"Smt Jyoti Mehta filed on behalf of all the Applicants an Affidavit-in-rejoinder to the reply of Custodian dated 23.09.2021 and challenged the false assets and liabilities picture being presented by Custodian for several years in complete violation of law laid down by Hon'ble Supreme Court in Harshad Mehta's judgment dated 13.05.1998. The Custodian acting in collusion with the IT department was including all the demands of the department in liabilities though as per Hon'ble Supreme Court the demand for taxes could be reckoned after they became final and binding and the demands for interest and penalty were liable to be excluded from liability on several grounds. That monies released to revenue with accrued interest was liable to be included in the assets. That Custodian did not have up-to-date picture of claims for past 4 years and the department was yet to pass several OGEs and yet to comply with the orders of Hon'ble Supreme Court. The Custodian was neither recovering the attached assets nor wanted Mehtas to recover them to confer benefit on banks and third parties. The reliefs to the family members could not be denied on the basis of Harshad Mehta Group and treating all of them as 'one entity'."

BEFORE THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992 MISC. APPLICATION NO.15 OF

Smt Jyoti Mehta & Ors. ...Applicants

Versus

The Custodian ...Respondent

Affidavit-in Rejoinder by Smt Jyoti Mehta to Affidavit in Reply of Custodian dated 23.09.2021

I, Smt Jyoti Mehta, Applicant No.1 abovenamed have gone through the contents of the Affidavit in Reply filed by one Shri N.B. Sawant, Under Secretary in the office of the Custodian and I am pleased to file an Affidavit in Rejoinder as under:

1. At the outset I state that I deny each and every averment made by the Custodian which is contrary to what is set out in our Application and nothing should be deemed to be admitted by us unless so specifically stated. I say that in order not to burden the records I may be permitted to file this common Affidavit in rejoinder on behalf of all the Applicants particularly since our replies are identical.
2. So far as what is stated in Paras 1 and 2 of the Reply are concerned, the same are formal averments and are substantially true.
3. So far as what is stated in Para 3 of the Reply is concerned, I say that the deponent has not filed the reply on a Para-wise basis and therefore in terms of the law governing pleadings to the extent the Custodian has failed to deal with our

averments the same should be deemed to be admitted. I say that in fact in order not to answer the allegations against the Custodian and to deal with the supporting evidence adduced by us the Custodian in almost all cases has deliberately not been dealing with our applications on a Para-wise basis. I say that in terms of law governing pleadings it is obligatory for the Custodian to specifically deal with the averments made in our application on a Para-wise basis and such deliberate failures to do so cannot be sheltered under bald and omnibus denials and thereby derive any advantage out of them.

4. So far as what is stated in Para 4 of the Reply is concerned, the contents of the same are denied and the deponent is put to strict proof thereof. In respect of the alleged Harshad Mehta Group I say and submit as under:

i. It is denied that there is any Harshad Mehta Group. I say that till date the Custodian has not filed any application seeking any order from this Hon'ble Court for declaration of any Harshad Mehta Group nor he has ever explained in any proceedings any basis in facts or law for existence of such Harshad Mehta Group much less ever explained how such a concept of group is required to operate. I say that in terms of law laid down by Hon'ble Supreme Court through several of its judgments there cannot be any joint discharge of liabilities as it is illegally canvassed by the Custodian.

ii. I say that the Custodian has notified the Applicants individually under his notification dated 08.06.1992 and I am pleased to enclose at **Exhibit A** copy of Gazette

Notification issued by Custodian on 08.06.1992. I say that having notified us individually the provisions of the Torts Act are liable to be applied to us only on an individual basis.

iii. I say that Custodian has no *locus* and cannot step into the shoes of the creditors but in fact it is his statutory duty to contest false claims of revenue and banks and take every step to protect, preserve and augment the attached assets but instead abdicating his statutory duties the Custodian acting in collusion with revenue and banks has been canvassing the patently illegal Harshad Mehta Group theory. I say that the Income Tax Act does not provide for recovery of dues of one notified entity from the assets of other notified entity and as such so far as claims of revenue are concerned the Harshad Mehta Group theory is violative of the provisions of the Income Tax Act.

iv. I say that admittedly even the banks have obtained *ex-parte* decrees except in one case of Shri Ashwin Mehta against the estate of late Shri Harshad Mehta **(HSM)** which decrees have become binding on the banks as they have attained finality and only open to a challenge by the notified entities. The banks had joined the legal heirs of late HSM viz. Smt Rasila Mehta and Smt Jyoti Mehta after the demise of HSM on 30.12.2001 and have made express averments in their pleadings that the legal heirs are liable only to the extent of inheritance received by them from the estate of late Shri Harshad Mehta. I

say that these banks have thereafter even filed Execution Applications before this Hon'ble Court to seek execution of their decrees in which they have prayed for the relief of payments to them from the estate of late Shri Harshad Mehta. I say that these decrees are presently challenged by Smt Jyoti Mehta before Hon'ble Supreme Court by making serious allegations against banks and Custodian and as such the said decrees have not attained finality. I say that the Custodian is fully aware about the above facts but yet by suppressing them and by acting in violation of the binding law has been canvasing the patently illegal Harshad Mehta Group theory.

v. In any event in view of the judgments delivered by this Hon'ble Court and by Hon'ble Supreme Court our assets and liabilities are required to be prepared only on an individual basis in terms of which we are entitled to the reliefs prayed for by us as our present application is fully covered by the law laid down by this Hon'ble Court under its order dated 12.02.1996 passed in MP 215 of 1995. I say that since Custodian has not challenged the above order the same has attained finality.

vi. I say that besides above, the Custodian has deliberately been presenting completely false assets and liabilities pictures whereby our assets are understated and liabilities are overstated. The picture is drawn in gross violation of the provisions of the Torts Act and in particular Section 11(2)(c) of the Act as also in gross

violation of the law laid down by Hon'ble Supreme Court in the case of Harshad Shantilal Mehta vs. Custodian reported as **(1998) 5 SCC 1** (hereinafter referred to as **"The said Judgment").**

vii. I say that in terms of Section 11(2)(c) only this Hon'ble Court has complete discretion to specify "*any other liability*" that would be included for distribution u/s 11(2)(c) of the Torts Act but admittedly till date this Hon'ble Court has not specified inclusion of any claims of revenue and banks u/s 11(2)(c) of the Torts Act. I say that this is because in terms of Para 38 of the said judgment the stage has yet not arrived for exercising the above discretion and for specifying inclusion of any claims u/s 11(2)(c) of the Torts Act. I say that the relevant part of above Para 38 is reproduced below:

Para 38 "..... *The Special Court is required to consider this question only from the point of view of distributing any part of the surplus assets in the hands of the Custodian after the discharge of liabilities under sections 11(2)(a) and 11(2)(b). The Special Court has full discretion under Section 11(2)(c) to decide whether such claim for penalty or interest should be paid out of any surplus funds in the hands of the Custodian."*

I say that in terms of the above law only after final distribution u/s 11(2)(a) and 11(2)(b) if any surplus is left this Hon'ble Court can exercise its above discretion.

viii. I say that admittedly such a surplus in the hands of the Custodian is yet to be established since no final

distribution u/s 11(2)(a) and 11(2)(b) has been undertaken by this Hon'ble Court. I say that instead disbursements have been made by this Hon'ble Court and Hon'ble Supreme Court only on an ad hoc and interim basis to revenue and banks after obtaining undertaking from them to unconditionally bring back the amounts together with interest as and when ordered to do so. I say that admittedly the claims falling due u/s 11(2)(a) and 11(2)(b) have not attained finality since they are disputed and denied and presently under challenge before Appellate authorities. I say that in a number of cases the challenge by the notified entities have succeeded because of which what was considered to be our liabilities was deleted and instead refunds of Rs.814.33 Crores have been already received by the Custodian from the revenue on behalf of several notified entities, the particulars of which are already provided in Exhibit H of the application. I say that further refunds from revenue of more than Rs.5500 Crores have already fallen due which monies are neither being returned by the revenue nor the Custodian is taking any steps to recover them from the department despite our repeated requests only in order to confer huge benefits on to revenue by acting in collusion with it. I say that at one point in time the revenue had made claims of almost about Rs.30,000 Crores but because of successfully contesting them we have secured more than 1200 orders of reliefs from the Appellate authorities on

account of which these claims have already fallen down drastically to about Rs.4000 Crores. I say that these claims will go down further and much larger amounts of refunds will further become due to us as and when the Appellate authorities dispose of the balance appeals.

ix. I say that in terms of law laid down in the said judgment the disputed claims of revenue for tax, interest and penalty cannot be included in our liabilities as done by the Custodian until they become final and binding on us and until this Hon'ble Court declares the date of distribution and reckons the claims of the revenue for inclusion in the distribution. I say that claims of revenue for tax, interest and penalty falling due u/s 11(2)(c) are not liable to be included in our liabilities and claims for interest and penalty for AY 1992-93 and AY 1993-94 are also not liable to be included in our liability. I say that in gross violation of the law laid down in the said judgment all the demands of revenue are being treated as our liabilities by the Custodian to justify release of monies to revenue and to propagate Harshad Mehta Group theory.

x. I say that Custodian is also aware that the revenue has not presented it with the correct picture of demands now for past almost 4 years despite the Custodian calling upon them to do so through at least 17 letters list of which together with the copies of the letters are enclosed at **Exhibit B**. I say that Custodian is bound by the orders passed by the Appellate authorities under the

Income Tax Act and even this Hon'ble Court is bound by them and cannot sit in appeal over them. I say that in fact Income Tax Appellate Tribunal (**ITAT**) is the last fact finding body and the conclusions reached by it cannot be disturbed by Hon'ble Bombay High Court and Hon'ble Supreme Court and even by this Hon'ble Court unless they are established to be perverse. I say that several of the orders passed by the Appellate authorities have not been challenged by the revenue and those which were challenged the same have been either dismissed or yet to be admitted by Hon'ble High Court of Bombay.

xi. I say that the revenue has not given effect to 90 orders of Hon'ble ITAT in complete defiance of these orders now for the past 16 years. I say that even the Hon'ble Supreme Court had to then intervene and by orders dated 02.05.2017 and 08.05.2017 passed in CA 6326 of 2010 directed the revenue authorities to give effect to the aforesaid 90 orders and in support of my contentions I am pleased to rely upon copies of above orders dated 02.05.2017 and 08.05.2017 which are to be found in Exhibit M and I respectively in the application. I say that only Hon'ble ITAT gave effect to its own 4 orders by passing a combined judgment on 14.01.2019 in 4 of the largest cases because of which the claims made by revenue fell down by Rs.4053.34 Crores and the same resulted into a refund of Rs.5185.53 Crores as computed on 31.03.2019 and a

copy of a Chart giving particulars of above reliefs is already enclosed at Exhibit O in the application. I say that since the refund has not been offered now further interest has fallen due till today.

xii. I say that admittedly despite our requests and letters addressed by the Custodian, revenue is yet to pass Order Giving Effects (**OGE**) in respect of about 200 orders of Appellate authorities in order to avoid giving refunds and in order to inflate the demands on us. I say that some of the OGEs are wrongly passed without giving effect to the reliefs granted to us and in many of the OGEs and fresh Demand Notices interest has been illegally levied u/s 234A, 234B, 234C and 220(2) of the Income Tax Act in order to inflate the demands on us. I say that a number of letters are already addressed to both revenue and the Custodian pointing out the errors contained in the OGEs and fresh Demand Notices but the same are not being rectified. I say that the Assessing Officer (**AO**) is consciously violating Section 240 of the Income Tax Act and several CBDT Circulars in respect of issue of OGEs and fresh Demand Notices and law governing refunds. I say that our Constitutional rights guaranteed under Article 265 of the Constitution are being brazenly violated.

xiii. I say that Custodian who is bound by the orders of Appellate authorities is deliberately relying upon only the demand charts being presented by the revenue despite knowing that they are erroneous, outdated and

not up-to-date in order to penalise us by exaggerating our liabilities so as to canvass the Harshad Mehta Group theory. I say that Custodian is also aware that revenue and banks are yet to make compliance for past 14 years with the law laid down by the Hon'ble Supreme Court in the case of DCIT vs. SBI reported as **(2009) 2 SCC 451** and express and time bound directions given therein. I say that the Custodian is also ignoring the findings given by this Hon'ble Court under its order dated 29.09.2007 in Report 15 of 2006 wherein the assessed income of HSM has been scaled down from Rs.3400 Crores to Rs.278 Crores (by about 92%) on the ground that there is gross miscarriage of justice in the 2 assessment orders of HSM for AY 1992-93 and AY 1993-94. I say that admittedly vast amounts are due and refundable to us by the revenue even on account of excess taxes paid under Tax Deducted at Source (**TDS**) by deliberately not complying with the order passed by Hon'ble Supreme Court on 13.02.2002 in CA 7572 of 1999, a copy of which is enclosed at **Exhibit C**.

xiv. I say that Custodian similarly presented a completely false assets and liabilities picture before Hon'ble Supreme Court in the proceedings in CA 6326 of 2010 and sought to justify on that basis for the third time before Hon'ble Supreme Court his proposal to sell our only residential premises at Worli. I say that we contested this false assets and liabilities picture by providing the same according to us and we also

furnished before Hon'ble Court a reconciliation Chart between the true picture and the picture presented by the Custodian and the said reconciliation chart is enclosed at Exhibit L of the application. I say that upon being probed the Advocate representing the Custodian conceded that the Custodian could not have included the claims of interest of Rs.15,898.86 Crores in our liabilities. I say that the said fact has been duly recorded by us under a letter dated 10.06.2017 addressed to the Custodian, a copy of which is already enclosed at Exhibit N in the application. The above letter and its contents have never been denied by the Custodian. I say that more importantly the Hon'ble Supreme Court rejecting the contentions of Custodian granted us relief for the third time by setting aside the impugned order directing sale of our flats and by directing to await the date of distribution as only by then the liabilities would stand crystallised. In support of above, I am once again pleased to rely upon the order of Hon'ble Supreme Court dated 02.05.2017 passed in CA 6326 of 2010.

xv. I say that our assets are also grossly understated by several thousand crores by not including them and accounting for all our attached assets for values running into more than Rs.5000 Crores which are recoverable but are deliberately not being recovered by the Custodian for the past 30 years. I say that this is despite the fact that u/s 3(3) of the Torts Act all our assets get attached simultaneously and automatically

even if they are lying in the hands of third parties and even after law is laid down by the Hon'ble Supreme Court in the case of L.S. Synthetics vs. FFSL reported as **(2004) 11 SCC 456** that once an asset gets automatically attached the said attachment continues until an order is passed by this Hon'ble Court. I say that Custodian is not only accounting for those attached assets which are specifically directed to be recovered by the Custodian under a number of orders passed by this Hon'ble Court since if such assets were reckoned and accounted for by the Custodian the same will expose his failures and violation of orders passed by this Hon'ble Court. I say that Custodian thus wants to take advantage of his own wrongs.

xvi. I say that assets are also understated by several thousand crores by not treating the monies released to revenue being a vast amount of Rs.3285.46 Crores on interim basis as our assets together with interest accrued on them despite knowing that such amounts are released on an interim and ad hoc basis, that they are carrying interest and that they are unconditionally recallable without assigning any reasons and also knowing fully well that these amounts are not finally appropriated towards the claims of revenue. In support of the above. I say that similar treatment is also liable to be given to large amounts of Rs.1716.03 Crores released to banks a large part of which is against the usual undertakings prescribed by this Hon'ble Court

and in support of above a Chart is already enclosed at Exhibit BB to the application.

xvii. I say that a number of representations have already been made to the Custodian on false and illegal assets and liabilities picture through letters and on affidavits filed in numerous proceedings before this Hon'ble Court and before Hon'ble Supreme Court. In support of my contentions I am pleased to enclose copies of our letters dated 10.04.2019, 16.04.2019, 30.04.2019 and 16.05.2021 which are enclosed at **Exhibits D, E, F** and **G** respectively. However the above letters have not been replied to by the Custodian nor any corrective steps taken by him only because he has a deep vested interest in presenting a false picture and then falsely claiming like above that our liabilities exceed our assets. I say that such an assertion can never be made by the Custodian in view of what is stated above.

I say that in support of above, I crave leave of this Hon'ble Court to refer to and rely upon the assessment proceedings and orders of relief passed by the Appellate authorities and letters addressed to Custodian and revenue when produced. I also crave leave of this Hon'ble Court to refer to and rely upon all the proceedings and papers relating to the *ex-parte* decrees passed by this Hon'ble Court, the proceedings in Execution Applications filed by the banks in respect of the decrees and the proceedings in Civil Appeals filed by

me before Hon'ble Supreme Court when produced. I crave leave of this Hon'ble Court to refer to and rely upon the proceedings relating to pending recovery of our attached assets, the proceedings relating to pending refunds of excess TDS paid to revenue and proceedings in CA 6326 of 2010 when produced. In view of what I have stated above, I deny that our liabilities exceed assets and in any case state that there are no liabilities of the Applicants which are greater than their assets

5. I say that the Custodian himself has been canvassing a case that the 3 brokerage firms in the family viz. M/s. Harshad S Mehta, M/s Ashwin Mehta and M/s J.H. Mehta had advanced interest bearing loans to the family members and the corporate entities and claimed interest on such loans at 18% p.a. while drawing their assets and liabilities picture. This case of the Custodian has been canvassed by it in affidavits filed in MP 41 of 1999 and even accepted by Hon'ble Supreme Court in their judgment in the case of Ashwin Mehta vs. Custodian reported as **(2006) 2 SCC 385** as can be seen from Paras 10, 48 and 50 of the judgment.

6. I say that the Custodian has relied upon our books of accounts for the statutory period which have been drawn under orders of this Hon'ble Court. These books clearly disclose the interest bearing loans availed by us from the 3 brokerage firms. I say that after prolonged litigation when revenue was not allowing us our claim for the expense of interest payable to the 3 brokerage firms the same has now

been conclusively decided in our favour by several orders passed by the Appellate authorities wherein the contentions of the family members and corporate entities that they have availed interest bearing loans have been accepted. I say that Hon'ble ITAT has also passed a combined order in our favour on 27.12.2017. I say that a letter was addressed to the Custodian on 22.01.2018 forwarding the copy of the above order duly explaining that the said order passed by the last fact finding authority was binding and conclusive and the same demolishes the Harshad Mehta Group theory and a copy of the above letter dated 22.01.2018 is enclosed at **Exhibit H**.

7. I say that besides above, the Custodian is incompetent to make any allegation regarding existence of Harshad Mehta Group for want of any first-hand knowledge. I say that the Custodian himself has filed affidavits before this Hon'ble Court relevant extracts of which are enclosed at **Exhibit I** confirming that since he has no first-hand knowledge of facts and transactions prior to his appointment on 06.06.1992. I say that in view of the above he cannot prove existence of any Harshad Mehta Group or allegations made in support thereon as it is settled law that the Indian Evidence Act is applicable to the proceedings before this Hon'ble Court. I say that only because of above, till date the Custodian has not filed any application in support of the Harshad Mehta Group theory and even MP 20 of 2006 filed by him against Smt Rasila Mehta and Smt Rina Mehta alleging that they were

front and benamidars of HSM and other entities was withdrawn by the Custodian with liberty to file it again under order of this Hon'ble Court dated 23.01.2007 and a copy of the above Petition and the order passed therein are already forming part of Exhibit HH and II to the application.

8. I say that since the Custodian is lacking in personal knowledge to prove his allegations, he obtained a completely doctored Report by engaging Chartered Accountants, M/s. Vyas & Vyas and by illegally and without any authority from this Hon'ble Court directed them to undertake investigation of a deceased person late HSM though such investigation cannot be ordered as there is no provision in the Torts Act to undertake investigation through such a private party. The Custodian also offered them fees 20 times of the scale applicable and approved by this Hon'ble Court because of which they obliged the Custodian by providing a completely doctored Report containing several baseless allegations and findings against the family members of HSM without even issuing any Show Cause Notice to them to deprive them of an opportunity to contest such findings. I say that the said Chartered Accountants have also relied upon inadmissible material like the Reports of Janakiraman Committee, JPC, IDG and the FIRs filed by CBI and Reports of auditor of RBI all of which were inadmissible and unproven material. I say that the Chartered Accountants heavily qualified their findings and subsequently disowned them completely under their letter dated 06.12.2013 a copy of which is enclosed at

Exhibit J. I say that while Custodian has heavily relied upon the Report of Chartered Accountants M/s. Vyas & Vyas in numerous proceedings before this Hon'ble Court including in support of the Harshad Mehta Group theory but he has never offered to prove the contents of the same by calling upon them to depose to the truth of the contents of the Report or by offering them in cross examination. I say that the above Report has not been accepted by this Hon'ble Court and till date the findings given in them remain to be proved and in support of my contentions, I rely upon the law laid down by this Hon'ble Court under its combined order dated 10.06.2003 in the case of Oswal Agro Mills vs. Custodian passed in MP 112 of 2000.

9. I say that when a grievance was made by the notified entities about the said Report and the findings contained therein by filing MA 70 of 2014, this Hon'ble Court was pleased to pass an order on 28.11.2014 granting the said application and a copy of the order is enclosed at **Exhibit K**. I say that Hon'ble Court held that the findings given in the Report of Chartered Accountants is merely an opinion expressed. I say that even when the contents of the Report were challenged, this Hon'ble Court by a combined order dated 08.01.2010 in MA 201 of 2009, a copy of which is enclosed at **Exhibit L** has held that the contents of the Report of Chartered Accountants cannot be relied upon until the same are proved. I say that the Custodian has also been obtaining orders from this Hon'ble Court and Hon'ble Supreme Court by misleading them and by not disclosing the binding law laid down by this Hon'ble

Court as also by Hon'ble Supreme Court that the Reports of Janakiraman Committee, JPC and IDG are not admissible in evidence in any proceedings before Hon'ble Courts. I say that in fact, the order of notification dated 04.01.2007 of Smt Rasila Mehta and Smt Rina Mehta was upheld by this Hon'ble Court and later by Hon'ble Supreme Court by Custodian relying upon inadmissible and unproven material and by misleading the Hon'ble Courts by not revealing the binding law in that regard. I say that the judgment delivered by Hon'ble Supreme Court in the case of Rasila Mehta vs. Custodian reported as **(2011) 6 SCC 220** was almost entirely based on such inadmissible and unproven material and on illegal and completely doctored Report of M/s. Vyas & Vyas. I say that in support of the above, I am pleased to enclose at **Exhibit M** an analysis of the aforesaid Rasila Mehta's judgment to prove our above contentions.

10. I say that all the aforesaid facts and supporting evidence adduced by us in our application is neither denied nor dealt with by the Custodian by acting illegally, unfairly and in a discriminatory manner. I say that in the case of notified entity Dhanraj Mills Pvt. Ltd. **(DMPL)** where the Custodian had made similar allegations of Group had yet obtained against each entity a decree in favour of DMPL but despite directions given by Hon'ble Supreme Court in Para 52 of their judgment in aforecited Ashwin Mehta's case he has not preferred any claims on the family members and the corporate entities on behalf of the above 3 brokerage firms and thereby patently discriminated against us. I say that Custodian is a **"State"**

within the meaning of Article 12 of the Constitution and therefore has a duty to act legally, fairly and in a non-discriminatory manner but yet has acted illegally, unfairly and in a discriminatory manner and thereby violated our fundamental rights guaranteed to us under Articles 14, 19 and 21 of the Constitution. I say that by presenting false assets and liabilities picture the Custodian has been denying us our Constitutional rights to defend our legal interest and by engaging Advocates and Counsels of our choice. I say that only to cover up his own failures and violations of law the Custodian is opposing the present application by creating a bogey of Harshad Mehta Group even though HSM now has surplus of assets over liabilities which has also rendered the Group theory completely redundant. I say that Custodian has a vested interest in delaying final distribution, in perpetuating notification of several entities and thereby ensuring continuation of his office. I say that the ulterior object of the Custodian is also to keep maximum assets under his control and management under the guise of Harshad Mehta Group. I say that only therefore the Custodian is not able to appreciate humongous efforts put by us in contesting false claims of revenue and banks on us and at the same time recovering of attached assets of more than Rs.2000 Crores many of which assets were deliberately not recovered by the Custodian for more than 25 years in gross violation of the orders of this Hon'ble Court.

11. I say that Custodian is bound to take into account the benefits of our success of thousands of crores as explained above vis-à-vis miniscule expense proposed to be incurred by the Applicants. I say that the Applicants and their family members are discharging several duties which the Custodian is required to discharge but has yet miserably failed to do so thereby defeating the objects of the Torts Act.

12. I say that so far as what is stated in Para 5 of the Reply is concerned, the same is denied as no relief is claimed against the Income Tax department and banks and therefore they are neither a necessary nor a property party. I say that it is very well settled law that it is the prerogative of Applicants / Petitioners to decide whom to join as party Respondents. I say that they are also not liable to be joined as they are adversaries and reliefs have been prayed to defend our legal interest against the illegal claims of revenue and banks. I say that they are bound to serve their own interest which is inimical to our interest. I say that as such there is a direct conflict of interest. I say that what is proposed to be spent are surplus of assets over liabilities in which neither the Income Tax nor the banks have any interest or right to give any say and even therefore they are not liable to be joined as a party. I say that our application is squarely covered by the law laid down by this Hon'ble Court in its order dated 12.02.1996 in MP 215 of 1995 which does not provide for joining our adversaries and which clearly lays down that so long as there is surplus of assets, the notified entities can spend it in whatever manner they choose to and even in this

view of the matter the revenue and banks are not liable to be joined as a party.

13. So far as what is stated in Para 6 of the Reply is concerned, it is only partly true. However, it is proposed to engage services of other Advocates since Shri Ashwin Mehta is unable to cope up with the huge volume of litigation as he is 67 years of age and has already suffered a major by-pass operation 20 years ago followed by 2 angioplasties. I say that the last angioplasty was performed after a mild heart attack suffered in the Court premises itself. I say that besides above, he suffers from several other ailments. I say that it is clearly stated in the application that the amounts are proposed to be spent in engaging services of Advocates and Senior Counsels.

14. So far as what is stated in Para 7 of the Reply is concerned, the question of paying the expense from future income does not arise and such a relief cannot be prayed before this Hon'ble Court as it would not have any jurisdiction to pass any order relating to future income. In fact, I deny that the Applicants other than Dr. Hitesh Mehta and Smt Bhavna M Shah have any future income which is unattached. I say that besides the expense are proposed to be incurred for defending the legal interest of notified entities where benefits will squarely accrue in the attached accounts.

15. So far as what is stated in Paras 8 and 9 of the Reply is concerned, the same are not required to be given in terms of law laid down by this Hon'ble Court in its order dated 12.02.1996 passed in MP 215 of 1995.

16. So far as what is stated in Para 10 of the Reply is concerned, the contents of the same are denied as we have already placed copies of orders passed by the Appellate authorities the effect of which have been two fold i.e. the false claims and demands of revenue stand deleted and wherever large amounts are released to revenue in violation of the said judgment they have become refundable to us with interest. I say that complete details of relief are provided and duly explained to the Custodian and as explained earlier the demand charts of revenue are false, erroneous, outdated and completely unreliable and they cannot be given any precedence over the orders passed by higher and superior authorities viz. CIT(A) and ITAT. I say that for the past 4 years and despite 17 letters addressed by the Custodian to revenue, the accurate demand picture is not being presented by the revenue to serve its own interest. I say that we cannot be left to the mercy of our tormentors who foisted upon us patently false and illegal claims, which have been conclusively established by us. I say that for the reasons that the Custodian is opposing our application he in fact ought to support it so that we can further succeed in contesting the residual demands of revenue through the pending appeals. I say that in terms of law laid down by Hon'ble Supreme Court in Para 35 of the judgment in the case of Jyoti Mehta vs. Custodian reported

as **(2009) 10 SCC 564** the assets and liabilities picture being presented by us is bound to be accepted by the Custodian. I say that in fact the Hon'ble Supreme Court has taken judicial notice and laid down as under:

Para 35: *"It is, however, not an expropriatory legislation as such. The Act provides for sufficient safeguards in the matter of sale of properties by auction or otherwise towards discharge of debts of the notified persons. It provides for grant of full opportunity of hearing to the notified persons. Notified persons have special knowledge of the facts relating to their assets and liabilities and, therefore, can always show that they have been notified wrongly or that their properties are not liable for sale either because their liabilities can otherwise be discharged or the quantum of liabilities projected by the Custodian is not correct."*

17. So far as what is stated in Para 11 of the Reply is concerned, it is not open to the Custodian to now introduce new conditions and stipulate fresh requirements beyond what is laid down in the binding judgment of this Hon'ble Court dated 12.02.1996 in MP 215 of 1995. I say that in any case, it is proposed to spend the amounts out of surplus of assets and in the alternative prayer the relief is sought for release of the amounts from the accounts of those entities whose surplus of assets cannot be challenged by the Custodian.

18. So far as what is stated in Para 12 of the Reply is concerned, is denied and Custodian is put to strict proof thereof. I say that despite a clear and elaborate judgment delivered by this

Hon'ble Court in MP 215 of 1995 on 12.02.1996 the Custodian is deliberately seeking to misread and misinterpret the same to somehow deny us of the benefit of the law laid down by this Hon'ble Court. I say that only because presumption was made on the basis of patently illegal and false demands of revenue and claims made by the banks, we have already been deprived of the benefit of law laid down in our favour. I say that contrary to what had been laid down by Hon'ble Supreme Court in aforecited Para 35 of Jyoti Mehta's judgment a presumption was made by this Hon'ble Court that our liabilities far exceed our assets. I say that on the basis of this assumption the Custodian has already prematurely sold our appreciating assets and caused us huge losses of Rs.18,275.35 Crores by coercive sale of our shares, the computation of which loss is given in a Chart at Exhibit DD of the application. I say that the Custodian having violated the law, now wants to further penalise us despite our huge success in contesting the false claims and causing recovery of our attached assets. I say that the Custodian cannot be allowed to take any further advantage out of his own wrongs and deliberate failures in discharging his statutory obligations and making compliance with the binding law as well as orders passed by this Hon'ble Court. I say that besides above, as already explained earlier the Custodian has a vested interest in continuation of his office which can be ensured by causing further delay in recovery of our attached assets and in contesting the residual false claims made on us by the revenue and banks. I say that we have already

established our *bona fides* by our performance and through several orders on every front which the Custodian deliberately refuses to acknowledge and take note of.

19. So far as what is stated in Para 13 of the Reply is concerned, the same is denied as the Custodian has deliberately not dealt with the averments made by us in our application on a Para-wise basis recording the facts and adducing supporting evidence in support of our case. I deny that any bald or incorrect statements are made by us as about 1200 orders of reliefs are already placed on the record of the Custodian. I say that in fact the Hon'ble Supreme Court as explained earlier has already accepted our contentions and rejected the patently false assets and liabilities picture presented by the Custodian while granting reliefs to us under order dated 02.05.2017 passed in CA 6326 of 2010.

20. So far as what is stated in Para 14 of the Reply is concerned, the same is denied since we have relied upon the binding judgments which duly support our application and the same are interpreted truly and properly.

21. So far as what is stated in Para 15 of the Reply is concerned, the same are denied and the deponent is put to strict proof thereof.

22. So far as what is stated in Para 16 of the Reply is concerned, the allegations made therein are denied in *toto*. In fact we have already adduced orders passed by this Hon'ble Court as also by Hon'ble Supreme Court criticising the conduct of the Custodian and giving the findings which fully support the

allegations made by us against the Custodian and the list of such orders is already enclosed at Exhibit KK in our application. I say that in particular I am pleased to enclose at **Exhibit N** a copy of order passed by this Hon'ble Court on 16.02.2017 in Custodian Report No.17 of 2016 filed in MA 72 of 2013 which very strongly criticizes the conduct of the Custodian.

23. So far as what is stated in Paras 17 and 18 of the Reply is concerned, even when we filed the earlier applications the Custodian presented the false assets and liabilities picture and misled this Hon'ble Court into believing that our liabilities were far greater than our assets. I say that since then we have conclusively disproved the contentions of the Custodian and brought about dramatic improvement in the assets and liabilities picture of each and every one of us. I say that only because of the same huge refunds of about Rs.6500 Crores have already accrued out of which Rs.814.33 Crores already stands received by the Custodian. I say that by our subsequent efforts ceaselessly made by us despite impediments created by the Custodian we have achieved sterling results and demolished the false case of the Custodian and baseless allegations made by him abusing his powers and authority and the position enjoyed by him under the Torts Act. I say that now it is only in the interest of the Custodian to reconcile himself with all the subsequent facts and events. I say that even as per Custodian entire claims u/s 11(2)(a) and 11(2)(b) of the Torts Act are fully met even though the claims of revenue and banks are still disputed

and under challenge which is bound to result into a further vast improvement of picture in our favour.

24. So far as what is stated in Para 20 of the Reply is concerned, I deny that the Harshad Mehta Group issue is finally decided since it is pending adjudication in 3 appeals filed by Smt Rasila Mehta 2 of which jointly with Smt Rina Mehta being CA 8437 of 2011, CA 2563 of 2012 and CA 799 of 2014 all of which are pending adjudication and interim reliefs are already granted in favour of the Appellants. I say that this issue is also pending adjudication in CA 2580 of 2011 as clearly recorded in the order passed by Hon'ble Supreme Court on the day of listing on 14.03.2011, copy of which order is enclosed at **Exhibit O**. I say that the observations made in order dated 02.05.2017 regarding the Group issue are incorrect and based on incorrect reading of Rasila Mehta's judgment cited supra. I say that the said Rasila Mehta's judgment has nowhere held the Appellants in the said appeal as members of any Harshad Mehta Group much less any directions have ever been given by Hon'ble Supreme Court to use the assets of those Appellants in discharge of liabilities of any other notified entities much less HSM. I say that on the other hand the Hon'ble Supreme Court has laid down the law through several of its judgments which when applied does not support Harshad Mehta Group theory as would be demonstrably shown by us. I say that in any event the said order dated 02.05.2017 is not binding particularly on Smt Rasila Mehta and Smt Rina Mehta since they were not a party

and several other notified entities were also not a party to the said proceedings.

25. So far as what is stated in Para 21 of the Reply is concerned, is denied for the reasons already set out earlier. I say that the Custodian had illegally opposed the said application and obtained an order on 31.01.2013 by presenting completely false assets and liabilities picture. I say that subsequently the assets and liabilities picture presented by the Custodian before Hon'ble Supreme Court has already been rejected by order dated 02.05.2017 in CA 6326 of 2010 as duly explained earlier. I say that even the subsequent facts and events narrated by us duly support our present application. I therefore deny that the present application is liable to be rejected on the principles of *res judicata* as we are seeking relief only on the basis of order already passed by this Hon'ble Court in our favour on 12.02.1996 in MP 215 of 1995.

26. So far as what is stated in Para 22 of the Reply is concerned, the same is denied for the reasons already explained earlier. As explained the Custodian has a duty to deal with our application on a Para-wise basis and following the law governing pleadings he could have established the falsity or irrelevance of any averments made by us. I say that since the Custodian is not in a position to deny our contentions he has adopted a course which is not in accordance with law. I once again state that since the Custodian has failed to deal with our averments on a Para-wise basis the same should be deemed to be admitted where they remain untraversed.

27. So far as what is stated in Para 23 of the Reply is concerned, the contentions of the Custodian are denied for the reasons already set out by me earlier. I say that in the interest of justice and to quickly achieve the objects of the Torts Act which have not been achieved now for about 30 years due to gross failures of Custodian the reliefs prayed for by us are bound to be granted and may kindly be granted by this Hon'ble Court for which act of kindness the Applicants will ever remain so grateful to this Hon'ble Court.

Solemnly affirmed at Mumbai)
this 10th day of December 2021)

(JYOTI H. MEHTA)

(Mr. Ashwin S Mehta)
Advocate for the Applicant Nos.1, 3 to 6

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VERIFICATION

I, Smt. Jyoti H. Mehta, Applicant No.1 above named residing at 32 Madhuli, Dr. Annie Besant Road, Worli, Mumbai 400 018, do hereby solemnly declare that what is stated in the foregoing Application in Para Nos.1 to 26 are true to the best of my knowledge and belief and I believe the same to be true.

Verified at Mumbai this 10th day of December 2021.

Solemnly declared at Mumbai)

this 10th day of December 2021)

J H Mehta

(JYOTI H. MEHTA)

Applicant No. 1

(Mr. Ashwin S Mehta)
Advocate for the Applicant Nos.1, 3 to 6

BEFORE ME

BIDHU PANICKER
B.Com. LL.B.
ADVOCATE HIGH COURT
NOTARY (Govt. of India)
Res: 303, Sandeep Apt., Plot No. A/197,
Sector-2[illegible] Near Balaji Temple,
Nerul (W), Navi Mumbai, Maharashtra.

Notary Reg. Sr. No. 9595/2021
In Book No. VII

10 DEC 2021

NOTARY Name: Bidhu Panicker Area : Wadala (E) Maharashtra Regn. No. 10324 Expires on 24.10.2023 GOVT. OF INDIA

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