumption is that Mr. Katre could only have signed after he had satisfied himself that the amount was payable. If Plaintiffs wanted to show otherwise they had to prove it. In my view, it would not be safe or correct to foist any liability on Defendant Nos. 3 and 4 only on the basis of the Jayakiraman Committee Report. Undoubtedly the 2nd Defendant has diverted a large amount of public fund of the Plaintiff Banks into his private pocket. It has not been denied by the 2nd Defendant that the proceeds of the suit cheque were disbursed as per his instructions. The case that this was under a routing facility enjoyed by him is not proved. His own witness does not support such a case. 2nd Defendant had no right to the proceeds of the suit cheque. Yet by his letters dt. 3rd January 1992 and 6th January 1992 he instructs 1st defendant to disburse proceeds as per his instruction. 1st Defendants obligingly do so. The 1st Defendant know that as per their own manual this amounts to conversion. The 1st Defendants complain that



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offences under Prevention of Corruption Act and under Sections 406 and 409 read with 120B Indian Penal Code are committed. On this complaint C.B.I. investigates and seeks Sanction to prosecute. The Executive Committee of the Plaintiffs Board of Directors, after considering all material grants sanction. Yet in this suit, Plaintiffs are justifying the conduct of their employees in a) receiving the high value cheque in a very large amount, without there being any transactions between the Plaintiffs and themselves and without the Plaintiffs owing them any amount and b) encashing the cheques and handing over the proceeds to the 2nd Defendant. By so adopting the 1st Defendants are becoming parties to the fraud. Once the 1st Defendant adopt the action of their employees and justify it, they can not say that they are not responsible. Therefore if it had been necessary to decide the case on fraud it would have had to be held that the 1st and 2nd Defendants have colluded and connived with each other and diverted Plaintiffs' funds. It would have to be held that the 1st and 2nd Defendants are parties to fraud. Thus the 1st and 2nd Defendants would become liable to pay to the Plaintiffs a sum of Rs. 95,39,78,082.19. The Issues have been answered accordingly only to indicate what the decision of the Court would have been.

99. That brings us to the question of interest and costs. Mr. Chinoy points out that right from the beginning notices have been issued to the 1st Defendant calling upon them to return the money with interest at call money rates. He submits that instead of honestly abiding by their obligations and liabilities, the 1st Defendant kept on taking up false, frivolous and unjustified contentions. Mr. Chinoy



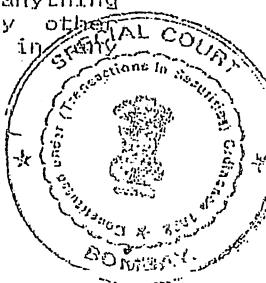
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submits that under Section 3 of the Interest Act, 1978 it is not at all necessary that a rate of interest should be quantified. He submits that under Section 3 all that is necessary is that a claim for interest should be made. He submits that the Court may grant interest at the current rate of interest.

100. Mr. Chinoy submits that even otherwise under Section 4(b) and (c) of the Interest Act, 1978 where there is a fiduciary relationship and an obligation to pay the money or restore any property or where money is obtained or retained by fraud the Court shall direct interest to be paid from the date of the cause of action. Mr. Chinoy submits that this Court has held that there is a fiduciary relationship. He submits that the Court has also indicated that it would have held that there is a fraud on the part of the 1st Defendant. He submits that even under Section 4 of the Interest Act, 1978 interest is payable from the date that the monies were received by the 1st Defendant.

101. Mr. Chinoy submits that even if Interest Act is not applicable then on the ratio laid down in the Judgment dated 15th June 1993 in Misc. Application No. 57 of 1993, interest would be payable. In this case the Court has observed as follows : -

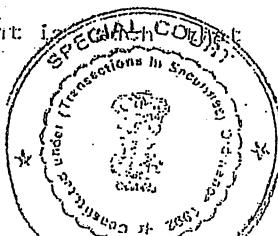
" In this behalf, it is to be noted that the provision of the Special Court Act and the powers given to this Court under the Special Courts are very wide. Under Section 13, this Act would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any



instrument having effect by virtue of any law, other than this Act. The whole Act becomes necessary because huge amounts were siphoned off into private pockets. Private persons have been enjoying monies which really belong to the Country. This is one such case. The 1st Respondent has continued to enjoy and use the sum of Rs. 1.395 crores for such a long period. In such cases where private persons have enjoyed monies or properties knowing fully well that they should have handed those over to the Custodian they must be made to pay interest. In this case, the 2nd Respondent got notified on 8th June 1992. The moment he got notified the 1st Respondent knew that he was bound to hand over this money to the Custodian. There is no explanation or reason given why upto 12th February 1993 the amount was not forwarded to the Custodian. In my view, the 2nd Respondent must therefore pay interest at a rate at which a private person could have turned this money over in the market. Unless this is done, others will be encouraged not to hand over attached properties or monies. In my view, in today's times the rate of 22% claimed by the Custodian is reasonable. As the amount became payable to the Applicant on the 2nd Respondent being notified on 8th June 1992, the interest become payable from that date.

Mr. Chihoy submits that in this case the conduct of the 1st Defendant had been such that the 1st Defendant must be made to pay a high rate of interest. He submits that from the beginning the 1st Defendant have had no defence. He submits that 1st Defendant knew that they were bound and liable to return the amount to the Plaintiff. He submits that in spite of that the 1st Defendant did not return the monies. He submits that even after this Suit was filed 1st Defendants took up false and frivolous defences resulting in this suit being dragged on for a period at least three years. He submits that the conduct of the 1st Defendant is such that the Court must grant high rate of interest.

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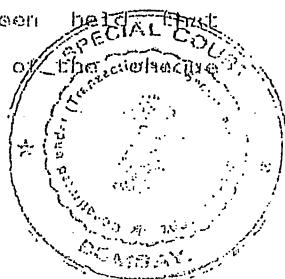


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102. On the other hand Mr. Sathe submits that in the notices given by the Plaintiffs they claimed interest at call money rates. He submits that there is no evidence to show what the call money rates were at the relevant time. He submits that there is thus no evidence to show that interest would be payable at any particular rate. He submits that as there is no evidence before the Court to show that the interest would be payable at any particular rate or what is the rate of the amount of interest, the notices cannot be deemed to be under Section 3 of the Interest Act, 1978.

103. I am unable to accept this submission. Section 3 of the Interest Act, 1978 does not require any rate of interest to be specified in the notice. All that is required is that the demand for interest should have been made. In this case the demand for interest has been made in the notices. A notice demanding interest at call money rate is a notice under Section 3 of the interest Act, 1978. Even if call money rate of interest is not proved the Court can always grant interest at the current market rate.

104. Mr. Sathe next submits that this Court has held that the 1st Defendant are guilty of conversion. He submits that the law is that on conversion damages equivalent to the face value of the instrument are to be awarded. In support of this he relies upon the case of Morison Vs. London County and Westminster Bank, Ltd. reported in (1914) King's Bench Division pg. 356 wherein at page 379 it has been held that the damages for conversion are the face value of the instrument.

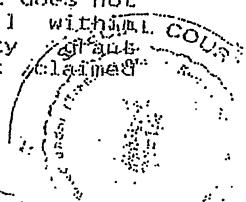


- and that this principle is established in a series of cases. It has also been held that this principle is so well established that it is not necessary to enquire into the principle which underlies the authorities. Mr. Sathe also relies upon the Judgment of this Court in the case of National Housing Bank Vs. ANZ Grindlays Bank PLC reported in 1998(2) Law Journal pg. 153 wherein in para 58 this Court has held that damages for conversion would be the face value\* of the cheque.

105. Mr. Sathe submits that as the Court is awarding damages the Court can only award interest from the date of the suit and not earlier. In support of this he relies upon the commentary in Payet's Law of Banking, 11th Edition wherein under Chapter 25 on pages 418 and 419 it is stated that damages in conversion or for money had and received are the face value of the cheque. He also relies upon the authority of the Supreme Court in the case of Mahabir Prasad Rungta Vs. Durga Datta reported in AIR (1961) S.C. pg. 990.

In this case the Supreme Court has held as follows :

"12. There remains the question of interest. Interest for a period prior to the commencement of suit is claimable either under an agreement, or usage of trade or under a statutory provision or under the Interest Act, for a sum certain where notice is given. Interest is also awarded in some cases by Courts of equity. Bengal Nagpur Ry. Co. Ltd. v. Rubbanji Ramji, 65 Ind App 66; (AIR 1938 P C 67). In the present case no agreement about interest was made, nor was it implied. The notice which was given did not specify the sum which was demanded, and, therefore, the Interest Act does not apply. The present case also does not fall within those cases in which Courts of equity grant interest. Learned counsel for Durga Datta claimed



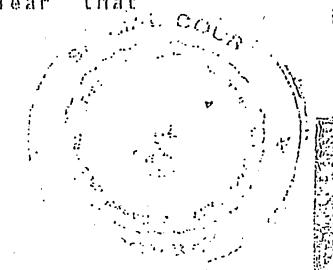
interest as damages; but it is well-settled that interest as damages cannot be awarded. Interest up to date of suit, therefore, was not claimable, and a deduction shall be made of such interest from the amount decreed. As regards interest pendente lite until the date of realisation, such interest was within the discretion of the Court. The rate fixed is 6 per cent, which, in the circumstances and according to the practice of Courts, appears high. Interest shall be calculated at 4 per cent, per annum instead of at 6 per cent, and the decree shall be modified accordingly."

Relying on this authority Mr. Sathe submitted that the Supreme Court has laid down that if the notice did not specify the sum which was demanded towards interest then the Interest Act would not apply. He submitted that in any case this authority lays down that on damages interest cannot be awarded upto the date of the suit and that interest can be awarded pendente lite till the date of the realisation.

106. Mr. Sathe next submits that as the Plaintiffs are contending that their case falls under Section 3 of the Interest Act, 1978 Section 4 of the Interest Act, 1978 cannot apply. He submits that in any case if it is held that there was conversion, there can be no fiduciary relationship between the parties and therefore Section 4(b) would not apply.

107. The Judgment of the Supreme Court in Rungra's case was under the old Interest Act. Section 3 of the Interest Act, 1978 is deferent. Now it is no longer required that the rate of interest or that the sum be mentioned. Also to be noted that Section 3 of the Interest Act, 1978 applies not just to debts but also to damages. Section 3 of the Interest Act, 1978 now makes it clear that

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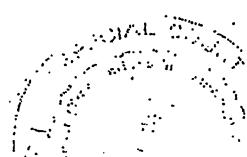


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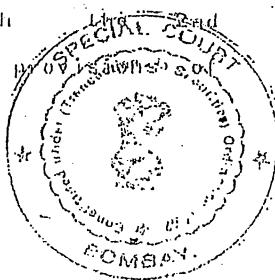
given in respect of damages, interest can be awarded from the date that the notice was given. Of course on a conversion what is awarded is damages being the face value of the cheque. However even the book of Paget's Law of Banking, which has been relied upon by Mr. Sathe, on pages 420 onwards states that if a Banker receives monies when they were not entitled to do so, then a fiduciary relationship comes into existence and the Banker acts as a constructive trustee. In this case, as has been set out above, the 1st Defendant is held liable not only in conversion but also on the basis of fiduciary obligation. They are also held liable on basis of monies being paid to them without intending to do so gratuitously. Thus interest is payable under Section 3 of the Interest Act, 1978. I am unable to accept Mr. Sathe's submission that because Plaintiffs claim that Section 3 applies then Section 4 will not apply. Of course if Section 3 applies then there would be no need to apply Section 4. However if Section 3 of the Interest Act, 1978 did not apply then automatically Section 4 of the Interest Act, 1978 would apply. In that case under Section 4 interest would be payable by the 1st Defendant, both under Section 4(b) as well as 4(c). The Court has held that the 1st Defendant liable on the basis of the fiduciary obligation. Court has also held that there has been fraud and 1st Defendants have adopted the fraud. Thus even in that case interest would be payable by the 1st Defendant.

108. Mr. Sathe then relied upon a Judgment of this Court dated 16th January 1999 in Misc. Petition No. 52 of

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This was a case where the 1st Defendant (herein) made claim against the 2nd Defendant (herein). It must be mentioned that in the records of the 1st Defendant (herein) the transactions were with the State Bank of India. The monies had been paid over by the 1st Defendant (herein) to the State Bank of India by account Payee cheques drawn in favour of State Bank of India. State Bank of India had encashed the cheques and thereafter parted with the monies in favour of the 2nd Defendant (herein). The principal claim of the 1st Defendant (herein) would thus have been against the State Bank of India. On principles laid down in ANZ Grindlays case State Bank of India would have had no defence. Yet no claim was made against the State Bank of India. This was because State Bank of India was the parent body of the 1st Defendant (herein). Giving up a good claim against the State Bank of India, the 1st Defendant chose to make a claim only against the 2nd Defendant (herein) knowing full well that the 2nd Defendant was a Nolified Party and the decree would in all probability be a paper decree. In this case also Court has commented on the unprofessional conduct of persons taking decisions on behalf of the 1st Defendants (herein). As the 2nd Defendant (herein) had received monies, the Court decreed the Suit against the 2nd Defendant (herein) on the basis of monies had and received. In that case even though the claim had been made against the 2nd Defendant (herein) no notice claiming interest had been issued to the 2nd Defendant. There was no contract to pay any interest because the 1st Defendant (herein) had no privity of the contract with Defendant (herein). Thus in that case the



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The Interest Act did not apply at all. Yet on equitable principles the Court directed that interest be paid. This Court followed the Judgment of the Supreme Court in the case The National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India reported in AIR (1963) S.C. pg. 1171 and a Judgment of the Karnataka High Court in the case of S. Kotrabasappa Vs. The Indian Bank reported in AIR (1987) Karnataka pg. 236. Thus in that case the interest was awarded only on equitable principles. Otherwise the 1st Defendant (herein) would not have been entitled to any interest. Following the ratio of the Judgment of the Karnataka High Court interest at 6% per annum was granted. The facts of that case are completely different from the facts of this case. The ratio of that case has no application to this case. In this case interest Act is applicable. In this case the 1st Defendant are therefore liable to pay interest at the current rate of interest.

109. It must be mentioned that in a number of Judgments this Court had been directing payment of interest at rates varying between 22% to 24% per annum. Court had been awarding interest at those rates on the footing that parties who have no defence and yet hung on to the monies of others, must pay at those rates. One such Judgment was carried to the Supreme Court. In an Order dated 6th December 1996 in Civil Appeal No 6029 of 1995 the Supreme Court held that in such cases the interest should be such as would be paid by a party who had been deprived of the monies had he borrowed that amount. The Supreme Court held that such interest should



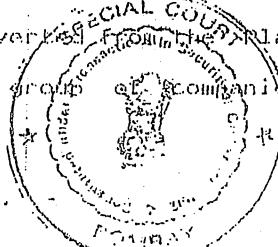
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ordinarily be about 19% per annum. This Court is bound by the Judgment of the Supreme Court. Therefore it would have to be held that interest must be at the rate of 19% per annum. The 1st Defendant must therefore pay interest at the rate of 19% per annum from the date that they received the monies till payment or realisation thereof.

110. Accordingly there will be a decree in favour of the Plaintiffs and against the 1st Defendant in a sum of Rs. 95,39,78,032.19p with interest thereon at the rate of 19% p.a. from 3rd January 1992 till payment or realisation thereof.

111. The next question that arises is about costs. Mr. Chinoy submits that this is a fit case where actual costs should be awarded by this Court. He submits that the 1st Defendant had known that they had no defence to the Suit. He submits that knowing that they had no defence to this Suit they have sought to delay the matter by taking up all sorts of false defences and by trying to confuse issues. He submits that this Court has held that the 1st Defendant had no defence. He submits that the party like the 1st Defendant who uses laws delays to deprive the real owner of their monies or properties must be made to pay actual costs.

112. On the other hand Mr. Gatho submits that this is a case where the Plaintiffs were equally responsible. He submits that as has been seen from the Janakiraman Committee Report, large amounts have been diverted from the Plaintiffs to the 2nd Defendant and/or his group of companies. He



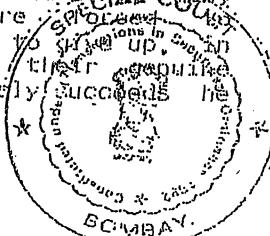
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submits that therefore the Plaintiffs were equally responsible for the diversion which has taken place. He submits that in Misc. Petition No. 79 of 1994, this Court has held that, as both the parties were equally responsible, no costs should be awarded in favour of either party. He submits that in this case also the Court should follow the same principles and award no costs.

113: This Court has noticed that it has become a common practice now a days for dishonest parties, who have no defence, to not honour their commitments and their obligations and force the other party to go to Court. The idea is to use laws delays. It is time that Courts actively curb such tactics. In a Judgment dt. 13th March 1995 in Suit No. 13 of 1994, this Court has held as follows :-

"52.....The Court has been noticing that there is a growing tendency not to honor debts/commitments. The tendency nowadays is to let the creditor go to Court. The tendency is to file some defense even when there is none. In many cases the defense taken is absolutely false. The whole intention is to use laws delays. Thereafter the attempt is to delay hearings as long as possible. It is only when it is found that it is not possible to delay any longer that, in most cases consent terms or a decree on admission are taken. In some cases even at the stage of trial the false defense is persisted in with the intention of whiling away further time in Appeals. In my view this is because parties know that litigation takes a number of years. In my view this is because parties know that ultimately the Courts will only award nominal interest and costs. Also today litigation has become prohibitively expensive. Many parties with genuine cases cannot afford to litigate. Just how expensive litigation is, is best indicated by this case. Because litigation is so expensive and takes so long, many parties with genuine claims are forced to settle/compromise. They are forced to give up, in many cases, a substantial part of their genuine claim. Also even if a party ultimately succeeds he

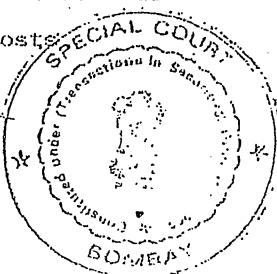


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does not in reality get his entire claim. The amount actually spent by him in litigating is never awarded. The successful party is thus out of pocket. Nowadays this is in a sizable amount. This hurts the genuine party. The dishonest party does not mind. He is sitting on the property or money, using it and in most cases making money out of it. This further encourages parties to be dishonest. In my view it is time that Courts actively curbed this tendency to file false cases or to take up false defenses merely with a view to delay payment or deliver up property. In my view if a Court is convinced that an absolutely false case has been filed or an absolutely false defense has been taken up, with a view to use laws delays, than the Courts should now grant a prohibitively high rate of interest. In my view the Courts must now grant actual costs incurred in conducting the litigation. In my view a dishonest litigant must be made to bear not just his own costs but also the entire costs of the other party. In other words the litigation must be at the costs and consequences of the dishonest litigant. In my view this is absolutely necessary, in present times, to bring home the message that using laws delays is not going to be remunerative. In my view it is time the message is brought home to dishonest litigants that using laws delays is going to be an expansive proposition. Of course I hasten to add that this drastic step must be taken and used very cautiously, sparingly and only in cases where the Court is certain that there is an absolutely false case or defense. To this Court it is clear that merely because a Court does not accept a case or defense is no ground for granting high interest or costs. It must also be mentioned that the Special Courts Act provides that the Civil Procedure Code does not apply. In my view, the facts set out hereafter, show that this is a fit case where actual costs must be awarded. It may only be mentioned that this Court has framed Regulations for conduct of trials before this Court. In these Regulations the Court has clarified that costs will include actual costs."

I am told that an Appeal was carried to the Supreme Court against that Judgment. The Supreme Court refused to interfere and directed the party even to pay the costs.

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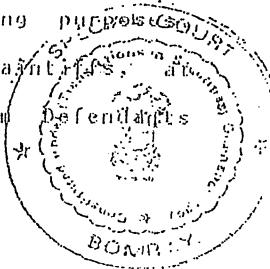
**114.** In this case it is to be seen that the 1st defendant had received an Account Payee cheque drawn in their favour. At the time when they received the cheque that they knew that there was no transaction between them and the Plaintiffs. At the time when they received the cheque they knew that no amount was payable to them. On the face of the cheque there was no direction or authority that the 2nd defendant was entitled to the proceeds of the cheque. Any prudent banker on receipt of such a cheque would have made an inquiry. The Manual of Instructions of the 1st Defendant, as has been set out above, specifically provides that under such circumstances the cheque should not be encashed as it would amount to conversion. Yet the 1st Defendant encash the cheque and disburse the proceeds as per the directions of the 2nd Defendant without any inquiry at all. The 1st Defendant therefore had no defence against the claim of the Plaintiffs. Having no defence against the claim of the Plaintiffs, they try to confuse Issues. They try to mix up their liability to Plaintiffs with the transaction of the Plaintiffs with Canfina. After the Judgment dt. 11th March 1996 in Suit No. 33 of 1995 1st Defendants have known that even if there are back to back transactions the rights and liabilities in each transaction are independent and unconnected. For trying to connect up and mix transactions 1st Defendants (herein) ended up paying heavy costs in Suit No. 33 of 1995. They being parties to Suit No. 33 of 1995 well knew the law that Plaintiffs transaction with Canfina



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nothing to do with their liability to the Plaintiffs.

An Appeal has been filed in the Supreme Court against this Judgment. The Appeal is admitted but the Supreme Court has not stayed to deliver up the concerned Units. The Supreme Court has only granted stay in terms of money for half the additional items directed by this Court to be delivered. Yet in this Suit they persist with the false defence. It is clear that knowing that they have no defence the 1st Defendants were using laws delays merely in order to delay having to perform their obligation and discharge their liability. Even today the 1st Defendants are not willing to perform, the idea undoubtedly is to further delay by wasting time in Appeal. As stated above the 1st Defendants have filed a criminal complaint against their employees and sanctioned prosecution. Yet in their effort to use Laws delays 1st Defendant have gone to the extant of justifying in this Suit, the action of their employees. In their attempt to raise defences where none existed 1st Defendant has also been dishonest with the Court. In my view this is a fit case where 1st Defendant must pay actual costs. Plaintiffs show to Court that they have incurred costs of Rs. 33 lakhs in contesting this Suit. The 1st Defendant is directed to pay costs to the Plaintiffs fixed at Rs. 33 lakhs. It is however clarified that these would be actual costs only if Solicitors have actually so billed and Counsel so marked on the dockets. Before paying the costs the Defendants will therefore be entitled to demand from the Plaintiffs copies of bills of Solicitors and dockets of Counsel showing that these have been actually charged/mark. Solicitors/Counsel may differ actual receipt of these fees for tax planning purposes. However this cannot be indefinite. Therefore Plaintiffs, at time of receipt of these costs, must also inform Defendants



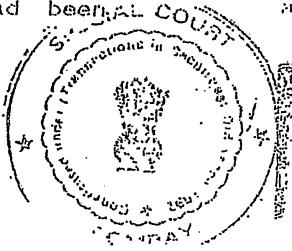
what period of time the fees are to be paid and then on  
annual payment send to the Defendants the Plaintiffs' solicitors receipts. It is clarified that if it is ultimately found that the fees or any part thereof is not actually paid, the Defendants will be entitled to claim that portion back from the Plaintiffs.

115. Further in unnecessarily allowing this litigation to come to Court and go through trial the 1st Defendants have dragged the Custodian through the trial. If the 1st Defendants had honestly honoured their liability, it would not have been necessary for any claim to have been made against the Custodian. The 1st Defendant must therefore also pay the costs of the Custodian. The Custodian has expended a sum of Rs. 70,000/- in contesting this suit. The 1st Defendant is directed to pay to the Custodian costs fixed at Rs. 70,000/-.

116. Mr. Jethmalani also applies for costs. In my view, the 2nd Defendant is not entitled to any costs. The application stands rejected.

117. However, as this Court has held that no case has been proved against Defendant Nos. 3 and 4, the Plaintiffs must pay and are directed to pay costs to Defendant Nos. 3 and 4 fixed at Rs. 10,000/- each.

118. There is one last aspect which requires to be dealt with in this suit. It has come to the notice of the Court that in the transaction between the Plaintiffs and Canfinav, 92 TRFC Bonds f.v. Rs. 100 crores had been



delivered to Canfina by the 2nd Defendant. Of course the 2nd defendant has not been able to prove that he had paid for these 9% IRFC Bonds f.v. Rs. 100 crores. It has been shown to Court that the Plaintiffs had paid a sum of Rs. 55,18,43,657.07 to Standard Chartered Bank. Standard Chartered Bank has adjusted that amount towards 9% IRFC Bonds f.v. Rs. 61.25 crores which they delivered to Canfina on behalf of Plaintiffs. It has been shown to Court that the Plaintiffs have not made any payment for the remaining 9% IRFC Bonds f.v. Rs. 38.75 crores. At the rate at which the transaction between the Plaintiffs and Canfina took place, the value of 9% IRFC Bonds f.v. Rs. 38.75 crores comes to Rs. 40.22 crores. 9% IRFC Bonds f.v. Rs. 38.75 crs. were delivered by the 2nd Defendant to Canfina. The Plaintiffs have thus derived a benefit. They have had their liability to the extent of 9% IRFC Bonds f.v. Rs. 38.75 crs. discharged without paying any consideration. They have got benefit in the sum of Rs. 40.22 crores.

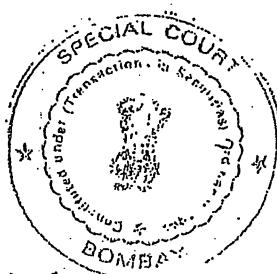
119. . We are now in 1999. Till date nobody else had made claim on these 9% IRFC Bonds f.v. Rs. 38.75 crs. or the sum of Rs. 40.22 crs. As it is shown to Court that these 9% IRFC Bonds f.v. Rs. 38.75 crs. they had been delivered to Canfina by the 2nd Defendant and as there is no other claimant the Court must consider these to be attached properties. As attached assets they must now be handed over to the Custodian. As has been set out in numerous matters, once it comes to the notice of the Court that attached assets



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In the hands of a third party, the Court is duty bound to direct that third party to hand over those assets to the Custodian. The Plaintiffs must and are directed to deliver to the Custodian the sum of Rs. 40.22 crores within a period of four weeks from today.

120. Today a Decree has been passed in favour of the Plaintiffs and against the 1st Defendant in the sum of Rs. 95,39,78,082.19p. along with interest at 19% per annum. If Plaintiffs are allowed to keep interest on the sum of Rs. 40.22 crs. they will have unjustly enriched themselves. This because with effect from 30th March 1992 the Plaintiffs liability to Canfinia stood discharged without their having paid any consideration for the 9% IRFC Bonds f.v. Rs. 38.75 crs. The Plaintiffs will be receiving interest at 19% per annum even on the sum of Rs. 40.22 crores. As stated above to allow the Plaintiffs to retain that interest would be to allow the Plaintiffs to unjustifiably enrich themselves. Thus it is directed that as and when the Plaintiffs receive interest at 19% on the sum of Rs. 40.22 crores, the Plaintiffs must hand over the interest amount on Rs. 40.22 crs. from 30th March 1992 onwards to the Custodian. Clarified that Plaintiffs will be entitled to keep the interest amounts, even on Rs. 40.22 crs., from 3rd January 1992 till 29th March 1992. This interest amount i.e. for the period 30th March 1992 onwards on Rs. 40.22 crs. would be payable to the Custodian within four weeks from the receipt of the amount by the Plaintiffs.



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121. The Suit stands disposed off accordingly.

122. On application of Mr. Satho operation of this judgment is stayed for a period of eight weeks from today.

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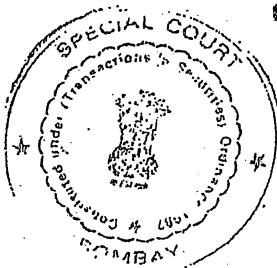
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Applied on... 25/2/99  
 Regd... 117  
 Examined by Mr. Mehta  
 Compared with Mr. Kapre  
 Ready on... 11/3/99  
 Delivered on... 12/3/99

Certified to be a true copy

*11/3/99*  
 OFFICER OF SPECIAL DUTY  
 Office of the Special Court  
 Bombay.



TRUE COPY  
 M/s. NEGANDHI, SHAH & HIMAYATULLAH  
 ADVOCATES & SOLICITORS

*Sdy-*  
 PARTNER / ASSISTANT







**LIST OF JUDGMENTS OF HON'BLE SUPREME COURT  
LAYING DOWN THE LAW ON OVERRIDING EFFECT OF  
SEC.13 OF THE TORTS ACT.**

---

1. Canara Bank vs Nuclear Power Corporation of India reported as **1995 SCC, Supl. (3) 81- Paras 22 and 33**
2. Solidaire India Ltd. V/s. FFSL reported as **(2001) 3 SCC 71 -Paras 7 to 11**
3. Virender Saigal & Co. V/s. A. K. Menon & Another reported as **(2003) 12 SCC 777 -Para-13**
4. L.S. Synthetics vs. FFSL reported as **(2004) 11 SCC 456 - Paras 35, 39**
5. Standard Chartered Bank vs. ABFSL reported as **(2006) 6 SCC 94 – Paras 61**
6. T.R.O. V/s. Custodian & Ors reported as **(2007) 7 SCC 461 -Paras 5, 12 to 14**
7. BOI V/s. Ketan Parekh reported as **(2008) 8 SCC 148 – Paras 13 to 18, 22 and 28**

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*Muz*  
Advocate For Petitioner / Respondent / Applicant



**260**

**EXHIBIT-N**

Certified Copy Charges Rs.....

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING  
TO TRANSACTIONS IN SECURITIES) AT BOMBAY

MISCELLANEOUS APPLICATION NO. 194 OF 1993.

Assistant Commissioner of  
Income-Tax, Bombay.

... Applicant

v/s

1. Shri A.K.Neson, Custodian  
and Others.

... Respondents

Mr. L.D.Vyas with Mr. L.K.Chatterjee, Advocates  
for the Applicant;

Mr. Atul Setalwad with Mr. A.S. Rajadhyaksha  
with Mr. G.R.Joshi i/b M/s. Pravin Mehta & Mithi  
& Co., Advocates for Respondent No.1;

Mr. Virag Tuizapurkar with Mr. Nihar Modi i/b  
M/s. Wadia Gandhi & Co., Advocates for  
Respondent Nos. 2 to 5;

Mr. Avari, Legal Officer from Respondent No.6,

Mr. Shukla i/b M/s. Dave & Co., Advocates for  
Respondent No.7;

Mr. Milind Sathe with Mr. Ravi Gandhi i/b  
M/s Kanga & Co. Advocates for Respondent Nos.8 to 11.

Mentioned Not on Board

CORAM: S.N.VARIAVA J.

DATE: 19TH OCTOBER 1993.

P.C. :

By Consent, the matter is placed on  
Board and called out.

Order in terms Minutes of Order, taken  
on record and marked 'X'.

Sd/- A.M.Trivedi.  
ASSOCIATE

...2/-

**TRUE COPY**

*My*  
Advocate for Plaintiff / Respondent / Applicant



261  
Per: Variava J

X/  
Court

19-10-93.

IN THE SPECIAL COURT  
CONSTITUTED UNDER THE SPECIAL COURT (TRIAL OF OFFENCES  
RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992  
AT BOMBAY

MISCELLANEOUS APPLICATION NO. 194 OF 1993

Assistant Commissioner of Income Tax .. Applicant  
Versus  
Shri A.K. Menon & Ors. .. Respondents

Coram: Variava J.

Date: 19th October 1993.

All parties are agreed that the aim is to locate the companies which had passed on to the notified persons through benami transactions in shares and that the attachment of shares in possession of a bona fide purchaser for value without notice would not be an appropriate solution.

Accordingly, ad interim order dated 20th September 1993 in terms of prayer (i) stands vacated. The attachments levied by the Income Tax Department on shares standing in the records of companies in the names of benamidars of notified parties including the attachments levied by the Income Tax Department by its order dated 21st September 1993 in respect of the shares of 17 companies, stand raised upon certification as mentioned below. The copies of the applications made by the persons claiming to be bona fide purchasers without notice will be forwarded <sup>by the concerned stock exchange</sup> to the Director General of Income Tax (Investigation) Bombay at

4th Floor, Aayakar Bhavan, Bombay simultaneously, along with copies of the share transfer deeds by the concerned

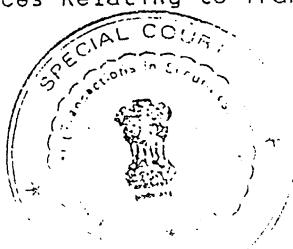


262

Stock exchange.

However, the Income Tax Department will be at liberty to investigate further and to establish linkages with b-namidars. Income Tax Department to place all evidence uncovered by it before the Custodian. The Income Tax Department will also inform the Custodian the details and particulars of scrips at present attached and which attachments are to be now raised by the Income Tax Department. All prohibitory and other restraint orders issued by the Income Tax Department in respect of the shares certified as mentioned hereinbelow shall stand automatically lifted on such certification. The Income Tax Department may however restrict transfer of any share temporarily for the purpose of inventory and/or verification and/or during the course of pending enquiry.

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 raised. This 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.



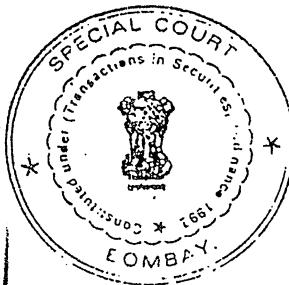
Shares will be regarded as being held by a bona fide purchaser for value without notice if they are certified by the concerned stock exchange in consultation with and with the concurrence of a representative of the Custodian that the person presently claiming to be a bona fide purchaser has acquired them from or through :

- (i) a member of the stock exchange in accordance with the Rules, Regulations and Bye-laws of the stock exchange; or
- (ii) a Sub-broker

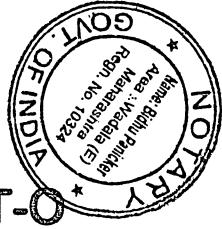
at a price not lower than the lowest price for which such securities were traded on the date of the transaction (except in cases of discount given on bulk purchases by institutions) and the full purchase price has been paid to any person other than a notified person under the Special Court Act, 1992 or a benamidar as listed in Application No. 104 of 1993.

When a transaction has taken place through a sub-broker the application for certification shall be made through a member of the stock exchange with whom the sub-broker in question is associated and the certification will be done by the stock exchange after scrutinizing the books of the said sub-broker and any other records which are found necessary.

Applied on 21.10.93  
 Pages 47  
 Examined by R.H.Kubal  
 Compared with B.S.Kadarm  
 Ready on 25.10.93  
 Delivered on 26.10.93



Certified to be a true copy  
 [Signature]  
 OFFICER ON SPECIAL DUTY  
 Office of the Special Court  
 Bombay



### OFFICE OF THE CUSTODIAN

**THE SPECIAL COURT (Trial of offences relating to transactions in Securities) Act, 1992**

3<sup>rd</sup> Floor, Bank of Baroda Bhavan,  
10, Parliament Street,  
New Delhi 110 001  
Phone: 3320030, 3327270

No.4151 /CUS/ATT/MA-930/OF 94/707(KW)

March 9, 1994

To,  
The Company Secretary,  
Hero Honda Motors Ltd.,  
34, Community Centre,  
Basant Lok, Vasant Vihar,  
New Delhi 110 057.

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 shares and debentures enumerated in the list enclosed belong to one or the other of 29 entities of Harshad Mehta Group (HMG) or are shares /debentures claimed by the three stock-broking firms, f 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 had also stated that some more shares/debentures, which have remained unregistered, the details of which are under compilation and will be submitted the same to Special Court at a later date.

In this circumstance, you are requested to confirm whether the shares / debentures enumerated in the said list are in the names of the first holder indicated therein. It must be noted that in terms of Sec.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 vest with the Special Court.

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

Yours faithfully,

Sd/-

(D.K. ROY CHOUDHARY)  
Officer on Special Duty

TRUE COPY

K.D.R.

*[Signature]* → Applicant

# 265

## \*\* HERO HONDA

BHARTIBEN R SHETH	900	137374
BHAVESH H MODI	750	137311
CHHAYA H MODI	750	137313
DARSHANA B. AVALANI	850	136540
DURLABHJI K MODI	750	137314
HARESH S AVALANI	820	136541
HARSUKHLAL D MODI	750	137317
HARSUKHLAL D MODI	100	137318
JAGDISH R SHETH	900	137377
JAYPRAKASH R SHETH	900	137376
KANCHANBEN R. SHETH	700	137379
MADHUBEN N MEHTA	850	137298
MEENABEN H. MODI	700	137320
MEENABEN J SHETH	900	137381
MILESH H. MODI	1600	137322
NAVINCHANDRA L MEHTA	850	137301
NILESH D. JOBALIA	800	136971
RAJANI D MODI	850	137323
RAJESH R. SHETH	850	137384
RAMNIKLAL V SHETH	850	137385
REKHABEN H AVALANI	785	136542
REKHABEN MODI	715	137325
SARLABEN AVALANI	800	136543
SHANTA D MODI	750	137326
SHANTILAL AVALANI	700	136544
** Subtotal **		20170

266

EXHIBIT-P



HONDA MOTORS LIMITED

34, B-SANT LOK, VASANT VIHAR, NEW DELHI-110 057.  
PHONES : 6142451, 6144121.  
FAX : 011-6143321, 6143198.

HERO  
HONDA

HHML:SECT:GP:CUS-111B:98

December 4, 1998

Officer on Special Duty,  
Office of the Custodian,  
9th Floor, Nariman Bhawan,  
227, Vinay K. Shah Marg,  
Nariman Point,  
Mumbai ~ 400021



KIND ATTN : MR. S.G.SRINIVASAN

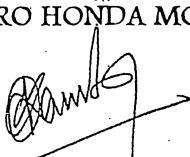
Sub : Shares relating to Harshad S. Mehta Group in the name of Benamidars

Dear Sir,

This has reference to your letter no.5757/CUS/BOM/MA-424/94/PN/97(236-M44) dated 13.11.98 received by us on 21.11.98. We wish to state that we have already clarified our position vide letter dated 21.10.98 which has been duly received by you. However, as requested by you, we are once again enclosing herewith the duplicate statement showing name, address, certificate no., distinctive no., no. of shares etc.

Kindly acknowledge the receipt.

Yours faithfully,  
for HERO HONDA MOTORS LIMITED

  
COMPANY SECRETARY

Encl : As above

Please update

16/12/98

Data updated

17/12/98

File No. 137318 vol in 1G  
in handwritten  
Dr. [Signature]

TRUE COPY

  
Advocate For Plaintiff / Respondent / Applicant

**DETAILS OF 20270 SHARES (BENAMI) : HONDA WING MOTORS LIMITED**

NM ADDR FOLIO CERT NO DIST FROM DIST TO HLDG

00186900	12279111	12279125	15
00184875	12342963	12342982	20
00184875	12343863	12343882	20
00184875	12612492	12612501	10
00186900	15341469	15341488	20
00186900	15560061	15560075	15
00308099	19943758	19943807	50
00308100	19943808	19943857	50
00308101	19943858	19943907	50
00308102	19943908	19943957	50
00308103	19943958	19943977	20
00308104	19943978	19943982	5
*TOT*			1125

11 BHARTIBEN R SHETH

KARANPURA MAIN ROAD

VRUV BHUVAN

RAJKOT GUJ

360001

0137374	00000281	13566	13615	50
00005214	260216	260265		50
00005600	279516	279565		50
00017781	888566	888615		50
00022835	1131266	1131315		50
00025101	1254566	1254615		50
00053300	2514516	2514565		50
00053301	2664566	2664615		50
00060504	3024816	3024865		50
00079907	3994866	3994915		50
00085846	4291816	4291865		50
00095682	11223414	11223463		50
00095683	11223464	11223513		50
00095684	11223514	11223563		50
00095685	11223564	11223613		50
00095686	11223614	11223663		50
00095687	11223664	11223713		50
00190619	12618232	12618251		20
00190619	15338914	15338943		30
00308089	19943496	19943545		50
00308090	19943547	19943595		50
00308091	19943596	19943645		50
00308092	19943646	19943695		50
00308093	19943696	19943715		20
00308094	19943716	19943720		5
*TOT*				1125

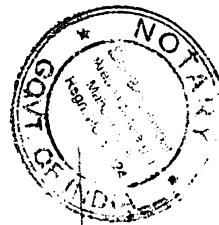
12 SHANTABEN D MODI

S T FAN STALL BUS STOP

UPLETA GUJARAT

360450

0137326	00000447	21866	21915	50
00000514	45216	45265		50
000015320	815515	815565		50
00020344	1014716	101676		50
00030432	1521116	1521165		50
00012088	1603916	1603963		50



SMT RASILA S MEHTA  
32 Madhuli, Dr Annie Besant Road, Worli, Mumbai 400 018

11.11.2010

M/s Karvy Computer Shares Pvt Ltd,  
Plot BNo.17-24,  
Vithalrao Nagar,  
Madhapur,  
Hyderabad 500 081.

WORLI MG <400018>  
SPFM145873916IN  
Counter No:1,OP-CodesRL  
To:M/S KARVY COMPUTER,MADHAPUR  
Hyderabad, PIN:500081  
From:RASILA S MEHTA , 32 MADHULI WORLI  
Wt:10grams,  
PS:25.00 , 15/11/2010 11:53  
Taxes:Rs.2.27<<Track#>>india@post.gov.in>>

15

Dear Sir,

Re : My holding of 289,000 shares under various Folio Nos.  
Non receipt of dividend of M/s Hero Honda Motors Ltd

1. Your company is aware that I am a notified person under the provisions of The Special Courts (Trial of offences in securities) Act 1992 and all my assets including my shareholdings in the above company together with accruals thereon in the form of dividends are attached property. As per the provisions of the said Act, these attached assets are liable to be dealt with only as per the directions of the Hon'ble Special Court. Your company has also been informed by the Office of the Custodian to regularly forward the dividends in respect of the shareholdings of the notified entities which in the case of the above company is a high dividend paying company, can run into crores since my shareholdings is very large.
2. On verification of my records, I find that the above company has not paid dividends for several years in respect of some of my shareholdings. According to me, the said amount is Rs.3,10,38,398/- (Rs.3.10 crores). I am pleased to enclose in a chart, particulars of dividends which have not been received by me. If there are any other dividends for other years which remain unpaid, kindly intimate the facts regarding the same. In the meantime, you are requested to urgently take steps to forward all unpaid dividends as detailed by me to the Office of the Custodian together with any other dividends which remain unpaid.
3. Since the above company has failed in making payments running into crores despite it being an attached asset and despite your company having instructions to make payment to the Office of the Custodian, the company is now liable to compensate me on the aforesaid unpaid dividends by making payment of interest @ 18% p.a. since the company is using the attached funds running into crores and has neglected to discharge their obligations. I am also forwarding a copy of this letter to the Office of the Custodian so that they take it up with your office and the aforesaid company the above issue of unpaid dividends and my claim for interest at the earliest. Please keep me updated by providing me a copy of your communications addressed to the Custodian since as per the law, the assets

TRUE COPY

*[Signature]* / Applicant

remain vested in me and the Custodian is appointed to comply with the directions of the Hon'ble Special Court from time to time.

Yours faithfully,

22 Nov 2011  
(Rasila S Mehta)

Encl : As above

CC: The Custodian, Office of the Custodian, Nariman Bhavan, 10<sup>th</sup> Floor, Nariman Point, Mumbai 400.021

For necessary information and action. You are requested to take up the issue of collection of unpaid dividends as described above and also recover interest @ 18% p.a. on the unpaid dividends from the dates when they fell due.



Rasila S. Mehta

## Details of Unpaid Dividend on shares of Hero Honda Motors Ltd.

Sr. No.	Year Ended	Folio No.	Qty.	Per Share Dividend	Div. Amt. Not received / collected
1	31.03.1998	124724	9,937	1.6	15,899
		132003	62,312	1.6	99,699
			<u>72,249</u>		
2	31.03.2004	124724	99,370	20	1,987,400
		132003	623,120	20	12,462,400
			<u>722,490</u>		
3	31.03.2006	124724	39,750	20	795,000
		132003	249,250	20	4,985,000
			<u>289,000</u>		
4	31.03.2007	124724	39,750	17	675,750
		132003	249,250	17	4,237,250
			<u>289,000</u>		
5	31.03.2009	124724	39,750	20	795,000
		132003	249,250	20	4,985,000
			<u>289,000</u>		
			Unpaid Dividend		31,038,398

Sr. No.	Folio No. / Client ID	Correspondance Address
1	124724	32, Madhuli, 3rd Floor, Dr. Annie Besant Road, Worli, Mumbai - 400 018.
2	132003	202, Arunachal, 19 Barakhamba Road, New Delhi - 110001
3	IN301127 16590024	The Office of the Custodian, 10th floor, Nariman Bhavan, 227, Vinay K Shah Marg, Nariman Point, Mumbai- 400021.

**Note :** Folio No. 124724 & 132003 got merged into 1 Folio No. IN 301127 16590024. Total of dematerialised shares is 433490 and rest would be in physical form. The Total holding should be 722490.

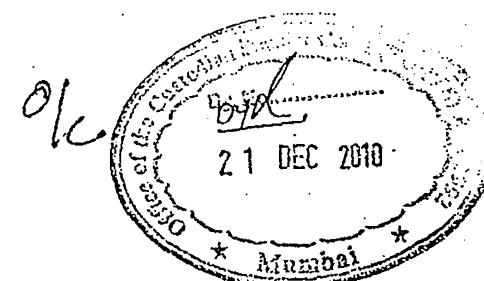




SMT RINA S MEHTA  
32 Madhuli, Dr Annie Besant Road, Worli, Mumbai 400 018

21.12.2010

M/s Karvy Computer Shares Pvt Ltd,  
Plot BNo.17 - 24,  
Vithalrao Nagar,  
Madhapur,  
Hyderabad 500 081.



Dear Sir,

**Re : My holding of 499475 shares under various Folio Nos.  
Non receipt of dividend of M/s Hero Honda Motors Ltd**

1. This is with reference to my letter dated 11.11.2010, a copy of which is enclosed for your ready reference. A period of almost 45 days have elapsed but you have failed to respond to my above letter.
2. I have earlier made a grievance of non receipt of dividend of a large amount of Rs.5,51,53,750/- commencing from the year 1998 onwards, particulars of which I have already placed on your record. It is surprising that after having failed to forward the dividends for last several years, now your company has failed even in responding to my aforesaid letter which is causing enormous anxiety to me.
3. In the circumstances, I once again call upon you to forthwith confirm the non payment as well as arrange to remit the said dividends to the Office of the Custodian alongwith interest @ 18% p.a from the respective due date of dividend payments failing which as I have stated earlier, I will be constrained to take appropriate steps and your company would remain liable to compensate me with interest @ 18% p.a. for using my funds. You would appreciate that u/s 3 of the Special Courts Act, the aforesaid dividend amount constitutes an attached property and the same can be dealt with only as per the orders of Hon'ble Special Court. Your company by withholding the payment of above dividends, have dealt with the attached assets for which your company will remain liable for all violations and costs and consequences thereof.

Yours faithfully,  
*Rina Mehta*  
(Rina S Mehta)

Encl : As above

CC: The Custodian, Office of the Custodian, Nariman Bhavan, 10<sup>th</sup> Floor, Nariman Point, Mumbai 400 021 – For appropriate action

WORLI MDG <400018>  
SP EM145953044IN  
Counter No:1, OP-Code:2  
To:KARVY COMPUTER SHARE,  
Hyderabad, PIN:500081



TRUE COPY

*Muz*  
Rina S Mehta / Lawyer / Advocate / Applicant





24/10/11  
S/11  
S/11

**Hero**

The Under Secretary  
Office of Under Secretary  
Ministry of Corporate Affairs  
Room No:521, "A" Wing, 5<sup>th</sup> Floor  
Shastri Bhawan  
Dr Rajendra Prasad Road  
New Delhi-110 001

Dear Sir,

Request for refunding the Unclaimed and Unpaid dividend remitted under A/C No: 007501040000-Miscellaneous General Services, Unpaid dividend Companies(IEPF)

Ref: Challan No:B23267123 dated 21/10/2011 for Rs.3,03,17,970/-towards the remittance of unclaimed and unpaid dividend ( 500% final dividend for the year 2003-2004 of Hero MotoCorp Limited)

We draw your kind attention to the challan under reference and the demand draft bearing no:695961 dated 20/10/2011 for Rs.3,03,17,970( Rupees Three Crores Three Lakhs Seventeen Thousand And Nine Hundred Seventy Only), submitted by us on 24/10/2011 with Punjab National Bank, ECE House, K.G.Marg, New Delhi.

The above amount was remitted by us towards the unpaid and unclaimed dividend for the year 2003-2004, in accordance with the provisions of Sections 205A & 205C of the Companies Act, 1956 read with Rule 3 of The Investor Education and Protection Fund (awareness and protection of Investors) Rules, 2001 (hereinafter referred to as "IEPF Rules").

1. The above provisions under the Companies Act and the IEPF Rules, respectively and collectively, place an obligation on the part of the Companies to,

- a) on completion of 30 days but not later than 37 days from the date of declaration of the dividend, transfer the unclaimed and unpaid dividend to a separate account to be opened by the companies in the name and style of Unpaid Dividend A/C of HHML-2003-04 Company Limited/Company (Private) Limited, and;
- b) remit to IEPF the money so transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer to unpaid dividend account, within 30 days of the completion of the said 'seven years' period.

*My*



2. As provided in the above provisions, the unpaid dividend amount in respect of the dividend declared and distributed by our company in 2004, which was transferred to Unpaid Dividend Account for the year 2004 (in terms of 6(i) above), became due for remittance to IEPF, in 2011.

3. Accordingly, as stated supra, an amount of Rs.3,03,17,970 ( Rupees Three Crores Three Lakhs Seventeen Thousand And Nine Hundred Seventy Only), was remitted by us on 24/10/2011. The said amount represents the unpaid / unclaimed dividend amount in respect of the shares pertaining to 3206 share holders / investors. Copies of the Challan, the list giving the details of the said 3206 share holders and the demand draft for the above said amount, tendered by us on 24/10/2011 with Punjab National Bank, are collectively enclosed as Exhibit-A.

4. While facts being so, it came to light that prior to remitting the above said dividend amount with IEPF, a claim/direction from the Office of the Custodian, Ministry of Finance, Government of India ( a Statutory Authority) was received by our Registrar and Share Transfer Agent, M/s Karvy Computershare Private Limited (KCPL), for remitting the dividend amounts for the year 2004 in respect of 1,44,49,800 shares held by one Smt Rasila S. Mehta ( notified party), vide letters dated 17/08/2011 and 19/09/2011. Copies of these letters are collectively enclosed as Exhibit-B. Your kind attention is drawn to these letters, from which it is evident that the Custodian while complaining non-receipt of dividend in respect of 4,73,240 shares (4,33,490 +39,750), acknowledged the receipt of dividend for balance shares, out of total shares (as mentioned above) held by the above said notified party.

5. It is noticed from the records that a duplicate dividend warrant was issued to the Custodian in respect of 39,750 shares (under Folio No:HML 124725), on 18/01/2011 and accordingly informed to the Custodian while replying to their above letters. However pending claim of the Custodian in respect of the dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) pertaining to 4,33,490 shares ( DPID IN301127/Client ID 16590024), the above said dividend amount was inadvertently remitted to IEPF on 24/10/2011. Your kind attention is drawn to item no.51 on page: 1 of Exhibit-A, which represents the above said amount.

6. It may kindly be noted that Custodian is a Statutory Authority appointed under Section 3(1) of Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992 (hereinafter referred to as "Special Court Act"). Further, as per sub-section (3) of Section 3 of the Special Court Act, all assets of such notified parties / entities stand simultaneously attached with the Custodian as on the date of their notification and the property so attached shall be dealt with by the custodian in such manner as the Special Court may direct.



7. Subsequent to the enactment of the Special Court Act, the Custodian notified the names of the persons involved in the above said transactions and attached their properties, in terms of the orders passed by the Special Court from time to time. Post attachment of shares standing in the name of the notified persons, the Custodian got opened Dematerialization Accounts in respect of the shares held by the notified persons in electronic form and got them transferred to such Demat Accounts, in terms of the Special Court Act and as per the directions of the Special Court from time to time. In this case, the shares in question were transferred in the name of Custodian on 25/06/2004 and the same were subsequently got dematerialized by the Custodian on 14/07/2004.

8. As per the records, all the shares (1,44,49,800) standing in the name of Smt Rasila S.Mehta , i.e the notified party, have been attached by the Custodian. Subsequent to the attachment, the shares stood transferred in the name and style of "*Custodian (Special Court) A/C Rasila.S*", on 25/06/2004, since which, the benefits on these shares have been getting remitted to the Custodian from time to time. However, as explained above, the dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) for the year 2004 in respect of one lot of 4,33,490 shares held in electronic form by the Custodian vide DPID IN301127/Client ID 16590024, was inadvertently remitted IEPF on 24/10/2011, pending his claim on the same.

9. It is pertinent to note that as per the clarification provided under Section 205C of Companies Act-1956, no amounts referred to under the Section shall form part of the Fund (IEPF) unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment. It may kindly be noted that with regard to the above dividend, there has been a claim from Custodian (who has been holding the units as a Statutory Authority) for payment of the same and hence, the dividend in question ought not have been qualified to be part of the Fund (IEPF), in terms of the clarification provided under the Companies Act,1956.

10. It is submitted that in this case, the shares were not only attached by the Special Court through a Statutory Authority but also there has been a claim/direction pending from the Statutory Authority for payment of the dividend on such shares even prior to said dividend was remitted to IEPF. Moreover, the Hon'ble Supreme Court, in the case of *Tejkumar Balkrishna Ruia V/s A.K.Menon & Another [1997, 9 SCC, 123]*, held that *the income or usufruct of attached property is also attached property. Thus, if the property be shares, dividends and bonus and rights shares thereon would also be attached property.*



11. From the above facts and submissions, it is evident:-

- (a) The dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) is pertaining to the shares held by one Smt Rasila S.Mehta, who is a notified person under the Special Court Act.
- (b) The shares in question have been attached under the provisions of the Special Court Act. By virtue of the attachment, the dividend also stands attached.
- (c) Subsequent to the attachment, the shares stood transferred in the name of the Custodian, a Statutory Authority.
- (d) There has been a claim by the Statutory Authority holding the shares, for payment of the dividend amount in question which has been inadvertently remitted to IEPF on 24/10/2011.
- (e) In view of the pending claim for payment of dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) from the Custodian prior to remitting the amount to IEPF and also the attachment of the shares on which the said dividend was declared under the provisions of the Special Court Act, the said amount of dividend cannot be construed as unclaimed as defined under Sections 205A and 205C of the Companies Act,1956 and thus cannot be forming part of the IEPF as provided under Rule 3 of IEPF Rules.

12. It is therefore most respectfully requested that the dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) in respect of shares appearing as item no. 51 on page 1 of Exhibit-A, may kindly be refunded to us to enable us to pass on the same to the Office of the Custodian.

It is humbly submitted that in addition to the above shares, the Custodian has also attached the shares pertaining to the following persons and the dividend amounts as shown against them were also remitted by us on 24/10/2011.

Sr.No	Name of the Investor	Name of the Account after attachment	Amount (Rs.)	Item nos in the Exhibit
1	Harshad Mehta	Custodian (Special Court)-A/C-Harshad Mehta	1,19,59,150.00	50
2	A.D.Narottam	Custodian (Special Court)-A/C- A.D.Narottam	17,500.00	52



As the above investments have also been attached by the Custodian in terms of the provisions of the Special Court Act, corresponding dividend amounts (as shown above) of Rs. 1,19,59,150/- (Rupees One Crore Nineteen Lakhs Fifty Nine Thousand One Hundred Fifty Only) and Rs. 17,500/- (Rupees Seventeen Thousand Five Hundred Only), respectively are required to be passed on to the Custodian. It is therefore humbly requested the above said amounts may kindly be either refunded to us or be paid to the Custodian directly.

Kindly note that a copy of this letter is being marked to the Office of Custodian for information.

Kindly do the needful.

Thanking you,

for Hero MotoCorp Ltd.

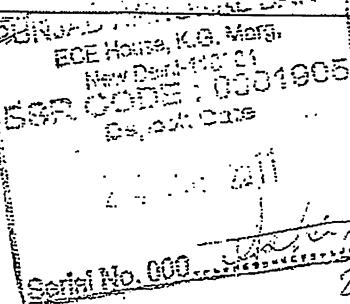
*(Signature)*  
ILAM C. KAMBOJ  
Sr. G.M. Legal & Company Secretary

Encl: As above.

09/07/2012

Mob - 8882625429

MINISTRY OF CORPORATE AFFAIRS		
CHALLAN		
G.A.R.7		
Challan No. : B23267123	Expiry Date : 28/10/2011	
Challan Date : 21/10/2011		
Challan money paid into..... Punjab National Bank ECE House, Barakhamba Road	(BANK) (BRANCH)	
<u>By Whom tendered</u>		
Name : VIVEK GAUTAM Address : B-306/6, STREET NO. 25, ASHOK NAGAR SHAHDARA NEW DELHI, DELHI, 110093		
<u>Entity on whose behalf money is paid</u>		
CIN : L35911DL1984PLC017354 Name : Hero MotoCorp Limited Address : 34, COMMUNITY CENTRE BASANT LOK, VASANT VIHAR NEW DELHI, DELHI INDIA - 110057		
<u>Full Particulars of Remittance</u>		
Service Type: Deposits to Investor Education and Protection Fund		
Service Description	Type of Fee	Amount(Rs.)
Particulars* : Unclaimed and Unpaid Dividend Amount of Rs. 3,03,17,970 (500% Final Dividend for the year 2003-04) to be transferred to the Investor Education and Protection Fund of the Central Government.	Normal	30,317,970.00
	Total	30,317,970.00
Head of Account : 6075001040000: Miscellaneous General Services, Unpaid dividend of companies (IEPF) Accounts Officer by whom adjustable : Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi	For Hero MotoCorp Ltd.	
Rupees(In words): Three crore Three Lacs Seventeen Thousand Nine Hundred Seventy only		
Mode of Payment: <input type="checkbox"/> Cash <input type="checkbox"/> Cheque <input checked="" type="checkbox"/> Demand Draft		
Cheque/Demand Draft details: No.: 695961 Drawn on Standard Chartered (Bank) New Delhi Date: 21/10/11	Dated: 20/10/11 Signature of the Remitter:	
Note: Cheque/Demand Draft should be locally payable and drawn in favour of "Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi"		
(For Bank use only)		
Received Payment Rupees(words) :		
Date:.....	Bank Officer:.....	
(For Office use only)		
Received Payment Rupees(words) :		
Date:.....	Cashier:.....	
Note* : Particulars of payment as entered by the user		
Disclaimer: Payment done at the bank after the EXPIRY DATE shall be rejected and the corresponding service requested shall not be accepted		



३४२ देवगढ़ लैन्सिंग बैंक  
३४२ Devgadha Lancing Bank  
P.O. : 7, नेहरामी बाजार, नई दिल्ली  
H.O. : 7, Neharami Bazaar, New Delhi

लगाता:

B.O.

21/10/2011

दस्ता/चालू/चेक/नक्शे उत्तर/अकाउंट बाजार संग्रह/  
Saving/C.A/ODD/CC/RD वा इनमें से।

										B2	S12	61711212
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PNB, PAY & AK OFFICE, MCA

प्राप्ति अधिकारी का नाम/प्राप्ति की दिनांक

Thirty million three hundred &  
Seventeen thousand nine hundred  
& Seven paisa only

चेक नंबर	क्रमांक	मुद्रा
Cheque No. & Name of Drawee	₹	Rs.
695961	20517970	
Signature/Challan		

अपेक्षित दोषी के नाम/उत्तराधिकारी के नाम	
नक्शे उत्तराधिकारी का नाम	नक्शे उत्तराधिकारी का नाम
नियमित नियुक्त विवरण या विवरण विवरण	नियमित नियुक्त विवरण या विवरण विवरण

नियमित नियुक्त विवरण या विवरण विवरण

ACCOUNT PAYEE ONLY

## Standard Chartered

Standard Chartered Bank

Narain Manzil, 23 Barakhamba Road,  
New Delhi - 110 001.

522-0-500024-6

VALID FOR SIX MONTHS  
FROM THE DATE OF ISSUE.

CH 001

Rs. 30,317.270.00

PAY TO THE PAYABLE TO THE PAYEE  
ORDER OF PAYMENTTHE SUM  
OF RUPEES THIRTY MILLION THREE HUNDRED AND SEVENTEEN  
THOUSAND NINE HUNDRED AND SEVENTY ONLY

For Standard Chartered Bank

Minu [Signature] - 5-12-2002

Authorised Signatory

CASHIER'S ORDER ISSUED BY

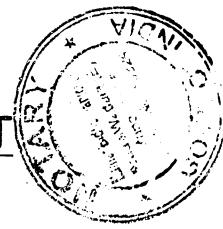
PAYMENTS

9006/AC/SCORP LIMITED FINAL PAY  
PAID DIV03-C4

#69596 1100360024 500024 62

280  
01

EXHIBIT-T



R.A. SHAIKH  
Bsc (Hons), LLB.  
Advocate High Court, Mumbai  
Original Side Regd No.1399

Mob: 9820083616

5<sup>th</sup> May, 2012

To,  
The Company Secretary,  
M/s Hero Honda Motors Ltd,  
34 Community Centre,  
Basant Lok,  
Vasant Vihar,  
New Delhi 110 017

RLAD WORLI MDG 400018  
A RM1.04326425IN  
Counter No:1, OF-Code:04  
To: HERO HONDA MOTORS,  
DELHI, PIN:110017



Wt:76grams  
Amt:40.00 , 08/05/2012 , 11:34

Sir,

Re : Status of compliance with combined order of Hon'ble Special Court dated 13.03.1997 in M.A No.194 of 1993

I am addressing this letter on behalf of my client Smt Jyoti H Mehta in the capacity of legal heir of late Harshad S Mehta who has asked me to address you as under :-

1. That your company was a party to the proceedings in M.A No.194 of 1993 and M.A No.53 of 1994 filed by the Asst. Commissioner of Income Tax V/s A K Menon Custodian & Others in Hon'ble Special Court, Mumbai. That in the said proceedings, my husband late Harshad S Mehta had filed an affidavit on 09.08.1994 inter alia disclosing facts and particulars of 20,170 shares of your company, a list of which is once again enclosed herewith for your ready reference.
2. That thereafter by a combined order dated 13.03.1997, a copy of which is enclosed, the said shares were declared to be the attached assets of notified entities. Your attention is drawn to Para 5 of the aforesaid order where under the concerned shares forming part of M.A No.194 of 1997 are declared as attached shares. In Para 8, the Hon'ble Special Court was pleased to direct the Custodian to adopt necessary steps to recover possession of the balance shares from the benamidars if they can be found. It was further directed that if the benamidars cannot be found, the Custodian to apply for duplicate shares from concerned company. Thus 20,170 shares declared by Harshad S Mehta in his affidavit were declared to be the attached assets u/s 3 of the Special Courts Act. It is a settled law as per law laid down by Hon'ble Apex Court in the case of T B Ruia Vs Custodian reported as (1997) 9 SCC 123 that all accruals on such attached shares whether in the form of dividend, bonus, rights etc are also treated as attached assets.

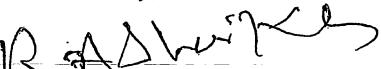
Chambers: 402, Yusuf Building, M.G.Road,Fort, Mumbai 400 001 Tel:22049017,Fax: 22880726  
Residence: Dominic Villa, 31 Ceasor Road, Amboli,Andheri (W), Mumbai 400 058 Tel.2677 1480

TRUE COPY

Advocate For Petitioner / Respondent / Applicant

7. Please note that in case the shares and accruals have already been handed over to the Custodian, even then my client is entitled to the said information by virtue of her ownership. The aforesaid particulars are required to contest the false claim lodged by Shri Ketan Mathurdas Chatwani and therefore my client expects your company to render full co-operation to her being the shareholder of your company. Your company would also appreciate that the present value of these attached shares if they are not already sold by the Custodian will run into few crores and even therefore, the matter assumes great importance. Your client is also contesting baseless allegations leveled against your company by Shri Ketan Mathurdas Chatwani
8. My client also expects your company to co-operate in view of what has transpired in the proceedings before Hon'ble Special Court today as the matter was heard and some order was passed including direction to your company to disclose the status of the shares. We hope your company would not act as an adversary to my client and keeping with the principle of corporate governance, will fully extend co-operation to my client to resist the false claim made on ownership of the said shares by Shri Ketan Mathurdas Chatwani.

Yours faithfully,

  
(R.A. Shaikh)  
Advocate High Court

Encl: as above

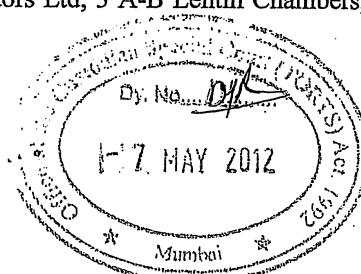
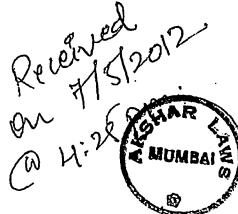
CC : Shri Satish Loomba, Custodian, Bank of Baroda Bhavan, 16, Sansad Marg, New Delhi – 110 001

You are requested to also inform my client the status of the shares as per records available with you.

CC: Custodian, Office of the Custodian, 10<sup>th</sup> Floor, Nariman Bhavan, Nariman Point, Mumbai 400 021

CC: Karvy Consultants Pvt Ltd (Unit : Hero Honda Motors Ltd), Karvy House, 46 Avenue 4, Street No.1, Banjara Hills, Hyderabad 500 034.

CC: M/s Akshar Laws, Advocate for M/s Hero Honda Motors Ltd, 3 A-B Lentin Chambers, 4<sup>th</sup> Floor, 36 Dalal Street, Mumbai 400 001



## FIRST HOLDER

## FOLIO NO. QUANTITY SECOND HOLDER

\*\* GUL T ALKALI  
CHAYA H MODI  
\*\* Subtotal \*\*

C4384 1000  
1000

## \*\* GUL T AMB OEME

BHUPENDRA S. AVALANI	B10325	4700
DARSHANA B AVALANI	D9345	5200
DARSHANA B AVALANI	D9368	1100
JAGDISH R SHETH	J9404	4900
JAY PRAKASH R SHETH	J9420	1100
JAYDISH R. SHETH	J9421	1200
KAMLESH C TOLIA	N10175	800
NILESH C TOLIA	R19540	100
RAMANIKLAL V SHETH	R19566	200
RAMANIKLAL V SHETH	R19549	2900
REKHABEN B MODI	S12458	100
SARLABEN S AVALANI	S21767	5100
SARLABEN S AVALANI	S21932	1900
SARLABEN S AVALANI	S21768	4700
SHANTILAL O AVALANI	S21816	100
SHANTILAL O AVALANI	S21917	1800
SHANTILAL ODHAVAJI AULANI		
** Subtotal **		35950

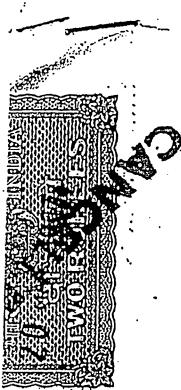
## \*\* HERO HONDA

SHARTIBEN R SHETH	137374	900
BHAVESH H MODI	137311	750
BIPINBHAI D MODI	137312	850
CHHAYA H MODI	137313	750
DARSHANA BHUPENDRA AVALANI	136540	850
DURLABHAJI KABABHAJ MODI	137314	750
HARESH SHANTILAL AVALANI	136541	750
HARESH SHANTILAL AVALANI	HH136541	70
HARSHUKHLAL D MODI	137317	750
HARSUKHLAL D MODI	137318	100
JAGDISH R SHETH	137377	900
JAYPRAKASH R SHETH	137378	900
KANCHANBEN R SHETH	137379	700
MADHUBEN N MEHTA	137298	850
MEENABEN H MODI	137320	700
MEENABEN J SHETH	137381	700
MEENABEN J SHETH	437381	200
NAVINCHANDRA L MEHTA	137301	850
NILESH D. JOBALIA	136971	750
NILESH D. JOBALIA	H136971	50
NILESH H MODI	137322	750
RAJANT D. MODI	137323	850

FIRST HOLDER	FOLIO NO.	QUANTITY	SECOND HOLDER
RAJESH R SHETH	137384	850	
RAMANIKLAL V SHETH	137385	650	
REKHABEN B MODI	137325	700	
REKHABEN B MODI	HH137325	15	
REKHABEN HARESH AVALANI	136542	785	
SARLASEN SHANTILAL AVALANI	136543	800	
SHANTABEN D MODI	137326	750	
SHANTILAL OOHAVJI AVALANI	136544	700	
** Subtotal **		20170	
** HINDALCO			
SHANTABEN D. MODI	HEA8333	900	
** Subtotal **		900	
** HINDOOSTAN SPINNING			
GAURI IMPEX (P) LTD.	G515	800	
** Subtotal **		800	
** HINDUSTAN CIBA			
BHARTIBEN R SHETH	B9545	20	
BHARTIBEN R SHETH	B9559	5	
KANCHANBEN R SHETH	K11124	45	
MEENABEN J SHETH	M11666	15	
MEENABEN J SHETH	M11906	15	
RAMNIKLAL V SHETH	R12479	45	
** Subtotal **		145	
** HINDUSTAN POWER PLUS			
CHHAYA H MODI	50569	1000	
DURLABATI R MODI	50568	1000	
JAYPRakash R SHETH	50573	1000	
JIGNESH R. SHETH	50571	800	
KANCHANBEN R. SHETH	50572	1000	
RAJANIBHAI D MODI	50570	1000	
RAJESH R. SHETH	50574	1000	
** Subtotal **		6800	
** I. C. I. C. I.			
HASMUKLAL D MODI	643289	5	
HASMUKLAL D MODI	693287	15	
HASMUKLAL D MODI	693289	20	
HASMUKLAL D MODI	H1438	70	
HASMUKLAL D MODI	H1439	675	
HASMUKLAL MODI	H1530	10	
JOLEBJIBHAI D. MODI	J1654	5	

PPK-194

Certified Copy Charges Rs. .... G.C.



IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO  
TRANSACTIONS IN SECURITIES) AT BOMBAY

MISC. APPLICATION NO. 194 OF 1993

Assistant Collector of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the  
Applicant.

Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi  
& Co; for Respondent No. 1.

Mr. Nihar Modi i/b M/s. Wadia Gandhi & Co. for Respondent  
No. 2.

Mr. H. D. Petit i/b M/s. Gagrat & Co. for Respondent No. 6.

Mr. Vipul Shukla i/b M/s. Dave & Co. for Respondent No. 7.

Mr. Amol Chaugule i/b Shah, Desai, Doijode and Phatarphekar  
for Respondent Nos. 8, 9, 10 and 11.

ALONG WITH

MISC. APPLICATION NO. 53 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the  
Applicant.

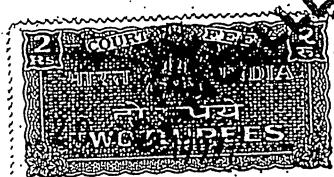
Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi  
& Co; for Respondent No. 1.

Mr. Amol Chaugule i/b Shah, Desai, Doijode and Phatarphekar  
for Respondent Nos. 6, 7, 8 and 9.

Mr. H. D. Petit i/b M/s. Gagrat & Co. for Respondent No. 10.

Mr. Vipul Shukla i/b Ms. Dave & Co. for Respondent No. 11.

Mr. P. N. Dixit i/b M/s. M. M. Legalventure for Respondent  
No. 20.



Mr. P. Palkhiwala i/b T. Pooran for Respondent No. 25.

ALONG WITH

MISC. APPLICATION NO. 92 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian .... Respondent

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the Applicant.

Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi & Co. for the Respondent No. 1.

ALONG WITH

MISC. APPLICATION NO. 93 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the Applicant.

Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi & Co. for Respondent No. 1.

Mr. Nihar Modi i/b Wadia Gandhi & Co. for Respondent No. 2.

Mr. Amol Chaugule i/b Shah, Desai, Doijode and Phatarphekar for Respondent Nos. 6, 7, 8 and 9.

ALONG WITH

MISC. APPLICATION NO. 424 OF 1994

IN

MISC. APPLICATION NO. 297 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents



Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the Applicant.

Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi & Co. for Respondent No. 1.

Mr. Nihar Modi i/b M/s. Wadia Gandhi & Co. for Respondent Nos. 2.

Mr. Amol Chaugule i/b M/s. Chaugule for Respondent Nos. 6, 7, 8 and 9.

Mr. H. D. Petit i/b M/s. Gagrat & Co. for Associated Cement Company.

Mr. P. N. Dixit i/b M/s. M. & M. Legalventure for I.T.C. Limited.

Mr. R. Murlidhar i/b M/s. Crâwfurd Bayley & Co. for PEICO Ltd.

Mr. Vipul Shukla i/b M/s. Dave & Co. for Reliance Industries.

Mr. P. Palkhiwala i/b M/s. T. Pooran for Sesa Goa Ltd.

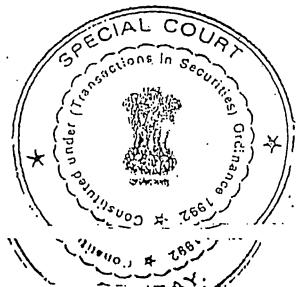
Mr. Dabhi i/b M/s. D. M. Harish & Co. for Nitiraj Construction.

CORAM: HON'BLE MR. JUSTICE  
S. N. VARIAVA,  
JUDGE, SPECIAL COURT.

13th March 1997.

ORAL ORDER :

1. By all these Applications the Income-Tax Department claims that shares which have been fully listed in Exhibits 'A' and 'B' to Misc. Application No. 424 of 1994 are attached assets. The Income-Tax Department claims that these shares are assets of the Harshad Mehta Group standing Benami in the names of the various persons whose names are set out in Exhibits 'A' and 'B' to Misc. Application No. 424



of 1994.

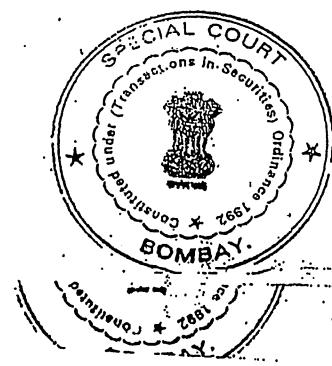
2. All the parties have been served by way of Public Notice. Some of the Companies whose shares are involved have been served. Mainly the shares are of A.C.C., I.T.C., Phillips India Ltd. (PEICO Ltd.) and Reliance. These Companies are present in Court today. All of them state that they waive service and that the Court should proceed to dispose off these Applications.

3. Needless to state that Mr. Chaugule appearing for Harshad Mehta Group willingly accepts that these shares belong to the Group.

4. Most of the concerned persons have not come before the Court in spite of the Public Notice. However some of them have filed separate Petitions or Applications wherein Orders had been passed or the Petitions/Applications are pending. Many others have undergone a process of certification which has been established by the Court. Many have applied for such certification and their Applications are still pending.

5. To the extent there is no dispute, I hereby declare that all the shares which are listed in Exhibits 'A' and 'B' to Misc. Application No. 424 of 1994 are attached properties under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 subject to the following:-

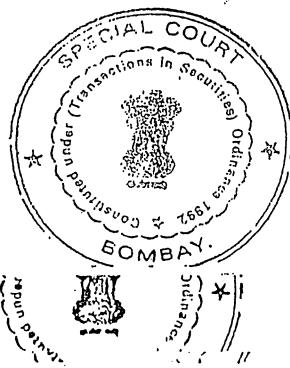
(a) That those shares which have already been declared or which may hereafter be declared as



not being attached or released from attachment shall be considered as not attached from the date of the respective Orders.

(b) Those shares which have already been certified or which may hereafter be certified by the Stock Exchanges within six weeks from today, pursuant to the procedure laid down by Order dated 19th October 1993, shall be considered to be released from attachment. It being clarified that hereafter the certification process can be undertaken only in respect of the Applications which have already been received till date. The Stock Exchanges are not at liberty to accept any further Applications for certification with effect from today. As stated above, the process of certification must be completed within a period of six weeks from today. It being clarified that if the process is not completed within six weeks, then after that date all concerned parties must apply to this Court for getting their shares released from attachment.

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



SPECIAL COURT  
Under (Transactions in Securities)  
Order No. 552 dated 1992

cannot be found the Custodian to apply for duplicate shares from the concerned Companies.

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.

8. The Income-Tax Department is directed to publish this Order along with the list of shares annexed as Exhibits 'A' and 'B' to Misc. Application No. 424 of 1994 in the Times of India and Indian Express. The Notice to state that any person who wishes to apply for release of his shares from attachment, who has not already applied for certification or filed any Application/Petition in this Court can make an Application to this Court within a period of 16 weeks from the date of publication of the Notice.

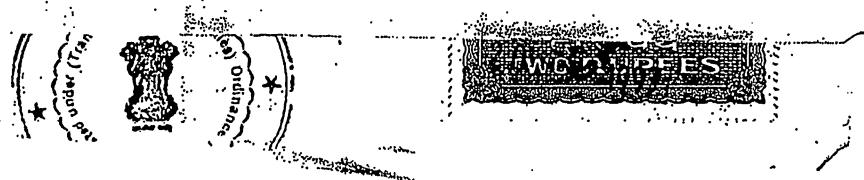
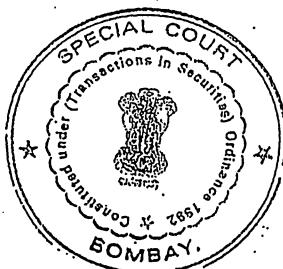
9. All these Applications stand disposed off accordingly.

10. Lastly the Court would be failing in its duty if it did not express its appreciation of the Income-Tax Departments' effort in having discovered these Benami assets.

\*\*\*\*\*

Applied on 20.3.97  
 Pages 2  
 Examined by R.M.Kabir  
 Compared with M.R.Pawar  
 Ready on 20.3.97  
 Delivered on 20.3.97

Certified to be a true copy  
Antimedi  
 for OFFICER ON SPECIAL DUTY  
 Office of the Special Court  
 Bombay.



EXHIBITPowers, Role and Responsibilities of Custodian(1998) 5 SCC 1 - Harshad Shantilal Mehta v/s Custodian & Ors

Para 12 The attached property also does not vest in the Custodian. In this regard, the position of a Custodian is different from that of an official liquidator of a company in winding up. Had the Act provided for the extinguishment of any subsisting rights of other persons in the attached property, the Act could well have been considered as arbitrary or unconstitutional (vide C B Gautam V. Union of India).

(2004) 8 SCC 355 - Canbank Financial Services Ltd v/s Custodian & Ors

70. The properties of a notified person do not vest in the Custodian. He is not a Receiver within the meaning of the provisions of the Code of Civil Procedure or an Official Receiver or an Official Assignee under the insolvency laws. He is also not an Official Liquidator under the Companies Act. His right is the same as that of the notified person. Only when the notified person has a subsisting right in a property, the same being subject to statutory attachment, can the Custodian approach the Special Court for an appropriate direction in relation thereto. In other words, the Custodian is not permitted to deal with any property which did not belong to the notified person on the relevant date.(Emphasis supplied)

2004 AIR SCW 6198 - Asea Brown Boveri Ltd Vs. Indl Finance Corpn of India

20. However, so far as the Act is concerned, we have to go by the provisions of the Act, keeping in view the real nature of the transaction ascertaining the real intention of the contracting parties in the light of the facts and circumstances of a given case. Once a party has been notified under sub-section (2) of Section 3 of the Act then under sub-section (3), notwithstanding anything contained in any other law for the time being in force with effect from the date of notification under sub-section (2), any property, movable or immovable or both belonging to notified party stands attached simultaneously with the issue of the notification and becomes liable to be dealt with by the custodian in such manner as the Special Court may direct. A person is liable to be notified by reference to transaction in securities between 1.4.1991 and 6.6.1992. Any contract or agreement entered into between 1.4.1991 and 6.6.1992, in relation to any property of the notified party is liable to be cancelled, if found to have been entered into fraudulently or to defeat the provisions of the Act. Analysing the provisions of the Act, it was held in B.O.I Finance Ltd Vs. Custodian and Others (1997) 10 SCC 488, that the custodian under the Act is required to assist in the attachment of the notified person's property and to manage the same thereof. The properties of the

notified persons, whether attached or not, do not at any point of time, vest in him. He is merely a custodian and not a receiver nor is he a final liquidator so as to enjoy control over the properties. In other words, the position of the custodian is the same as that of the notified person himself. We are therefore, of the opinion that the custodian remains bound by the obligations incurred by the notified party itself, if not incurred fraudulently or to defeat the provisions of the Act. (Emphasis supplied)

**(2012) 1 SCC 83 Ashwin Mehta & Anr V/s Union of India Ors**

**Para 30**

*Section 3 of the Special Court Act relates to the appointment and functions of the Custodian. Sub-section (2) thereof clothes the Custodian with the power to notify in the official gazette, the name of a person, who has been involved in any offence relating to transactions in securities during the period as mentioned therein. Sub-sections (3) and (4) of Section 3 stipulate that with the issue of the aforesaid notification, properties, movable or immovable or both, belonging to the notified person shall stand attached, and such properties are to be dealt with by the Custodian in such manner as the Special Court may direct.*

**Para 34**

*It is also clear that the Custodian has to deal with the attached properties only in such manner as the Special Court may direct. The Custodian is required to assist in the attachment of the notified person's property and to manage the same thereafter. The properties of the notified persons, whether attached or not, do not at any point of time, vest in him, unlike a Receiver under the Civil Procedure Code or an official Receiver under the Provincial Insolvency Act or official Assignee under the Presidency Insolvency Act (See : B.O.I. Finance Ltd. Vs. Custodian & Ors.13). The statute also mandates that the Special Court shall be guided by the principles of natural justice. (Emphasis supplied)*

**Para 36**

*Therefore, the stand of the Custodian that inviting Apollo to make the bid was necessarily in compliance of the scheme/condition of sale, cannot be accepted inasmuch as it was for the Special Court to take such a decision at the appropriate time and not the Custodian. The Custodian could not have foreseen that the Special Court would not accept the bid of the sole bidder viz. Punjab National Bank. (Emphasis supplied)*

**Para 38.**

*As aforesaid, so far as issue of notification in terms of Section 3(2) is concerned, the Custodian derives his power and authority from the Special Court Act but his jurisdiction to deal with property under attachment, flows only from the orders which may be made by the Special Court constituted under the said Act. It is obligatory upon the Custodian to perform all the*

functions assigned to him strictly in accordance with the directions of the Special Court. In the present case, although we do not find any material on record which may suggest any malafides on the part of the Custodian yet we are convinced that by inviting Apollo to bid, vide letter dated 28th April, 2003, the Custodian did exceed the directions issued to him by the Special Court.  
(Emphasis supplied)

**Para 43**

In fact, by his letter dated 29th April, 2003 addressed by the Custodian to the notified parties, including the appellants, the right of the appellants to bring better offer was foreclosed by the Custodian, which evidently was without the permission of the Special Court.  
(Emphasis supplied)





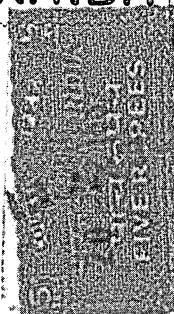
EXHIBIT-U

293

PPK/94

Certified Copy Charges Rs..... 9.00 -

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IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO

TRANSACTIONS IN SECURITIES) AT BOMBAY

MISC. APPLICATION NO. 194 OF 1993

Assistant Collector of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the  
Applicant.

Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi  
& Co; for Respondent No. 1.

Mr. Nihar Modi i/b M/s. Wadia Gandhi & Co. for Respondent  
No. 2.

Mr. H. D. Petit i/b M/s. Gagrat & Co. for Respondent No. 6.

Mr. Vipul Shukla i/b M/s. Dave & Co. for Respondent No. 7.

Mr. Amol Chaugule i/b Shah, Desai, Doijode and Phatarphekar  
for Respondent Nos. 8, 9, 10 and 11.

ALONG WITH

MISC. APPLICATION NO. 53 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the  
Applicant.

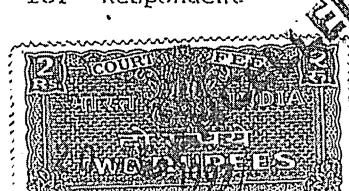
Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi  
& Co. for Respondent No. 1.

Mr. Amol Chaugule i/b Shah, Desai, Doijode and Phatarphekar  
for Respondent Nos. 6, 7, 8 and 9.

Mr. H. D. Petit i/b M/s. Gagrat & Co. for Respondent No. 10.

Mr. Vipul Shukla i/b M/s. Dave & Co. for Respondent No. 11.

Mr. P. N. Dixit i/b M/s. M. M. Legalventure for Respondent  
No. 20.



TRUE COPY  
Nay

Advocate: S. P.

Mr. P. Palkhiwala i/b T. Pooran for Respondent No. 25.

ALONG WITH

MISC. APPLICATION NO. 92 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian .... Respondent

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the  
Applicant.

Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi  
& Co. for the Respondent No. 1.

ALONG WITH

MISC. APPLICATION NO. 93 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents

Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the  
Applicant.

Mr. Atul Setalvad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi  
& Co. for Respondent No. 1.

Mr. Nihar Modi i/b Wadia Gandhi & Co. for Respondent No. 2.

Mr. Amol Chaugule i/b Shah, Desai, Doijode and Phatarphekar  
for Respondent Nos. 6, 7, 8 and 9.

ALONG WITH

MISC. APPLICATION NO. 424 OF 1994

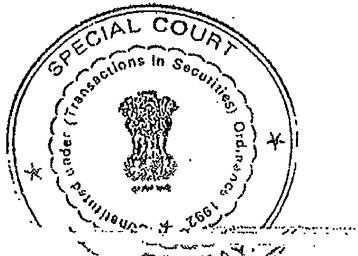
IN

MISC. APPLICATION NO. 297 OF 1994

Assistant Commissioner of Income-Tax .... Applicant

Vs.

Shri A. K. Menon, Custodian & Ors. .... Respondents



Mr. S. G. Mandrekar i/b Mr. L. K. Chatterjee for the Applicant.

Mr. Atul Selaiyad with Mr. G. R. Joshi i/b M/s. P. M. & Mithi & Co. for Respondent No. 1.

Mr. Nihar Modi i/b M/s. Wadia Gandhi & Co. for Respondent Nos. 2.

Mr. Amol Chaugule i/b M/s. Chaugule for Respondent Nos. 6, 7, 8 and 9.

Mr. H. D. Petit i/b M/s. Gagrat & Co. for Associated Cement Company.

Mr. P. N. Dixit i/b M/s. M. & M. Legalventure for I.T.C. Limited.

Mr. R. Murlidhar i/b M/s. Crawford Bayley & Co. for PEICO Ltd.

Mr. Vipul Shukla i/b M/s. Dave & Co. for Reliance Industries.

Mr. P. Palkhiwala i/b M/s. T. Pooran for Sesa Goa Ltd.

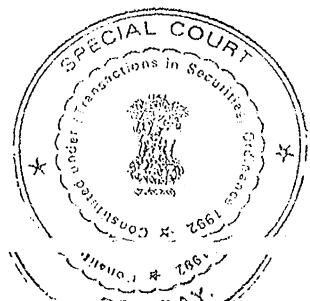
Mr. Dabhi i/b M/s. D. M. Harish & Co. for Nitiraj Construction.

CORAM: HON'BLE MR. JUSTICE  
S. N. VARIAVA,  
JUDGE, SPECIAL COURT.

13th March 1997.

ORAL ORDER :

1. By all these Applications the Income-Tax Department claims that shares which have been fully listed in Exhibits 'A' and 'B' to Misc. Application No. 424 of 1994 are attached assets. The Income-Tax Department claims that these shares are assets of the Harshad Mehta Group standing Benami in the names of the various persons whose names are set out in Exhibits 'A' and 'B' to Misc. Application No. 424



of 1994.

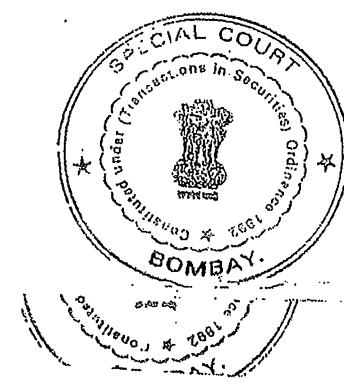
2. All the parties have been served by way of Public Notice. Some of the Companies whose shares are involved have been served. Mainly the shares are of A.C.C., I.T.C., Phillips India Ltd. (PEICO Ltd.) and Reliance. These Companies are present in Court today. All of them state that they waive service and that the Court should proceed to dispose off these Applications.

3. Needless to state that Mr. Chaugule appearing for Harshad Mehta Group willingly accepts that these shares belong to the Group.

4. Most of the concerned persons have not come before the Court in spite of the Public Notice. However some of them have filed separate Petitions or Applications wherein Orders had been passed or the Petitions/Applications are pending. Many others have undergone a process of certification which has been established by the Court. Many have applied for such certification and their Applications are still pending.

5. To the extent there is no dispute, I hereby declare that all the shares which are listed in Exhibits 'A' and 'B' to Misc. Application No. 424 of 1994 are attached properties under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 subject to the following:-

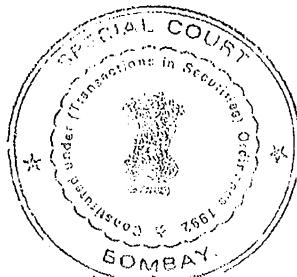
(a) That those shares which have already been declared or which may hereafter be declared as



not being attached or released from attachment shall be considered as not attached from the date of the respective Orders.

(b) Those shares which have already been certified or which may hereafter be certified by the Stock Exchanges within six weeks from today, pursuant to the procedure laid down by Order dated 19th October 1993, shall be considered to be released from attachment. It being clarified that hereafter the certification process can be undertaken only in respect of the Applications which have already been received till date. The Stock Exchanges are not at liberty to accept any further Applications for certification with effect from today. As stated above, the process of certification must be completed within a period of six weeks from today. It being clarified that if the process is not completed within six weeks, then after that date all concerned parties must apply to this Court for getting their shares released from attachment.

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.

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.

8. The Income-Tax Department is directed to publish this Order along with the list of shares annexed as Exhibits 'A' and 'B' to Misc. Application No. 424 of 1994 in the Times of India and Indian Express. The Notice to state that any person who wishes to apply for release of his shares from attachment, who has not already applied for certification or filed any Application/Petition in this Court can make an Application to this Court within a period of 16 weeks from the date of publication of the Notice.

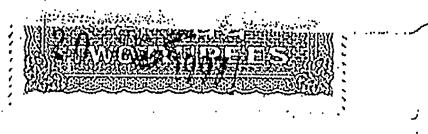
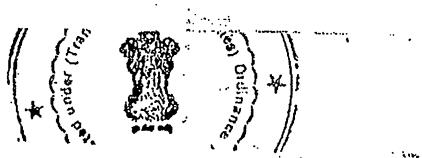
9. All these Applications stand disposed off accordingly.

10. Lastly the Court would be failing in its duty if it did not express its appreciation of the Income-Tax Departments' effort in having discovered these Benami assets.

\* \* \* \* \*

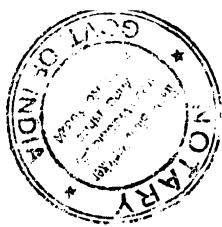
Applied on 20.3.97  
 Pages (6)  
 Examined by R.M.Kabir  
 Compared with M.R.Pava  
 Ready on 20.3.97  
 Delivered on 20.3.97

Certified to be a true copy  
Authored  
 for OFFICER ON SPECIAL DUTY 20/3  
 Office of the Special Court  
 Bombay.



Recd on 16/6/01 299  
After 2 weeks

EXHIBIT-V



## REPORT

Misc. Application No. 217 of 2010 In

Misc. Application No. 83 of 2006

Ketan Mathuradas Chatwani V/s. The Custodian & Ors.

Mr. Ketan Mathuradas Chatwani from Mumbai filed the aforesaid application in the Hon'ble Special Court praying for an order to lift / raise the attachment on 225 shares and to declare the applicant as bonafide purchaser / owner of the said 225 shares of Hero Honda Motors Ltd., along with other prayers. The Hon'ble Special Court by order dated 04/07/2006 referred to the Officer on Special Duty Mumbai for Certification. The applicant since failed to submit the papers for verification, the Hon'ble Court by order dated 08/11/2006 dismissed the matter with liberty to get it restored as and when the applicant is in a position to produce the documents in support of his claim.

The applicant Mr. Ketan Mathuradas Chatwani thereafter filed Misc. Application No. 217 of 2010 pleading for an order for restoration of Misc. Application No. 83 of 2010 and to allow in terms of prayer clauses. The matter when came up for hearing on 06/11/2011, the Hon'ble Special Court restored the application and referred for certification to the Officer on Special Duty Custodian Mumbai. The applicant in this regard visited the Custodian's office and produced the following papers.

- (a) Xerox copy of share certificates and Transfer deeds for 225 shares covered by share certificate nos. 307920 – 307925.
- (b) Xerox copy of clients settlement for net status Bill for settlement for the period from 30/07/1997 – 06/08/1997.

TRUE COPY

My

/ Applicant

- (c) A Xerox copy of share transfer agency M.C.S. & Ltd., New Delhi letter dated 13/05/1997 addressed to the Stock Holding Corporation of India Ltd., intimating their objection for transfer of the shares.

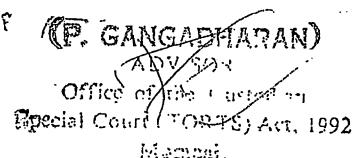
The documents produced by the applicant have been verified.

The applicant has stated in his application that he had purchased approximately 4000 shares of Respondent No. 2 Company i.e. Hero Honda Motors Ltd. On or about 5<sup>th</sup> December 1996 from the open market @ Rs. 197-50 and made payment of consideration for a Sum of Rs. 5,50,000/- (should be Rs. 7,90,000). The name of the broker from whom the said shares purchased is not mentioned in the application and also not supported with original bill or Contract Note in this regard. However from Banks Statement of account of City Bank submitted in support of payment consideration for the transaction, it is found that the payment has been made to the broker Mr. Piyush. B. Virani (a broker from Bombay Stock Exchange) in whose favour the cheque ~~had been~~ issued. He further states that out of 4000 shares of Hero Honda Ltd. Purchased, 225 shares are found registered in the name of Bharti Ben Sheth with Folio H.H. 137374. (a Benami Holder of Harshad S. Mehta Group).

The applicant further states that he sold the shares in the open market through Respondent No. 4 i.e. Shreyas & Co. a registered broker of National Stock Exchange from Chennai (and Purchased on behalf of Resp. No. 7 SBI Capital Market) Thereafter a quantity of 225 shares came back as "Bad Delivery" and the cost of the shares were debited from applicant's Bank A/c. The applicant since made good for the bad delivery, he claims the ownership for the 225 shares of Hero Honda Ltd and covered by the application.

In this regard it may be stated that the Income Tax authorities filed Misc. Application No. 297 of 1994 against the Custodian & Ors., Praying for an order for

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**P. GANGADHARAM**  
 ADVISOR  
 Office of the Counselor  
 Special Court (TORTS) Act, 1992  
 Mumbai.

attachment of the shares mentioned in column 4 of Annexure A to the application. The Hon'ble Special Court in a combined order dated 13/03/1997 in Misc. Application No. 194 of 1993 along with Misc. Application No. 53 of 1994, along with 92 of 1994, 93 of 1994 along with Misc. Application No. 424 of 1994 in Misc. Application No. 297 of 1994 declared that the shares are attached property of Harshad S. Mehta. Accordingly a quantity of 900 shares of Hero Honda Motors Ltd., held in the name of Bhartiben Sheth under Folio no. 137374 were attached being the properties of Harshad S. Mehta. In this regard it may also be stated that on a request made to the company to furnish the details for the Benami shares of Harshad S. Mehta & Group Folio wise the company by letter no. HML/Sect/GP/CUS/111B:98 dated 04/12/1998 furnished the Complete details for the Benami Shares Folio wise. A copy of Company's letter together with the statement for the shares held under Folio No. 0137374 in respect of Bharatiben R. Sheth is enclosed. It will be seen from the statement enclosed that the 225 shares covered under Certificate nos. 308089 - 302094 are found reflected in the statement. It appears that 225 shares covered by the present application and held by the applicant are the bonus shares declared by the company at the ratio of 1 : 4 during the year Oct., 1994. Therefore said 225 shares Bonus Shares issued on the 900 Base shares at the ratio of 1 : 4 on Oct., 1994 form part of the attached assets. It also appears that the Company issued the Bonus shares of 1994 directly to the Benamidars in spite of the Custodian instruction to the Company for the attachment on the shares vide letter no. 4150/CUS/BOM/ATT/ma530 OF 94/987(kw) dated 19/14/03/1994, copy enclosed. It appears that the Benamidar sold these shares in the openmarket.

It may also state that the applicant Mr. Ketan Mathordas Chatwani failed to prove the bonafide of the purchased with proper and sufficient documents like Bill / Contract Note, Documents in support of payment Delivery Note, a copy of quotation from Mumbai Stock Exchange. In view of the short comings Officer of Special Duty Custodian is unable to clear the transaction in the Certification process.

Submitted for orders please.

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*[Signature]*  
31-1-2011  
**G. GANGADHARAN**  
Adv. 334  
Office of the Custodian  
Special Court for S. S. Act, 1992  
Mumbai.



BEFORE THE SPECIAL COURT (CONSTITUTED UNDER SPECIAL COURT TRIAL OF  
OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992 AT BOMBAY

MISC. APPLICATION NO. 217 OF 2010

IN

MISC. APPLICATION NO. 83 OF 2006

Ketan Mathurdas Chatwani

Applicant

Versus

The Custodian & Ors.

...Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO.2, NAMELY, M/S. HERO

HONDA MOTORS LIMITED

I Mayank Goel, Sr. Manager – Legal and Secretarial of Respondent No.2 Company having its registered office at 34, Community Centre, Basant Lok, Vasant Vihar, New Delhi - 110 057, do hereby solemnly affirm and state as under:-

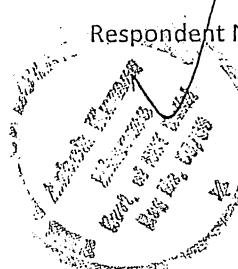
I say that, I have gone through the copy of third Misc. Application taken out by the Applicant and Annexures therewith filed by the Applicant and in reply to the above Application on behalf of Respondent No.2, it is submitted as under :-

1. I say that being Sr. Legal Manager of Respondent No.2 company, I am conversant with the facts of the case and I am competent and authorized to swear the present affidavit on behalf of Respondent No 2 and from the records of the Respondent No.2, I submit as under:

TRUE COPY

My

\_\_\_\_\_  
Mayank Goel / Applicant



2. I say that unless otherwise expressly admitted herein all the averments made and contentions raised by the Application in the application under reply are wrong and denied as if each one of the same has expressly been traversed and refuted herein. I further say that the Applicant had taken out the first Misc. Application No.83 of 2006 allegedly claiming the 225 shares of Hero Honda Motors Ltd. and for lifting the attachment and claiming other benefits on the same which was dismissed on 08.11.2006 by this Hon'ble Court, as the counsel for the custodian stated to the Hon'ble Court that no documents were produced by the Applicant even after 4 chances were given. Accordingly, liberty was given to the Applicant to get it restored as and when he is in a position to produce the documents in support of his claim. Hereto annexed and marked Exhibit "A" is the copy of the Order dated 08.11.2006 passed by His Lordship Hon'ble Mr. Justice S. K. Shah in the Misc. Application No.83 of 2006.
3. I further say that, the Applicant had taken out another Misc. Application No.198 of 2010 after a period of more than 4 years for seeking the order against the Custodian and the Company for the reliefs as prayed therein on the shares allegedly claimed at Annexure "A" which are 225 shares as claimed by the Applicant in his earlier Application No.83/2006. I say that, the Applicant has also sought other prayers as more particularly stated in the Misc. Application 198/2010.
4. I say that, the Misc. Application No.198 of 2010 which was listed before this Hon'ble Court on 18.11.2010 in which the Counsel for the Applicant sought leave of this Hon'ble Court to withdraw the Misc. Application No.198 of 2010 with liberty to file appropriate application. Hereto annexed and marked Exhibit "B" is the copy of the Order dated 18.11.2010 passed by His Lordship Hon'ble Mr. Justice V. M. Kanade in Misc. Application No. 198/2010.
5. I say that, the above Application No.217 of 2010 came up before His Lordship Hon'ble Mr. Justice V. M. Kanade on 06.01.2011 and His Lordship was pleased to recall the order dated 08.11.2006 and matter is referred to O.S.D. Mumbai and

adjo

29,

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adjourned the above matter for 8 weeks and directed the Respondent No.2, 28,  
304  
9, 30, 31 to file their Affidavit in Reply before the next date. Hereto annexed  
and marked Exhibit "C" is the copy of the Order dated 06.01.2011 passed by His  
Lordship Hon'ble Mr. Justice V. M. Kanade in above Misc. Application No.217 of  
2010.

6. I say that, the Applicant inspite of the orders passed by this Hon'ble Court on 08.11.2006 till date has not produced the documents as more particularly stated therein and therefore the present application filed by the Applicant is not maintainable in law and deserves to be dismissed in limine.
7. Without prejudice to above and fully relying on the same, para-wise reply to the Application is as under :-

(i) With reference to Paragraph 1 to 4 of the above Misc. Application I say that the same need no comments from the answering Respondent to the extent what are matters of record.

(ii) With reference to Paragraph 5 of the above Misc. Application, I say that the Respondent No.3 was the Registrar and Share Transfer Agent of the Respondent No.2 upto 31.05.2007 and presently the Registrar and Share Transfer Agent of Respondent No.2 company is M/s. Karvy Computershare Pvt. Ltd. having its address at Plot No.17-24, Vittal Rao Nagar, Madhapur Hyderabad 500 081 which is a necessary and proper party to the present proceedings and as such I say that it is incumbent upon the Applicant to implead the aforesaid M/s. Karvy Computershare Pvt. Ltd. as one of the Respondents.

(iii) With reference to Paragraph 6 to 8 of the above Misc. Application, I say that this Respondent is not aware of the averment made in the Paragraph under reply and therefore no comment is required in respect thereof. This Respondent puts to the Applicant to strict proof thereof.

(iv) With reference to Paragraph 9 of the above Misc. Application, I say that pursuant to the intimation given by Respondent No.1 vide its letter

No.415/CUS/ATT/MA-53 of 94/906 (KW) dated 09.03.1994, the above shares were formed part of corporate benefits on the benami holding of Harshad S. Mehta Group and Respondent No.2 marked "stop transfer" of the shares with other corporate benefits.

- (v) With reference to Paragraph 10 of the above Misc. Application, I say that the alleged claim of the Applicant is against the Respondent No.7 to 25 and therefore no comment is required in respect thereof.
- (vi) With reference to Paragraph 11 of the above Misc. Application, I say that no comment is also required, as the transaction is between the Applicant and Respondent No.26. I hereby submit that Respondent No.2 has acted in accordance with law in the matter.
- (vii) With reference to Paragraph 12 of the above Misc. Application, I say that, no comment is required and this Respondent puts the Applicant to strict proof thereof.
- (viii) With reference to Paragraph 13 of the above Misc. Application, I say that I categorically deny that, the Respondent No.2 has made any false submission as alleged. I hereby state that, the answering Respondent has acted on the basis of the letter dated 9.03.1994 issued by the Respondent No.1 and acted bona fide in the matter.
- (ix) With reference to Paragraph 14 and 15 of the above Misc. Application, I say that so far as this Respondent is concerned no comment is required, however, the Application is put to strict proof thereof.
- (x) With reference to Paragraph 16 of the above Misc. Application, I say that the Applicant of his own showing that his claim lodged with the Investors Grievance Cell of Bombay Stock Exchange has also insisted for Contract Notes and this also indicate the weakness of the baseless claim of the Applicant. I therefore say and submit that, the allegations made by the Applicant against the Respondent No.2 Company and its officials are false and baseless.

- (xi) With reference to Paragraph 17 of the above Misc. Application, I say that the Applicant is making false allegations against the Respondent No.2 Company and its officials without proving his alleged claim of the shares. I categorically deny that any false affidavit was filed by Mr. Ilam C. Kamboj, as alleged. I further say that, the Applicant has not annexed the basic documents of alleged purchase of shares by him and his making false and baseless allegations against Respondent No.2 and its officers is highly untenable which needs to be curbed by this Hon'ble Court by passing suitable orders preventing the Applicant from making such false and baseless allegations and for making such type of allegations, the Applicant deserves to be dealt with strictly by this Hon'ble Court. I further say that the claim to the shares being made by the Applicant on the alleged ground that nobody else has claimed till date without producing requisite documents for such claim being made by him, is highly untenable and misconceived on facts and in law. I also say that in the above Misc. Application nothing specifically has been mentioned about the alleged claim of the Applicant and therefore the application taken out by the Applicant is liable to be dismissed with cost.
- (xii) With reference to Paragraph 18 of the above Misc. Application, I say that the Respondent No.1 has never informed the facts as stated in the Paragraph under reference to the Respondent No.1. I put the Applicant to strict proof thereof. I say that the Respondent No.2 has acted as per the letter dated 23.03.1994 sent by the Respondent No.1. I say that the Applicant has not even annexed the letter referred in Paragraph under reference to the above Misc. Application in the absence of the answering Respondent is not in a position to make any comment thereon and the answering Respondent reserves its right to make suitable reply to the said letter dated 29.06.2010 as and when make available to the

- answering Respondent. In the mean time I deny all the allegations made by the Applicant in a Paragraph under reference.
- (xiii) With reference to Paragraph 19 of the above Misc. Application, I say that all the allegations made by the Applicant are false and baseless. I say that, the Applicant has not produced till date any valid Contract Note and/or proof of purchase of the shares of the Respondent No.2 and is pressurizing the Respondent No.2 without proving or having any bona fide claim on the shares in question.
- (xiv) With reference to Paragraph 20 of the above Misc. Application, I deny all the allegations made by the Applicant and I repeat and reiterate that the stop transfer was marked on the basis of instructions issued by the Respondent No.1 and this Respondent No.2 will abide by the order by this Hon'ble Court.
- (xv) With reference to Paragraph 21 of the above Misc. Application, I categorically deny that, Mr. Kamboj has filed any Affidavit on the basis of which any Show Cause Notice for contempt is required to be issued. I further say that, the earlier Affidavit was filed on the basis of records available with the Respondent No.2 and stop transfer were marked on the shares on the basis of letter dated 09.03.1994 issued by the Respondent No.1 and therefore the allegations made in Paragraph under reference is totally false and baseless.
- (xvi) With reference to Paragraph 22 to 26 of the above Misc. Application, I deny all the allegations made by the Applicant except as to what are matters of record and Respondent No.2 will abide by the order of this Hon'ble Court.
- (xvii) With reference to Paragraph 27 of the above Misc. Application, I categorically deny that no period of limitation is prescribed. I also categorically deny that, the Respondent No.2 has wrongfully withheld the shares in question. I say that the alleged claim of the Applicant is barred

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by law of limitation. I crave leave to file another Affidavit after filing of  
any Affidavit by the Applicant.

8. In the circumstances I therefore say and submit that the above Misc. Application filed by the Applicant is liable to be dismissed in limine with cost and it is prayed accordingly.

Dated this 2<sup>nd</sup> day of April, 2011

For Hero Honda Motors Limited

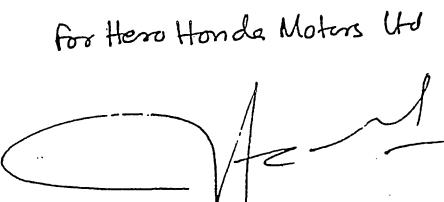
  
Authorized Signatory  
Respondent No.2

For Akshar Laws,

  
Arun H. Mehta,  
(Proprietor)  
Advocates for the Respondent No.2

VERIFICATION

I, Mr. Mayank Goel, an Adult Indian Inhabitant, Sr. Manager - Legal and Secretarial of the Respondent No.2 above-named, do hereby solemnly declare that what is stated in the Reply is true to my own knowledge based on records of Respondent No.2 company and the submissions made are true to my belief upon advice received.

  
for Hero Honda Motors Ltd

Solemnly affirmed at )

Dated this 2<sup>nd</sup> day of April, 2011 )

Before me,

  
Authorised Signatory  
Respondent No.2

For Akshar Laws,

  
for Arun H. Mehta,  
(Proprietor)  
Advocates for the Respondent No.2

  
ATTESTED  
Notary Public State Regd

201  
2/4/11

2/4/11





## ASHWIN MEHTA

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

30<sup>th</sup> September 2020

Ms. Neerja Sharma  
 Company Secretary & Chief Compliance Officer,  
 Hero MotoCorp Ltd.  
 34, Community Centre,  
 Basant Lok, Vasant Vihar,  
 New Delhi 110 057.  
 secretarialho@heromotocorp.com

Dear Madam,

**Re: Recovery of shares attached u/s 3(3) of the Trial of Offences Relating to Transactions in Securities Act, 1992 (Torts Act) being shares belonging to notified entities transferred by your company to Investor Education Protection Fund (IEPF) in violation of Sec.3(4) of the Torts Act and in violation of law laid down by Hon'ble Special Court under order dated 18.08.2016 in MA 24 of 2016 in MA 244 of 2003 filed by the Custodian against the Chairman of the Committee of IEPF.**

1. I am addressing this letter as an Advocate representing notified entities viz. late Shri Harshad Mehta represented by his sole legal heir, Smt Jyoti Mehta and Smt Pratimca H. Mehta as also other notified members in my family collectively referred to as "**Mehtas**" who have asked me to address you as under:
2. That your company (previously Hero Honda Ltd.) at all times have been aware of notification of Mehtas including above 2 entities who all came to be notified by the Custodian u/s 3(2) of the Torts Act on 08.06.1992 under a Gazette Notification, a copy of which is enclosed at **Annexure A**. The above was very widely reported in the media. You would be aware that Mehtas were holding very large quantities of shares of your company.
3. That thereafter the Custodian also issued a Public Notice on 10.09.1992 informing the public at large about the names of persons notified by him and the effect of such notification under the provisions of the Torts Act and the said Public Notice is enclosed at **Annexure B**. That even the BSE issued circulars to all listed companies on 27.07.1992 and 09.01.1993 in respect of attached shareholdings of notified persons, copies of which are also enclosed at **Annexure C**.

TRUE COPY

For / On behalf of / As per instructions of / Applicant

4. That besides above, the Custodian has also entered into correspondence with all the companies calling upon them to pay all the accruals on the attached shares to the Office of the Custodian or directly into bank accounts of notified entities under intimation to the Custodian and in compliance of it, your company has made payments of dividends since 08.06.1992 and other accruals as per instructions of Custodian. Thus, your company is fully aware of the provisions of the Torts Act.
5. Being aggrieved by the fact that the companies ever since their notification on 08.06.1992 were only corresponding with the Custodian but not discharging their obligations towards the notified entities who were not divested of the ownership of their shareholdings, letters and notices have been addressed to all leading companies by Mehtas on 12.03.2007, 26.05.2011, 25.03.2017, sample copies of which are enclosed at **Annexure D (Colly.)**. Similar letter was also addressed to your company. The notified entities sought details of shareholdings and payment of accruals on them but your company has not met with the legitimate requests because of which the non-payment of accruals and any violation committed by your company in dealing with their attached shares is not being immediately discovered by the Mehtas. It is in the aforesaid background that your company remains liable for all costs and consequences for dealing with their attached shares and accruals in violation of the Torts Act and the provisions of the Companies Act and SEBI Rules & Regulations protecting the interest of the investors. In the present case, your company has transferred 3,875 shares belonging to late Shri Harshad Mehta and Smt Pratima Mehta into IEPF.
6. Besides above, the Custodian also issued Public Notice in newspapers for companies on 26.11.1996 calling upon them to disclose in a pre-determined format complete details of shareholding of the notified entities and accruals paid on them and a copy of this notice is enclosed at **Annexure E**. That your company is bound to have complied with the above Public Notice and given reply to the Custodian for reconciling the shareholdings of all the notified entities.
7. That the Mehtas are also informed by the Custodian through proceedings in MA 273 to 279 of 2007 that the Custodian on 15.06.2007 had also called upon the companies to disclose the facts relating to their shareholdings and accruals paid on the same and copy of a sample letter is enclosed as **Annexure F**. The above letter of Custodian would also have been replied to by your company. Thus your company is fully familiar with the provisions of the Torts Act and requirements of compliance thereunder.
8. That despite above, it was earlier discovered by Smt Rasila Mehta and Smt Rina Mehta who had large shareholdings in your company that they were not paid the following dividends by your company:

- a. Your company failed to pay dividend to Smt Rasila Mehta of Rs.1.60 per share on 72,249 shares for year ended 31.03.1998.
- b. Your company failed to pay dividends of Rs.1,44,49,800/- on 7,22,490 shares of Smt Rasila Mehta and Rs.1,24,75,000/- on 12,47,500 shares of Smt Rina Mehta for year ended 31.03.2004.
- c. Your company failed to pay dividend of Rs.57,80,000/- on 2,89,000 shares of Smt Rasila Mehta and Rs.99,87,500/- on 4,79,300 shares of Smt Rina Mehta for year ended 31.03.2006.
- d. Your company failed to pay dividend of Rs.14,09,13,000/- on 2,89,000 shares of Smt Rasila Mehta and Rs.84,89,375/- on 4,99,375 shares of Smt Rina Mehta for year ended 31.03.2007.
- e. Your company failed to pay dividend of Rs.1,42,14,375/- on 7,48,125 shares of Smt Rina Mehta for year ended 31.03.2008.
- f. Your company failed to pay dividend of Rs.57,80,000/- on 2,89,000 shares of Smt Rasila Mehta and Rs.99,87,500/- on 4,99,375 shares of Smt Rina Mehta for year ended 31.03.2009.

Thus, an amount of Rs.3,10,38,398/- (Rs.3.10 Crores) and Rs.5,51,53,750/- (Rs.5.52 Crores) remained unpaid by your company respectively to Smt Rasila Mehta and Smt Rina Mehta covering several years which facts were discovered by them and letters were addressed to your company and the Custodian on 11.11.2010 and 21.12.2010 and even the Custodian took up the matter with your company and your Share Transfer Agent (STA) consequent to which the above amounts were recovered. In fact, Smt Rasila Mehta and Smt Rina Mehta also filed MA 87 of 2011 before Hon'ble Special Court to seek payment of interest on unpaid dividends and now this issue is pending before Hon'ble Supreme Court in Civil Appeal filed by them being CA 9880 of 2016.

- 9. That in the aforesaid proceedings in MA 87 of 2011 it was disclosed by your company that even the dividend of Rs.1,19,59,150/- belonging to Shri Harshad Mehta was inadvertently remitted by your company to IEPF and for which a letter was addressed by your company on 09.07.2012 to seek refund and payment to Custodian and a copy of this letter is enclosed at **Annexure G**. That the Hon'ble Special Court passed an order on 06.09.2013 in Review Application No.35 of 2013 filed in MA 87 of 2011 by the Ministry of Corporate Affairs wherein it was directed to refund the above amount of Rs.1,19,59,150/- to Harshad Mehta's account which was complied with. However, Smt Jyoti Mehta filed an Application before Hon'ble Special Court being MA 18 of 2014 to seek interest @ 24% p.a. on unpaid dividend.

10. I say that in regard to transfer of dividends and shares to IEPF, the Hon'ble Special Court has since then laid down the law under an order dated 18.08.2016 in MA 24 of 2016 in MA 244 of 2003, a copy of which is enclosed at **Annexure H**. The Custodian filed the above Application wherein it is laid down by the Hon'ble Special Court that the companies have violated the provisions of the Torts Act by transferring attached shares and accruals into IEPF without permission from Hon'ble Special Court and were therefore guilty of dealing with the attached assets. The above order has not been challenged by the IEPF and therefore the law laid down therein has become binding on all companies.
11. Now, my aforesaid clients are aggrieved that despite having complete awareness, your company has once violated the provisions of the Torts Act and transferred the following 3,875 attached shares of Hero MotoCorp to IEPF:

<b>SR. NO.*</b>	<b>FOLIO NO.</b>	<b>NAME OF SHAREHOLDER</b>	<b>NO. OF SHARES</b>
1432	HML0124720	HARSHAD SHANTILAL MEHTA	2,000
1449	HML0125774	HARSHAD SHANTILAL MEHTA	625
1536	HML0132001	PRATIMA H. MEHTA	1,250
<b>TOTAL</b>			<b>3,875</b>

\* This represents the Serial No. disclosed in the website of your company disclosing above particulars.

12. Thus, your company is found to be regularly violating Sec.3(4) of the Torts Act by dealing with the attached shares and accruals held in your company by Mehtas and have also not been meeting their legitimate requests for providing them the details of their shareholdings and payment of accruals on them. Your attention is drawn to Sec.13 of the Torts Act in terms of which the provisions of the Torts Act overrides on the provisions of Indian Companies Act and law and regulations governing transfer of any shares into IEPF account. In fact, through a number of judgments the Hon'ble Supreme Court has laid down the law that the Torts Act being a Special Statute and in most cases being a later statute, its provisions will have overriding effect on all other statutes. Reliance is placed on the following judgments of Hon'ble Supreme Court:

- (i) Solidaire India Ltd. V/s. FFL reported as **(2001) 3 SCC 71**(Paras 7 to 11)
- (ii) Virender Saigal & Co. V/s. A. K. Menon & Another reported as**(2003) 12 SCC 777** (Para 13)

- (iii) T.R.O. V/s. Custodian & Ors reported as **(2007) 7 SCC 461**(Para 7)
- (iv) BOI V/s. Ketan Parekh reported as **(2008) 8 SCC 148** (Paras 13 to 18, 22, 28)

13. That in view of the above settled law, your company has become liable to forthwith make good the subject 3,875 shares and all accruals thereon. Your company and the Custodian who has also failed in discharging his statutory duties are called upon to recover the shares and accruals, if any, back from IEPF by urgently taking steps in that regard. You are also called upon to explain the reasons for dealing with the attached assets despite knowing the provisions of the Torts Act and having such adverse history as per the facts disclosed above.
14. That my clients had occasion to peruse through the list of particulars of shares transferred by your company into the said IEPF account and it was seen therefrom that large quantities have been transferred under the head of "Abeyance Cases", the particulars of which are given below:

<b>Sr. No.</b>	<b>Folio No.</b>	<b>Name of Shareholder</b>	<b>No. of shares</b>
1876	HML0888888	Abeyance Cases	1,86,040
1882	HML0999999	Abeyance Cases	18,750
<b>TOTAL</b>			<b>2,04,790</b>

15. Since Mehtas have suffered several orders passed by CBI, Income Tax department, Custodian and BSE to keep their shares and payment of accruals in abeyance, therefore you are requested to disclose the names of entities and other particulars in respect of aforesaid 2,04,790 shares to Custodian and my clients to enable us to ascertain whether any of the above shares belong to Mehtas.
16. In view of what is stated above, you are called upon to immediately disclose:
  - a. Why the aforesaid 3,875 shares have been transferred by your company under the IEPF despite knowing them to be attached properties u/s 3(3) of the Torts Act?
  - b. Kindly provide complete reconciliation in respect of attached shareholdings of the Mehtas and payment of dividends on all accruals on them from 08.06.1992 to which information they are entitled to because by their notification they have not been divested of the ownership of their shareholdings but the Custodian is only

- appointed to manage the attached assets as per the orders of Hon'ble Special Court.
- c. That several shares in your company belonging to Mehtas came to be registered in names of other entities but later on they were declared by Hon'ble Special Court as benami shares of Mehtas. You are called upon to provide information in respect of such shareholdings and payment of accruals on them and that none of the shares or dividends in respect of such shareholdings have been paid over to the Government or deposited in IEPF.
  - d. That in case you fail to secure the above shares and transfer them back to the accounts of my clients managed by the Custodian, your company will remain liable for all costs and consequences that they may suffer due to violations committed by your company which would include claim for damages.
17. Please note that I am also forwarding a copy of this letter to the Custodian to proceed to recover the aforesaid 3,875 shares and also take appropriate steps to protect the interest of my clients at the earliest and if need be to file an application before Hon'ble Special Court to seek full and proper disclosure in regard to the attached shareholdings of Mehtas so as to satisfy them that no further recovery is pending from your company in respect of their shareholdings and accruals paid on them.

Yours truly,

**(ASHWIN MEHTA)**

**Advocate**

**Encl:** As above

**Cc:** Ms. Molly Sengupta, Director, Office of the Custodian, Nariman Bhavan, Mumbai 400 021. [custodian.mumbai@yahoo.com](mailto:custodian.mumbai@yahoo.com)

- It has been a grievance of the Mehta family which is well-documented in previous correspondence and proceedings that the Office of Custodian has been grossly mismanaging their attached assets and despite the fact that a number of times the Custodian has been called upon to carry out a reconciliation of their shareholdings and account for all the shares and accruals belonging

to them but yet the Custodian has deliberately not been doing so even though this is an elementary requirement to properly manage their attached shares and accruals thereon. That because of deliberate failures the third parties have been illegally dealing with their attached properties and their recoveries are not taking place. In fact, such unrecovered shares and accruals are not being accounted for in the assets of notified entities and they are being penalized by your office for no fault of theirs.

- That Custodian has on oath committed before Hon'ble Special Court that all the attached assets belonging to notified entities are accounted for and duly recovered and that the Custodian has secured the information from companies and carrying out a reconciliation in that regard. However, the above instances disprove your contentions. In fact, no reconciliation of shareholdings has never been carried out by your office during past 28 years nor any results placed before Hon'ble Special Court. In fact, when notified entities sought to carry out such a reconciliation, you have advised companies to supply information to Mehtas only under advice to Custodian and discouraged us from doing such an exercise.
- It is on account of your gross failures that even after 28 years the shares have not been taken charge of nor their accruals recovered and now such instances are coming to light of pending recovery of shares only because of ceaseless efforts being made by Mehtas to make up for the gross failures of Custodian's office.
- In the facts and circumstances set out above, you are called upon to recover the subject 3,875 shares of Hero MotoCorp or any further shares that may be pending to be recovered from Hero MotoCorp with accruals thereon without any loss of time. You are called upon to even find out from IEPF if any further shares have been transferred to them by Hero MotoCorp under the shares in 'abeyance category' or any of the benami shares or by any other company since every now and then facts of such pending recoveries keep emerging proving complete negligence and mismanagement by the Office of the Custodian.

**Cc:** Kfin Technologies Pvt. Ltd. (formerly known as "Karvy Fintech Pvt. Ltd."), Selenium, Tower B, Plot No.31 & 32, Financial District, Nanakramguda, Serlingampally Mandal, Hyderabad 500 032 [einward.ris@k fintech.com](mailto:einward.ris@k fintech.com)

- Your organisation is fully familiar with the provisions of the Torts Act and the requirements thereunder since you have been interacting with the Custodian on a regular basis in respect of shareholdings of notified entities in a number of companies for

which you are acting as an STA. You are therefore called upon to meet the above legitimate request of my clients.

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INDEX

<b>Annexure</b>	<b>Particulars</b>
A	Gazette Notification issued by Custodian on 08.06.1992 notifying Mehtas.
B	Public Notice dated 10.09.1992 issued by Custodian regarding Notification.
C	BSE Circulars issued to all listed companies on 27.07.1992 and 09.01.1993 in respect of attached shareholdings of notified persons.
D (Colly)	Sample copies of identical letters and notices addressed to leading companies by Mehtas on 12.03.2007, 26.05.2011 and 25.03.2017 where they had shareholdings.
E	Custodian issued a Public Notice in newspapers for companies on 26.11.1996 calling upon them to disclose in a pre-determined format complete details of shareholding of the notified entities and accruals paid on them.
F	Copy of sample letter by Custodian dated 15.06.2007 addressed to companies calling upon them to disclose the facts relating to their shareholdings accruals paid on the same.
G	Copy of letter addressed by Hero MotoCorp dated 09.07.2012 to IEPF for refund of Rs.1,19,59,150/- belonging to Shri Harshad Mehta wrongly deposited.
H	Copy of Order of Hon'ble Special Court dated 18.08.2016 in MA 24 of 2016 in MA 244 of 2003 laying down the law that companies should not deposit shares and dividends under IEPF.



2/11/92

# भारत का राजपत्र

## The Gazette of India

असाधारण  
EXTRAORDINARY

भाग III—भाग 4  
PART III—Section 4

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 23]

नई विल्ली, सोमवार, जून 8, 1992/ज्येष्ठ 18, 1914

No. 23]

NEW DELHI, MONDAY, JUNE 8, 1992/JYAISTHA 18, 1914

इस भाग में भिन्न पृष्ठ संख्या वी जाती है जिससे कि यह अलग संकालन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

त्रिष्णुप न्यायालय (प्रतिभूति संव्यवहार संबंधी अपराध विचारण) अध्यादेश,  
1992 की धारा 3(1) के अन्तर्गत स्थापित अधिकारक का कार्यालय  
अधिसूचना

नई विल्ली, 8 जून, 1992

सं. अधिकारक/1/92—भारत सरकार, वित्त मंत्रालय (बैंकिंग  
प्रभाग) द्वारा जारी तारीख 8 जून, 1992 की अधिसूचना सं. 6/2/92-  
सत्र(ii) द्वारा मै. ए.डे. बेनन, वित्त न्यायालय (प्रतिभूति संव्यवहार  
संबंधी अपराध विचारण) अध्यादेश 1992 की धारा 3(2) के अन्तर्गत  
अधिकारक नियुक्त किया गया है। मै. नियन्त्रित नामों को, उनका  
अध्यादेश की धारा 3(2) के द्वारा मूले दी गई शक्तियों के प्रत्यर्गत  
मूले दी गई जामकामी के अधार पर, यह सुनिश्चित कर लेने के पश्चात्  
कि नियन्त्रित अवधि 1 अर्ब्द, 1991 के पश्चात् हथा उक्त अध्यादेश जारी  
हुने की तारीख को और उसके पहले, प्रतिशूलियों के संव्यवहार से संबंधित  
प्रभाराघ में समिलित पाये गये हैं, भारत के राजपत्र में अधिसूचित  
करने का आदेश देता हैः—

1. मैसर्ज हर्षद एस. मेहता,
2. मैसर्ज शशिकल एस. मेहता,

3. मैसर्ज जे. एच. मेहता,
4. श्री हर्षद एस. मेहता, पुत्र श्री शान्तिनाल मेहता
5. श्री शशिकल एस. मेहता
6. श्री हिनेश एस. मेहता
7. श्री शुभीर एस. मेहता
8. श्रीमति ल्योटि एच. मेहता, कम सं. 4 की पत्नी
9. श्रीमति दीपिका प. मेहता, कम सं. 5 की पत्नी
10. श्रीमति प्रसिद्धा एच. मेहता, कम सं. 6 की पत्नी
11. हर्षद एस. मेहता, हिन्दू संयुक्त परिवार
12. प्रशिक्षण एस. मेहता, हिन्दू संयुक्त परिवार
13. हितेश एस. मेहता, हिन्दू संयुक्त परिवार
14. मैसर्ज सनराईज, एन्टरप्राइजेज
15. गोमोर रिसर्च एंड एसेंट्स मैनेजमेंट लि.
16. गोमोर लीजिंग एंड इन्वेस्टमेंट प्रा. लि.
17. गोमोर एक्सपोर्ट प्रा. लि.
18. आतूर होटेल्स प्रा. लि.
19. हर्ष इस्टेट्स प्रा. लि.

20. वांचे इंडियन प्रा. लि.
21. अंगिन इंवेस्ट प्रा. लि.
22. फार्मूल होल्डिंग प्रा. लि.
23. ट्रेपर होल्डिंग प्रा. लि.
24. बैलेट होल्डिंग प्रा. लि.
25. एमिनेंट होल्डिंग प्रा. लि.
26. परस्थी होल्डिंग प्रा. लि.
27. जेस्ट होल्डिंग प्रा. लि.
28. टोपज होल्डिंग प्रा. लि.
29. विवार्ता होल्डिंग प्रा. लि.

उपरोक्त के पासे, मुझे दी गई जास्तकारी के प्रत्याशार निम्न हैः—

- आफिस:**
1. लेन्टिन चैम्बर्स,  
4 एसी मंजिल,  
वलाल स्ट्रीट, फॉर्ट,  
मुम्बई-400023
  2. 1205/6, नेकर चैम्बर्स 5,  
नरीमन प्लाईंट,  
मुम्बई-400 021

- आवास:** माधुरी,  
एनी बैसेस्ट रोड,  
वली, मुम्बई-400 025

- 30. श्री घण्टय वर्मसिंह नरोत्तम**  
(श्री घरमसिंह नरोत्तम के पुत्र)  
पता : 1. टेबल नं. 1, पूष्ठ मार्ग  
फाला विल्डिंग, भाऊद ए  
फॉर्ट, मुम्बई, 400 023  
2. रिजेंट चैम्बर्स  
2 एसी मंजिल  
208, अमनालाल बजाज मार्ग,  
नरीमन प्लाईंट, मुम्बई-400 020

- आवास:** 186, वारकर रोड  
मालावार हिल्स,  
मुम्बई-400 006

- 31. श्री विहेन प्रसान खेलोल,**  
(श्री प्रसान जयन्तीलाल वलाल के पुत्र)

- पता : आफिस: कमरानं 11/2,  
वास्वे म्यूचुअल विल्डिंग  
19/21, हमाम स्ट्रीट, मुम्बई

- आवास:** देव छाया,  
7वीं रोड, मान्तानगूज (पूरब)  
मुम्बई.

OFFICE OF THE CUSTODIAN SET UP UNDER SECTION 3(1) OF THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES), ORDINANCE, 1992

#### NOTIFICATION

New Delhi, the 8th June, 1992

No. Custodian/1/92.—I, A.K. Menon, have been appointed Custodian under Section 3(1) of the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992 vide Govt. of India Ministry of Finance, Banking Division notification No. 6/2/92/Vig.(ii) dated 6-6-1992.

Under the functions entrusted to me vide Section 3(2) of the above mentioned Ordinance, having been satisfied on information received that the below-mentioned persons have been involved in offences relating to transactions in securities after the 1st day of April, 1991 and on and before the promulgation of this Ordinance, I hereby order that their names shall be notified in the Official gazette as follows:

1. M/s. Harshad S. Mehta, Proprietary concern.
2. M/s. Ashwin S. Mehta, Proprietary concern.
3. M/s. J.H. Mehta, Proprietary concern.
4. Mr. Harshad S. Mehta, son of Shantilal Mehta
5. Mr. Ashwin S. Mehta.
6. Mr. Hitesh S. Mehta.
7. Mr. Sudhir S. Mehta.
8. Mrs. Jyothi H. Mehta, wife of Sr. No. 4.
9. Mrs. Deepika A. Mehta, wife of Sr. No. 5.
10. Mrs. Pramila H. Mehta, wife of Sr. No. 6.
11. Harshad S. Mehta, H.U.F.
12. Ashwin S. Mehta, H.U.F.
13. Hitesh S. Mehta, H.U.F.
14. M/s. Sunrise Enterprises.
15. Growmore Research & Assets Management Ltd.
16. Growmore Leasing & Investment Pvt. Ltd.
17. Growmore Exports Pvt. Ltd.
18. Aatur Holdings Pvt. Ltd.,
19. Harsh Estates Pvt. Ltd.,
20. Cascade Holding Pvt. Ltd.,
21. Orion Travels Pvt. Ltd.,
22. Fortune Holdings Pvt. Ltd.,
23. Treasure Holding Pvt. Ltd.,
24. Velvet Holding Pvt. Ltd.,
25. Eminent Holding Pvt. Ltd.,
26. Pallavi Holding Pvt. Ltd.,
27. Zest Holding Pvt. Ltd.,
28. Topaz Holding Pvt. Ltd.,
29. Divine Holding Pvt. Ltd.,

Addresses of the above, as communicated to me, are as under :

Office: 1. Lentin Chambers,  
4th Floor,  
Dalal Street,  
Fort, Bombay-400 023.

2. 1205/6, Maker Chambers V,  
Nariman Point,  
Bombay-400021

Residence: 186, Walkeshwar Road,  
Malabar Hill,  
Bombay-400 006

**Residence:** 1. Madhuli,  
Annie Besant Road,  
Worli,  
Bombay-400 025

81. Shri Hiten Prasan Dalal,  
(Son of Shri Prasan Jayantilal Dalal)

30. Shri Abhay Dharamsinh Narottam  
(Son of Shri Dharamsinh Narottam)

**Address:** 1. Table No. 1, Rear Side,  
Cama Building, Ground Floor,  
Dalal Street,  
Fort, Bombay-400023

Office: Room No. 11/2,  
Bombay Mutual Building,  
19/21, Hamam Street,  
Bombay.

2. Regent Chambers,  
2nd Floor,  
208, Jamnalal Bajaj Marg,  
Nariman Point,  
Bombay-400020

**Residence:** Dev Chhaya,  
7th Road, Santa Cruz (East)  
Bombay

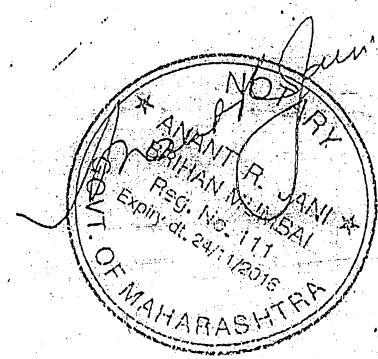
A. K. MENON, Custodian

PUBLIC NOTICE

Office of the Custodian appointed under Special Court (Trial of Offences relating to transactions in securities) Act, 1992.

1. This is to inform all concerned that under the Special Court Trial of Offences relating to the transactions in securities) Act, 1992 Section 3(2) names of persons/companies who have been notified by the Custodian appointed under Section 3(1) of the Act are given at the concluding para of this notice.
2. Under Section 3(3) of the said Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973 and any other law for the time being in force on and from the date of notification any property movable or immovable or both, belonging to any person so notified shall stand attached simultaneously with the issue of the notification.
3. Further, under Section 3(4) of the said Act, the property attached shall be dealt with by the Custodian in such manner as the Special Court may direct.
4. Under Section 13 of the said Act, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith

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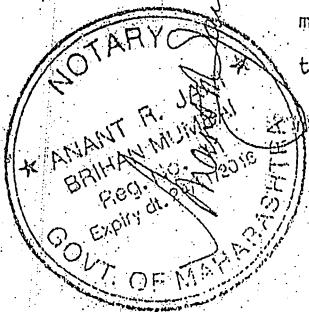


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contained in any other law for the time being, in force or in any instrument having effect by virtue of any law, other than the said Act or in any decree or order of any Court, Tribunal or other authority.

5 . . . . In view of the above all companies, firms, banks, individuals and all others concerned are once again informed by this notice that all properties pertaining to notified persons/companies stand attached. No transactions of any kind and in any manner relating to such properties is permissible except as directed by the Hon'ble Special Court, which has been constituted at the High Court, Bombay. Nor can any movable property be removed or taken possession of without the consent of the Custodian.

6. All those who have had dealings  
or are presently dealing in such properties  
including banks, financial institutions,  
mutual funds, etc., are hereby requested  
to intimate the Custodian at the addresses.



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properties including, all movable and immovable properties, bank accounts, fixed deposits, shares, scrips, stocks, bonds, debentures, units of the Unit Trust of India or any other mutual fund or other marketable securities, vehicles, tenancy rights, etc. as on the date of notification, held by them in the name of the notified persons, jointly or severally or on behalf of the notified persons, as also details and value of shares, bonds, etc. held as collateral security furnished by the notified persons.

Addressess to which information is required to be sent:

Bombay: C.N. Jayaraman  
Office of the Custodian  
29th Floor, Stock Exchange  
Dalai Street  
Bombay 400 001

New Delhi: R. Thirumalai  
Secretary to Custodian  
Room No.24, 11 Floor  
Jeevan Dada Building  
Banking Division  
Department of Economic  
Affairs  
Parliament Street..  
New Delhi 110 001;

This will also apply to all those who may be notified in future.

Names of persons/companies notified by the Custodian:

Notification No. and date	Name of the person/company notified
1. Custodian/1/92 dated 8.6.92	1. M/s Harshad S Mehta, proprietary concern
	2. M/s Ashwin S Mehta, proprietary concern
	3. M/s J H Mehta, proprietary concern
	4. Mr. Harshad S Mehta, son of Shantilal Mehta
	5. Mr. Ashwin S Mehta
	6. Mr. Hitesh S Mehta
	7. Mr. Sudhir S Mehta
	8. Mrs. Jyoti H Mehta, wife of Sl.No.4
	9. Mrs. Deepika A Mehta, wife of Sl.No.5
	10. Premila H Mehta, wife of Sl.No.6
	11. Harshad S Mehta, H U F
	12. Ashwin S Mehta, H U F
	13. Hitesh S Mehta, H U F
	14. M/s Sunrise Enterprises
	15. Groumore Research & Assets Management Ltd
	16. Groumore Leasing & Investment Pvt. Ltd.
	17. Groumore Exports Pvt. Ltd.
	18. Aatur Holdings Pvt. Ltd.
	19. Harsh Estates Pvt. Ltd.
	20. Cascade Holding Pvt. Ltd.
	21. Orion Travels Pvt. Ltd.
	22. Fortune Holdings Pvt. Ltd.
	23. Treasures Holdings Pvt. Ltd
	24. Velvet Holding Pvt. Ltd.

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25. Eminent Holding Pvt. Ltd.  
 26. Pallavi Holding Pvt. Ltd.  
 27. Zest Holding Pvt. Ltd  
 28. Topaz Holding Pvt. Ltd  
 29. Divine Holding Pvt. Ltd.

Addressess of the above, as communicated, are as under:

**Office:** 1. Lentin Chambers  
 4th Floor,  
 Dalal St.  
 Fort, Bombay 400 023.

2. 1205/G, Makor Chambers V  
 Nariman Point  
 Bombay 400 021

**Residence:** Madhuli  
 Annie Besant Road  
 Worli  
 Bombay 400 025.

30. Shri Abhay Dharansinh Narottam  
 son of Dharansinh Narottam

**Addressess:**

**Office:** 1. Table No 1, Rear Side  
 Cams Building,  
 Ground Floor  
 Dalal Street,  
 Fort, Bombay 400 023

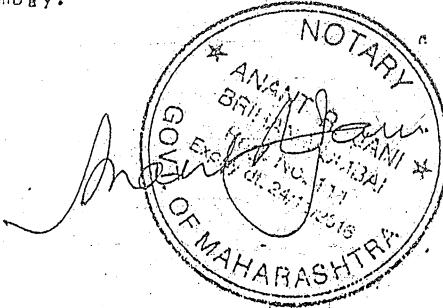
2. Regent Chambers  
 2nd Floor  
 208 Jamnalal Bajaj Marg  
 Nariman Point  
 Bombay 400 020

31. Shri Hiten Prasan Dalal  
 son of Shri Prasan Jayantilal  
 Dalal

**Addressess:**

**Office:** Room No. 11/2  
 Bombay Mutual Building  
 19/21 Hanum St.  
 Bombay

**Residence:** Dev Chhaya  
 7th Road, Santa Cruz (East)  
 Bombay.



2. Custodian/2/92  
dated 13.6.92

1. Shri C.L. Khomani  
Dy Managing Director (& I.M.)  
Central Office  
State Bank of India  
Bombay

2. Shri A.N. Bavadekar  
Dy Manager  
Securities Division  
Main Branch  
State Bank of India  
Bombay

3. Shri R. Sitaraman  
JMG.I Officer  
Securities Division  
Main Branch  
State Bank of India  
Bombay

3. Custodian/3/92  
dated 2.7.92

1. Bhupen Dalal

*Addressee*

(i) Managing Director of M/s  
Champaklal Investment &  
Financial Consultancy  
Services Ltd.,  
Mumbai Point  
Bombay 21

(ii) Bhupen Chambers  
No. 9, Dalal Street  
Bombay 400 023

(iii) 42, Chitrakoot  
Altamount Road  
Bombay 400 026

2. Shri J.P. Gandhi

*Addresser*

(i) C/o M/s Champaklal  
Investment & Financial  
Consultancy Services Ltd.,  
Report Chambers  
Mumbai Point  
Bombay 400 021

(ii) Amita Building  
Malabar Hill  
Bombay

3. Shri T.N. Ruia

(i) c/o Dhonraj Mills Pvt.Ltd  
Sitaran Jadhav Marg  
Lower Parel  
Bombay



(ii) SA, Samundra Gurav  
Worli Seaface  
Bombay ...

2. Shri R Ganesh  
Assistant Vice President  
Fairgrowth Financial  
Services Ltd.,  
Vittal Mallya Road  
Bangalore 560 001

5. Custodian/5/92 1. H/o Dhanraj Mills Pvt.  
dated 5.8.1992 Limited  
Siteram Jadhav Marg  
Lower Parel  
Bombay 400 013

Dated the 40<sup>th</sup> September 1992

At M.E.N.O.N.  
CUSTODIAN



PHIROZE JEEJEGHILY TOWER,  
DALAL STREET,  
BOMBAY-400 001/05.  
TEL: 276681, 276020, 276860-81  
GRAMS: "SHARATION",  
Bombay-400 001.

(27)

THE STOCK EXCHANGE LTD.			TELEGRAPHIC ADDRESS:	TELEX: 011-86026 STEX IN.
L. M. C.			FAX: 011-22-2028121	
MON	TUE	WED	THU	FRI
23 JULY				10th July, 1992
CLX	CD	EDH	PEP	AM

OFFICE OF THE  
SECRETARY

To  
All Listed Companies.

Dear Sir,

Sub: Transfer of securities standing in the names of persons whose properties have been attached by the Custodian under the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992.

This is to bring to your notice that under the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992 (hereinafter referred to as the "Ordinance") issued on the 6th June, 1992, the Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before the promulgation of this Ordinance, notify the name of such person in the Official Gazette and on the notification of such person, any properties, movable or immovable, or both, belonging to the person so notified stands attached.

2. In pursuance of the power vested under the Ordinance, the Custodian has so far issued four notifications on the 8th June, 13th June and 2nd July, 1992 notifying in all 39 persons. Copies of the four notifications are enclosed (Annexures I to IV).

3. Securities which are standing in the names of above persons but which have been bought by payment of valuable consideration and which may be lodged with the company for transfer do not belong to them. In the like manner, securities where names of any one of the notified members of Stock Exchanges appear anywhere in the transfer deed also do not belong to them. Out of the 39 names in the four lists, members of the Stock Exchanges who have been notified are eight, viz.: (i) Shri Harshad S. Mehta, (ii) Smt. Jyoti H. Mehta, (iii) Shri Ashwin Mehta, (iv) Shri A. D. Narotam, (v) Shri Bhupendra Champaklal Dalal of Bhupendra Champaklal Devidas, (vi) Shri J. P. Gandhi of Champaklal

...2/-

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Devidas, (vii) Shri Hiten Dalal and (viii) Fairgrowth Financial Services Limited. These are the submissions made in the petitions of the Bombay, Calcutta and Delhi Stock Exchanges which have been admitted by the Special Court constituted under the Ordinance.

4. Should the company due to some reason or the other decide not to transfer the shares referred to above in the names of those seeking the transfer, it is suggested that till such time a verdict in this behalf is obtained, all the rights such as dividend, bonus shares, rights issues, etc., attached to these shares, which may be lodged with you for transfer, may be withheld as per the provisions contained in Section 206A of the Companies Act, 1956.

5. Receipt of this letter may please be acknowledged.

Yours faithfully,

A. B. Nayak

Secretary.

Encls:4  
rs.



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## THE STOCK EXCHANGE

OFFICE OF THE  
SECRETARYTO,  
All Listed Companies.9th January, 1993.  
*act/a/1/93*

Dear Sirs,

Sub: Holding of rights/bonus shares, dividends, etc. in abeyance in respect of shares attached under Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

Reference is invited to this Exchange's Circular letter dated the 10th July, 1992 addressed to all the Listed Companies, asking them to withhold all the rights such as dividend, bonus shares, rights issues, etc. in respect of shares attached under the above mentioned Act as per the provisions contained in Section 206A of the Companies Act, 1956.

2. We have now received a communication from Shri Rajiv Bhardwaj, Deputy Secretary, office of the Custodian, New Delhi, wherein he has advised us to communicate his directions to all the listed Companies that all rights, dividends and bonus entitlement of attached shares be kept in abeyance in accordance with Section 206A of the Companies Act, 1956, till the title of the bonafide owner is certified by the concerned Stock Exchange in terms of the Judgement of the Hon'ble Special Court. A xerox copy of the said letter dated the 4th January, 1993 is enclosed for your information and compliance.

3. Receipt of this letter may please be acknowledged.

Yours faithfully,

*N R [unclear]  
Secretary.*

Encl:1

msp

ANNEXURE D (COLL)

HARSHAD S MEHTA  
32 Madhuli, Dr Annie Besant Road, Worli, Mumbai 400 018

12th March, 2007

To  
The Company Secretary,  
Shree Cement Ltd,  
Bangur Nagar,  
P B No.33, Beawar Masuda Rd,  
Near Vill. Andheri Deori,  
Beawar, Ajmer

Dear Sir,

**Re : Reconciliation of attached assets – Receipt of benefits thereon**

1. This common letter is being addressed by the Undersigned notified persons who are notified on 08.06.1992 under the provisions of Special Court (Trial Of Offences Relating To Transactions In Securities) Act, 1992. As per the provisions of the above Act, on and from the date of notification, our assets stand attached in the hands of the Custodian appointed for the purpose. This letter is being addressed to your company as on the date of notification, some of the undersigned notified persons were holding shares in your company which stood attached. In case of shareholdings, several instances have now come to light of the following nature :-  
  - a. It has emerged that dividends / interests have not been paid by the company or in the records of the company, they have remained unclaimed / undelivered and therefore they have been deposited with the Government of India or that dividend / interest warrants were sent to the addresses of notified entities and they have remained undelivered or unencashed.
  - b. That companies have been holding shares on behalf of notified entities in abeyance on one or the other grounds on the request or direction of Custodian, C.B.I, Revenue or B.S.E. These shares are held in abeyance by the companies for several years awaiting further instructions. The value of such shares discovered recently run into a few hundred crores.

- c. That some companies have not furnished the T.D.S certificates or they have been furnished but have not been actually received by the notified entities and therefore the same have remained unclaimed.
- d. That shares have remained unclaimed after they were split or exchanged on account of mergers, de-mergers, issue of bonus shares, preferential or rights issue of shares or upon conversion of warrants or conversion of debentures.
2. It appears that the Office of the Custodian has not carried out the reconciliation of the entire shareholding and the receipt of bonus thereon because of which these instances are now coming to light. The notified persons are therefore desirous of undertaking a complete reconciliation of their shareholdings and are desirous of accurately drawing their books of accounts so that they can make statutory compliance properly and effectively. Now therefore through this letter, we request your company to meet our following queries / requirements :-
- a. Kindly confirm our shareholdings giving complete particulars of holdings on a Foilo Nos wise basis as on 08.06.1992 together with details of all the changes that have taken place in these holdings from that period till today. We submit that these changes could have occurred because of issue of bonus or rights shares, change in the Face Value of the shares, conversion of any instruments like Debentures or because of sale of shares or on account of some shares being treated as tainted shares whose title has been cleared by the Special Court subsequently under a procedure called Certification Procedure. In some instances, shares have been sent for registration in the name of notified entities through the Office of the Custodian. There could also be some shares which are treated as tainted shares but the Court order has not been obtained clearing the title in the name of the proposed buyer or company is treating these shares separately or in a separate account.
- b. Kindly furnish us particulars of dividend, interest payments made to us on and from 08.06.1992 till date. These particulars may kindly disclose complete details such as gross interest / dividend, Tax Deducted at Source if any, percentage of dividend / interest, Folio No./quantity of holdings etc. In case any of the dividends / interest have remained unpaid and if your company has deposited the same as unclaimed interest / dividend, then kindly furnish us particulars of the same. In case dividend / interest were kept in abeyance and came to be paid subsequently or

bunched up payment has been made, then please specify the year and period for which these interest / dividend have been paid.

c. Kindly disclose if you are holding any shares in abeyance under the instructions of revenue / CBI / Custodian or Bombay Stock Exchange. In case any of the shares / debentures are kept in abeyance, then you may kindly furnish us the copies of such instructions and particulars of such shares / debentures held by you on our account.

d. Kindly furnish us copies of your communications addressed to the Custodian or to our Bank forwarding shares / interest / warrants or any other benefits or any statement giving reconciliation of our shareholdings.

e. Wherever holdings are in more than one Folio, you are requested to give particulars on a folio wise basis.

f. Particulars of shares received for transfer but not transferred and held pending certification of shares.

g. Any asset held by you on our account or remaining unclaimed / undelivered / delivered but returned or to your knowledge remains unclaimed.

3. Please note that hereafter all communications may be addressed to us on the residential address. In case you do not have it on your record, you may treat the present letter as our request to record change of address.

4. Please note that the above particulars are required to make compliance in several proceedings before the Hon'ble Special Court and other proceedings against the revenue in matters of our appeal. The stage of distribution is approaching and therefore it is essential to bring to the knowledge of the Hon'ble Special Court all our assets. Your co-operation in the matter will therefore go a long way in assisting us in reconciling our asset base and tracing out all the assets which have escaped the attention.

5. Please note that in case you do not respond to our request, then we will be constrained to file an application in the Special Court praying for relief



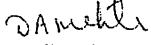
and direction to your company to furnish us the above particulars as it is absolutely essential to obtain above details and documents as several instances have come to light where the attached assets belonging to us have remained undiscovered. In the circumstances, it is absolutely essential to carry a complete reconciliation and hence the present request.

6. Awaiting your favourable response.

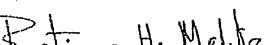
Thanking you,

Yours faithfully,

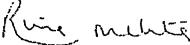
  
Ashwin S Mehta

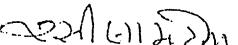
  
Deepika A Mehta

  
Dr Hitesh S Mehta

  
Dr Pratima H Mehta

  
Sudhir S Mehta

  
Rina S Mehta

  
Rasila S Mehta

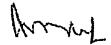
  
Jyoti H Mehta

Jyoti H Mehta  
(as legal heir of late Harshad S Mehta)

For GROWMORE RESEARCH &  
ASSETS MANAGEMENT LTD

for GROWMORE LEASING &  
INVESTMENT PVT LTD

  
(Ashwin S Mehta)  
Director

  
(Ashwin S Mehta)  
Director

CC : Smt Rekha Gupta, Custodian, Office of the Custodian, 3<sup>rd</sup> Floor, Bank of Baroda Bhavan, 16 Parliament Street, New Delhi 110 001

You are requested to instruct the companies to make available to us the above data, documents and records. This request is being made to you to arrive at an account of attached assets and to trace out if any assets have escaped your attention since several instances are now coming to light.

*Sent via DHL*  
**R.A.SHAIKH**

BSc (Hons), LLB.  
Advocate High Court, Mumbai  
Original Side Regd No.1399

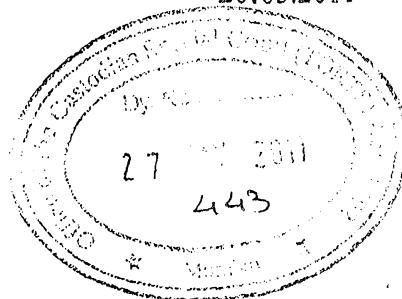
Mob : 9820083616

26.05.2011

To  
The Company Secretary,  
Shree Cement Ltd,  
Bangur Nagar, P B No.33,  
Beawar, Rajasthan 305 901

Sir,

Re: **In the matter of information and records relating to my clients who are notified u/s 3(2) of The Special Courts (Trial of Offences Relating To Transactions In Securities) Act, 1992**



1. I am addressing this letter on behalf of my clients Dr Hitesh S Mehta, Dr Pratima H Mehta, Shri Sudhir S Mehta, Smt Jyoti H Mehta – both in her individual capacity and as legal heir of late Harshad S Mehta, Shri Ashwin S Mehta, Smt Rasila S Mehta, Smt Deepika A Mehta, Smt Rina S Mehta, M/s Growmore Research & Assets Management Ltd, M/s Growmore Leasing & Investments Ltd, M/s Aatur Holdings Pvt Ltd, M/s Growmore Exports, M/s Harsh Estates Pvt Ltd, M/s Orient Travels Pvt Ltd, M/s Cascade Holdings Pvt Ltd, and M/s Fortune Holdings Pvt Ltd. My aforesaid clients barring Smt Rasila S Mehta and Smt Rina S Mehta got notified on 08.06.1992 and the other two clients were notified on 04.01.2007. That however prior to their notification, the assets of these two clients were also treated as attached assets as other notified persons were joint / second holders in the shares held by them. That on and from the date of their notification, in terms of Section 3 of the Special Courts Act, all their assets stand attached and in terms of Section 3(4) of the said Act, the same can be dealt with by the Custodian only as per the directions of the Hon'ble Special Court.

2. That your kind attention is drawn to the law laid down by the Hon'ble Apex court in several cases where it has been held that the attached property does not vest with the Custodian nor he is an Official Liquidator. That his rights are equal to the rights of notified person themselves save and except that he has powers to notify a person in terms of Section 3(2) and power to cancel contracts in terms of Section 4(1) of the said Act. That the relevant extracts of several Judgments of the Hon'ble Apex Court are enclosed at Annexure A in support of the above contention. The ownership rights in the shareholdings at all points of time, therefore remained in my clients. Please be further informed that as per the law laid down by the Hon'ble Apex Court in the case of Tejkumar Balkrishna Ruia V/s A K Menon & Anr reported as (1997) 9 SCC 123, even the accruals on the shareholdings of my clients are attached assets and they cannot be dealt with without permission of the Hon'ble Special Court. Please also note that the provisions of the Special Courts Act would also prevail over the provisions of the Companies Act wherever there is a conflict.

3. My clients state that after their notification, the Custodian has issued instructions to various companies which might include your company to the effect that all the accruals on the shareholdings may be forwarded to the Office of the Custodian. Pursuant thereto, your

company may be forwarding all accruals and documents relating to the shareholdings of my clients to the Office of the Custodian. My clients are therefore not in possession of all the records relating to their shareholdings and the accruals on them and are also not fully aware of the changes that have taken place in their holdings due to further issue of shares either by split, rights / preferential or bonus issue

4. That on the basis of experience of past eighteen years, my clients have discovered the following :-

- a) That several companies have not forwarded dividends or they have treated them as unclaimed dividend and proposed to deposit it with the Govt. of India though the same cannot be done in view of the fact that it is an attached property.
- b) That several companies have not dispatched the shares and kept them in possession with themselves on one ground or the other.
- c) That several companies have kept the Rights / Preferential shares issue in abeyance or have not issued shares on the ground that some Call / Final allotment money remains pending.
- d) That several companies have kept Rights and Preferential issue in abeyance as attached assets.
- e) That a number of companies have not been paying dividends in time nor other accruals on the shares have been delivered to the Office of the Custodian.
- f) That no intimation is given by the companies to my clients they continue to be owners of the shares.

5. In view of the fact that my clients have never been divested of their right, title and interest in the shares held by them, they are entitled to receipt of all the documents, correspondence, letters, facts relating to their shareholdings. In view of aforesaid experiences, my clients are now undertaking a complete audit and reconciliation of their shareholdings in order to ascertain that all the shares belonging to them are duly accounted for and or delivered to the office of the Custodian and that all accruals on their shareholdings are also similarly deposited with the Custodian.

6. My clients are also required to make statutory compliance under The Income Tax Act as well as The Companies Act to truly and fully reflect the details of all the income earned by them as well as to draw and present their asset and liability picture. That in regard to credits made in their bank account, they are required to produce supporting evidence by way of letters, dividend warrants received from the companies etc so that they are accounted for properly and the tax free income in the form of dividends do not get taxed in their hands. In terms of the law laid down by the Special Court, the Custodian is not a representative assessee and this statutory compliance is therefore required to be made by the notified entities themselves i.e. my clients.

7. In view of the aforesaid legal and factual position, my clients call upon your company to provide them with the following documents / information :-

- a) Details of their shareholdings from 08.06.1992 till today explaining all variances therein.

b) Details of all payments made by your company as and by way of dividend, interest together with particulars of TDS and copies of the dividend / interest warrants.

c) Details of any additional issues made on their existing shareholdings whether by way of Rights / Preferential / Split or de-merger.

8. Kindly arrange to forward copies of correspondence exchanged with Custodian in regard to my clients shareholdings. Please disclose if any shares or dividends are still held by your company with reasons thereof and disclose if my dividend is deposited by your company with Govt. of India as unclaimed dividend. In order that the details are compiled in a methodical way, copies of formats in which the above information may be made available to my clients are enclosed at Annexure B.

9. Please arrange to forward the aforesaid information / documents to my clients in a period of not more than thirty days. My clients are also ready and willing to depute their representative to collect the information in case your company or Registrars are situated in Mumbai or Delhi. Please also be informed that any failure on your part in making available the information sought for in this notice would compel my clients to make a grievance before the Hon'ble Special Court which is wholly avoidable if your company extends co-operation and meets with the aforesaid legitimate request of my clients.

Yours truly,



(R A Shaikh)

Advocate High Court

Encl : As above

CC: Registrar, Karvy Computershare Pvt Ltd, Plot No.17-24, Vitthal Rao Nagar, Madhapur, Hyderabad 500 081

CC: Shri Satish Loomba, Custodian, Office of the Custodian, Bank of Baroda Bhavan, 16 Sansad Marg, New Delhi 110 001

CC : The Office of Custodian, 10<sup>th</sup> Floor, Nariman Bhavan, Nariman Point, Mumbai 400 021.

For information and necessary action

~~330~~

ASHWIN S MEHTA

32, Madhuli Apartments, Dr. A.B. Road, Worli, Mumbai - 400 018.

25<sup>th</sup> March 2017

To

The Company Secretary  
ACC Ltd.,  
Cement House, 121,  
Maharshi Karve Road,  
Churchgate, Mumbai - 400 020.

Dear Sir,

Re: Furnishing of information in respect of payment of accruals/dividends on the attached shareholdings of persons notified u/s.3(2) of the Torts Act of 1992

1. I am addressing this letter on my own behalf as also in the capacity of Advocate representing Late Shri Harshad Mehta and all his family members and corporate entities promoted by us a list of which entities is enclosed at **Annexure "A"**. That all these entities have been notified by the Custodian u/s. 3(2) of "The Special Court (Trial of Offences) Relating to Transaction in Securities) Act, 1992 (hereinafter referred to as the Torts Act). On behalf of all the above entities now I address you as under:-
  - i) That on 8<sup>th</sup> of June 1992, the Custodian notified 29 entities u/s. 3(2) of Torts Act being Special Court (Trial of offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as The Torts Act"). That thereafter on 4<sup>th</sup> January 2007 he also notified Smt. Rasila Mehta and Smt. Rina Mehta. That so far as Smt. Rasila Mehta and Smt. Rina Mehta is concerned though they came to be notified on 4<sup>th</sup> January 2007 their assets got attached on 8<sup>th</sup> June 1992 by virtue of fact that the shares were held by them jointly with the other family members who came to be notified on 8<sup>th</sup> June 1992. Thus for all practical purposes even these two entities have suffered the drastic consequences of attachment of their assets u/s. 3(3) of the Torts Act like their family members on and from 8.6.1992 and even their assets have therefore been under the management and control of Custodian since then. Thus in terms of the provisions of the Torts Act on and from the date of their notification i.e. 8.6.1992 all the assets have come under the control and management of Custodian appointed under the Act.

- ii) That your attention is drawn to the provisions of the above Act wherein by virtue of Section 3(3) and consequent to their notification all the assets of above entities including their shareholdings in your company came to be attached simultaneously and automatically irrespective of the fact whether they were in the possession of notified parties or lying in the hands of third parties which would include your company. That because of such automatic attachment there is no requirement in law for the Hon'ble Special Court or the Custodian to separately pass any order of attachment in respect of each of such attached assets but in fact there is a statutory presumption of attachment which is all pervasive and which would be binding on all concerned including your company. In support of above contentions reliance is placed on several judgments of Hon'ble Supreme Court and in the main on Judgment in the case of T.B. Ruia V/s. A.K. Menon Custodian reported as **(1997) 9 SCC 123**.
- iii) That in terms of law laid down by Hon'ble Supreme Court in the case of T.B. Ruia V/s. Custodian reported as **(1997) 9 SCC 123** even ususfruct on the attached shares viz. all the accruals on the shareholdings in the form of dividends, rights, bonus shares and all other accruals also constitutes attached asset. That even shares issued pursuant to split in the face value of shares, merger, demerger and under preferential offers would also constitute attached asset and all the corporate entities are liable to treat such accruals as attached assets and therefore they cannot deal with them without obtaining any prior approval of Hon'ble Special Court in that regard u/s. 3(4) of Torts Act.
- iv) That infact in terms of Section 3(4) of the Act these attached assets can be dealt only with the permission of the Hon'ble Special Court and a number of judgments have been passed by Hon'ble Special Court holding that if any transactions are undertaken in respect of these attached assets without the permission of Hon'ble Special Court the same would be illegal and void and parties who have dealt with the attached assets would become liable to meet all costs and consequences arising out of the same. That no title would also pass in favour of any third party with or without notice under such illegal transactions. That it has also been held in some judgments that if companies deal with these attached assets and their accruals in any manner including under the provisions of Companies Act or any other law or Regulations without the permission of Hon'ble Special Court then they will become liable for all the costs and consequences for their actions and infact they have been ordered to make good such attached shares and accruals parted with by them. In support of above contentions, I am pleased to enclose as and by way of a sample a list of some of the orders and judgments passed by Hon'ble Special Court during past 25

years at **Annexure "B"** and I clarify that the above list is not exhaustive.

- v) That it has been experienced in the past that several companies are failing to take note of provisions of the Act and particularly of the fact that Sections 3(3) and 13 of the Torts Act contains non-obstante clauses as also of the fact that Torts Act is a special statute and because of Section 13 the provisions of this Act have an overriding effect on all other statutes, Rules, Regulations framed thereunder particularly if they are in conflict with the provisions of the Torts Act. That the companies normally make compliance with the general law under the Companies Act and SEBI Regulations but they fail to take note of or disregard the above legal position which has lead to a number of disputes and resulted into avoidable litigation before Hon'ble Special Court. It is therefore stated that the above provisions and binding law in that regard may be specifically taken note of and in further support of above contentions we are pleased to rely upon atleast 3 judgments passed by Hon'ble Supreme Court arising out of the Torts Act laying down the law that the provisions of Torts Act override over other statutes. These judgments are as under:-

**Solidaire India Ltd Vs FFSL & Ors reported as (2001)  
3 SCC 71**

**T.R.O Vs Custodian & Ors reported as (2007) 7 SCC  
461.**

**Bank of India V/s. Ketan Parekh & Ors reported as (2008)  
SCC 148**

- vi) That u/s. 3(2) of the Torts a Custodian has come to be appointed to manage the attached assets for and on behalf of the notified entities as per the directions of Hon'ble Special Court. That under the Torts Act and in terms of several judgments passed by Hon'ble Special Court as well as Hon'ble Supreme Court the Custodian has only two powers viz. power to notify a person u/s.3(2) of the Act and power to cancel a contract u/s.4(1) of the Act. That besides this the role of the Custodian is to manage the attached assets to preserve, protect and augment them so that they become available to discharge the liabilities of notified entities under distribution liable to be made to the creditors u/s.11(2) of the Act.
- vii) That one of the primary function of the Custodian is to comply with all the orders passed by Hon'ble Special Court and Hon'ble Supreme Court in regard to these attached assets. It is significant to note that all the attached assets do not vest in Custodian unlike several other statutes and that the right, title and interest of a notified person in his

assets do not get affected or extinguished because of their notification. That for your benefit and ease of reference and in support of above contentions we furnish you a list of judgments as under which list is not exhaustive:-

- BOI Finance Ltd. v/s. Custodian reported as **(1997) 10 SCC 488.**
  - Harshad Mehta v/s. Custodian reported as **(1998) 5 SCC 1.**
  - Canbank Financial Services Ltd. v/s. Custodian & Ors. reported as **(2004) 8 SCC 355.**
  - L.S. Synthetics Ltd. v/s. F.F.S. Ltd. reported as **(2004) 11 SCC 456.**
  - Asea Brown Boveri Ltd. v/s. IFCI reported as **(2004) 12 SCC 570.**
  - Ashwin Mehta v/s. Union of India **(2012) 1 SCC 83.**
  - Order of Special Court dated 12.2.1996 in M.A. No.2015 of 1995.
  - Order of Special Court dated 20.2.1995 in M.A. No.107 of 1993.
2. I state that the notified persons on whose behalf I am addressing this letter have been deeply aggrieved and affected now for past about 25 years because of mismanagement of their attached assets by Custodian and because of actions taken by several companies in violation of law which are narrated as under:-
- a) That the Custodian has advised all companies to correspond with his office and to pay all the accruals on the attached shares to his office and to pay dividends directly into the banks accounts of notified entities and the companies have been doing so now for past 25 years. The Custodian has not devised a system to track announcements of the accruals and to find out cases where the accruals are not paid to him by the companies and in several cases the dividends and refund amounts were either not paid by the companies, or paid with gross delay or treated as unpaid and unclaimed and handed over to the Government under the provisions under the Companies Act without realising that they constituted attached assets and therefore neither they could have been treated as unpaid or unclaimed nor could they have been handed over or paid to the Government. The Companies in doing so have violated the provisions of the Torts Act and instructions given by Custodian and Public Notices issued by him and thereby incurred a liability to

make good such assets / dividends and payments with interest or to meet claims of the damages as the case may be. That it is the onus of Companies to come forward and disclose and hand over such accruals to Custodian or before Hon'ble Special Court and in support of above contentions I am pleased to rely upon order of Hon'ble Special Court dated 18.8.2016 in M.A. 24 of 2016 in M.A. 244 of 2003.

- b) That the companies have also violated provisions of the Indian Companies Act and several Regulations of SEBI issued to protect the interest of investors by not keeping the concerned notified entities informed and posted about all corporate actions and payment of accruals made to the Custodian or directly in their Bank accounts on their behalf in compliance with the directions given by the Custodian. Since the notified persons are not divested of the ownership in their shareholdings as explained above they were at all times entitled to each and every information, communication and correspondence exchanged with the Custodian in respect of their shareholdings as also complete details and supporting evidence in respect of payment of accruals on their shareholdings including for Tax Deducted at Source (TDS) if any. That failures of companies to furnish all the above have deeply hurt them in several ways which are explained hereinafter.
- c) That to compound the matters and acting highhandedly the Custodian has also failed to discharge his duties and obligations towards the notified entities by failing to provide them fully with all the aforesaid details and documents and correspondence pertaining to their shareholdings including payment of accruals made thereon because of which the notified entities have suffered at the hands of Custodian for past 25 years. That besides above the Custodian has not fully accounted for and reported all their attached assets and not undertaken reconciliation of their shareholdings.
- d) That it has been held by the Hon'ble Special Court that the notified entities notwithstanding their notification remain liable to discharge their statutory obligations such as regularly maintaining their books of accounts and filing returns under the Income Tax Act, pay advance and self assessment taxes, etc. as well as under the Companies Act for corporate entities, That the above statutory duties and obligations can be discharged by the notified persons only if and after the Custodian and companies and the banks furnish to them the details and documents pertaining to their attached assets and incomes received thereon but because of gross failures of Custodian as well as companies in discharging their

obligations they have not been able to discharge their statutory obligations and in several cases they have suffered false additions to their incomes in absence of details and supporting documents. That for past most of the years the dividends are exempt from payment of income tax which exemption can be claimed only provided the supporting documents establishing that the monies credited to their accounts represent such dividends is established by the notified entities. That such false additions run into crores and have either denied or delayed the benefits due to them. That as a further consequence of all the above they have also been suffering the liability to pay interest under various Sections of the Income Tax Act and are also exposed to penalties and prosecution for failures associated with such obligations. In this regard right from 1992 several letters have been addressed by notified entities to companies and Custodian and a number of representations made before Hon'ble Special Court and only in recent period the Custodian has started furnishing details and documents though yet not fully and some corporate entities have responded to our letters but in a number of cases the details and documents still remain pending to be furnished to us by the Custodian and companies.

- e) That a number of orders passed by Hon'ble Special Court specifically directing recovery of attached assets from third parties remain pending to be complied with by the Custodian for more than two decades. That several companies have also failed to make compliance with the provisions of the Torts Act as also with the orders of Hon'ble Special Court particularly in the matter of payment of accruals. That we have been constrained to proceed against some companies for recovery of our attached assets and for compensation wherever the accruals are not paid or paid very late which was avoidable had the Custodian and the companies discharged their duties and obligations as explained above.
- f) That pursuant to enactment of the above statute and letters written by Custodian the Bombay Stock Exchange (BSE) has already issued atleast two circulars to all the listed companies on 10.7.1992 and 9.1.1993 and copies of the above two circulars and letter dated 4.1.1993 addressed by Custodian to BSE is enclosed at Annexure C. That through the above notices all the companies have been fully informed about the provisions of the Torts Act and its effect on payment of accruals and the companies have been already advised in the years 1992 / 1993 itself that the accruals falling due on the attached shares are liable to be kept in abeyance u/s.206A of

Indian Companies Act. That in violation of above circulars several companies have not kept the accruals in abeyance and allotted the rights and bonus shares to the erstwhile shareholders or to other shareholders presumably exercising the discretion available to companies under the Indian Companies Act without realizing that since the shares and accruals thereon were the attached properties such discretion was not available to the companies. That in this manner while some companies have been keeping the rights entitlement on the shareholdings in abeyance pending the orders from Hon'ble Special Court in their regard but many others have disregarded and violated the provisions of the Torts Act and above circulars and dealt with such attached rights and bonus shares and other accruals without seeking permission from the Hon'ble Special Court. By doing so they have incurred liability to make good such attached properties together with interest as the case may be.

- g) That notwithstanding above, on 10.09.1992 the Custodian issued a Public Notice disclosing the facts relating to notification of several entities including us under the Torts Act and explained the implications and effect of such notification including regarding automatic attachment and called upon public at large not only not to deal in such attached assets without the permission of Hon'ble Special Court but also called upon them to disclose facts relating to holding of such attached assets belonging to notified entities as also if any transactions were outstanding to be performed and a copy of above Public Notice is once again enclosed at **Annexure "D"** for ease of your reference. That Custodian by Public Notice issued on 14.11.1996 under the orders of Hon'ble Special Court also called upon all corporate entities to make a complete disclosure regarding the attached shareholdings and accruals on them belonging to notified entities and the copy of the said Public Notice is enclosed at **Annexure "E"**. That despite the above notices, a large number of companies have failed to take note as also to comply with them because of which they have become liable for costs and consequences in respect of such failure.
- h) That besides above, the Custodian has also failed to reconcile our shareholdings and account for all our shares and accruals receivable and actually received on them. Till date it has been experienced in a number of cases that the shares and dividends have been pending to be recovered from the companies and erstwhile shareholders and the value of which is estimated to run into hundreds of crores. That on account of above gross failures a proper picture of our assets is not being presented to Hon'ble Special Court and Hon'ble Supreme

Court in numerous pending proceedings before them. That on account of the above a number of cases had to be filed before Hon'ble Special Court for recovery and accounting of such assets and to fix the liabilities arising out of such failures. That it is seen that a number of companies are facing such litigation wherein claims are also lodged against them for recovery of attached shares and accruals and for claim of interest on account of their failures.

3. Now therefore in order to obviate the hardships being caused to my aforesaid clients , I call upon you as under:-
  - a) Kindly once again take a serious note of the above provisions of the Torts Act and its implications as also of facts, binding circulars, Public Notices and judgments and the law governing in our case. You are called upon to make total compliance with the same wherever it remains pending to be complied. Please also note that the company will remain liable for all the costs and consequences for any failures in compliance with the same. This letter is addressed to put your company once again to notice so that our sufferings are alleviated and litigation is avoided.
  - b) That several companies have been regularly coming out with rights and preferential issues of shares, convertible debentures or similar other issues. That as per law cited above the entitlement of the notified entities in respect of above issues constitutes attached assets and therefore the companies are required to keep their entitlements in abeyance under the provisions of Torts Act. That BSE has also issued Circular to all listed companies on 10<sup>th</sup> July 1992 and 9<sup>th</sup> January 1993 to keep such entitlements in abeyance u/s. 206 A of Companies Act. That it is the onus of the companies making such issues to approach Custodian failing which Hon'ble Special Court to seek orders for dealing with our attached entitlements and if it fails to do so it becomes liable including to make good such entitlements.
  - c) That kindly disclose facts and particulars of cases where your company has not made compliance in making payment of dividends with 207 of Indian Companies Act under which you were required to pay dividends within 42 days of their declaration or 30 days after the above act was amended and disclose complete particulars of such delay in payment of dividends. That therefore if any entitlement of above notified entities have been dealt with by your company without permission of Hon'ble Special Court the facts relating to the same may be disclosed forthwith.
  - d) Kindly furnish complete particulars of accruals paid by your company to all the aforesaid notified entities in the format which is enclosed at **Annexure "F"**.

- e) Kindly disclose if any dividends and refunds of any amounts have come to be paid to the Government of India as unclaimed or unpaid dividends/refunds as also amounts which have been transferred to Investor Education Fund. You are called upon to take steps to recover and recall them as done by some companies after taking note of the overriding provisions of the Torts Act and pursuant to orders passed by Hon'ble Special Court.
- f) That wherever dividends have been deposited in the bank accounts of the notified entities directly as per the instructions of the Custodian, kindly issue the supporting documents, vouchers or counter-foils of the dividends and copies of letters addressed to the Custodian in that regard as the same are required as evidence to be adduced before the revenue authorities and also required to draw / update our books of accounts and to enable us to make statutory compliance.
- g) That wherever your company has deducted tax at source kindly disclose particulars of the same and also confirm that the same have been deposited with the revenue to enable us to claim suitable credit for taxes already paid by us.
- h) That even earlier notices were addressed to companies by our previous advocate Shri R.A. Shaikh in the year 2011 and this may be treated as reminder notice.

4. In view of what is stated above I call upon you to meet our requirements as set out above in not more than 30 days from the receipt of this notice. Please note that in case you fail to reply to above legitimate requests we will be compelled to proceed against your company before Hon'ble Special Court.

Yours truly,

  
(Ashwin Mehta)  
For myself and as Advocate on behalf of notified entities

CC: Shri Jayanti Prasad, Custodian  
Office of the Custodian, 3<sup>rd</sup> floor,  
Bank of Baroda Bhavan, 16 Sansad Marg,  
New Delhi-110001

You are requested to advice the companies as per enclosed list to extend complete cooperation so that our shareholdings get reconciled at the earliest and all assets together with their accruals get accounted for and verification is completed regarding receipt of all accruals. That most of the companies have stopped sending any intimation to us after 8.6.1992 when Custodian took over management of our attached assets without realising that our rights continue as shareholders and we are entitled to receipt of all information pertaining to our shares and payment of accruals thereon.

List of Family Members and Corporate entities

Sr. No.	Entity
1	Harshad S. Mehta
2	Ashwin S. Mehta
3	Hitesh S. Mehta
4	Sudhir S. Mehta
5	Rasila S. Mehta
6	Jyoti H. Mehta
7	Deepika A. Mehta
8	Pratima H. Mehta
9	Rina S. Mehta
10	Orion Travels Pvt. Ltd.
11	Fortune Holdings Pvt. Ltd.
12	Cascade Holdings Pvt. Ltd.
13	Growmore Research & Assets Management Ltd.
14	Growmore Leasing & Investments Ltd.
15	Zest Holdings Pvt. Ltd.
16	Pallavi Holdings Pvt. Ltd.
17	Divine Holdings Pvt. Ltd.
18	Velvet Holdings Pvt. Ltd.
19	Eminent Holdings Pvt. Ltd.
20	Topaz Holdings Pvt. Ltd.
21	Aatur Holdings Pvt. Ltd.
22	Harsh Estates Pvt. Ltd.
23	Growmore Exports Ltd.

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ANNEXURE "B"

1. Copy of order of Special Court dated 21.6.1993 in the case of Custodian v/s. Uttam Balva Steels & Ors.
2. Copy of order of Special Court dated 19.10.1993 in M.A. No.184 of 1993 in the case of Custodian v/s. Southern Petrochemicals Industries Corporation Ltd.
3. Copy of order of Special Court dated 18.4.1995 in M.A. No.599 of 1994 in the case of J.H. Mehta v/s. V.I.P. Industries Ltd. & Anr.
4. Copy of order of Special Court dated 18.8.2016 in M.A. No.24 of 2016 in M.A. No.244 of 2003.

PHIROZE JEEJEBHUY 10W  
DALAL STKAT,  
BOMBAY-400 001/05.  
Tel.: 276681, 276426, 276860-81  
GRAMS: "SHARATION"  
Bombay-400 001

alpha/1/95

THE STOCK EXCHANGE LTD.				TELX : 011-86026 STEX IN
PERU	L.M.C.			FAX : 91-22-2028121
23 JULY, 1992				10th July, 1992
EST				
CLX	CD	COM	PPP	AM

OFFICE OF THE  
SECRETARY

To

All Listed Companies,

Dear Sir,

Sub: Transfer of securities standing in the names of persons whose properties have been attached by the Custodian under the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992.

This is to bring to your notice that under the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992 (hereinafter referred to as the "Ordinance") issued on the 6th June, 1992, the Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before the promulgation of this Ordinance, notify the name of such person in the Official Gazette and on the notification of such person, any properties, movable or immovable, or both, belonging to the person so notified stands attached.

2. In pursuance of the power vested under the Ordinance, the Custodian has so far issued four notifications on the 8th June, 13th June and 2nd July, 1992 notifying in all 39 persons. Copies of the four notifications are enclosed (Annexures I to IV).

3. Securities which are standing in the names of above persons but which have been bought by payment of valuable consideration and which may be lodged with the company for transfer do not belong to them. In the like manner, securities where names of any one of the notified members of Stock Exchanges appear anywhere in the transfer deed also do not belong to them. Out of the 39 names in the four lists, members of the Stock Exchanges who have been notified are eight, viz. (i) Shri Harshad S. Mehta, (ii) Smt. Jyoti H. Mehta, (iii) Shri Ashwin Mehta, (iv) Shri A. D. Narotam, (v) Shri Bhupendra Champaklal Dalal of Bhupendra Champaklal Devidas, (vi) Shri J. P. Gandhi of Champaklal

: 2 :

Devidas, (vii) Shri Hiten Dalal and (viii) Fairgrowth Financial Services Limited. These are the submissions made in the petitions of the Bombay, Calcutta and Delhi Stock Exchanges which have been admitted by the Special Court constituted under the Ordinance.

4. Should the company due to some reason or the other decide not to transfer the shares referred to above in the names of those seeking the transfer, it is suggested that till such time a verdict in this behalf is obtained, all the rights such as dividend, bonus shares, rights issues, etc., attached to these shares, which may be lodged with you for transfer, may be withheld as per the provisions contained in Section 206A of the Companies Act, 1956.

5. Receipt of this letter may please be acknowledged.

Yours faithfully,

A. G. Biju  
Secretary.

Enclos: 4  
rs.



THE STOCK EXCHANGE

PHIROZE JEEJEEBHoy TOWERS,  
DALAL STREET,  
BOMBAY 400 001/ES.  
TEL: 276681, 276626, 276860-61  
GRAMS: "SHARATION",  
Bombay 400 001--  
TELEX: 011-86926 STEX IN  
FAX : 011-22-202 8121

OFFICE OF THE  
SECRETARYTO,  
All Listed Companies.

Dear Sirs,

Sub: Holding of rights/bonus shares, dividends, etc. in abeyance in respect of shares attached under Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

Reference is invited to this Exchange's Circular letter dated the 10th July, 1992 addressed to all the Listed Companies, asking them to withhold all the rights such as dividend, bonus shares, rights issues, etc. in respect of shares attached under the above mentioned Act as per the provisions contained in Section 206A of the Companies Act, 1956.

2. We have now received a communication from Shri Rajiv Bhardwaj, Deputy Secretary, office of the Custodian, New Delhi, wherein he has advised us to communicate his directions to all the listed Companies that all rights, dividends and bonus entitlement of attached shares be kept in abeyance in accordance with Section 206A of the Companies Act, 1956, till the title of the bonafide owner is certified by the concerned Stock Exchange in terms of the Judgement of the Hon'ble Special Court. A xerox copy of the said letter dated the 4th January, 1993 is enclosed for your information and compliance.

3. Receipt of this letter may please be acknowledged.

Yours faithfully,

R. L. Secretary

Encl:1

msp

atfa/1/95

No. 12741 CUS (AT) / HN. ISKA/92 (146)

परिवेशक का कापलिय OFFICE OF THE CUSTODIAN

विशेष न्यायालय SPECIAL COURT

(प्रतिमूलि दंडनवाहार समरस्थी (Trial of Offences Relating to  
प्रपराप विचारालय) परिविधि, 1992 Transactions in Securities) Act 1992

III FLOOR, BANK OF BARODA BHAVAN

16 Parliament Street, NEW DELHI

New Delhi 110001 Dated the 10th January 1993

Dated 4 January 1993

RAJIV BHARDWAJ  
DEPUTY SECRETARYShri M R Mayya  
Executive Director  
Bombay Stock Exchange  
Phiroze Jeejeebhoy Towers  
Dalal Street  
Bombay 400 001/55

PNB	State Bank	VNI	WIFI
KATH	TDS	TRAD	TRAD
KAVADI	L	14/93	DIY
KELAH	N	07/1	PAK
BOB	DOSH	TRAD	TRAD

Sub: Holding of rights, dividends etc. in abeyance for attached shares in the process of certification.

Sir,

Reference is invited to your letter dated 22nd October 1992 on the above mentioned subject with request to the Custodian on the issue of directions to all companies in this regard.

2. The issues raised in your letter have been considered in consultation with Government in the Department of Company Affairs and SEBI. There is agreement with your views that all rights, dividends, bonus etc. relating to shares which are in the names of any of the persons notified under the provisions of the Special Court Act 1992 or shares

accompanied by transfer deeds bearing the name of any such person, should be kept in abeyance in accordance with section 206 A of the Companies Act, 1956, till the title of the bona fide owner is certified by the concerned Stock Exchange in terms of the judgements of the Hon'ble Special Court in Misc. Applications No 1, 2 and 3 delivered on 27.7.92 and 31.7.92.

3 Accordingly these directions may be communicated to all companies listed with your stock exchange. The members of your stock exchange may also be advised to inform concerned companies the particulars of all such shares which may have been lodged with the stock exchange for certification or which may be likely to come up for certification in future.

4 Receipt of this letter may please be acknowledged.

Yours faithfully,

*Rajiv Bhardwaj*  
(RAJIV BHARDWAJ)  
DEPUTY SECRETARY

PUBLIC NOTICE

Office of the Custodian appointed under Special Court (Trial of Offences relating to transactions in securities) Act, 1992.

1. This is to inform all concerned that under the Special Court Trial of Offences relating to the transactions in securities) Act, 1992

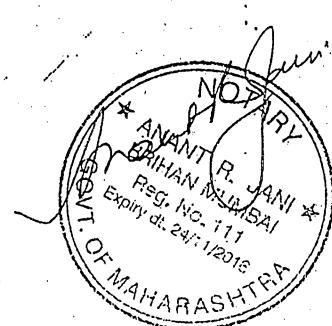
Section 3(2) names of persons/companies who have been notified by the Custodian appointed under Section 3(1) of the Act are given at the conclusion of this notice.

2 Under Section 3(3) of the said Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973 and any other law for the time being in force on and from the date of notification any property moveable or immovable or both, belonging to any person so notified shall stand attached simultaneously with the issue of the notification.

3 Further, under Section 3(4) of the said Act, the property attached shall be dealt with by the Custodian in such manner as the Special Court may direct.

4 Under Section 13 of the said Act, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith

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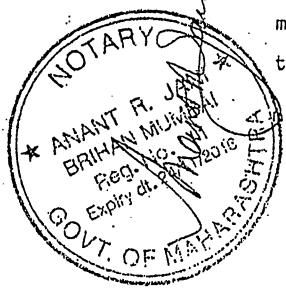


-2-

contained in any other law for the time being, in force or in any instrument having effect by virtue of any law, other than the said Act or in any decree or order of any Court, Tribunal or other authority.

5. In view of the above all companies, firms, banks, individuals and all others concerned are once again informed by this notice that all properties pertaining to notified persons/companies stand attached. No transactions of any kind and in any manner relating to such properties is permissible except as directed by the Hon'ble Special Court, which has been constituted at the High Court, Bombay. Nor can any moveable property be removed or taken possession of without the consent of the Custodian.

6. All those who have had dealings or are presently dealing in such properties including banks, financial institutions, mutual funds, etc. are hereby requested to intimate the Custodian at the addresses mentioned below the details of such



## Names of persons/companies notified by the Custodian:

Notification No. and date	Name of the person/company notified
1. Custodian/1/92 dated 8.6.92	1. M/s Harshad S Mehta, proprietor concern
	2. M/s Ashwin S Mehta, proprietor concern
	3. M/s J H Mehta, proprietor concern
	4. Mr. Harshad S Mehta, son of Shantilal Mehta
	5. Mr. Ashwin S Mehta
	6. Mr. Hitesh S Mehta
	7. Mr. Sudhir S Mehta
	8. Mr. Jyoti H Mehta, wife of Sl.No.4
	9. Mrs. Deepika A Mehta, wife of Sl.No.5
	10. Premila H Mehta, wife of Sl.No.6
	11. Harshad S Mehta, H U F
	12. Ashwin S Mehta, H U F
	13. Hitesh S Mehta, H U F
	14. M/s Sunrise Enterprises
	15. Growmore Research & Assets Management Ltd.
	16. Growmore Leasing & Investment Pvt. Ltd.
	17. Growmore Exports Pvt. Ltd.
	18. Aatur Holdings Pvt. Ltd.
	19. Harsh Estates Pvt. Ltd.
	20. Cascade Holding Pvt. Ltd.
	21. Orion Travels Pvt. Ltd.
	22. Fortune Holdings Pvt. Ltd.
	23. Treasure Holdings Pvt. Ltd
	24. Velvet Holding Pvt. Ltd.

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-3-

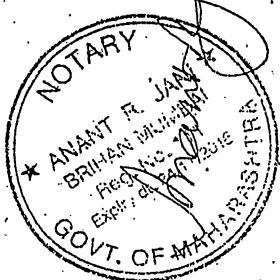
properties including, all movable and immovable properties, bank accounts, fixed deposits, shares, scrips, stocks, bonds, debentures, units of the Unit Trust of India or any other mutual fund or other marketable securities, vehicles, tenancy rights, etc. as on the date of notification, held by them in the name of the notified persons, jointly or severally or on behalf of the notified persons, as also details and value of shares, bonds, etc. held as collateral security furnished by the notified persons:

Addressess to which information is required to be sent:

Bombay: C.N. Jayaraman  
Office of the Custodian  
29th Floor, Stock Exchange  
Dalal Street  
Bombay 400 001

New Delhi: R. Thirumalai  
Secretary to Custodian  
Room No.24, II Floor  
Jeevan Deep Building  
Banking Division  
Department of Economic  
Affairs  
Parliament Street  
New Delhi 110 001.

This will also apply to all those who may be notified in future.



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25. Eminent Holding Pvt. Ltd.
26. Pallavi Holding Pvt. Ltd.
27. Zest Holding Pvt. Ltd
28. Topaz Holding Pvt. Ltd
29. Divine Holding Pvt. Ltd.

Addressess of the above, as communicated, are as under:

- Office: 1. Lentin Chambers  
4th Floor,  
Dalal St.  
Fort, Bombay 400 023.
2. 1205/6, Makar Chambers V  
Nariman Point  
Bombay 400 021

Residence: Madhuli  
Annie Besant Road  
Worli  
Bombay 400 025.

30. Shri Abhay Dharmsinh Narottam  
son of Dharmsinh Narottam

Addressess:

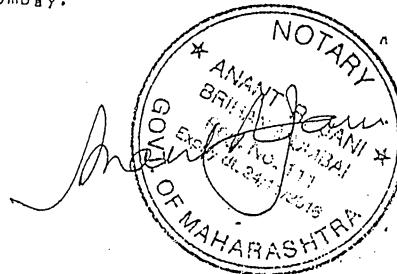
- Office: 1. Table No 1, Rear Side  
Came Building,  
Ground Floor  
Dalal Street,  
Fort, Bombay 400 023
2. Regent Chambers  
2nd Floor  
208 Jamnial Bajaj Marg  
Nariman Point  
Bombay 400 020

31. Shri Hiten Prasan Dalal  
son of Shri Prasan Jayantilal  
Dalal

Addressess:

Office: Room No.11/2  
Bombay Mutual Building  
19/21 Hanam St.  
Bombay

Residence: Dav Chhaya  
7th Road, Santacruz(East)  
Bombay.



2. Custodian/2/92  
dated 13.6.92

1. Shri C.L. Khemani  
Dy. Managing Director (S&M)  
Central Office  
State Bank of India  
Bombay
2. Shri A.N. Bavadekar  
Dy. Manager  
Securities Division  
Main Branch  
State Bank of India  
Bombay
3. Shri R. Sitaraman  
JMG.I Officer  
Securities Division  
Main Branch  
State Bank of India  
Bombay

3. Custodian/3/92  
dated 2.7.92

1. Bhupen Dalal

Addressess:

- (i) Managing Director of M/s  
Champaklal Investment &  
Financial Consultancy  
Services Ltd.,  
Mariman Point  
Bombay 21
- (ii) Bhupen Chambers  
No. 9, Dalal Street  
Bombay 400 023
- (iii) 42, Chitrakoot  
Altamount Road  
Bombay 400 026

2. Shri J.P. Gandhi

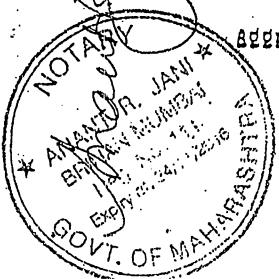
Addressess:

- (i) C/o M/s Champaklal  
Investment & Financial  
Consultancy Services Ltd.,  
Regent Chambers  
Mariman Point  
Bombay 400 021
- (ii) Anita Building  
Malabar Hill  
Bombay

3. Shri T.N. Rula

Addressess:

- (i) c/o Dhomraj Mills Pvt. Ltd  
Sitaram Jadhav Marg  
Lower Parel  
Bombay



-8-

(ii) 6A, Samundra Gurav  
Worli Seaface  
Bombay ..

4. Custodian/4/92  
dated 2.7.92

1. Fairorouth Financial  
Services Limited  
Fairorouth House  
Vittal Mallya Road  
Bangalore 560 001

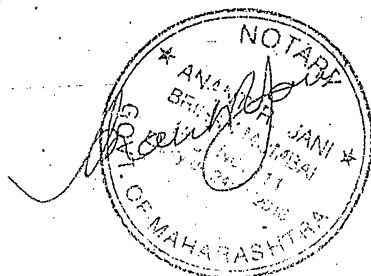
2. Shri R Ganesh  
Assistant Vice President  
Fairorouth Financial  
Services Ltd.,  
Vittal Mallya Road  
Bangalore 560 001

5. Custodian/5/92  
dated 5.8.1992

1. H/o Dhanraj Mills Pvt.  
Limited  
Siteram Jadhav Marg  
Lower Parel  
Bombay 400 013

Dated 10<sup>th</sup> September 1992

AC MEON  
CUSTODIAN



**362 361**

THE ECONOMIC TIMES - 7. 26.11.96

(DELHI EDN)

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

**PUBLIC NOTICE**

Inform all concerned that names of persons/Companies, have been notified under Section 3(2), of the Special Court Offences Relating to Transactions in Securities) Act, 1992. Custodian appointed under Sec.3(1) of the Act, are once again at the concluding para of this Notice.

In response to a Public Notice issued by the Custodian on 10th October, 1992 as also to specific references made in regard to the holdings of shares/debenture bonds, units, etc., the notified persons individually and/or in joint names have been intimated to this office. As a result of various issues like issue of bonus/rights shares, orders of the Court for sale/transfer after complying with the process of action laid down by the Special Court, etc. it is not unlikely that the holdings may have increased or decreased.

It is to have on updated and authenticated details of the holdings as well as dividends/interest paid, tax deducted at source, etc. all concerned including companies, banks and financial institutions are hereby called upon to furnish same irrespective of the position whether they have been upon earlier by this office to do so, as per proforma given preferably on floppies (data base format). They are also required to indicate separately such of these holdings being on behalf of the Custodian as well as those delivered to the Office of the Special Duty, Office of the Custodian, Mumbai during their reference. The details of holdings may indicate numbers and distinctive numbers. The information may be sent irrespective of whether separate communications from the office of the Custodian have been received.

On and distinctive numbers of benami holdings along with the respective account are already with the Companies concerned. Full particulars of dividend amounts accruing from benami holdings should also be indicated against each of the individual distinctive numbers as well as tax deducted at source.

Names to which the aforesaid particulars are required to be furnished are: (1) Shri M.P. Purushottam, Officer on Special Duty, Office of the Custodian, Nirman Bhawan, 9th Floor, 227 Vinay K. Shah Marg, Nirman Point, Mumbai-400 021, and (2) Shri R. Mehta, Secretary to Custodian, Office of the Custodian, Col. Borivali-Olivian, 3rd Floor, 16 Parliament Street, New Delhi-110 001.

Names of persons/Companies notified by the Custodian are: (i) Shri Harshad S. Mehta, Proprietary concern, (ii) M/s Ashwin Mehta, Proprietary concern, (iii) M/s Jyoti H. Mehta, Proprietary concern, (iv) Mr. Harshad S. Mehta, (v) Mr. Ashwin S. Mehta, (vi) Mrs. Hitesh S. Mehta, (vii) Mr. Sudhir S. Mehta, Mrs. Jyoti H. Mehta, (ix) Mrs. Deepika A. Mehta, (x) Mrs. H. Mehta, (xi) M/s. Growmore, Research & Assets Management Ltd., (xii) M/s. Growmore Leasing and Investment Ltd., (xiii) M/s. Growmore Exports Pvt. Ltd., (xiv) M/s. Antur Holdings Pvt. Ltd., (xv) M/s Harshi Estate Pvt. Ltd., (xvi) M/s. Ado Holdings Pvt. Ltd., (xvii) M/s Orissa Travels Pvt. Ltd., (xviii) M/s Fortune Holdings Pvt. Ltd., (xix) M/s Trensure Holdings Ltd., (xx) M/s Velvet Holdings Pvt. Ltd., (xxi) M/s Eminent

Holdings Pvt. Ltd., (xxii) M/s Pallavi Holdings Pvt. Ltd., (xxiii) M/s Zest Holdings Pvt. Ltd., (xxiv) M/s Tobax Holdings Pvt. Ltd., (xxv) M/s Divine Holdings Pvt. Ltd., (xxvi) Mr. Abhay Dhamani, Sinh Narottam, (xxvii) Mr. Hitesh Prasann Dalal, (xxviii) Mr. A.N. Bavedkar, (xxix) Mr. R. Sitaraman, (xxx) Mr. Bhupendra Champaklal Patel [M/s. Bhupendra Champaklal Devdas-Proprietary concern of No. (xxx)], (xxxi) Mr. Jagdish Patalal Gandhi, (xxxii) Mr. Tejkumar Balakrishna Rula, (xxxiii) M/s Fairgrowth Financial Services Ltd. (FFSL), (xxxiv) Mr. P. Ganesh (Vice-President, FFSL), (xxxv) M/s Dhantai Mills Pvt. Ltd. and (xxxvi) Mr. Deepak B. Mehta.

Note : Sl No (i) to (xxv) form Harshad Mehta Group.

6. Proforma for furnishing particulars

Sl No	Name of the notified person	Holdings as on the date of notifications	Number of shares/bonds/units transferred after the date of notifications	INVESTMENT ACCOUNT NUMBER	INVESTMENT ACCOUNT NUMBER	GENERAL REVENUE ACCOUNT OF CENTRAL GOVERNMENT	GENERAL REVENUE SOURCE
				(i) Shares	(ii) Debentures	(iii) Bonds	(iv) Units
				Cents/Shares	Rs/Rs(b)	Rs/cents	Rs/cents
				(v) & (vi)			
						1992-93	1992-93
						1993-94	1993-94
						1994-95	1994-95
						1995-96	1995-96

Shares:

\ Debentures:

Bonds:

Units:

Other Holdings:

\*Harshad Mehta Group

A.O. Narottam 08.08.92

Hitesh P. Dalal

A.N. Bavedkar

R. Sitaraman

Bhupendra C. Patel

J.P. Gandhi

T.B. Rula

Fairgrowth Financial Services Ltd.

R. Ganesh

Dhantai Mills

(P) Ltd. --

Deepak B. Mehta

07.01.93

Authorized Signatory of Company

Sd/-

Custodian

The Special Courts (KOTIS) Act, 1992

dtd 9/6/98

~~363~~ 362

Name of the Scrip / Company - \_\_\_\_\_

**Particulars of Dividend Accrued / paid from Financial Year 1992-93 to 2016-17**

Company Name :-

**Particulars of Share Holding with accrued Benefits from Financial Year 1992-93 to 2016-17**

Sr. No.	Name of Entity	Folio No.	Registered shares as on 08.06.92	Bonus Shares Details		Ex-Bonus Date	Bonus Ratio	Bonus Quantity	Ex-Rights Date	Rights Ratio	Rights Quantity allowed	Debenture Conversion Details		Shares Split (Sub Division) Details	Total Quantity after Debenture Conversion	Total Quantity after Sub Division	Sale of Shares Details		Net Quantity of Shares as on 31.03.2017
				Total Shares Quantity after Bonus issue	Rights Details							Conversion Date	Conversion Ratio	Converted Share Quantity	Split Date	Split Qty.	Sale of Shares Date	Quantity	
1	Harshad S. Mehta																		
2	Ashwin S. Mehta																		
3	Jyoti H. Mehta																		
4	Hitesh S Mehta																		
5	Sudhir S Mehta																		
6	Deepika A Mehta																		
7	Pratima H Mehta																		
8	Rasila S Mehta																		
9	Rina S Mehta																		
10	Growmore Research																		
11	Growmore Leasing																		
12	Growmore Exports																		
13	Aatur Holdings																		
14	Harsh Estates																		
15	Orion Travels																		
16	Pallavi Holdings																		
17	Topaz Holdings																		

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**365**

SR. NO.	NAME OF THE COMPANY
1	ACC LTD.
2	ADITYA BIRLA NUVO LTD (INDIAN RAYON AND INDUTRIES LTD.)
3	AMBUJA CEMENTS (ERSTWHILE GUJARAT AMBUJA CEMENTS LTD.)
4	APOLLO TYRES LTD.
5	BAJAJ AUTO LTD.
6	CASTROL INDIA LTD.
7	COLGATE PALMOLIVE LTD.
8	EXCEL INDUSTRIES LTD.
9	GLAXOSMITHKLINE PHARMACEUTICALS LTD. (ESKAYEF LTD.)
10	HERO MOTOCORP LTD. (ERSTWHILE HERO HONDA MOTORS LTD.)
11	HINDALCO LTD.
12	HINDUSTAN UNILEVER LTD.
13	INDIA CEMENTS LTD.
14	INDIAN HOTEL LTD.
15	ITC LTD.
16	JAIN IRRIGATION LTD.
17	JINDAL STEEL & POWER CO. LTD.
18	JINDAL STRIPS Ltd.
19	LARSEN & TOUBRO
20	MAHINDRA & MAHINDRA LTD.
21	PONDS (INDIA) LTD.
22	RELIANCE INDUSTRIES
23	SUN PHARMACEUTICAL INDUSTRIES LTD .(RANBAXY LTD.)
24	TATA GLOBAL BREVARAGES LTD. (ERSTWHILE TATA TEA LTD.)
25	TATA STEEL
26	TELCO ( ERSTWHILE TATA MOTORS LTD.)
27	UNITED PHOSPEROUS
28	VIDEOCON INTERNATIONAL LTD.

THE ECONOMIC TIMES - 7. 26.11.96  
 (Delhi Edn)

**OFFICE OF THE CUSTODIAN  
 SPECIAL COURT OF JUDICATURE OF OFFENCES RELATING  
 TO TRANSACTIONS (IN SECURITIES) ACT, 1992**

10, Nariman Point, Mumbai-400 021

**PUBLIC NOTICE**

Inform all concerned that names of persons/Companies, who have been notified under Section 3(2), of the Special Court of Offences Relating to Transactions in Securities) Act, 1992 Custodian appointed under Sec.3(1) of the Act, are once again at the concluding para of this Notice.

Response to Public Notice issued by the Custodian on 10th October, 1992 as also as replies to specific references made in regard to the holdings of shares/debenture bonds, units, etc. of the notified persons individually and/or in joint names have been intimated to this office. As a result of various issues like issue of bonus/rights shares, orders of the Court for sale/transfer after complying with the process of action laid down by the Special Court, etc. it is not unlikely that the holdings may have increased or decreased.

Please to have an updated and authenticated details of the holdings as well as dividends/interest paid, tax deducted at source date, all concerned including companies, banks and financial institutions are hereby called upon to furnish same irrespective of the position whether they have been approached earlier by this office to do so, as per proforma given preferably on floppies (data base format). They are also required to indicate separately such of these holdings being held on behalf of the Custodian as well as those delivered to the Special Duty, Office of the Custodian, Mumbai, in their reference. The details of holdings may indicate numbers and distinctive numbers. The information may be sent irrespective of whether separate communications from office of the Custodian have been received.

Distinctive numbers of bonami holdings along with the disperser's account are already with the Companies and full particulars of dividend amounts accruing from bonami holdings should also be indicated against each of the individual distinctive numbers as well as tax deducted at source.

Issues to which the aforesaid particulars are required to be sent:

(1) Shri M.P. Purushu, Officer on Special Duty, Office of the Custodian, Nariman Bhawan, 9th Floor, 227 Vinay K. Shah Marg, Nariman Point, Mumbai-400 021, and (2) Shri R. Misra, Secretary to Custodian, Office of the Custodian, 10, Nariman Bhawan, 3rd Floor, 16 Parliament Street, New Delhi-110 001.

Names of persons/Companies notified by the Custodian are:-  
 (i) Shri Harshad Mehta, Proprietary concern, (ii) M/s Ashwin Mehta, Proprietary concern, (iii) M/s Jyoti H. Mehta, Proprietary concern, (iv) Mr. Harshad S. Mehta, (v) Mr. Ashwin S. Mehta, (vi) Mr. Hitesh S. Mehta, (vii) Mr. Sudhir S. Mehta, Mrs. Jyoti H. Mehta, (ix) Mrs. Oneeka A. Mehta, (x) Mrs. Hema Mehta, (xi) M/s. Growmore, Research & Assets Management Ltd., (xii) M/s. Growmore Leasing and Investment Ltd., (xiii) M/s. Growmore Exports Pvt. Ltd., (xiv) M/s. Antutings Pvt. Ltd., (xv) M/s Harsh Estate Pvt. Ltd., (xvi) M/s. Ado Holdings Pvt. Ltd., (xvii) M/s. Origin Travels Pvt. Ltd., (xviii) M/s Fortune Holdings Pvt. Ltd., (xix) M/s. Trensure Holdings Ltd., (xx) M/s. Velvet Holdings Pvt. Ltd., (xxi) M/s. Eminent

Holdings Pvt. Ltd., (xxii) M/s Pallavi Holdings Pvt. Ltd., (xxiii) M/s Zest Holdings Pvt. Ltd., (xxiv) M/s Topaz Holdings Pvt. Ltd., (xxv) M/s Divine Holdings Pvt. Ltd., (xxvi) Mr. Abhay Dheram Sinh Narottam, (xxvii) Mr. Hitesh Prashe Datal, (xxviii) Mr. A.N. Bavedkar, (xxix) Mr. R. Sitaraman, (xxx) Mr. Bhupendra Chempaklal Datal [M/s. Bhupendra Chempaklal Devidas Proprietary concern] of No. (xxxi), (xxxi) Mr. Jagdish Patel Gandhi, (xxxii) Mr. Tej Kumar Balakrishna Rula (xxxiii) M/s Fairgrowth Financial Services Ltd.(FFSL), (xxxiv) Mr. P. Ganesh (Vice-President, FFSL), (xxxv) M/s Dhantai Mills Pvt. Ltd. and (xxxvi) Mr. Deepak B. Mehta.

Note : Sl No (i) to (xxv) form Harshad Mehta Group.

6. **Proforma for furnishing particulars**

Sl. No.	Name of the notified person	Holdings as on the date of notification	Number of shares/bonds/units etc. held on the date of notification*	Proprietary concern	Dividend/Interest/other income		Date of notification
					(i)	(ii)	
				Bonus Rights	Cent. S/les Furnished dated shares	Rs. (i) (ii)	Sl. No.
					Rs. (i) (ii)	Rs. (i) (ii)	
					1992-93 1993-94 1994-95 1995-96	1992-93 1993-94 1994-95 1995-96	

Shares:  
 ✓ Debentures:  
 Bonds:  
 Units:  
 Other holdings:

\*Harshad Mehta Group  
 A.O. Narottam 08.06.92

A.N. Bavedkar 13.06.92

R. Sitaraman

Bhupendra C. Datal

J.P. Gandhi

T.B. Rula 02.07.92

Fairgrowth Financial Services Ltd.  
 R. Ganesh

Dhantai Mills 05.08.92

(P) Ltd. ..

Deepak B. Mehta 07.01.93

Mumbai  
 14th November, 1996

Authorised Signatory of Company  
 Sd/-

Custodian

The Special Courts (MOHTS) Act, 1992

dtsp 95/388

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विशेष न्यायालय (प्रांतीयभूति संव्यवहार सम्बन्धी  
अपराध धिक्कारण) अधिनियम, 1992.  
गोकुंग प्रभाग (आर्थिक कार्य विभाग)  
चित्त मंत्रालय  
10 वां मर्जिल - नरिमन भवन,  
227 विनय के. शाह मार्ग,  
नरिमन पाइल बुलडॉग 400 021  
फ़ाक्स : 2202 2251 - 2285 6780 - 2283 3007  
फ़ोन : 022-2281 0357

THE SPECIAL COURT (Trial of offences  
relating to transactions in Securities) Act, 1992.  
Banking Division (Department of Economic Affairs)  
Ministry of Finance  
10th Floor, Nariman Bhawan,  
227, Vinay K. Shah Marg,  
Nariman Point, Mumbai - 400 021.  
Phone : 2202 2251 - 2285 6780 - 2283 3007  
Fax : 022-2281 0357



No. : 1414/CUS/BOM/REC/NP/ALL/07(2274)

15 June, 2007

To,  
Reliance Industries Limited  
4, Maker Chambers,  
3rd Floor, 222,  
Nariman Point,  
Post Box 11717,  
Mumbai 400 021.

Sub : Reconciliation of attached assets-Receipt of benefits thereon  
Persons / entities notified by the Custodian under Special Court  
(TORTS) Act, 1992.

Sir,

1. In the recent past this office has received references from various companies seeking advice on the letters received from notified entities of Harshad Mehta Group (HMG) calling for information regarding their attached shares and accruals thereon. Notified persons belonging to Harshad Mehta Group have addressed a joint and identical letter to all the Companies whose shares they were holding and now attached by the Custodian. They have sought the following information in respect of shares of such Companies :-

1. Folio wise shareholding details as on 08-06-1992 with details of all the changes that have taken in these holdings till date.
2. Particulars of dividend payments from 08-06-1992 till date.
3. Information regarding any shares held in abeyance under the instructions of revenue/CBI/Custodian/Bombay Stock Exchange together with copies of instructions.
4. Copies of company communications addressed to the Custodian or to their Bank forwarding shares / warrants or any other benefits or any statement giving reconciliation of their shareholdings.

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.2/-

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- 2 -

5. Particulars of shares received for transfer but not transferred and held pending certification of shares.

In most of the cases the concerned Companies have sought advice whether the information can be given to the concerned notified persons. *Copy of letter addressed by notified persons/ entities of Harshad Mehta Group to M/s. Larsen & Toubro Limited duly seeking information on above lines is enclosed for reference.*

2. The matter has been carefully examined. It may be recalled that by virtue of provisions of section 3(3) of the Special Court (TORTS) Act, the assets of the notified persons / entities stand attached from the date of the notification. Therefore, maintenance of the said assets, (shares in this case) lies with the Custodian and the same shall be dealt with by the Custodian in such manner as the Special Court may direct in terms of Section 3 (4) of the said Act. In view of this position it will not be appropriate for the Companies to furnish the information desired by the notified entities or HMG direct to them. The information may be furnished to Custodian under intimation to the concerned notified persons / entities. The Custodian would then reconcile the position of Shares of the concerned notified persons with them as also take further necessary action for obtaining shares / dividends held in abeyance or still held by the Companies for one reason or the other.

3. Apart from the above, you are also requested to furnish the share holding position in respect of all the notified persons / entities from the date of notification in the enclosed pro-forma to enable the office of the Custodian to reconcile the share holding position in respect of the other notified persons / entities in a similar manner. A list of the notified persons indicating the dates of the notification is enclosed.

.3/-

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- 3 -

4. It has come to notice that some of the companies are still holding the attached shares pertaining to notified parties. All such companies are hereby requested to send all such shares and accruals thereon to the Custodian.

5. The address to which the aforesaid particulars as well as shares and accruals thereon are required to be sent is as under :-

Sh. A. K. Toprani  
Director,  
Office of the Custodian, Special Court (TORTS) Act, 1992  
Nariman Bhavan,  
10<sup>th</sup> Floor, 227 Vinay K Shah Marg,  
Nariman Point,  
Mumbai 400 021.

6. The shares as well as the particulars as per the enclosed pro-forma shall be sent at the address given above under intimation to office of the Custodian, Special Court (TORTS) Act, 1992, 3<sup>rd</sup> floor, Bank Baroda Bhawan, 16, Parliament Street, New Delhi – 110 001.

Yours faithfully

OC  
*Dilip C. Nair*  
(Dilip C. Nair)  
Officer on Special Duty

Encl.

- Pro-forma
- List of Notified Parties

CC :

Karvy Computershare Private Limited  
6-1-68/2, Saifabad,  
Hyderabad 500 004

Sangeeta  
15/6/04

Hero

The Under Secretary  
 Office of Under Secretary  
 Ministry of Corporate Affairs  
 Room No:521, "A" Wing, 5<sup>th</sup> Floor  
 Shastri Bhawan  
 Dr Rajendra Prasad Road  
 New Delhi-110 001

Dear Sir,

Request for refunding the Unclaimed and Unpaid dividend remitted under A/C No: 007501040000-Miscellaneous General Services, Unpaid dividend Companies(IEPF)

Ref: Challan No:B23267123 dated 21/10/2011 for Rs.3,03,17,970/-towards the remittance of unclaimed and unpaid dividend (500% final dividend for the year 2003-2004 of Hero MotoCorp Limited)

We draw your kind attention to the challan under reference and the demand draft bearing no:695961 dated 20/10/2011 for Rs.3,03,17,970( Rupees Three Crores Three Lakhs Seventeen Thousand And Nine Hundred Seventy Only), submitted by us on 24/10/2011 with Punjab National Bank, ECE House, K.G.Marg, New Delhi.

The above amount was remitted by us towards the unpaid and unclaimed dividend for the year 2003-2004, in accordance with the provisions of Sections 205A & 205C of the Companies Act, 1956 read with Rule 3 of The Investor Education and Protection Fund (awareness and protection of Investors) Rules, 2001 (hereinafter referred to as "IEPF Rules").

1. The above provisions under the Companies Act and the IEPF Rules, respectively and collectively, place an obligation on the part of the Companies to,

- a) on completion of 30 days but not later than 37 days from the date of declaration of the dividend, transfer the unclaimed and unpaid dividend to a separate account to be opened by the companies in the name and style of Unpaid Dividend A/C of HHML-2003-04 Company Limited/Company (Private) Limited, and;
- b) remit to IEPF the money so transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer to unpaid dividend account, within 30 days of the completion of the said seven years' period.



2. As provided in the above provisions, the unpaid dividend amount in respect of the dividend declared and distributed by our company in 2004, which was transferred to Unpaid Dividend Account for the year 2004 (in terms of 6(1) above), became due for remittance to IEPF, in 2011.

3. Accordingly, as stated supra, an amount of Rs.3,03,17,970 ( Rupees Three Crores Three Lakhs Seventeen Thousand And Nine Hundred Seventy Only), was remitted by us on 24/10/2011. The said amount represents the unpaid / unclaimed dividend amount in respect of the shares pertaining to 3206 share holders / investors. Copies of the Challan, the list giving the details of the said 3206 share holders and the demand draft for the above said amount, tendered by us on 24/10/2011 with Punjab National Bank, are collectively enclosed as Exhibit-A.

4. While facts being so, it came to light that prior to remitting the above said dividend amount with IEPF, a claim/direction from the Office of the Custodian, Ministry of Finance, Government of India ( a Statutory Authority) was received by our Registrar and Share Transfer Agent, M/s Karvy Computershare Private Limited (KCPL), for remitting the dividend amounts for the year 2004 in respect of 1,44,49,800 shares held by one Smt Rasila S. Mehta ( notified party), vide letters dated 17/08/2011 and 19/09/2011. Copies of these letters are collectively enclosed as Exhibit-B. Your kind attention is drawn to these letters, from which it is evident that the Custodian while complaining non-receipt of dividend in respect of 4,73,240 shares (4,33,490 +39,750), acknowledged the receipt of dividend for balance shares, out of total shares (as mentioned above) held by the above said notified party.

5. It is noticed from the records that a duplicate dividend warrant was issued to the Custodian in respect of 39,750 shares (under Folio No:HML 124725), on 18/01/2011 and accordingly informed to the Custodian while replying to their above letters. However pending claim of the Custodian in respect of the dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) pertaining to 4,33,490 shares ( DPID IN301127/Client ID 16590024), the above said dividend amount was inadvertently remitted to IEPF on 24/10/2011. Your kind attention is drawn to item no.51 on page 1 of Exhibit-A, which represents the above said amount.

6. It may kindly be noted that Custodian is a Statutory Authority appointed under Section 3(1) of Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992 (hereinafter referred to as "Special Court Act"). Further, as per sub-section (3) of Section 3 of the Special Court Act, all assets of such notified parties / entities stand simultaneously attached with the Custodian as on the date of their notification and the property so attached shall be dealt with by the custodian in such manner as the Special Court may direct.



7. Subsequent to the enactment of the Special Court Act, the Custodian notified the names of the persons involved in the above said transactions and attached their properties, in terms of the orders passed by the Special Court from time to time. Post attachment of shares standing in the name of the notified persons, the Custodian got opened Dematerialization Accounts in respect of the shares held by the notified persons in electronic form and got them transferred to such Demat Accounts, in terms of the Special Court Act and as per the directions of the Special Court from time to time. In this case, the shares in question were transferred in the name of Custodian on 25/06/2004 and the same were subsequently got dematerialized by the Custodian on 14/07/2004.

8. As per the records, all the shares (1,44,49,800) standing in the name of Smt Rasila S.Mehta , i.e the notified party, have been attached by the Custodian. Subsequent to the attachment, the shares stood transferred in the name and style of "Custodian (Special Court) A/C Rasila.S", on 25/06/2004, since which, the benefits on these shares have been getting remitted to the Custodian from time to time! However, as explained above, the dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) for the year 2004 in respect of one lot of 4,33,490 shares held in electronic form by the Custodian vide DPID IN301127/Client ID 16590024, was inadvertently remitted IEPF on 24/10/2011, pending his claim on the same.

9. It is pertinent to note that as per the clarification provided under Section 205C of Companies Act 1956, no amounts referred to under the Section shall form part of the Fund (IEPF) unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment. It may kindly be noted that with regard to the above dividend, there has been a claim from Custodian (who has been holding the units as a Statutory Authority) for payment of the same and hence, the dividend in question ought not have been qualified to be part of the Fund (IEPF), in terms of the clarification provided under the Companies Act,1956.

10. It is submitted that in this case, the shares were not only attached by the Special Court through a Statutory Authority but also there has been a claim/direction pending from the Statutory Authority for payment of the dividend on such shares even prior to said dividend was remitted to IEPF. Moreover, the Hon'ble Supreme Court, in the case of *Tejkumar Balkrishna Ruia V/s A.K.Menon & Another* [1997, 9 SCC, 123], held that the income or usufruct of attached property is also attached property. Thus, if the property be shares, dividends and bonus and rights shares thereon would also be attached property.



11. From the above facts and submissions, it is evident:

- (a) The dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) is pertaining to the shares held by one Sint Rasila S.Mehta, who is a notified person under the Special Court Act.
- (b) The shares in question have been attached under the provisions of the Special Court Act. By virtue of the attachment, the dividend also stands attached.
- (c) Subsequent to the attachment, the shares stood transferred in the name of the Custodian, a Statutory Authority.
- (d) There has been a claim by the Statutory Authority holding the shares, for payment of the dividend amount in question which has been inadvertently remitted to IEPF on 24/10/2011.
- (e) In view of the pending claim for payment of dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) from the Custodian prior to remitting the amount to IEPF and also the attachment of the shares on which the said dividend was declared under the provisions of the Special Court Act, the said amount of dividend cannot be construed as unclaimed as defined under Sections 205A and 205C of the Companies Act, 1956 and thus cannot be forming part of the IEPF as provided under Rule 3 of IEPF Rules.

12. It is therefore most respectfully requested that the dividend amount of Rs.43,34,900/- (Rupees Forty Three Lakhs Thirty Four Thousand Nine Hundred Only) in respect of shares appearing as item no. 51 on page 1 of Exhibit "A", may kindly be refunded to us to enable us to pass on the same to the Office of the Custodian.

It is humbly submitted that in addition to the above shares, the Custodian has also attached the shares pertaining to the following persons and the dividend amounts as shown against them were also remitted by us on 24/10/2011.

Sr.No	Name of the Investor	Name of the Account after attachment	Amount (Rs.)	Item nos in the Exhibit
1	Harshad Mehta	Custodian (Special Court)-A/C-Harshad Mehta	1,19,59,150.00	50
2	A.D.Narottam	Custodian (Special Court)-A/C-A:D.Narottam	17,500.00	52



As the above investments have also been attached by the Custodian in terms of the provisions of the Special Court Act, corresponding dividend amounts (as shown above) of Rs. 1,19,59,150/- (Rupees One Crore Nineteen Lakhs Fifty Nine Thousand One Hundred Fifty Only) and Rs. 17,500/- (Rupees Seventeen Thousand Five Hundred Only), respectively are required to be passed on to the Custodian. It is therefore humbly requested that the above said amounts may kindly be either refunded to us or be paid to the Custodian directly.

Kindly note that a copy of this letter is being marked to the Office of Custodian for information.

Kindly do the needful.

Thanking you,

for Hero MotoCorp Ltd.

  
JITAM C. KAMBOJ  
Sr. G.M. Legal & Company Secretary

Encl: As above.

09/07/2012

11 True Copy 11

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

MISCELLANEOUS APPLICATION NO.24 OF 2016

IN

MISCELLANEOUS APPLICATION NO.244 OF 2003

The Custodian

.. Applicant

Vs.

The Chairman of the Committee

Investor Education & Protection Fund

Department of Company Affairs & Ors. .. Respondents

Mr. J. Chandran a/w Ms. Shilpa Bhate i/b. Leena Adhvaryu & Associates for the applicant.

Mr. Anil Singh, ASG, a/w Suresh Kumar for respondent no.1.

Ms. M. D'Souza i/b. Partners Asso. for respondent no.5

Mr. Pankaj Uttaradhi i/b. S. R. Legal for respondent no.7.

Mr. V. K. Nair for respondent no.8.

Mr. D. P. Kamat for respondent no.14.

Mr. Ashwin Mehta for respondent no.15 & 16.

CORAM : A.K. MENON, J.

(SPECIAL COURT)

DATED : 18TH August, 2016

P.C. :

1. This is an application taken out on behalf of the Custodian seeking the following reliefs:-

"(a) This Court be pleased to direct the respondent no.1 i.e.

*Investor Education and Protection Fund, Ministry of Corporate Affairs, New Delhi to release the unclaimed principal amounts and interest warrants of respondent nos.2 to 8, 10 and Bombay Stock Exchange belonging to the notified parties viz. Shri Hiten P.Dalal, late Shri Abhay D. Narottam and Mrs. Rasila S. Mehta and Mrs. Rina S. Mehta as listed in Annexure A to this application to the applicant Custodian for crediting in the attached Bank Account of the notified parties.*

*(b) This Court be pleased to direct the respondent no.9 i.e. U.P. Rajya Utpadan Nigam Ltd. to remit a sum of Rs.9.85 lakhs with interest to the attached A/c of Shri Hiten P. Dalal as mentioned at Annexure B.*

*(c) Any other order this Court may deem fit and proper in the interest of justice."*

Mr. Chandran, the learned counsel appearing for the Custodian states that all the respondents have been served. Respondent nos.1 and 11 have been incorrectly described. Respondent no.1 is intended to be the Investor Education and Protection Fund, Department of Company Affairs. Respondent no.11 is intended to be the Bombay Stock Exchange Ltd. In this Order reference to Respondent no.11 will mean the Bombay Stock Exchange Limited. Respondent no.12 is a share transfer agent and Respondent nos.13

to 16 are notified parties. An affidavit of service dated 16<sup>th</sup> June, 2016 has been filed. However, only respondent nos.1, 5, 7, 8, 14, 15 & 16 are represented by Advocates. The contesting respondent is only Respondent No.1 being the Investor Education and Protection Fund, Department of Company Affairs, Ministry of Corporate Affairs. No relief is sought against the others.

3. On behalf of respondent no.1 an affidavit of Shri A. K. Chaturvedi opposing the grant for reliefs has been filed. On behalf of respondent no.5 the affidavit-in-reply indicates that they are willing to submit to the orders of the Court. Respondent no.15 and 16 have filed a common affidavit dated 29<sup>th</sup> June, 2016 in effect supporting the application.

4. Mr. Chandran, submits that the respondent no. 2 to 8 and 10 and 11 have deposited the maturity value of various bonds, deposits, debentures, dividend and interest warrants and proceeds such as interest in respect of various investments made ("Maturity Proceeds") due to the notified parties with the Respondent no. 1. Respondent no. 9 is believed to be still holding on to Maturity Proceeds despite being called upon to pay over the same to the Custodian. Since all properties belonging to the notified parties stood automatically attached, the Custodian is entitled to receive the same. It appears that by virtue of operation of Section 205C of the Companies Act, 1956 the Maturity Proceeds have been paid over by respondent nos.2 to 8, 10

and 11 to respondent no.1.

5. Mr. Chandran further states that the applicant had issued letters dated 17<sup>th</sup> November, 2003 to respondent nos.2 to 11 requesting them to deposit the Maturity proceeds with the applicant. However, the said request has not been complied with. By a letter dated 28<sup>th</sup> January, 2004 the respondent no.11 confirmed having transferred the said Maturity Proceeds to respondent no.1 pursuant to aforesaid Section 205C of the Companies Act.

Respondent no.2, 3, 4, 5, 6, 7, 8 and 10 have vide various letters written between 21<sup>st</sup> December and 30<sup>th</sup> December, 2003 being Exhibits "C" to "J" to the application informed the Custodian that the Maturity Proceeds have been deposited with respondent no.1. Respondent no. 9 vide its letter dated 11<sup>th</sup> March 2005 being Exhibit "K" addressed to the State Bank of India contended that the maturity value of bonds were being held by the said Bank. A copy of the said letter is marked to the Custodian alluding to the fact that the said Bank may act as required by the Custodian. Mr. Chandran submitted that although the respondent nos. 13 to 16 were notified on 8.6.1992 and respondents 15 and 16 were notified on 4.1.2007, the Custodian was unaware of these investments and the maturity proceeds till the Central Bureau of Investigation handed over the relevant evidence in this respect after the Order dated 20<sup>th</sup> September 2003 passed by the Special Court in M.A. No.244 of 2003 (Exhibit A to the Application). It is only after this

information was received that the letters dated 17<sup>th</sup> November, 2003 were addressed to the respondents 2 to 11.

6. Mr.Chandran submitted that the funds comprising Maturity Proceeds are attached properties and as such the Custodian was bound to bring back these funds so as to deposit the same with the Custodian to augment the assets of the notified parties. The attached monies belonging to notified parties are in fact Custodia Legis and this Court alone has the jurisdiction to entertain and dispose of the present application. He therefore prayed for the relief as aforesaid. Mr. Chandran also relied upon the order of the Special Court in Misc. Petition No.285 of 1995 dated 2<sup>nd</sup> August, 1996 and he relied upon the observations in paragraph 14, 18 and 19 of the said order. He submitted that it is already well settled that limitation cannot be a ground on which the present relief could be opposed.

7. On behalf of respondent no.1 Mr. Anil Singh, the learned Additional Solicitor General opposed the application. Mr.Singh contended that the application is not maintainable. He relied upon the provisions of Section 205C of the Companies Act and submitted that the explanation to the said Section clearly provided that no claim shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for

payment and no payment shall be made in respect of any such claims.

8. Mr. Singh therefore submitted that the present application is liable to be dismissed in limine. In support of his contention, Mr. Singh relied upon the provisions under Section 205C and submitted that the proceeds of unpaid dividends, matured deposits, matured debentures and interest from the aforesaid would all have to be deposited with the first respondent fund if they were unclaimed and/or unpaid for a period of seven years from their respective due dates. In support of this contention Mr. Singh relied upon the two decisions in the case of *R. Rajgopal Reddy v/s. Padmini Chandrasekharan*(1995) 2 SCC 630 and *R. S. Raghunath v/s. State of Karnataka and another* (1992) 1 SCC 335. In the judgment of Rajgopal Reddy (supra) Mr. Singh relied upon paragraph 11 and submitted that the applicant's right to apply for the reliefs in this application had been taken away by virtue of Section 205C of the Companies Act and that no suit, claim or other action to enforce any right to claim the maturity proceeds could now lie. He relied upon the definition of word "lie" forming part of the explanation to Section 205C which was dealt with in the said judgment. The Collins English Dictionary defined "lie" as meaning "for an action, claim, appeal etc. to subsist; be maintainable or admissible." He therefore submitted that the present action will not lie and the application is therefore not maintainable.

9. Relying upon the observation of the Supreme Court in paragraph 13 of the judgment in the case of Raghunath (*supra*), the learned Additional Solicitor General submitted that there is no inconsistency between the Companies Act and the Special Courts (Trial of Offences relating to Transactions in Securities) Act and the non-obstante clause forming part of the Special Courts Act does not entitle the applicant to any relief in the present application. Mr. Singh further contended that as observed by the Supreme Court in Raghunath (*supra*) before giving effect to the overriding nature of a non-obstante clause, one must ascertain whether there is a clear inconsistency between the two enactments. According to Mr. Singh there is no inconsistency the relevant provisions of the Companies Act and the Special Courts Act and therefore the non-obstante provisions of the Act do not come into play. According to Mr. Singh the Companies Act clearly intends to protect the rights of the investors by utilizing the funds which are unclaimed and once the period of seven years has passed, the claimant cannot access these amounts.

10. Mr. Ashwin Mehta appearing for the Respondents 15 and 16 supported the Applicants and contended that the application may be allowed. Mr. Chandran in rejoinder reiterated the applicant's case and relied upon the Order dated 1<sup>st</sup> February 2013 in MA no. 87 of 2011 a similar issue had arisen and by the said Order the Special Court had directed the Respondent

No.1 – Union of India to pay over the relevant amount to the Custodian. He further reiterated the fact that the amounts lying with Respondent Nos.2 to 11 stood attached upon notification and the said respondents ought not have paid over the Maturity Proceeds to the Respondent No.1. In other words, if any Maturity Proceeds remained with the Respondent Nos.2 to 11 and had not been paid to the rightful owner for a period of seven years from their respective due dates or if after the dues were offered for payment or payments were attempted to be remitted but remained unclaimed with the said respondent companies, these amounts would have to be transferred to the Fund. He therefore submitted that in the present case by operation of law these amounts have been transferred to the fund and therefore could not be claimed by respondent no.1. More so because the Companies Act deal with the specific provisions for protection of investors and it is not subservient to the provisions of the Special Courts Act.

11. Having heard the parties, I do not find any merit in the first respondent's case. Section 205C of the Companies Act 1956 is relied upon by the first respondent is reproduced below for ease of reference :

*"205C. Establishment of Investor Education and Protection Fund.--*

*(1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").*

(2) There shall be credited to the Fund the following amounts, namely:—

- (a) amounts in the unpaid dividend accounts of companies;
- (b) the application moneys received by companies for allotment of any securities and due for refund;
- (c) matured deposits with companies;
- (d) matured debentures with companies;
- (e) the interest accrued on the amounts referred to in clauses (a) to (d);
- (f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and
- (g) the interest or other income received out of the investments made from the Fund.

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation.— For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established".

12. In my view, Section 205C of the Companies Act was intended to

protect funds which are not claimed by any party but does not cover Maturity

Proceeds which parties could not claim by virtue of operation of the Special

Courts Act. The Maturity Proceeds came to be transferred as a result of the

inability of notified parties to claim those amounts. These notified parties

were incapable of personally claiming these amounts. There was a legal bar

against the amount being collected or appropriated by the notified parties.

The Special Courts Act was enacted after investigations by the Reserve Bank

of India revealed large scale irregularities and malpractices in transactions in

securities, indulged in by some brokers in collusion with the employees of

various banks and financial institutions leading to the diversion of funds from

banks and financial institutions to the individual accounts of certain brokers.

The Act is thus intended inter alia to ensure recovery of the amounts

involved, to punish the guilty and restore confidence in and maintain the

basic integrity and credibility of the banks and financial institutions.

13. I do not see any reason why the maturity proceeds transferred to

the fund cannot be held by the Custodian. The Custodian could not have

made this application earlier for want of knowledge. The Companies Act,

1956, provides for establishment of the fund to be utilised for protection of

the interests of the investors in accordance with rules that may be prescribed.

The committee appointed under Section 205C (4) is empowered to spend

monies out of the fund for carrying out objects for which the fund was

established. It was contended by the learned Additional Solicitor General that

there is no provision that enables the amount to be returned but the notified

parties were incapable of claiming these amounts owing to their disability

upon their notification which entails automatic attachment of the assets. The

funds, therefore, stood attached in the hands of respondent nos.2 to 11. The fact of attachment was publicly notified and all concerned including respondent nos. 2 to 11 were expected to be aware of the fact that the Maturity Proceeds had been attached. It was the bounden duty of all these entities i.e. respondent nos.2 to 11 to have approached the Custodian and sought clarification if they were in any doubt as to the effect of the promulgation of the ordinance, the notification of parties and the Act.

14. In the circumstances, the said respondent ought not to have paid over the Maturity Proceeds to respondent no.1 but should have entrusted the same with the Custodian. It has been repeatedly emphasised that debtors must find the creditors and the respondent nos.2 to 11 were bound to approach the Custodian if they were in doubt and seek its clarifications as to the fate of the maturity proceeds. This not having been done, resulting in the amounts being paid over to the Fund, the first Respondent cannot now be heard to say that the Maturity Proceeds which stood attached upon notification cannot be paid over to the Custodian.

15. The attachment of these assets was in furtherance of the objects of the Special Courts Act. In this respect, the Special Court is bound to pass appropriate orders. In *L.S. Synthetics Ltd. v/s. Fairgrowth Financial Services Ltd. & Anr. in Civil Appeal No.4268 of 2003* the Supreme Court reiterated that the provisions of the Act required the Custodian, inter alia, deal with the properties in the manner as directed by the Special Court and that the debt in question is capable of being attached if it is a property belonging to the notified party. The Special Court has the requisite jurisdiction to deal with the property attached. The Supreme Court observed as follows –

“.... .... As the Special Court had the requisite jurisdiction to deal with the attached property, it is immaterial whether the factum of the statutory provisions is brought to its notice by the notified party himself or by the Custodian. The Court has the requisite jurisdiction nay a duty to apply itself to the said question once the matter is brought to its notice.”

16. The Supreme Court in L.S. Synthetics (supra) inter alia, clarified that the provisions of the Limitation Act could only be applied when a suit is filed and the proceeding is initiated for a recovery of amount and not where liberty is required to be applied towards claims pending before the Tribunal

for the purpose of discharge of liabilities of a notified person. In the circumstances, the Maturity Proceeds stood attached upon a notification of the parties concerned and the respondent nos.2 to 11 were bound to approach the Custodian to seek appropriate directions if in doubt and in the facts of this case the said amounts could not have been utilized by the Fund for any of the purposes set out in Section 205-C. For the aforesaid reasons, the application is required to be allowed.

17. I therefore, pass the following Order:-

- (i) The Investor Education and Protection Fund, Ministry of Corporate Affairs, New Delhi, shall release the amount of maturity value of bonds, debentures, deposits, unpaid dividends and interest warrants which were due to the notified parties viz. Hiten P. Dalal, late Shri Abhay D. Narottam and Mrs. Rasila S. Mehta and Mrs. Rina S. Mehta from Respondent Nos.2 to 11 and which were remitted to the Investor Education and Protection Fund by the aforesaid Respondents and the Bombay Stock Exchange Ltd within a period of four weeks from today.
- (ii) Respondent No.9 shall remit the maturity proceeds of 7.25% U.P.S.E.Bonds 1996 under certificate nos.743, 744, 745, 746, 747, 864, 861, 862, 863, 865, 866, 867 and 868 as detailed in letter dated 11.3.2005 from Respondent No.9 to Deputy General Manager, State Bank of India, Kanpur

also within a period of four weeks from today.

- (iii) To facilitate compliance, the first Respondent Investor Education and Protection Fund is directed to disclose on oath within a period of two weeks from today particulars of all remittances received from respondent nos.2 to 8, 10 and the Bombay Stock Exchange Ltd.
- (iv) Application disposed off in the above terms.

(A.K. MENON, J.)



Office to accept  
for filing

4/3/2023

Ms. Vaidya Tochek  
05/03/2023

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

M.A. NO. 10 OF 2023

Smt Jyoti H. Mehta ... Applicant

Vs

Custodian & Ors.

... Respondents

APPLICATION

(PART - I)

Dated this 27<sup>th</sup> day of February, 2023

File number  
F. 6. 2023

(Mr. Ashwin S Mehta)

Advocate for Applicant  
32, Madhuli, Dr. A B Road,  
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Filed

Date: 07/06/2023

- 1) Respondent Nos 8 & 9 are fronts of other respondents who are the legal heirs. Once they heard the appearance the details of legal heirs would be cleared and application will be answered.
- 2) Rectified. 3) Produced at the time of hearing.
- 4) No application is filed.
- 5) All objection removed.
- 6) Replace all objection removed.

MS  
13/3/2023

Obj. No. 1, not complied  
with  
Ld 17/3/2023  
all objection removed  
22/05/2023  
06/06/2023