

APPLICATION SEEKING DIRECTIONS/ORDERS FOR TRANSFER OF SHARES BELONGING TO THE HARSHAD MEHTA GROUP ENTITIES IN THE NAME OF THE CUSTODIAN/APPLICANT AND FURTHER SEEKING DIRECTION AS TO THE MANNER OF DEBITING/CREDITING THE ATTACHED ACCOUNT OF THE HARSHAD MEHTA GROUP ENTITIES WITH RESPECT TO THE EXPENDITURE INCURRED IN TRANSFER OF SUCH SHARES AND THE SALE VALUE OF SUCH SHARES.

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

(L) 153-A
MISCELLANEOUS APPLICATION/NO. 332 OF 2003

THE CUSTODIAN

.. APPLICANT

VERSUS

MRS. JYOTI H. MEHTA & ORS.

.. RESPONDENTS

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

MISCELLANEOUS APPLICATION, NO. ^(L)153-A OF 2003

Custodian appointed under the)
Special Court (Trial of Offences)
Relating to Transactions in)
Securities) Act, 1992 having his)
Office in Bombay at 10th Floor,)
Nariman Bhavan, Nariman Point,)
Bombay 400 021.) .. Applicant

Versus

- 1.a) Mrs. Jyoti H. Mehta,)
b) Mrs. Rasilaben S. Mehta,)
c) Mr. Asatur H. Mehta,)
all of Mumbai Indian Inhabitants)
residing at Madhuli, Dr. Annie)
Besant Road, Worli,)
Mumbai 400 018.)
2. Ashwin S. Mehta of Mumbai Indian)
Inhabitant, residing at Madhuli)
Dr. Annie Besant Road, Worli,)
Mumbai 400 018.)
3. Hitesh S. Mehta of Mumbai Indian)
Inhabitant, residing at Madhuli)

- Dr. Annie Besant Road, Worli,)
Mumbai 400 018.
4. Sudhir S. Mehta of Mumbai Indian)
Inhabitant, residing at Madhuli)
Dr. Annie Besant Road, Worli,)
Mumbai 400 018.)
5. Jyoti H. Mehta of Mumbai Indian)
Inhabitant, residing at Madhuli)
Dr. Annie Besant Road, Worli,)
Mumbai 400 018.)
6. Deepika A.Mehta of Mumbai Indian)
Inhabitant, residing at Madhuli)
Dr. Annie Besant Road, Worli,)
Mumbai 400 018.)
7. Pratima H.Mehta, of Mumbai Indian)
Inhabitant, residing at Madhuli)
Dr. Annie Besant Road, Worli,)
Mumbai 400 018.)
8. Rina S. Mehta, of Mumbai Indian)
Inhabitant, residing at Madhuli)
Dr. Annie Besant Road, Worli,)
Mumbai 400 018.)
9. Rasila S. Mehta,of Mumbai Indian)
Inhabitant, residing at Madhuli)
Dr. Annie Besant Road, Worli,)
Mumbai 400 018.)
10. M/s. Harshad S. Mehta,)
11. M/s. Ashwin S. Mehta,)
12. M/s. Jyoti H. Mehta,)

- Respondent Nos.10 to 12 all)
proprietary concerns having their)
office at 1205-6, Maker Chambers)
V, 221, Nariman Point,)
Mumbai 400 021.)
13. Growmore Research and Assets)
& Management [P.] Limited, a)
company incorporated under the)
provisions of the Companies Act,)
1956 and having its office at)
1205-6, Maker Chambers V,)
221, Nariman Point, Mumbai 400 021.)
- 14 . Growmore Exports Private)
Limited, a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
15. Growmore Leasing and Investments)
[P] Limited, a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021,)
16. Aatur Holdings Private)
Limited, a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)

- Chambers V, 221, Nariman Point,)
Mumbai 400 021.
17. Harsh Estates (Pvt.) Limited,
a company incorporated
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
18. Cascade Holdings Pvt.Limited,
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,
Mumbai 400 021.)
19. Orion Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
20. Fortune Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)

21. Treasure Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
22. Velvet Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
23. Eminent Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
24. Pallavi Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)

25. Zest Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-8, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
26. Topaz Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
27. Divine Holdings Pvt.Limited,)
a company incorporated)
under the provisions of the)
Companies Act, 1956 and having)
its office at 1205-6, Maker)
Chambers V, 221, Nariman Point,)
Mumbai 400 021.)
28. The Registrar of Companies,)
Maharashtra having its address)
at Everest, 100 Marine Drive,)
Mumbai 400 020.)

And

also having its office at)
Hakoba Compound, Kala Chowki,)
Lalbaug, Mumbai 400 033.)...Respondents

TO,
THE HON'BLE JUDGE OF THE SPECIAL
COURT CONSTITUTED UNDER THE SPECIAL
COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992.

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVENAMED.

MOST RESPECTFULLY SHEWETH :

1. The Applicant is the Custodian appointed under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as "the said Act").

2. In terms of Section 3(2) of the said Act, the Custodian/Applicant has the power to notify any person in the Official Gazette on being satisfied that such person was/has been involved in any offence relating to transactions in securities after 01.04.1991 and on and before 06.06.1992.

3. In exercise of the power conferred upon it under Section 3(2) of the said Act, the Custodian/Applicant vide Notification dated 08.06.1992 notified the Harshad Mehta Group entities. Under, and in terms of, the provisions of Section 3(3) of the said Act, on and from the date of such notification any property, movable or immovable or both, belong to the notified persons simultaneously and automatically stood attached.

Further, the said attached property was required to be dealt with by the Custodian/Applicant as per the directions of this Hon'ble Court.

4. After the Securities Scam in 1992, wherein the Harshad Mehta Group entities were also involved, various search and seizure operations were undertaken and carried out by the Income-tax Department and the Central Bureau of Investigations and shares belonging to the Harshad Mehta Group entities were seized.

5. As the Harshad Mehta Group entities were notified parties, the shares seized by the Income Tax Department and Central Bureau of Investigation from the premises of Harshad Mehta Group entities were handed over to the Custodian. Further, some shares were directly handed over by the Harshad Mehta Group entities to the Custodian. Annexed herewith as EXHIBIT - "A" are the details of the said shares of 44 such Companies handed over to the Custodian by the Harshad Mehta Group. In respect of shares belonging to 65 Companies, Income-tax Department and CBI handed over the shares to the Custodian. The list of these 65 Companies is given in EXHIBIT - "B".

6. With respect to the said shares, the Custodian moved various Petitions/Applications praying inter-alia, for;

- (i) directions by the Special Court to the Harshad Mehta Group Entities to disclose on affidavit the name of the entity amongst the Harshad Mehta Group to whom the shares belonged;

- (ii) directions to the Company, whose shares were involved, to transfer the said shares in the name of the respective entity of the Harshad Mehta Group.

The relief (i) prayed for by the Custodian involved one to one co-relation between the shares and the owners.

7. From time to time, orders were passed by the Special Court, inter-alia granting the relief prayed for in the said Petitions/Applications. In some of these Petitions, the Special Court passed directions that the entities of Harshad Mehta Group should carry out the co-relation exercise and disclose the names of the notified entity to whom the shares belonged and thereafter, the shares should be transferred in the name of the identified notified entity. The Special Court also ordered that if, the disclosure is not made within six weeks, then the shares shall be transferred in the name of the Custodian. In certain other matters, the orders were different in as much as there was no directions for automatic transfer of the shares in the name of the Custodian.

8. In the matters in which there was an order for automatic transfer, the transfer of shares in the name of the Custodian is in process.

9. In the other cases, where there is no order for automatic transfer, the process is completely dead locked with the Harshad Mehta Group entities being

unable to carry out the co-relation exercise itself.

10. In view of the above position, the Office of the Custodian convened a meeting of the Harshad Mehta Group entities on 13.01.2003 for ascertaining the name of the entities to whom the said shares belonged. However, as the said meeting could not take place, it was re-scheduled for 23.01.2003. The meeting on 23.01.2003 was attended by Mrs. Jyoti H. Mehta, Mr. Hitesh S. Mehta and Mrs. Pratima H. Mehta, Mr. Sudhir Mehta did not attend the meeting due to sickness. Further Mr. Ashwin S. Mehta and his wife Mrs. Deepika A. Mehta also did not attend the meeting. However, Mrs. Deepika A. Mehta addressed a letter, dated 20.01.2003, stating that her presence was not necessary as the shares were purchased by three brokerage firms and the said firms were liable to disclose the particulars the shares that belonged to her.

11. However, even after detailed discussions and enquiry, it could not be ascertained as to which particular notified entities the said shares belonged. The notified entities expressed their inability to identify the entities to whom the said shares belong. Accordingly, the Harshad Mehta Group entities unanimously requested the Custodian to transfer the said shares in the name of the notified entities and/or the Custodian in a manner deemed fit by the Custodian. Smt. Jyoti H. Mehta also stated that Mr. Sudhir S. Mehta has conveyed his agreement to the proposal. Accordingly, minutes of the meeting was prepared, which was duly

signed by Mrs. Jyoti H. Mehta, Dr. Hitesh Mehta and Dr. Pratima Mehta and Shri N. K. Srivastava, Office on Special Duty, on behalf of the Custodian. Annexed herewith as EXHIBIT - "C" is a true copy of the said minutes of the meeting duly signed by the parties.

12. Thus, the Harshad Mehta Group entities have failed to disclose the names of the entities to whom the said shares belong and also to carry out the co-relation exercise. Further, they have left the discretion to the Custodian to have the shares transferred in a manner deemed fit by him. In view of this, it is the most humble prayer of the Custodian that in the Petitions/Applications in which there is no order for automatic transfer since the Harshad Mehta Group entities have failed to disclose the names of entities to whom the shares belong, this Hon'ble Court may pass orders for automatic transfer of the said shares in the

name of the Custodian. *Hereto annexed & marked as Ex-D is a list of unregd shares belonging to the HSM grp which are not covered under any appeal or Petition*

13. The Custodian/Applicant humbly submits that the Special Court has the power to grant the reliefs claimed in terms of the provisions of law mentioned hereunder:

- (1) as per Section 108 (1) of the Companies Act, 1956, a Company shall not register a transfer of shares in or debentures of the Company unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee has been delivered to the Company along with certificate relating to the shares or debentures Second proviso to this Sub

Section, however, provides that nothing in this
Section shall prejudice any power of the Company
to register as shareholder or debentures of the
Company has been transmitted by operation of law.

- ii) the Special Court Act, 1992 provides that the Custodian/Applicant may on being satisfied on information received that any person has been involved in any offences relating to transactions in securities after the 1st day of April, 1991 and on and before 6th June, 1992 notify the name of such person in the Official Gazette and any property movable or immovable or both belonging to any person notified shall stand attached simultaneously with the issue of notification and that the property so attached shall be dealt with by the Applicant in such manner as this Hon'ble Court may direct. The Custodian/Applicant further states that 12,38,306 shares of various companies at Exhibit 'D' belonging to the Harshad Mehta Group which were seized by Income Tax Department and CBI are in the possession of the Custodian against which no orders for registration have been so far sought. The Custodian therefore humbly prays that appropriate orders may be passed by this Hon'ble Court for transfer of the shares in the name of the Custodian on account of Harshad Mehta Group and subsequent dematerialisation and sale of the shares as per the procedure laid down by this Hon'ble Court. The Custodian also prays that entities of Harshad Mehta Group may be

directed to disclose the names of the notified entities to whom the shares belong. In the event of any such disclosure by the notified entities of Harshad Mehta Group and subsequent upholding by this Hon'ble Court of such claim, the shares would be transferred from the demat account of Custodian A/c.- HMG into the demat account of the respective notified party. If, however, the shares are sold before such disclosure and upholding by this Hon'ble Court, the Custodian shall give appropriate credit into the attached account of the notified party equal to the money value of the shares sold as on date(s) of the sale(s)".

14. The Applicant submits that the present application seeks to deal with notified entities and their attached assets. This Hon'ble Court has, therefore, exclusive jurisdiction in the matter.

15. The Applicant submits that the present Application is within time.

16. This Application is being verified by Mr. P. Gangadharan, Officer on the Special Duty and Constituted Attorney of the Applicant, who is conversant with the facts of the case and is able to depose the same.

17. The Custodian/Applicant will rely upon the documents that may be in its possession and/or will come into its possession in the course of the further enquiry/investigation, when produced.

The Applicant therefore prays :-

- (i) Pass orders/directions for transfer of shares, referred to in ^{Exhibit B} Annexure A and B in the name of the Custodian/Applicant;
- (ii) that all rights, bonus and dividend accruing on the aforesaid shares released after the date of notification i.e. 08.06.1992 be transferred to the Custodian who maintains account on behalf of the notified entities;
- (iii) that along with transfer of shares in the name of the Custodian, the said shares be permitted to be dematerialized wherever applicable and sold by following the procedure laid down in the Order dated 17.08.2000 passed by this Hon'ble Court in Misc. Petition No. 64 of 1998;
- (iv) that a separate dematerialization account with Stock Holding Corporation Ltd. in the name of Custodian Account - Harshad Mehta Group unregistered shares be opened for this purpose;
- (v) that all expenses for such transfer, dematerialization and sale be released and debited to the attached account of Late Shri Harshad S. Mehta no. 1/135 with State Bank of Mysore, Dalal Street Branch;
- (vi) that the Applicant be permitted to meet all the fees, costs, incidental expenses relating to the present Application from the attached account of Shri Harshad S. Mehta;
- (vii) pass any other order(s) that the Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

(viii)for costs.

For Pravin Mehta and Mithi & Co.,

Partner

Advocates for the Custodian.

Constituted Attorney
to the Applicant

VERIFICATION

I, P. Gangadharan, of Mumbai, Indian inhabitant,
Officer on Special Duty in the Office of the Applicant
abovenamed am well conversant with the facts of the
case and able to depose to the same, do hereby solemnly
declare and state that whatever is stated in paragraphs
1 to 12 and 16 is of the Application true to my own
knowledge and what is stated in paragraphs 13, 14, 15
and 17 of the Application is stated on information and
belief and I believe the same to be true.

Solemnly declared at Mumbai)
aforesaid this 22nd day of)
July, 2003.)

Before me,

For M/s. Pravin Mehta & Mithi & Co.

(Partner)

Advocates for the Applicant.