

"Custodian filed Affidavit in reply in MA 8 of 2016 by falsely denying the allegations against him and instead made false averments that he had complied with all the orders of Hon'ble Special Court and recovered the attached assets of Mehtas in each and every case. In fact, the Custodian averred that it would be absolutely waste of time without any meaningful purpose to look at each and every order passed since 8th June 1992 and the principal relief is impracticable for compliance. I however wish to say that this office has always been complying every order of this Hon'ble Court."

LEENA ADHVARYU & ASSOCIATES
ADVOCATES

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LAA/138 /2016

30th June, 2016

To,

1. **Mr. Ashwin Mehta**

CA for the Applicant

Sir,

Re: Before the Special Court at Mumbai

Misc. Application No. 8 of 2016

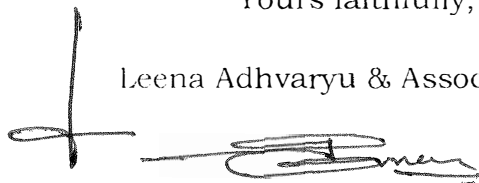
Jyoti Mehta & Ors V/s The Custodian

We are concerned for the Custodian Appointed under the provisions of Special Court (TORTS) Act, 1992.

Please find enclosed herewith a copy of the Affidavit in Reply on behalf of the Custodian. Dated 30th June, 2016 as & by way of service upon you.

Yours faithfully,

Leena Adhvaryu & Associates



Advocates for the Custodian

Encl: As Above

C.C.

To,

Mr. M. Valsankumar

O.S.D, Custodian Office, Mumbai.

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

MISC. APPLICATION NO.8 OF 2016

Smt. Jyoti H. Mehta & Ors ...Applicant

v/s.

The Custodian ...Respondents

Affidavit in reply on behalf of the Custodian

I, Valsan Kumar, adult, Indian Inhabitant working as an Officer on Special Duty in the office of the Custodian and having my office at 10, Nariman Bhavan, Nariman Point, Mumbai 400 023, do hereby solemnly affirm and state as under:

1. I say that I have read a copy of the Application filed by the Applicants and in reply to the same wish to state as follows.
2. At the outset I say that the reliefs claimed in the present application are general in nature and the same are required to be rejected with appropriate directions. I say that the principal relief claimed by the Applicant, inter alia, relating to recovery of attached assets and disclosing the same can be best explained by the latest position of assets and liabilities of the Applicants. I say that by virtue of order dated 31st January 2013 passed in MA 62 of 2012 alongwith several companion applications this Hon'ble Court has held that the Applicants are part of a singular group. I say that it is absolutely waste of time without any meaningful purpose to look at each and every order passed since 8th June 1992 and the principal relief is impracticable for compliance. I however wish to say that this office has always been complying every order of this hon'ble court.
3. At the further outset I say that Exhibit "B" is a list of 46 applications out of which only application at S.No.46 appears to be a current matter wherein orders have been passed and compliance to the effect of filing regular reports is being carried out. I say that it is a impracticable and improper for the Applicants to approach this Hon'ble Court in respect of applications filed several years ago seeking status report without any reason or basis and without

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annexing any of the said orders. I say that the notified parties/applicants have all been parties to the various applications and for recovery the answering Respondent approaches this Hon'ble Court by filing execution applications as and when required. I say that such an omnibus relief requiring the answering Respondent to file a status report after so many years when this Hon'ble Court has passed several interim orders in distribution reports filed by the Custodian is highly improper. I say that the distribution reports filed are testimony to the fact that the recovered assets of the notified party have been applied for distribution. I also wish to state that there are several orders passed in various matters pertaining to sale of properties, shares etc belonging to the Applicants over the past several years which have been complied with.

4. I say that the only basis and/or charge contained in the present application is that the office of the Custodian has acted high handedly and arbitrarily in dealing with the assets of the Applicants. I say that this charge is not only denied but dismissed with contempt as office of Custodian always works under the directions and orders of the Hon'ble Court. I say that the office of Custodian has always adhered to the due process of law at all times and has never transgressed the limitations of law while dealing with attached assets. I therefore dismiss the aforesaid charge levied against the office of custodian and put the applicants to the strict proof of their various allegations contained in the application.
5. I say that insofar as recovery of attached assets is concerned the office of Custodian has always taken the lead to recover the attached assets however, it is at times non cooperative attitude of the notified parties that result into non realization of decrees. Despite this, office of Custodian is taking every step to recover the amount by writing to various authorities to ascertain the details of the judgment debtors. I say that in the last few years the Applicants have been represented by their constituted power of attorney Mr. Ashwin S. Mehta and the Applicants through Ashwin S. Mehta have filed several recovery applications wherein the Custodian has co-operated with the Applicants. I therefore say that the charges levied in the Application are false and incorrect.

6. At the further outset, I say that it is the charge of the Applicants that the Custodian has failed to recover claims of approximately Rs. 4156 crores as contained in Exhibit "C". I say that a glance through Ex. "C" will reveal that the entire claims are in respect of issues which are to the knowledge of the notified parties/applicants. I say that nothing prevented the applicants who were involved in first hand dealing of the securities concerned to initiate recovery proceedings. I say that the Custodian is a statutory authority appointed under the Special Court (Torts) Act, 1992 and was not in existence when the alleged transactions contained in the various applications mentioned in Ex."C" were transacted. Therefore to claim and expect the office of custodian to file recovery application without any tangible evidence for such claims is preposterous in law as the office of Custodian would never be in a position to prove such transactions thus onus is on the applicant to file such applications before the honble court and the office of custodian would take every step to follow it up to realize the amount. I say that the transactions that were effected during the statutory window period i.e. 1/4/1991 to 6/6/1992 and the onus thereof is on the Applicants to prove that the same and seek recovery. I say that the office of Custodian has always been helpful to the Applicants by providing them all details and inspection of data as required by them. In fact by order dated 3rd January 2006 in (2006) 2 SCC 385 - Ashwin Mehta Vs The Custodian, the Hon'ble Apex Court, at Para 77(vi), inter alia, directed the Applicants to not only take inspection of all data required by them from the Custodian's office, but also permitted the Applicants to take Xerox copies of the same. I say that pursuant to the above order Mr. Ashwin S. Mehta, inter alia, representing the Applicants visited the office of the Custodian alongwith a Xerox machine for several months for completing the inspection and taking copies of the documents as required by the Applicants. I therefore say that the charge of non-cooperation against the Custodian is untrue.

7. I say that the Custodian has filed distribution report no.26 of 2015, which was with reference to Hon'ble Special Court order dated 10th July 2015 in MA No. 135 of 2012, inter alia, pertaining to the Applicants under the provisions of Section 11 of the said Act. I say

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that the assets and liabilities position as on 30th September 2015 of the said distribution report is based on Statement of their Tax dues provided by the Income Tax Department. I say that the assertion of the Applicants to consider their version of the assets and liabilities cannot be considered in the absence of the orders of the Hon'ble Special Court. I say that the latest assets and liabilities position qua the Applicants, as on 31st March 2016, as furnished by the Income tax Department dated 05th April 2016 and 12th April 2016 is hereto annexed and marked as **Exhibit "A" and "B"**. I say that the entire liabilities are in excess of available assets. I say that there are several assets claimed by the Applicants which are yet to be crystalized and received in the attached account.

8. With reference to paragraph nos. 1 to 4, I do not wish to offer my comments on the same.
9. With reference to paragraph 5 and 7 I say that the allegations levelled by the Applicants in the aforementioned paragraphs are vague, uncertain, devoid of merit and not true. I say that the office of the Custodian has always discharged its duty as per the directions and orders passed by the Hon'ble Special court. I say that the Applicant by making such frivolous and repetitive Applications is trying to raise the same issue again and again so as to prejudice the Hon'ble Court and malign the office of the Custodian with wild allegations.
10. With reference to paragraph nos. 8 and 9, I say that in the foregoing paragraphs the Applicants have raised very serious issues and allegations without any proof thereof thus the Applicants may be put to the strict proof thereof. I say that the Applicant is merely interested in maligning the office of the Custodian by making such untrue, unsubstantiated, incorrect allegations. I say that all the allegations raised by the Applicants are completely baseless and without any relevance whatsoever. I say that the office of Custodian has always conducted itself on the basis of the various orders directions and guidelines made by the Hon'ble Special Court. I say that the Applicants are merely making false allegations with no documentary evidence of any kind.

11. In view of the above I say that the present application be dismissed and cost may be imposed upon the applicant for filing frivolous applications time and again.

Solemnly affirmed at Mumbai,)

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This 30th day of Jun, 2016) Before me,

Leena Adhvaryu & Associates

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Advocates for the Custodian

VERIFICATION

I, M. Valsankumar, of Mumbai, Indian Inhabitant, O.S.D in the Office of the Custodian above named, solemnly declare that what is stated in the foregoing paragraphs is true to my knowledge.

Solemnly affirmed at Mumbai,)

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This 30th day of Jun, 2016) Before me,

Leena Adhvaryu & Associates

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Advocates for the Custodian

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

MISC. APPLICATION NO. 8 OF 2016

Jyoti H. Mehta & Ors , ...Applicant

Versus

The Custodian & Ors. ...Respondents

**Affidavit- in Reply on behalf of the
Custodian**

Dated 30th day of Jun , 2016

Leena Adhvaryu & Associates
Advocates for the Custodian
2nd & 3rd floor, Behramji Mansion,
4 Homji Street, Sir P.M. Road,
Fort, Mumbai - 400 001.