

“The Custodian filed identical Affidavits in reply in MA 13 and 14 of 2011 filed by Smt Jyoti Mehta to seek compliance by Custodian with the orders of Hon’ble Special Court which orders were deliberately not complied with so as to not recover the attached assets of Mehtas from third parties. False and misleading averments were made by the Custodian that he has always complied with all the orders and recovered the assets and Affidavit in MA 13 of 2011 is enclosed as a sample.”

1

BEFORE THE SPECIAL COURT CONSTITUTED
UNDER THE PROVISIONS OF SPECIAL COURT (TRIAL
OF OFFENCES RELATING TO TRANSACTION IN
SECURITIES) ACT, 1992

MISC. APPLICATION NO. 13 OF 2011

IN

CUSTODIAN REPORT NO. 9 OF 2010.

Smt. Jyoti H. Mehta ... Applicant

Versus

The Custodian ... Respondent

AFFIDAVIT IN REPLY ON BEHALF OF THE
CUSTODIAN

I, N.P. Suvarna, working as an Officer on Special Duty in the Office of the Custodian and having my office at 10th Floor, Nariman Bhavan, Nariman Point, Mumbai 400021, do hereby solemnly affirm and state as under:

1. I say that I have read a copy of the application filed by the Applicant Notified Party being the legal heir of the late Harshad S. Mehta and in reply to the same, wish to state as follows. I say that I may not be deemed to have admitted any of the submissions, contentions and allegations stated in the application which have not been specifically dealt with by me in my reply hereunder. I put the Applicant to the strict proof of the various submissions, allegations and contentions stated in the application.

2. At the outset I say that consideration of this Application would be a futile and infructuous exercise for the following reasons:-
- (i) Firstly, in para 4 of the Application, the Applicant states that the present Application may be treated by the Hon'ble Court as the objection of the Applicant to the distribution Report No. 9 of 2010.
 - (ii) Secondly, as admitted by the Applicant herself in Para 2 of the Application, the Applicant has filed Affidavits on 23.09.2010, 12.10.2010 and 10.11.2010 opposing the distribution.
 - (iii) Thirdly, the Applicant herself admits in the said Para 2 that the numerous legal and factual grounds all of which were urged in the aforesaid Affidavits are adopted as if they are verbatim reproduced. This is a deliberate attempt on the part of the Applicant to attract the attention of the Hon'ble Special Court to the oft-repeated and vague pleas being made by the Applicant in various contexts.
 - (iv) Fourthly, the Special Court have already considered the Affidavits filed by her on 23.09.2010, 12.10.2010 and 10.11.2010 and passed on interim distribution order dated 25.02.2011, on Custodian's distribution Report No. 9 of 2010.
 - (v) Fifthly, against the said order dated 25.02.2011 of this Hon'ble Court, the Applicant has filed CA No. D 6671 of 2011 before the Hon'ble Supreme Court, which is pending. Therefore, detailed consideration of this Application by this Hon'ble Special Court, is not really warranted, especially since the order passed by it on 25.02.2011 making provisional distribution is under challenge before the Apex Court.

- (vi) Sixthly, in the entire Application, the Applicant miserably failed to list out specifically as to which of the assets are yet to be recovered by the Custodian, but makes repeated sweeping statement that assets worth hundreds of crores of rupees are yet to be recovered. Such sweeping and general allegations do not warrant consideration by this Hon'ble Court.
- (vii) Seventhly, it has been the deliberate tendency of the Applicant to engage this Special Court in consideration of non-issues so that the time of this Special Court is adequately wasted and the consideration of the core issues gets repeatedly adjourned/postponed to suit the Applicant's game plan.
3. At the further outset, I say that the present application as filed by the Applicant is vague and insufficient in its particulars viz., because the Applicant desires to invoke a fishing enquiry into the objective working of the Respondent No. 1 and this Hon'ble Court in particular. I say that such an application without specific particulars cannot be accepted and/or replied thereto. In spite of the vague pleas, the various contentions raised by the Applicant are dealt herewith. At the further outset, I say that with reference to paragraph 27 i.e. the prayer clause in the present application, I say that none of the prayers prayed for justify the filing of the present application and it will be seen that the present application is nothing but an attempt on the part of the Applicant to cause a fishing enquiry. With reference to prayer clause (a), I say that the order dated 12th November, 2003 passed by this Hon'ble Court in M.A. No. 332 of 2003, inter alia, relates to unregistered shares of the Harshad Mehta Group. It is clear from the said order that the shares are of the companies whose names are disclosed in the list annexed to the said application. It is further stated that in terms of the said order, the entire lot of

unregistered shares were transferred to the name of the Respondent so as to facilitate the process of further transfer of the said shares in the name of the respective notified parties. It is stated that, till date i.e. even after a period of almost seven years, the Respondents in M.A. No. 332 of 2008 i.e. those entities of the Harshad Mehta Group have never approached this Respondent with the details of entitlement of the said unregistered shares. This itself reflects the suspicious conduct on the part of the present Applicant and/or the various other notified entities of the Harshad Mehta Group who never complied with the directions contained in the said order. I say that, in any event, pursuant to the judgment and orders dated 16/5/2008 passed by the Supreme Court of India in the case of Sudhir S. Mehta vs. Custodian, the entire subject of segregating the entitlement of the subject unregistered share is now purely academic in nature. I say that the order dated passed by this Hon'ble Court in M.A. No. 41 of 1999, reflects that the entire group of entities of the Harshad Mehta Group of Notified Parties is required to be treated as a group by itself. I also wish to place on record that a substantial number of unregistered shares of the Harshad Mehta Group have been transferred onto the name of this Respondent and the same have been subsequently disposed off through the Disposal Committee. I say that as per the records of this Respondent, an amount of Rs.261.75 Crores had already been realised and also forms part of the report for distribution of the Harshad Mehta Group which has been filed in this Hon'ble Court. With specific reference to prayer clause (b) relating the order dated 23rd November, 2007 passed in the various applications filed by the Applicant, it is stated that though the filing of the report as directed was delayed primarily because of the delay and non cooperation on the part of the notified parties, this Respondent had taken all the possible steps in respect of the subject

shares which form part of M.A. No. 106 of 2007 to M.A. No. 109 of 2007 and has filed Report No. 1 to 4 of 2011 in this Hon'ble Court, which are presently under adjudication by this Hon'ble Court. I further say that the remaining prayers are incidental and ancillary to the aforesaid prayers and do not require to be dealt with, especially for the reasons sated in Para 2 above.

4. Without prejudice to the above and specific reference to paragraphs 1 to 5, I say that the substance of the submissions contained in the paragraphs under reference pertain to the distribution report filed by this Respondent. I say that the entire submissions is now redundant and infructuous in view of the fact that this Hon'ble Court has passed interim order dated 25/2/2011 in Report No. 9 of 2010, inter alia, distributing the available attached assets in favour of the creditors of the Harshad Mehta Group as per the assets and liabilities report submitted to this Hon'ble Court. Hence, the charge and claim made in the paragraphs under reference do not subsist. I say that in the Distribution Report the liabilities of the Harshad Mehta Group have been projected and distributed towards the revenue liability as well as liabilities to banks under Section 11(2)(a) and 11(2)(b) respectively. I say that the Applicant has always been represented through Advocates and Counsels during the hearing of the said distribution report. The contention of the Applicant, that the available assets are sufficient to meet all genuine liabilities is completely incorrect. I say that at various points of time, this Respondent has placed before this Hon'ble Court the latest position of the assets and liabilities of the Harshad Mehta Group. I say that, the aforesaid facts have been dealt in detail in the Custodian's Affidavit-In-Rejoinder filed on 6.1.2011 in Report No. 9/10 in reply to the Applicant's Affidavit dated 23/9/2010. The same has never been challenged on affidavit to say that the available assets were greater than and sufficient to meet all liabilities. I

further say that, this Hon'ble Court has always been judicious in considering the objections of the Advocates and Counsel for the Applicant at the time of hearing of the distribution report. I say that insofar as the remaining submissions are concerned, this Respondent has been carrying out its functions and duties under the orders and directions of this Hon'ble Court, in terms of sub Section (4) of Section (3) of the Special Court (TORTS), Act, 1992.

5. With reference to paragraphs 6 to 10, I say that the Applicant has made bald and unsubstantiated allegations of mismanagement of attached assets in the application without giving material evidence. I deny that this Respondent has failed in recovery and management of attached assets of the Applicant or the Harshad Mehta Group of Notified Parties. I say that the onus is on the Applicant to furnish a list of assets lying in the hands of third party as has been stated by the Applicant in the application. Only then, this Respondent will be able to examine the claim of the Applicant. I say that, it is the duty of this Respondent to liquidate the assets of the notified party for the purpose of meeting the crystallized and ascertained liability. I say that this Respondent cannot take action on the assets/properties of the notified parties as referred to by the Applicant which may be in the hands of the Applicant and unknown to this Respondent. I deny that the entire objective has been achieved or met with insofar as distribution of the attached assets is concerned. I say that, the legal notice dated 17th January, 2011 refers to the orders dated 12th November, 2003 and 23rd November, 2007. I say that the lapse of time in between the passing of the said order and the legal notice addressed only reflects the conduct of the Applicant. I deny that there is non-compliance of any of the aforesaid two orders as contended by the Applicant. I further say that there has been no delay or inaction or silence as alleged by

the Applicant. I say that timely action has always been taken by this Respondent in respect of attached of assets belonging to Notified entities of Harshad Mehta Group are concerned. I say that at the then relevant time, this Respondent was constrained to file applications in this Hon'ble Court for a direction to the Applicant to furnish the names and addresses of the registered shareholders and to complete the necessary formalities since there was no cooperation coming forth from the Notified entities of Harshad Mehta Group. I say that the action of this Respondent was in favour of and to recover attached assets belonging to the Applicant.

6. With reference to paragraphs 11 to 15, I say that this Respondent has always complied with the orders passed by this Hon'ble Court and has also recovered all accrued benefits in the form of interests, dividends, bonus, rights and preference shares, inter alia, belonging to the notified parties. With reference to the allegation that the benefits recovered have gone into the hands of the third parties, I say that this Respondent has been recovering all the benefits on the attached shares which genuinely belong to the HMG notified parties. I completely deny that the assets and liabilities was distorted against the late Harshad S. Mehta as claimed by the Applicant. I say that the submissions made in paragraph 13 are vague, general and insufficient for taking any further action. I deny that there is lack of transparency on the part of this Respondent in compliance with the orders of this Hon'ble Court. I deny that this Respondent has compromised with the interest of late Harshad S. Mehta in the matter attached assets and recovery from third party. I say that each and every asset that had been recovered has formed part of the distribution report placed before this Hon'ble Court. I say that the Applicant and several other entities of the Harshad Mehta Group have time and again objected to the

distribution report being heard and finalised by this Hon'ble Court on the basis of the available attached assets. I crave leave to refer to and rely upon the various proceedings filed by the Applicant and/other entities of the Harshad Mehta Group in respect of the aforesaid, if so required at the time of arguments. I therefore say that this Respondent has always been transparent and more importantly it has always been the endeavour of this Hon'ble Court to hear/ consider the objections on behalf of the notified party before passing any orders in distribution reports. I say that the Applicant and the other notified entities of the Harshad Mehta Group have been afforded all the possible opportunities by this Hon'ble Court before passing any orders in distribution reports.

7. With reference to para 16 to 20, I say that in so far as the issues of inspection of records to the notified parties are concerned it is stated that as per the Hon'ble Supreme Court order dated 03.01.2006 in CA No. 667-671,672-675,676-680 and 681 of 2004, though the direction of the Hon'ble Supreme Court was to give inspection for a continuous period of one week, the Custodian granted inspection to the notified parties of all documents in his possession and power almost a year. Not only this, Xerox copies of the documents sought for by the notified parties in the Supreme Court were also furnished to them at their request though there were no directions to that effect. For this purpose Applicant and representative of the notified entities were permitted to install a Xerox machine in the Custodians' office and by this process Applicant and representative of notified entities have been given copies of documents identified by them for almost a year. This fact was also brought to the notice of the Applicant by the then Solicitor of this Respondent vide letter dated June 18, 2009. Hereto annexed and marked as **Exhibit "A"** is a copy of the said letter. Therefore, it does not lie in the mouth of

the Applicant to now make a grievance and claim that adverse inference ought to be drawn against this Respondent. I say that every crystallized asset belonging to the Harshad Mehta Group have formed part of and has been included in the distribution report. I say that Shri R.A. Shaikh Advocate, in his letter dated 13/09/2010 on behalf of notified parties and corporate entities, while alleging that asset and liability picture presented by the Custodian is grossly incorrect, sought inspection of material relied upon in filing the aforesaid report. I say that in compliance to the aforesaid letter, the Custodian, under letter dated 21/09/2010 through his Advocate, has furnished all the relevant information as sought by the notified parties along with supporting documents in Annexure A, B, C and D. Besides, this the same documents in support of assets and liabilities shown in the Annexure A to Report No. 9 of 2010 were annexed to the Custodian's affidavit-In-Rejoinder dated 6/1/2011. I strongly refute and deny the allegation that this Respondent has any desire to hide and/or suppress any facts which are material to the purpose of effective distribution of the assets of the Applicant notified party.

8. With reference to paragraphs 21 to 26, I say that the applicant has not made out any cause for grievance in the paragraphs under reference, save and except has repeated the allegations which are vague, insufficient and without any material particulars. The distribution made is provisional and in terms of the order of the Special Court dated 25.02.2011, against which the Applicant's filed CA No. D. 6671 of and the Hon'ble Supreme Court did not accept the plea of the Applicant to stay the operation of the said order.
9. With specific reference to paragraph 27 i.e. the prayer clauses, I say that the sale proceeds of unregistered shares were credited to the various accounts of the

Harshad Mehta Group as held by this Respondent. I say that the present application as filed by the Applicant is a vexatious and frivolous application and the same is required to be dismissed with exemplary costs.

10. In view of the above, I say that the present application be dismissed with costs.

Solemnly affirmed at Mumbai,)
this 23 day of September, 2011.)

Before me,

A. K. Tewari
Advocate for the Custodian.

VERIFICATION

I, N.P. Suvarna, of Mumbai, Indian Inhabitant, Officer on Special Duty in the Office of the Custodian above named, solemnly declare that what is stated in the foregoing paragraphs is true to my knowledge.

Solemnly declared at Mumbai,)
this 23 day of September, 2011)

Before me,

Shri A. K. Tewari
Advocate on Record for the Custodian