

**"The Hon'ble Special Court passed an order in MA 15 of 2021 and rejected the same accepting the assets and liabilities picture presented by the Custodian which was admittedly more than 4 years old. That the contention of Mehtas that Smt Rasila Mehta had a clear surplus even according to the Custodian of Rs.836.11 Crores was rejected. It was observed that the Income Tax department appears to have a huge claim though it was not suggested that the claim is correct or accurate. The Hon'ble Court directed that no similar Application ought to be filed without leave of the Court which would enable the Court to consider any improvement in the assets and liabilities position prior to investing time in hearing and disposing of such Applications."**

**IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO  
TRANSACTIONS IN SECURITIES) ACT, 1992 AT BOMBAY**

**MISCELLANEOUS APPLICATION NO. 15 OF 2021**

- 1) Smt. Jyoti H. Mehta, sole legal heir  
of late Harshad Mehta  
2) Ashwin Mehta  
3) Smt. Bhavna Manish Shah  
4) Dr. Hitesh S. Mehta  
5) Sudhir S. Mehta  
6) Aatur Harshad Mehta  
r/at 32, Madhuli Apts.,  
Worli, Mumbai-400 018. .. Applicants  
v/s.

The Custodian appointed u/s 3(2)  
of the Torts Act and having his office  
at 10<sup>th</sup> floor, Nariman Bhavan,  
Nariman Point, Mumbai-400 021. .. Respondent

Mr. Ashwin Mehta for the applicant.

Mr. J. Chandran i/b. Ms. Shila Bhate for the respondent.

**CORAM : A.K. MENON**  
**JUDGE, SPECIAL COURT**  
**DATE : 6TH MAY, 2022.**

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**P.C. :**

1. The applicants are the members of the family of late Harshad S. Mehta and Smt. Rasila S. Mehta. Applicant nos.1, 2, 4 and 5 are notified parties. Upon their notification, all their assets stand attached. Applicant no.3 is the married daughter of late Smt. Rasila S. Mehta and her legal heir. Applicant no.6 is the son of late Harshad S. Mehta and also legal heir of Smt. Rasila Mehta through her son late Harshad S. Mehta. Both late Smt. Rasila S. Mehta and Shri. Aatur Mehta have disclaimed any right to the estate of late Harshad S. Mehta. The Respondent is the Custodian, appointed under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (*Special Court Act*).

2. The reliefs claimed in this application are as follows :-

- (a) Direct Custodian to release a sum of Rs.3 crores each from the attached accounts of late Harshad Mehta and late Smt. Rasila Mehta and pay the same to the Applicant Ashwin Mehta acting for and on behalf of the applicants; Or in the alternative to prayer (a) above;
- (b) Direct Custodian to release a sum of Rs.1.5 crores each from the attached accounts of applicants Smt. Jyoti H. Mehta, Ashwin S Mehta, Dr. Hitesh S Mehta and Sudhir S Mehta and pay the same to the applicant Ashwin Mehta acting for and on behalf of the applicants;

(c) Any other relief as is justified to be granted to the applicants in the facts and circumstances narrated in the present application or as deemed appropriate by this court.

3. Analyzing the reliefs, it is seen that the application seeks a direction to the Custodian to release monies to pay professional charges claimed by one of the applicants, namely, the applicant no.2 Mr. Ashwin Mehta, who is also a notified party and who has since been practicing as an Advocate inter alia acting on behalf of several notified parties and entities including for self, numerous matters in this court including this application. According to the applicants, Smt. Jyoti H. Mehta and Dr. Hitesh Mehta, widow and brother, respectively, of late Harshad S. Mehta have never been accused or involved in any of the offences in relation to the Securities Scam of 1992. The application proceeds on the basis that applicant no.2-Ashwin Mehta is owed large sums of monies towards professional charges. The applicants seek release of funds for payment of fees for services that he has rendered to the family members and entities controlled by family members. The other applicants can be seen to be supporting applicant no.2. The release of funds is sought from the attached assets of the notified parties; thus involving the Custodian and subject to the Custodian's views in the matter.

4. The Custodian has opposed these reliefs by filing an affidavit dated 23<sup>rd</sup> September 2021 of one N.V. Sawant, Undersecretary in the office of the

Custodian. The matter was taken up on priority on the application made by the applicants citing urgency and upon circulation by praecipe. However, I find upon considering the reliefs sought that similar reliefs had been sought earlier and have been declined by this court, not once but twice.

5. The application runs into over 50 pages dealing with historical facts in the matter of the securities scam. The identical paragraph start from para 18(j) and other connected paragraphs read with paragraph 18(xxvii) to 18(xxxiii), paragraphs 19 and 20. The applicants have contended through Mr. Mehta that the application seeks reliefs which were denied to them in the absence of a clear picture of assets and liabilities in the year 1995. Those reliefs were once again denied to them in the year 2011 upon the Custodian presenting a false picture of assets and liabilities. Since then 10 years have elapsed and there is a “complete change” in scenario, which now favours the applicants because of steps taken by them despite the allegedly adversarial role played by the Custodian. The allegation is that the Custodian is not attending to the interests of the applicants. Mr. Mehta has extensively conducted this matter, argued on these aspects, quoting from numerous judgments and in support of his plea that there is a huge surplus of assets over liabilities. He has relied upon various judgments cited in the application, taken me through the pleadings contending inter alia that apart from late Harshad S. Mehta, the others have not entered into transactions in securities.

6. Mr. Mehta submitted that all obligations under Section 11(2)(a) of the Special Court Act are fully met. Refunds of Rs.5,500 crores are now due to the applicants. Even liabilities under Section 11(2)(b) have been fully met and thus there is a clear case of surplus. As far as Section 11(2)(c) are concerned, it is the case of Ashwin Mehta that nothing has been quantified to enable the Custodian to consider payment of any amounts. In view of large refunds that are now expected, the assets and liabilities picture presented by the Custodian is grossly incorrect. The Custodian is including liabilities which are not final and binding and the stage of final distribution has not arrived. Thus, there is no occasion today to continue to deny reliefs sought in the present application.

7. Mr. Mehta is at pains to point out that the version of the Custodian in its reply is incorrect. Surplus available cannot be disputed and hence relief may be granted. It is contended that Rasila S. Mehta is not part of the Harshad Mehta Group. The principal plank in the present application is Mr. Mehta's contention that what is known as the "group issue" viz. whether all members of the Harshad Mehta family and the entities controlled by some of them, are members of the "Harshad Mehta Group" has not been conclusively decided.

8. On the other hand it is the case of the Custodian consistently that the group issue stands concluded. Reliance is being placed on the decisions of the

Supreme Court in Rasila S. Mehta, reported in (2011) 6 SCC 220 and in Jyoti H. Mehta, reported in (2009) 10 SCC 564 as well as in the case of Sudhir S. Mehta, reported in (2008) 12 SCC 84. It is further submitted on behalf of the Custodian that the issue is no longer res integra and even as late as 2<sup>nd</sup> May 2017 in Civil Appeal No.6326 of 2010, the Supreme Court has once again reaffirmed that the group issue stands decided against the notified parties by making reference to the decision of the Supreme Court in Rasila S. Mehta, (2011) 6 SCC 220. Mr. Mehta has however contended otherwise. According to him, the group issue is still open, it is not finally decided and hence it is not proper to bracket all entities together to arrive at an asset and liability position.

9. I have considered all these aspects. I have also considered Mr. Mehta's submissions on the basis of the assets and liabilities statement as updated on 31<sup>st</sup> July 2021 and a copy of which is annexed as Exhibit-A to the reply filed by the Custodian. Mr. Mehta has sought to point out that the figures are incorrect inasmuch as the total liability is not Rs.22,606.22 crores. The statement shows that excess of liabilities over assets is amounting to Rs.19,001.19 crores, a bird's eye view of the asset/liability statement reveals the following :-

<b>Total Assets</b> <b>Rs.3,605.03 crores</b>	<b>Total Liabilities</b> <b>Rs.22,606.22 crores</b>
<p>Bank Deposits of Rs.1,249.76.</p> <p>Traded and listed shares, which are attached, are valued @ Rs.2,301.67.</p> <p>Immovable assets @ Rs.44.34 crores.</p> <p>Recoverable at about Rs.9.26 crores.</p>	<p>Income Tax on priority and non-priority periods.</p> <p>Wealth Tax Liability and interest thereon.</p> <p>Penalty for non-priority period and interest on wealth tax for priority and non-priority period.</p> <p>Amounts of decrees awarded to Bank against the notified parties and interest on the decrees.</p>

10. Total assets are therefore shown to be Rs.3,605.03 crores. Excess of the liabilities over assets is therefore Rs.19,001.19 crores. This is sought to be disputed by Mr. Mehta inter alia contending that there is a huge refund due from the Income Tax Department and if the orders giving effect to the decision of the tribunal are taken into consideration, the dues will be erased and hence the notified party would not be found to be owing the amounts that are now depicted as a large liability.

11. I am unable to agree with the contentions of the applicants. Through aforesaid submissions, Mr. Mehta has taken me through the relevant versions of the judgments cited by him in the case of Harshad Shantilal Mehta Vs.

Custodian, (1998) 5 SCC 1, Rasila S. Mehta and Ors. Vs. Custodian, (2011) 6 SCC 220, order dated 25<sup>th</sup> June 1997 in Miscellaneous Application No.222 of 1996 (Fairgrowth Financial Services Ltd. Vs. DCIT, Bangalore and Ors.) inter alia to support his argument that on an analysis of all claims and list of liabilities prepared, the court will have a picture of the claims against the notified party and in the present case having considered all aspects and the liabilities of individual members, one would find for instance in the case of Rasila S. Mehta that assets and liabilities picture is not in accordance with law.

12. Mr. Mehta has submitted that there is a surplus of assets over the liabilities in the case of individuals taken independent of the collective projected liabilities and therefore the Custodian has an incorrect picture in the affidavit filed by him. The court should therefore determine the liabilities. He submitted with reference to the relevant extracts of the assets and liabilities statement presented by the Custodian that the liability of Rasila S. Mehta is only Rs.102.22 crores whereas the total assets are Rs.938.33 crores. Therefore, there is a clear surplus of Rs.836.11 crores. Mr. Mehta submitted that there is a clear surplus. There are no fetters in law that would prevent the court from passing an order in terms of the application and therefore the applicants contend that the Custodian's version be rejected especially since Rasila S. Mehta is not a member of the Harshad S. Mehta Group. Mr. Mehta

also submitted that the Custodian has admittedly written more than a dozen letters to the Income Tax Department, but writing letters alone is insufficient. The orders of the tribunal are yet to be given effect to by the Income Tax Department and merely because of the Income Tax Department's inaction, it is not possible to await a decision in all the challenges that the Income Tax Department may avail of. In effect Mr. Mehta submits that the assets and liabilities picture is incorrect and therefore the reliefs can be granted.

13. Quite apart from the fact that the Income Tax Department is not a party, nor are the banks which are being named as claimants against the Harshad Mehta Group and its entities, the fact remains that the Income Tax Department appears to have a huge claim. It is not to suggest that the claim is correct or accurate. While court cannot sit in appeal against the assessments, save and except for scaling down, this court, as has been held by the Supreme Court, is not competent to assess the correct amount of tax due, if any. Mr. Mehta's contention that the liabilities can be determined by this court must therefore be rejected at the outset. Furthermore, I find that the Supreme Court has already reiterated that the group issue stands concluded as against the Harshad Mehta entities. If the applicants herein seek to obtain a different view, it is not open for this court to do so. That having been said it is time that the Custodian in co-ordination with the Tax Department reviews the merits of the claim.

14. In conclusion, I find that I am unable to agree with Mr. Mehta and his submissions, which have been canvassed in great length. In this application, the record indicates that repeated attempts are being made by the applicants before different Judges of this court. Initially, similar reliefs sought have been rejected by an order dated 31<sup>st</sup> January 2013. Thereafter, similar applications have been filed by different notified entities being Miscellaneous Application Nos.62/2012, 75/2012, 76/2012, 79/2012, 80/2012, 81/2012, 114/2012 and 115/2012, in which reliefs were sought for sanction and release of payments to various Tax Consultants and Professionals. Subsequently, counsels' fees were also sought to be paid out of attached assets. These applications were opposed by the Custodian.

15. In Miscellaneous Petition No.41 of 1999, Special Court had followed the decision of the Supreme Court inasmuch as Harshad S. Mehta was a front for all family members; the group concept gained credence and the conclusions of the Special Court that various proprietary firms and entities of Harshad Mehta Group had brought in funds into various accounts of family members in an attempt to show them as independent transactions has been upheld. Similar applications have already been rejected in the past. In my view no case has been made out to take a different view. Till the assets and liabilities position is finally determined by assessing the claims of the Income

Tax Department, which this court cannot do, there is no question of permitting release of funds from the attached accounts. In view of the above the clear conclusion that can be drawn from the various contentions raised before me, I am of the view that no similar application ought to be filed without leave of the court which would enable the court to consider any improvement in the assets and liabilities position prior to investing time in hearing and disposing of such applications. In conclusion, I pass the following order :-

- (i) Miscellaneous Application is dismissed.
- (ii) No orders as to costs.
- (iii) The Special Court registry shall not register any further application for release of funds from attached assets for payment of fees payable by notified parties without leave of the court.

**(A.K. MENON, J.)**