"The Hon'ble Special Court passed an order in MA 53 of 1993 filed by Custodian for recovery of NLC Bonds from Canfina where its dishonest conduct is strongly criticized."

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) AT BOMBAY

MISC. APPLICATION NO. 53 OF 1993

Mr. A. K. Menon, Custodian ... Applicant

-versus.-

Canbank Financial Services Ltd. & Anr. ... Respondents

Mr. G. R. Joshi i/b. M/s. P. M. Mithi & Co. for the Applicant.

Mr. J. I. Mehta with Mr. Shaunak Thakkar i/b. M/s. Mulla & Mulla & C. B. C. for Respondent No. 1.

Mr. Milind Sathe with Mr. Ravi Gandhi i/b. M/s. Kanga & Co. for Respondent No. 2.

CORAM : S. N. VARIAVA J.
SPECIAL JUDGE
26th July 1993.

ORAL ORDER :

1. By this Application, the Custodian is asking for directions against the 1st Respondent to hand over to him 13 % NLC Bonds of the face value of Rs. 5 Crores together with all accrued and accruable interest thereon and the post-dated interest warrants pertaining thereto. The 2nd Respondent is supporting the Application.

2. The admitted facts are that on 22nd February 1992 the 2nd Respondent purchased, from the 1st Respondent, 13% NLC Bonds of the face value of Rs. 5 crores for a sum of Rs. 4,48,12,671.23 ps.

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It is an admitted position that this amount was received by the 1st Respondent by cheque. The 1st Respondent issued a Bankers Receipt dated 22nd February 1993. The Bankers Receipt is annexed as Exhibit "1" to the Affidavit-in-Reply dated 7th July 1993 of one Mr. S. Ramji, the Principal Officer of Respondent No. 1. The operative part of the Bankers Receipt reads as follows:

No 1592
Rs. 4,48,12,671/23 Dated 22/21992
Received from Growmore Research & Assets Management Ltd
the sum of Rupees 4,48,12,671/23
being the cost of 13 per cent NLC
Securities/Debentures/Bonds/Units of the face value of
5,00,00,000 @ -83/25 %
with Interest 31,87,671/23 Less Income Tax
from 27/8/91 to date
The Securities/ Debentures/Bonds/Units of the face value of Rs. are delivered herewith and Securities/ Debentures/ Bonds Units of the face value of Rs. 5,00,00,000 will be delivered when ready in exchange for this receipt duly discharged and in the meantime the same will be held on account of
Growmore Research & Asset Management Ltd

3. It is an admitted position that interest for the period 27th August 1991 upto 22nd February 1992, amounting to Rs. 31,87,671/23p was paid by the 1st Respondent to the 2nd Respondent. On 8th June 1992 the 2nd Respondent was notified by the Custodian. On 16th November 1992 Advocates for the 1st Respondent wrote to the Custodian stating that the 1st Respondent had sold 13% NLC Bonds of the face value of Rs. 5 crores to the 2nd Respondent on 22nd February 1992. They state that in lieu thereof Bankers Receipt No. 1592 dated 22nd February 1992

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had been issued. In the said letter it is also stated that the said Bonds belonging to the 2nd Respondent are being held by the 1st Respondent. In the said letter, it is claimed that the 1st Respondent has various claims against Ashwin Mehta Group and the right to claim lien on the said Bonds is reserved. Thus at this stage even according to the 1st Respondent there is a sale and it is holding 13% NLC Bonds of the face value of Rs. 5 crores which are belonging to the 2nd Respondent. This can only be if the 1st Respondent themselves understood that the property/ownership in the Bonds had passed to the 2nd Respondent. That the property in 13% NLC Bonds of the face value of Rs. 5 crores had been passed by the 1st Respondent to the 2nd Respondent is clear from the further correspondence.

4. By his letter dated 6th January 1993, the Custodian asks the 1st Respondent to give certain information in respect of the sale of 13% NLC Bonds of face value of Rs. 5 crores to the 2nd Respondent. One of particulars called for is the distinctive numbers of the Bonds. The 1st Respondents are also informed that the Bonds and interest/dividends accrued on the Bonds stands attached. By their letter dated 16th February 1993 the 1st Respondent set out the distinctive numbers

of the Bonds. They interalia state as follows:

"The payment towards the above sale was recovered by our F & I, Bombay by bankers cheque No. 553045 for Rs. 4,48,12,671/23 from SBI as per F & I sections statement of cheques issued and received dated 22.02.92.

As advised by you, in respect of the Bonds referred under our BR No. 1592 dt. 22.02.92 and interest accrued/accruable on the above bonds, we have noted that the same have been attached under section 3(2) of the Special Court Act."

Thus the 1st Respondents confirm that there is a sale. They give the distinctive numbers of the Bonds and they confirm that the Bonds referred under Br No. 1592 dt 22.02.92 and interest accrued/accruable on the above Bonds stand attached. The Custodian by his letter dated 17th February 1992 called upon the 1st Respondent to credit the half yearly interest accrued/accruable on these Bonds into the account of the 2nd Respondent in ANZ Grindlays Bank, Madras. I am orally informed that the half yearly interest accrued on these Bonds has been deposited into the said account on 2nd March 1993 and 16th April 1993. This is prior to the filing of this Application. To be noted that the

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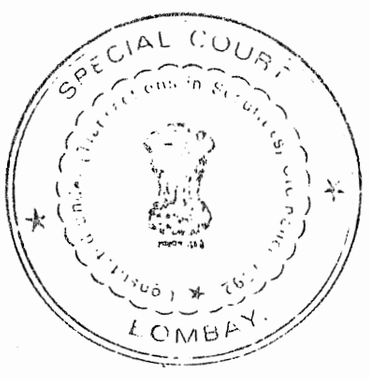
interest for the period 27th August 1991 upto 22nd February 1992 and thereafter could have been given to the 2nd Respondent's or credited into their account only provided the 1st Respondents also understood and admitted that the property in the Bonds had passed to the 2nd Respondent. Thus even upto this date there is no dispute that there is a sale.

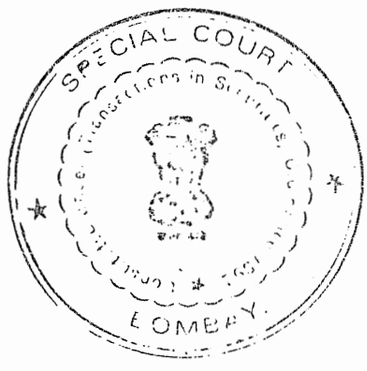
5. It has now been urged, on behalf of the 1st Respondent that the Bankers Receipt is merely a receipt for money. It is urged that the said Bankers Receipt does not identify any particular or specific NLC Bonds in as much as it does give any distinctive numbers. It is urged that the Bankers Receipt is merely an Agreement to Sell unspecified goods at a future date. It is urged that by virtue of the Bankers Receipt, there is no transfer of interests/property in any particular Bond in favour of the 2nd Respondent. In support of this argument, reliance has been placed upon Sections 2(7) and 18 to 23 of the Sale of Goods Act. Reliance is also placed on the case of A. W. Domingo v/s L. C. DeSouza reported in 50 I.L.R. pg. 695. wherein it is held that when a person agrees to sell shares in a Company without specifying the numbers of the share certificates, the agreement is merely an agreement to sell unascertained goods and



passes no interest in any share owned by the vendor until such shares are definitely ascertained. It is urged that on 8th June 1992 when the 2nd Respondent became notified the Bonds were still unspecified. It is urged that as the Bonds were still unspecified, all that the 2nd Respondent had, on that date, was a right to have specifically performed the agreement under Bankers Receipt. It is urged that the Bankers Receipt did not transfer any title in any particular Bond to the 2nd Respondent. It is urged that the only right, if any, of the 2nd Respondent, is to file a Suit for specific performance of the Agreement to deliver 13% NLC Bonds of the face value of Rs. 5 crores or to claim damages. It is urged that on the date that the 2nd Respondent was notified, apart from this right, no further or other interest in any particular Bond had been created in favour of the 2nd Respondent. It is urged that, under these circumstances, there was no property belonging to the 2nd Respondent which could be or was attached. It is urged that under the Special Courts Act it is only the properties belonging to the notified persons on the date of the Notification which can be attached or dealt with by the Special Court. It is urged that the property which a notified party may subsequently own or acquire cannot be attached

under the Special Courts Act. It is urged that in such cases, this Court has no jurisdiction to pass any Orders to specifically enforce any agreement or to direct delivery of the Bonds to the Custodian or to any other party.

6. I am unable to accept any of these submissions. In my view, it is indeed surprising that a Nationalised body like the 1st Respondent should take up contentions which to this Court appear to be patently dishonest. The 1st Respondent is a Financial Institution. It well knows how transactions in Securities are undertaken. The authority cited has no application to transactions in securities. Transactions in securities are undertaken either by delivery of actual securities or on the basis of Bankers Receipt. When Bankers Receipt are given, distinctive numbers are seldom if ever mentioned. The Bankers Receipt normally mention only names of the contracting parties, the type of Security, the face value, the rate and the total amount. 1st Respondents have annexed the Bankers Receipt in this case. It is a typical Receipt. To be noted that there is no column for distinctive numbers. Even though no distinctive numbers are mentioned, the Bankers receipt clarify that the Securities named and of that face value are thereafter held on



account of the purchaser. The Institution or Bank receiving the Bankers Receipt becomes entitled to the equivalent of the securities named in that Receipt. On the basis of the Bankers Receipt the purchasing Institute or Bank becomes entitled to deal with and further transfer the securities covered by the Bankers Receipt. It is the practice of the trade that an equivalent of the type and value of the securities mentioned in the Bankers Receipt are ultimately delivered to the purchaser. In these transactions very often the selling Institute or Bank may not have actual securities in their possession. They may themselves be holding only a Bankers Receipt. This will not mention the distinctive numbers of the Securities which will finally be delivered against the Bankers Receipt. Yet on basis of the Bankers Receipt they are entitled to and do transfer the Securities that they have purchased. Such transactions, running into crores of Rupees, take place innumerable times every day only on basis of such Bankers Receipts. It is only finally at the end, that after adjustments, delivery of actual Securities takes place. Therefore whenever a transaction in security take place once the type of securities and the face value of the security is mentioned, it is a transaction in respect of the security named and

of the face value shown. In such transactions, this is always considered sufficient for transferring property in specific securities of an equivalent value and of the type named. In this respect, Section 2(4) of the Sale of the Goods Act is relevant. Under Section 2(4) a document of title to goods includes any documents used in the ordinary course of business as proof of possession or control of the goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the documents to transfer or receive the goods thereby represented. A Bankers Receipt is in the nature of a document of title to the equivalent of the securities mentioned therein. It is a document which is ordinarily used in the course of sale and purchase of securities. It is a proof of the control of the possession or control over the equivalent of the securities mentioned therein. By delivery of a Bankers Receipt the Institution/Bank receiving it is authorised not just to receive but also to transfer the equivalent of the securities mentioned in the Bankers Receipt. Therefore, in effect, by delivery of the Bankers Receipt what has taken place is a transfer in the property of the goods itself. In my view, it is indeed surprising that a Nationalised Institution should now contend against

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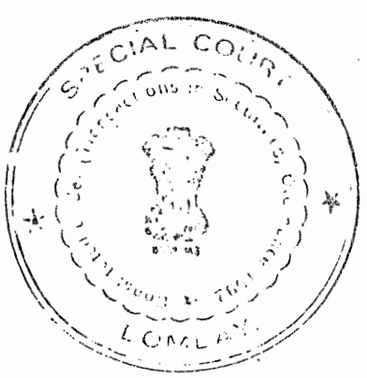
the prevailing practice. The fact that the amount was received is admitted. The fact that the Bankers Receipt has been issued is admitted. That by issuing the Bankers Receipt an obligation to deliver 13% NLC Bonds of the face value of Rs. 5 crores has been undertaken cannot be denied. That the submissions now taken up are dishonest becomes clear from the correspondence set out above. On 16th November 1992 the 1st Respondents themselves state that they had sold 13% NLC Bonds of Face value of Rs. 5 crores. They are themselves saying it is a sale. By this letter they have also informed the Custodian that they are holding Bonds belonging to the 2nd Respondent. If, as now contended, no property in any specific Bond has been transferred then how could they be holding any Bonds on behalf of the 2nd Respondents. The Custodian by his letter dt. 6th January 1993 talks of a sale. That it is a sale is again confirmed by the 1st Respondent by their letter dt. 16th February 1993. That a dishonest case is now sought to be put forth is also clear from fact that interest of Rs. 31,87,671/23p (for the period 27th August 1991 upto 22nd February 1992) was paid to the 2nd Respondent on issuance of the Bankers Receipt. If the Bankers Receipt was only an Agreement to Sell unspecified Bonds and did not

transfer any property then it would be the 1st Respondent who would have been entitled to this interest. It is only if property in 13% NLC Bonds of the face value of Rs. 5 crores had passed in favour of the 2nd Respondents that this interest could have paid to the 2nd Respondents. The fact that it was paid clearly belies the case now dishonestly put forth. To be noted that this shows that even though no distinctive numbers have been set out the Bankers Receipt operated as a Document of Title for an equivalent of 13% NLC Bonds of the face value of Rs. 5 crores. That the 1st Respondents also so knew and understand is clear from the fact that thereafter on 2nd March 1993 and 16th April 1993 accrued interest has been credited into the 2nd Respondents account without any protest. If as now claimed no particular securities have been specified or earmarked towards the Bankers Receipt then in respect of which security was the interest so paid and/or credited.

7. In any event the dishonest case which has now been put up, does not stand scrutiny because in this case there has been appropriation towards the contract. By their letter dated 16th February 1993 distinctive numbers of the Bonds have also been given. They are :

PF-2-122-0005 to PF-2-122-009



When specific Bonds were earmarked by the 1st Respondents towards Bankers Receipt No. 1592 dt 22nd February 1992 has conveniently not been stated by the 1st Respondents. However from letter dt. 16th February 1993, it is clear that these distinctive Bonds were purchased by the 1st Respondents on 6th February 1992. On a question from Court it is admitted that these Bonds are still with the 1st Respondents. Thus on 22nd February 1992 when the Bankers Receipt was issued these Bonds were in the possession of the 1st Respondents. The fact that these Bonds have been kept for such a long period and the fact that interest has been paid suggests that there was actual appropriation on 22nd February 1992 itself. In any event by 16th February 1993 there was actual appropriation. Once there was actual appropriation the property in the Bonds passed in any event. It is not possible to accept contention that only property which belonged to a Notified party, on date of notification can be attached. In my view such a restricted interpretation cannot be given to the provisions of the Special Courts Act. In my view it is clear that all property belonging to a notified party is to stand attached. Therefore even if a Notified party comes to own any asset or property subsequent to the date of Notification

that property will also stand attached. In my view, under the Special Courts Act all properties of the Notified person existing or future will stand attached. In this case even on this footing the Bonds bearing the distinctive Numbers as set out in the 1st Respondents letter dt. 16th February 1993 stand attached.

8. I also see no substance in the contention that this Court does not have jurisdiction to direct delivery of the Bonds to the Custodian or to any other party. Under Section 11 of the Special Courts Act this Court has to distribute property belonging to a Notified party in the manner set out therein. Sections 3(4) and 11(1) empower this Court to pass appropriate directions and orders in respect of property belonging to a Notified party. In my view this includes a power to ensure proper collection of property belonging to a Notified party and to pass appropriate orders for such collection. In my view this Court has jurisdiction and is entitled to and hereby directs and calls upon 1st Respondents to deliver up to the Custodian 13% NLC Bonds bearing distinctive Nos. PS-2-122-0005 to PF-2-122-0009 of the face value of Rs. 5 crores or failing that any 13% NLC Bonds of the face value of Rs. 5 crores. The Bonds to be delivered along with accrued interest and interest

warrants thereon, if any.

9. It may only be mentioned that in the Affidavit-in-Reply it has been also claimed on behalf of the 1st Respondent that a sum of Rs. 27.92 crores is payable by Mr. Harshad Mehta and his family members, particularly Mr. Ashwin Mehta. In the affidavit it is averred that as against this liability the 1st Respondent is entitled to exercise a right of lien over these Bonds. Mr. Mehta has very fairly not argued this at all.

10. That leaves for determination the question of interest on the amounts recovered by the 1st Respondents by way of half yearly interest on .13% NLC bonds of the face value of Rs. 5 crores. I am informed that the half yearly interest comes to Rs. 32,50,000/-. As stated above the same was deposited in to 2nd Respondents account on 2nd March 1993 and 16th June 1993. Mr. Mehta has submitted that the interest warrants remained with the 1st Respondents and the interest warrants were deposited on the above mentioned dates. He submits that the 1st Respondents have not used these amounts and therefore no interest should be charged. I am not happy with the attitude of the 1st Respondents. However Mr. Mehta is right. The 1st Respondents not having used this amount cant be made to pay interest on interest. There will be no Order in

respect of interest on the interest amounts.

11. In my view, the 1st Respondent has adopted and got argued dishonest contentions before this Court. In my view it is necessary to bring to the notice of the Finance Ministry the dishonest attitude on the part of this Nationalised Body. This so that corrective action can be taken to ensure that it is not repeated in future. Office is directed to send a copy of this Order to the Finance Ministry.

12. Mr. Mehta applies for stay of this Order for 4 weeks. In my view stay should not be granted. No prejudice can be caused to the 1st Respondents. The Bonds will be in the hands of the Custodian. There can be no alienation by the Custodian. Stay is accordingly refused.

Certified to be a true copy

OFFICER ON SPECIAL DUTY 31.7.93
Office of the Special Court
Bombay.

Applied on 29.7.1993
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Compared with B.S. Kadam
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