

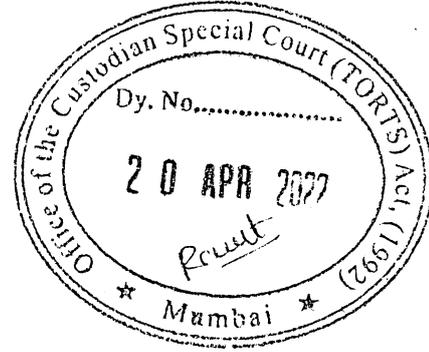
“Mehtas once again made a representation to Custodian about the false and illegal assets and liabilities picture being presented by the Custodian to deny them several reliefs. The methods deployed by the Custodian who understate the assets and overstate the liabilities were duly explained with a request to Custodian to present a correct and an up-to-date picture before Special Court.”

ASHWIN MEHTA

32, Madhuli Apts., Dr. Annie Besant Road, Worli, Mumbai 400018

19th April 2022

Ms. Molly Sengupta,
Director,
Office of the Custodian,
Nariman Bhavan,
Nariman Point, Mumbai 400 021.



Dear Madam,

URGENT

**Sub: MA 15 of 2021
Jyoti H. Mehta & Ors. Vs The Custodian**

Ref: Our previous letters dated 10.04.2019, 16.04.2019, 30.04.2019 and 16.05.2021 which are forming part of Exhibits D, E, F and G of Affidavit in rejoinder dated 10.12.2021 filed in the above matter.

I am addressing this letter on my own behalf and on behalf of the Applicants who have filed the above Application who have asked me to address you as under:

1. At the outset and before proceeding to make any submissions on the above issue, we heavily rely upon the judicial notice taken by Hon'ble Supreme Court in Para 35 of the judgment delivered by them in the case of Jyoti Harshad Mehta & Ors. Vs. Custodian & Ors. reported as **(2009) 10 SCC 564** that the notified entities have special knowledge of the facts relating to their assets and liabilities. The relevant part of the said Para 35 is reproduced below:

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. ...**”* (emphasis supplied)

In view of the above, the Custodian ought to have got guided by the averments made on oath by the notified persons now for past more than 25 years that the revenue has raised patently false and illegal demands

on them to take advantage of priority accorded to it u/s 11(2)(a) of the Torts Act as also to exploit the peculiar conditions that were prevailing with the notified entities during the years between 1993 and 1997 when several high-pitched assessment orders were passed. The notified entities have drawn their books of accounts in compliance with the orders of Hon'ble Special Court for period covering 01.04.1990 to 06.06.1992 and entries recorded in the above books of accounts are duly supported by impeachable contemporary evidence and primary records. The demands raised by revenue under the provisions of best judgment assessment on the very face of it are preposterous and high-pitched in the extreme and the fact that even Hon'ble Supreme Court in their judgment cited hereinafter has carved out a separate category of demands raised by revenue by invoking the provisions of the best judgment assessment which are arbitrary and guestimates. The Hon'ble Special Court has also criticized the conduct of the department under its order dated 2.07.1993 passed in MA 107 of 1993, a copy of which is enclosed at **Annexure A**. The department had also accepted a declaration of income of Rs.100 Crores made by Mehtas before it on 02.06.1992. Besides above, the Mehtas have already conclusively established their above allegations against revenue by securing more than 1200 orders of relief from the appellate authorities and thereby brought down the demands of revenue by more than Rs.20,000 Crores. Thus, in view of all the above the Custodian cannot get guided by the demands raised by revenue and treat it as the liabilities of Mehtas and must accept the assertions of Mehtas that each one of them have surplus of assets over liabilities which alone will help achieve the objects of the Torts Act.

2. We have time and again requested the Custodian not to get guided by the demand charts being supplied by the Income Tax department as the same are erroneous and out-dated as the reliefs secured by Mehtas are not reflected in these charts of demand. By addressing several letters both to the Assessing Officers and the Custodian we have already shown several examples about falsity of these demand charts and they have no sanctity to be treated as 'gospel truth'. We have also requested the Custodian that he is bound to get guided by the orders passed by the appellate authorities vis-à-vis the demand charts being presented by the department which is deliberately not passing Order Giving Effects (**OGEs**) for several years even after reliefs are secured or passes incorrect OGEs and inflates the demand by false levy of interest under various sections of the IT Act even though the same is not leviable. Admittedly, the Custodian himself has addressed at least 17 letters to the department during past 4 years, a list giving particulars of which is enclosed at **Annexure B** calling upon the department to furnish the updated list of

demands but the letters of the Custodian are not being replied to and the Custodian in this regard has not even made any grievance before Hon'ble Special Court to seek a direction against the department to present a correct and updated chart of demands. It is apparent that only a record is being created by the Custodian by addressing so many letters to create false justification of relying upon old charts of demand presented by the department without giving effect to the orders of relief. Despite having no obligation to accept such erroneous charts of demand, the Custodian is yet getting guided by them in preparing the assets and liabilities picture so that the Mehtas get deprived of the reliefs already secured by them of several thousands of crores from the appellate authorities.

3. As your kindself is aware that all entities in Mehta family and corporate entities promoted by them have time and again made grievance that the Custodian has been presenting incorrect assets and liabilities picture by understating the assets and overstating their liabilities. The assets and liabilities picture is drawn in complete 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**. The Custodian has been mechanically including all the demands of the revenue in respect of tax, interest and penalty in our liabilities even though they are disputed and denied and under contest before the appellate authorities and even before the claims have become final and binding on Mehtas.
4. It is laid down in Para 24 of the above judgment that the phrase "Taxes Due" cannot refer merely to a liability created by the charging section to pay the tax under the relevant law. It must refer to an ascertained liability for payment of taxes quantified in accordance with law. It is further laid down that taxes which are not legally assessed or assessments which have not become final and binding on the assessee, are not covered u/s 11(2)(a) **because unless it is an ascertained and quantified liability, disbursement cannot be made. In the context of Sec.11(2), therefore, "the taxes due" refer to "taxes as finally assessed"**. Yet the assessments which are not framed in accordance with law and which are framed under the provisions of the best judgment assessment and which are high-pitched and patently illegal on the very face of it but yet the demands raised therein are included in the liabilities. Such claims are denied and disputed and under challenge before the appellate authorities and therefore they cannot be included in our liabilities u/s 11(2) of the Torts Act. The benefit of this law is bound to be given to us by the Custodian.
5. Not only above, in Para 27 of the judgment it is further laid down as under:
Para 27: *"...The date of distribution arrives when the Special Court completes the examination of claims under Section 9-A. **If on that date***

any liability for the statutory period is legally assessed, and the assessment is final and binding on the notified person, that liability will be considered for payment under Sec.11(2)(a), subject to what follows.”

Thus, both in terms of Para 24 and Para 27 of the above judgment, no monies were liable to be released to the Income Tax department and yet abnormally large amounts of Rs.3285.46 Crores have been released to revenue under adhoc and interim arrangement in complete violation of the above law and the directions given in Para 39 of the aforecited judgment. In view of the above, no claim for tax, penalty or interest until it becomes final and binding on Mehtas can be included in the liabilities as illegally done by the Custodian in violation of above law.

6. It has also been pointed out by us earlier that the claims of revenue in respect of tax, penalty and interest which fall u/s 11(2)(c) of the Torts Act are also not liable to be added to our liabilities in view of Sec.11(2)(c) of the Torts Act which reads as under:

Sec.11(2)(c): “any other liability as may be specified by the Special Court from time to time”

In terms of the above, unless the Hon’ble Special Court specifies inclusion of any claims of revenue for post-statutory period in final distribution to be made u/s 11(2)(c) of the Act, none of such claims can be included by the Custodian in our liabilities. The Custodian has no power or authority to pre-empt and exercise the discretionary powers which are strictly exercisable only by the Hon’ble Special Court as specified above. Thus, thousands of crores included by the Custodian in our liabilities representing claims of tax, interest and penalty covering post-statutory period is in gross violation of Sec.11(2)(c) of the Torts Act.

7. Notwithstanding and without prejudice to the above, such claims for interest and penalty cannot be included in our liabilities even in view of the law laid down by Hon’ble Supreme Court in Para 38 of the aforecited judgment. Firstly, it is laid down that interest and penalty for any action or default after the date of the notification are not covered by the Act. Secondly, it is laid down that the notified persons have a remedy to seek waiver of penalty and interest levied on them only under the provisions of Income Tax Act. Thirdly, it is laid down that 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.
8. In view of what is held in Para 38 above, the Custodian has no power or authority to include any claims of revenue in regard to tax, interest and

penalty falling u/s 11(2)(c) of the Act in the liabilities so long they are under contest and because interest and penalty post-statutory period are not covered by the Act. The claims for interest and penalty are not liable to be included in the liabilities until the waiver of the same is sought by the notified entities and such a waiver would obviously be sought only after liability to pay tax gets crystallized. If the liability to pay tax is reduced by the appellate authorities (as is being done regularly in our cases), the question of seeking waiver would then not arise since such claims of interest and penalty get deleted when liability to pay tax is reduced.

9. Besides above, the Hon'ble Special Court has till date not exercised its above discretion as per Para 38 of the judgment because the stage for it has not arrived since final distribution has not taken place u/s 11(2)(a) and 11(2)(b) of the Torts Act and no surplus has emerged in the hands of the Custodian as yet. In any event, the Custodian has no power or authority to pre-empt the above discretionary powers which are strictly exercisable only by Hon'ble Special Court and include all such claims of revenue in our liability which fall u/s 11(2)(c) in respect of tax, interest and penalty. Thus, the Custodian is bound to await the stage when the Hon'ble Special Court exercises its discretionary powers vested in it both u/s 11(2)(c) as also in terms of the law laid down in Para 38 as above before including any such demands in our liabilities.
10. It is increasingly becoming obvious that the Custodian has a vested interest in presenting a false assets and liabilities picture in order to promote his pet "**Harshad Mehta Group theory**" and in order to deny any relief to the Mehtas such as of denotification, partial release of their assets from attachment, release of any monies to meet genuine expenses to defend their legal interest and to indefinitely delay final distribution u/s 11(2) of the Torts Act. The Custodian wants to perpetuate notification and thereby persecute us, wants to keep control over maximum amount of assets for as long as possible by keeping several persons notified and thereby ensure continuation of his office by expanding the scope and reach of the Torts Act beyond what the scheme, objects and provisions of the Torts Act contemplates.
11. We are also aggrieved that the Custodian has not replied to several representations already made by us on the issue of incorrect assets and liabilities picture including through our letters dated 10.04.2019, 16.04.2019, 30.04.2019 and 16.05.2021, none of which have been replied to. In the proceedings in the above matter, the Hon'ble Justice suggested that we should resolve and reconcile our assets and liabilities picture with your office and therefore the present letter is once again addressed by me with a request to draw our assets and liabilities picture in accordance with law as explained above.

12. In further support of our contentions we are pleased to also rely upon the order passed by Hon'ble Special Court on 25.06.1997 in MA 222 of 1996, a copy of which is enclosed at **Annexure C**, where in Para 46 the following has been laid down:

Para 46: *“Under Question No.5 Mr. Cooper had sought clarification regarding the procedure which will be followed. Court has before its claims against the Notified Party. The Custodian also has a list of such claims. Court and Custodian have before them the attached assets. Before distribution Custodian is directed to issue a Public Notice fixing a time within which parties could file their claim before the Custodian if they have not yet approached the Court. **The Notified Party is then given an opportunity either to admit or deny those claims. On the basis of all admitted claims or claims decided by Court a list of liabilities is prepared.** The Court also has before it a picture of claims by the Notified Party. **The Court has before it all available assets of the Notified Parties. Initially the undisputed claims and claims already decided would be distributed either wholly or proportionately from available assets.** This would be done after first making a provision for the disputed claims. **As and when the disputes are resolved further distribution will take place.** This then will be the procedure which will be followed by this Court in all such matters.”* (emphasis supplied)

13. From all the above, it emerges that the stage for distribution has not arrived in case of Mehtas as vast quantities of attached assets are yet to be recovered and the claims of revenue and banks against Mehtas are denied and disputed and presently under challenge and pending adjudication before Hon'ble Supreme Court. That so far as claims of revenue are concerned, they are pending in challenge before the appellate authorities viz. Hon'ble CIT(Appeal) and Hon'ble ITAT. The Hon'ble ITAT has passed 90 orders between 2005 and 2017 directing the Assessing Officer and/or CIT(Appeal), to determine the income of Mehtas in accordance with law and by complying with the principles of natural justice and by taking into consideration the crucial evidence of books of accounts but admittedly the assessing authorities have not made compliance with the above orders of Hon'ble ITAT. Being aggrieved at our behest, the Hon'ble Supreme Court has already intervened and directed the authorities to give effect to the above 90 orders under their orders dated 02.05.2017 duly corrected on 08.05.2017 in CA 6326 of 2010, copies of which are enclosed at **Annexure D**.

14. Unfortunately, even the above orders of Hon'ble ITAT and Hon'ble Supreme Court have not yet been complied with by the assessing authorities in order to sustain or resurrect the old additions which have already been deleted by the higher authorities. The books of accounts

being presented by the notified entities in case after case are being mechanically rejected without even examining the veracity of the same and even ignoring the fact that these books of accounts have been examined and verified by 3 independent firms of Chartered Accountants who were appointed by Hon'ble Special Court and that these books of accounts have been drawn in compliance with the orders of Hon'ble Special Court.

15. It is submitted that Mehtas have also conclusively established their above allegations by winning more than 1200 cases before the appellate authorities where they have secured reliefs of deletion of more than 98% of the additions in all the large cases. That on account of such reliefs the notified entities have already secured refunds to the Custodian of Rs.814.33 Crores the particulars of which are provided in an enclosed chart at **Annexure E**. That besides above, refunds of more than Rs.5500 Crores are due which are not being given for past several years by the department nor the monies are being recovered by the Custodian from the department in order to confer favour on it. The copies of all the orders of reliefs and claims of refund are already placed on your record.
16. We also rely upon the order passed by Hon'ble Special Court on 29.09.2007 in Report 15 of 2006 where the Hon'ble Special Court examined the assessment orders passed against late Shri Harshad Mehta for AY 1992-93 and AY 1993-94. After hearing the revenue, the Hon'ble Special Court has given a finding that there is gross miscarriage of justice in the aforesaid 2 assessment orders passed by the revenue and scaled down the assessed income from Rs.3400 Crores to Rs.278 Crores by 92%. Smt Jyoti Mehta has thereafter already conclusively established the above as Hon'ble ITAT under order dated 14.01.2019 has already quashed the largest assessment orders of Shri Harshad Mehta and Shri Ashwin Mehta for AY 1992-93 and thereby secured 100% relief.
17. Besides above, in course of proceedings before Hon'ble Supreme Court in CA 6326 of 2010 the Custodian conceded before Hon'ble Courts that claim of interest of revenue of Rs.15,898.86 Crores was incorrectly included in the liabilities and accordingly the Hon'ble Supreme Court quashed and set aside the third order of sale of residential properties of Mehtas dated 30.04.2010 passed in MP 41 of 1999. The above fact is duly recorded by Shri Ashwin Mehta in letter dated 10.06.2017 addressed to Custodian, the contents of which have not been denied by the Custodian and this letter is forming part of Exhibit N (Pgs.200-201) of the above MA 15 of 2021.
18. The Custodian has been grossly understating our assets by not including the amounts released to the revenue of Rs.3285.46 Crores together with interest accrued on it in our assets as these amounts are bound to be treated as interest-bearing deposits until they are allowed by Hon'ble

Special Court and Hon'ble Supreme Court to be finally appropriated towards the claim of the revenue u/s 11(2)(a) of the Torts Act. That admittedly these amounts have been released to revenue which contain a stipulation that they are unconditionally recallable either by Hon'ble Special Court or Hon'ble Supreme Court in any of the proceedings and when ordered the revenue will bring back the amounts within 30 days of it being so directed. In fact, the department has also executed undertakings to bring back the amounts on above terms and some orders are already passed by Hon'ble Special Court recalling the amounts from revenue with interest. The amounts are recallable without being linked to any deletion of demands of revenue and therefore such amounts with accrued interest is bound to be added to our assets. Similarly, even the amounts which are due and refundable to us on account of orders of relief passed by the appellate authorities are also liable to be included in our assets which are not being so included by the Custodian in order to understate our assets by several thousands of crores. It must be borne in mind that the provisions of the Torts Act do not provide for any such adhoc or interim release of monies to revenue or banks and in fact such amounts are being released in gross violation of the law laid down in the aforecited Harshad Mehta's judgment and even therefore such large amounts illegally secured by revenue and banks are bound to be accounted for as assets of Mehtas together with accrued interest on it but yet the Custodian is not doing so for reasons set out in Paragraph 10 of the present letter.

19. In view of what is stated above, we once again call upon you to draw a correct picture of assets and liabilities of Mehtas in accordance with law so that the objects of the Torts Act are achieved and final distribution u/s 11(2) can be proceeded with despite an abnormal delay caused by the Custodian at least of 17 years since the Custodian invited the claims against Mehtas by issue of a public advertisement on 19.10.2005, copy of which is enclosed at **Annexure F**.

Yours truly,

(ASHWIN MEHTA)

Encl: As above

CC: Shri Lalit Kumar Chandel, Custodian, Office of the Custodian, Bank of Baroda Bhawan, Parliament Street, Delhi 110 001 custodian.delhi@yahoo.com

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