



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

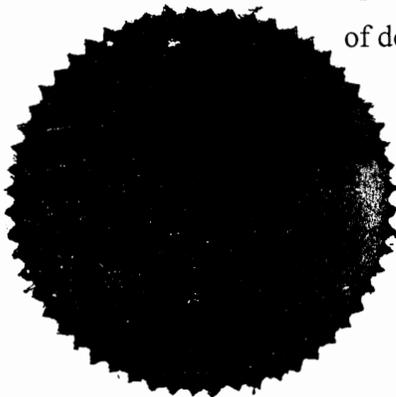
Report No. // of 2011 of the Custodian for sale of assets of Smt Rasila S Mehta and Smt Rina S Mehta, notified parties for the purpose of distribution.

I, Smt Rina S Mehta, aged Adult, residing at 32 Madhuli, Dr Annie Besant Road, Worli, Mumbai 400 018., do hereby state on solemn affirmation as under .

1. I have gone through the contents of the report and in response to the same, I have to say and submit as under. I say that nothing should be deemed to have been admitted by me unless so specifically stated.

2. I say that I have been served in the late afternoon on 03.06.2011, a copy of Report dated 01.06.2011 filed by the Custodian whereunder he has proposed sale of my entire asset base to meet the liabilities of four entities viz. Shri Harshad S Mehta, M/s Harshad S Mehta, Smt Rasila S Mehta, and myself. I am filing my preliminary reply to oppose to the said prayers and I pray to this Hon'ble Court to take the same on record.

3. I say that I have also requested the Custodian through my Advocate by a letter dated 04.06.2011, a copy of which is enclosed at Exhibit A to grant me inspection of all the material relied upon by him and the break up of all the consolidated figures cited by him in his Report which are only known to him. I say that the contents of the above letter would speak for itself. I therefore pray to this Hon'ble Court to permit me to file an additional affidavit after I take inspection of the material and I receive a reply to my letter from Custodian. Being apprehensive that I may not get proper opportunity in view of my travel, I am filing this preliminary affidavit of objection which is drawn up in a limited time of one day and without the benefit of full facts, inspection of documents and material relied upon by Custodian, and proper legal advise.





4. I am filing this preliminary reply as I am undertaking a travel tomorrow outside the country. I say that the aforesaid Report is liable to be rejected on several grounds all of which are set out herein after and are stated without prejudice to one another.

a) At the outset, I state that this Report is liable to be rejected as in terms of Regulations relating to Procedure For Civil Cases of the Special Courts Act, the Custodian is required to file a petition supported by an affidavit. I say that under Regulation 3 and 4 of the aforesaid Regulations, for matters where substantive rights or claims of securities / monies and or properties are involved, the parties have to first file a petition. It is further stipulated that such petitions can also be converted into a suit if the Court finds that the matter cannot be decided on affidavits. I say that the aforesaid Report has been filed by the custodian not on an affidavit and does not meet the requirements laid down in the aforesaid Regulations and on that ground alone, the same is liable to be rejected.

b) At the further outset, I state that I am aggrieved by the Judgment dated 06.05.2011 passed by the Hon'ble Apex Court in Civil Appeal No.2924 of 2008 and Civil Appeal No.2915 of 2008 (herein after referred to as "**the said Judgment**"). Since the receipt of the said Judgment, I have received legal advise that I have remedy of filing a Review Application as well as a Curative Petition. I say that presently the Hon'ble Apex Court is on vacation and I propose to avail of these remedies immediately on the re-opening of the Hon'ble Apex Court. I therefore humbly pray to this Hon'ble Court that the issue of sale of my assets may be considered by this Hon'ble Court only after I avail of the aforesaid remedies. I say that in the meantime, if my assets are ordered to be sold before availing of these remedies, grave harm, loss and prejudice would be caused to me. I say that this Hon'ble Court may be pleased to grant this prayer as Custodian has notified me after a period of 14 ½ years and therefore it is not a case of urgency which cannot justify granting of my aforesaid prayer.

c) I respectfully submit that the effect of the said Judgment is such that my constitutional and human rights to enjoy peaceful possession of

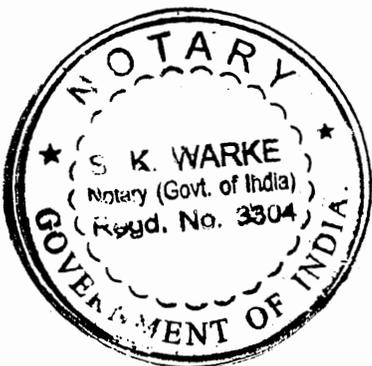




my property stands deeply violated. I say that the said Judgment is also contrary to several Judgments of Hon'ble Apex Court which includes even Judgments of three Judge Benches of Hon'ble Apex Court. I respectfully submit that by the said Judgment, contrary law has been laid down without referring the matter to a larger Bench which alone could have over ruled the law as was operating in the field hitherto. I say that in the interest of justice, it is therefore imperative that I am permitted to pursue my remedies of a review application and curative petition.

d) I say that the Hon'ble Apex Court in the said Judgment was bound to abide by and follow these previous Judgments and if there was any disagreement with them, it ought to have been recorded and the matter ought to have been referred to a larger Bench. I say that I am aggrieved with the said Judgment on this count as is further explained herein after.

e) I say that in Para 11 of the Judgment in the case of Harshad S Mehta V/s Custodian reported as (1998) 5 SCC 1, it has been held that since the property which is attached is of the person notified, the liabilities which are to be paid or discharged u/s 11(2) are also liabilities of person notified. I say that thus my assets cannot be used to discharge liability of any other notified person as proposed by the Custodian as the same would violate the aforesaid Judgment delivered by a Bench of three Judges of Hon'ble Apex Court. I state that in fact, in the aforesaid Judgment, it is also clearly held that the Special Court has no power to extinguish the right, title and interests of any third person in their property. I say that even therefore my right, title and interest in my properties cannot be extinguished and I cannot be deprived of the same by using my monies to discharge the liabilities of any other notified entity as proposed by the Custodian. It has been clearly held that had the Act provided for extinguishment of any subsisting rights in the attached property, the said Act could well have been considered as arbitrary and unconstitutional. The constitutional validity of the provisions of the Act have been upheld only on the basis that the Special Court has no power to extinguish the right, title and interest of a person in his assets.





f) I say that my above contentions are also fortified by what has been held by a three Judge Bench of the Hon'ble Apex Court in the case of Canbank Financial Services Ltd Vs Custodian reported as (2004) 8 SCC 355 where in Para 85, it has been pleased to hold as under :-

The constitutional validity of the Act came up for consideration before this Court in Harshad Shantilal Mehta v. Custodian. The vires of the said statute was upheld, inter alia, on the ground that by reason thereof the right, title and interest in a property belonging to Respondent 3 is not affected. The interest of the appellant, thus, was not affected by the said Act or by the Benami Transactions Act. Extinction in right, title and interest in a property must be caused as a result of operation of law and not otherwise.

g) I say that notwithstanding the foregoing and without prejudice, I respectfully submit that while all my assets get attached upon my notification, the same can be used only in discharge of my liabilities. In this regard, I also rely upon the Judgment in the case of Jyoti H Mehta V /s Custodian reported as (2009) 10 SCC 564 wherein Para 56, the Hon'ble Apex Court has been pleased to hold as under :-

It is true that to such an extent all properties would be liable to be sold which are needed for redemption and not beyond the same. What should be kept uppermost in the mind of the Court is to see that the liabilities are discharged and not beyond the same.

I say that in this very Judgment, the Hon'ble Apex Court in Para 35 has held as under :-

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

I say that further this Hon'ble Court in Para 42 of the Judgment in the case of L S Synthetics Vs Fairgrowth Financial Services Ltd reported as (2004) 11 SCC 456 has held as under :-

Only in the event, all the claims are provided for under Section 11 of the said Act are fully satisfied, the amount belonging to the notified person can be directed to be released in his favour or in favour of any other person.





h) I say that the Custodian has heavily relied upon the Judgment in the case of Jyoti H Mehta. I say that in this Judgment, the Hon'ble Apex Court has been pleased to give the following findings :

Para 39 *Mr Syed, therefore, in our opinion is not correct in contending that the advances made by Harshad Mehta to the appellants herein for the purpose of purchase of properties would amount to benami transactions whereof sub section (1) of Section 4 of the Special Act shall apply*

Para 57 *It is an accepted fact that the reports of the Janakiraman Committee, the Joint Parliamentary Committee and the Inter Disciplinary Group (IDG) are admissible only for the purpose of tracing the legal history of the Act alone. The contents of the report should not have been used by the learned Judge of the Special Court as evidence*

I say that from the above, it becomes obvious that if loans have been advanced to me by Harshad Mehta or any other notified entity for the purpose of purchase of properties, the same would not amount to a benami transaction. I say that in the said Judgment, the Hon'ble Apex Court has treated Reports of various Committees as proved evidence which is contrary to law laid down in Jyoti Mehta's case as cited above.

i) I say that in the said Judgment, the aforesaid two findings in the previous Judgment of Jyoti Mehta has not been applied and the Hon'ble Apex Court has departed and given contrary findings. I say that as such, several of the earlier binding Judgments of Hon'ble Apex Court have not been followed though they were cited. I say that on this ground, both a review petition and curative petition can lie. I say that this issue also needs to be resolved to enable this Hon'ble Court to also decide as to which of the aforesaid conflicting Judgments of the Hon'ble Apex Court, this Hon'ble Court should follow or rely upon. I say that the Custodian also cannot rely upon some portions of Judgment of Jyoti Mehta and ignore those portions of the Judgment which are in my favour. I say that therefore in the interests of justice, this Hon'ble Court may please permit me to pursue the remedies available to me before deciding the present Report.





j) I say that it may be noted that the Custodian has filed the said Report clearly admitting that the properties which are proposed to be sold belong to me. As such, there is no dispute about their ownership. I say that this fact emerges from reading Paras 8, 11, 13 and 14 and prayer 15(a) of the Report. I say that if the said properties belong to me, the Custodian has failed to make out a case as to why they should be sold to meet the liabilities of Harshad S Mehta. I say that it also ought to be noted that the Custodian had earlier filed M.P No.20 of 2006 seeking the same relief but this petition subsequently came to be withdrawn on 23.01.2007. A copy of the order of this Hon'ble Court in this regard is enclosed at **Exhibit B**. I say that in view of the fact that the aforesaid petition was withdrawn by the Custodian, the present proposal of the Custodian to use my assets or discharging liabilities of Harshad S Mehta is liable to be rejected.

k) I say that the aforesaid Report is liable to be rejected on the ground of non joinder of necessary parties. I say that only the legal heirs of Harshad S Mehta are joined as parties to the Report. It may be noticed from prayer (a) of the Report that the Custodian is seeking to sell the shareholdings of Smt Rasila S Mehta and myself which are held either solely or jointly alongwith other members of so called Harshad Mehta Group. I say that these joint and second holders in the shareholdings ought to be joined as a party as they are entitled to be heard in terms of the Judgment of Hon'ble Apex Court reported as (1998) 5 SCC 1, more particularly what is held in Paras 12, 13 and 18 of the said Judgment. I am stating this without prejudice to my contention that I am the sole owner of all the shares wherein I am the first holder and the second holder being a family member, is introduced by me only for safety of the said asset. However this position has been disputed by the Custodian in numerous proceedings and he has called upon the first holder to establish the ownership of such joint holdings. I say that in view of above and in consistence with their earlier stands, the Custodian ought to have joined the second holders in the shares and bank accounts as parties to the Report.

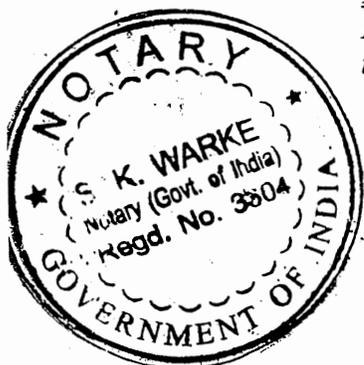




l) I say that the present Report is liable to be rejected on the ground that the same is premature on numerous counts as is explained herein after. I say that the Hon'ble Apex Court through the said Judgment have only upheld my notification but not decided the issue of sale of my assets. I say that upon notification, all my assets get automatically attached. I say that however such an automatic attachment of assets u/s 3(2) of the Special Courts Act does not necessarily lead to automatic sale of the same u/s 11(1) of the said Act as is incorrectly urged by the Custodian in Para 8 of his Report. I say that in terms of Para 14 of the Judgment reported as (1998) 5 SCC 1 and the binding Judgment of the Division Bench of this Hon'ble Court in Hitesh S Mehta's case in Writ Petition No.1547 of 1992, I am entitled to release of all those assets which have no nexus with any funds belonging to the banks and financial institutions. I say that all my assets acquired prior to the statutory period are liable to be released from attachment on the ground of no nexus. I say that in terms of the aforesaid Judgment, even those assets acquired during the statutory period, are liable to be released from attachment which have no nexus with any tainted funds belonging to the banks. I say not only that even those assets which are acquired out of tainted monies are liable to be released from attachment if they are not required to meet any liabilities. In this regard, I also rely upon two Judgments i.e. Para 15 of Ashwin Mehta's case reported as (2006) 2 SCC 385 and Paras 35 and 56 of Jyoti Mehta's case reported as (2009) 10 SCC 564.

m) I say that admittedly the Custodian in the proceedings before this Hon'ble Court leading to the Judgment dated 26.02.2008 in M.P Nos.1 and 2 of 2007, has failed to establish that I have acquired any assets out of tainted monies belonging to the banks. I say that even before the Hon'ble Apex Court, this fact was conceded by the Custodian by making the following averments in Paras 121 and 122 of their affidavit in reply which are reproduced below :-

Para 121 *Firstly, the dates of deposits of monies in Banks by M/s Harshad S Mehta and the dates on which the firm transferred the monies to the Appellant need not necessarily be the same.*



Para 122 *The sources of all the funds were banks and financial institutions and it is impossible in case of intermingling of funds to identify the sources of any particular transfer to a third party.*

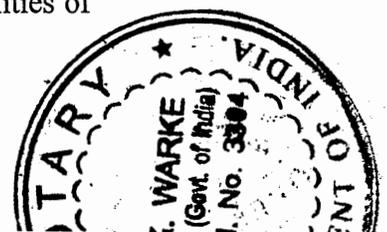
I say that as such, my assets are liable to be released from attachment both on the ground of no nexus and / or on the ground that they are not required to meet any liabilities. I say that I wish to avail of this remedy of seeking release of such assets by filing appropriate applications before this Hon'ble Court. I say that therefore I may be permitted to file such an application which I propose to file in a period of not more than one month from today. I say that before ordering any sale of my assets, this Hon'ble Court ought to therefore examine and identify those assets which are acquired out of such tainted monies before they are ordered to be sold. I say that the Custodian's Report is premature even on the above ground.

n) I say that under the provisions of the Act, the date of distribution arrives only after crystallization of my liabilities. I say that the Custodian has not issued any advertisement calling upon my creditors to make their claim, if any. In support of my above contention, I rely upon Para 27 of the Judgment reported as (1998) 5 SCC 1 which reads as under :-

The date of distribution arrives when the Special Court completes the examination of claims under Section 9-A.

I say that therefore the present Report is premature.

o) I say that under the objects clause of the Act, what is required to be recovered and restored back to the banks is the amounts involved in the transactions undertaken with the brokers. I say that admittedly I have not undertaken any transactions with any bank nor have I received any tainted monies. I say that therefore my monies are not liable to be used in discharge of liabilities of Harshad S Mehta. I say that my monies are in fact liable to be disbursed only as per the provisions of Section 11(2) of the Act and in the order of priority specified therein. I say that therefore in violation of said Section 11(2) of the Act, my monies cannot be used to meet the liabilities of Harshad S Mehta.



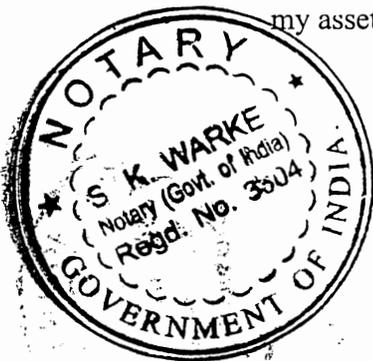


p) I say that admittedly the only liabilities against me as on date are the claims made by the revenue department since the Custodian has not preferred any claim against me on behalf of other notified entities. I say that the Custodian in their Report have not separately furnished charts of my liability as claimed by the revenue though the same is available with them. I am therefore pleased to enclose a copy of such liability chart furnished by revenue showing my liability as on 09.07.2010 of Rs.137.97 crores at Exhibit C. I say that my liquid balances can be used to meet my revenue claims particularly for the priority period.

q) I say that the Custodian has not explained any factual or legal basis as to why my assets should be used to discharge the liabilities of any other notified entity. I say that the finding of this Hon'ble Court in its Judgment dated 26.02.2008 upholding my notification are as under :-

The Custodian, therefore, in my opinion, with justification, submitted that detailed analysis of the sources and application of funds flow of funds etc would show that Mrs Rasila S Mehta and Mrs Rina S Mehta are nothing but front benamidars of Harshad S Mehta and their assets should be used to discharge his liabilities. The Custodian has also relied on submission made by Mrs Rasila S Mehta in an affidavit filed in reply to Misc. Application No.291 of 2006, where she has submitted that she had advanced loan for purchase shares by three brokerage firms of M/s Harshad S Mehta, M/s Ashwin Mehta, and M/s J H Mehta. It appears that the Petitioners were housewives. They were given loans by these three brokerage firms for purchase and sale of shares. From the material that has been placed on record by the Custodian, it becomes clear that the transaction on record disclose that many assets and shares were diverted to the Petitioner by these three brokerage firms, which are notified parties, and therefore, it can be definitely said that the Petitioner had nexus and therefore, in my opinion, the notification is not liable to be cancelled.

I say that in view of the above finding about loan and advances to me by other notified entities, the Custodian can only file recovery applications against me. I say that once my liabilities are established, I am ready and willing to pay and my assets are sufficient to meet the same.





r) I say that the facts applicable in my case attract the ratio laid down by the Hon'ble Apex Court in the Judgment in Ashwin Mehta's case reported as (2006) 2 SCC 385 where in Para 51, it has been pleased to hold as under :-

A question may further arise as to whether the learned Judge was correct in considering the individual liabilities of the notified parties as the liabilities of the group. If those individuals who had no connection with Harshad Mehta could not have been proceeded against for meeting the liabilities of Harshad Mehta jointly or severally, a clear finding was required to be arrived at. Only because there had been large intermingling and flow of funds from Harshad Mehta and inter se within the group, the same by itself may not justify the conclusion that all of their assets were required to be sold irrespective of their individual involvement. It was, thus necessary for the learned Special Court to arrive at a firm conclusion as regards the involvement of the individuals with Harshad Mehta, if any, and the extent of his liability as such.

s) I say that so far as the finding that I am a front and benamidar and my assets can be used for discharging the liabilities of Harshad S Mehta is concerned, the Custodian is yet to establish and adduce evidence as to for which transaction, I have acted as front and benamidar as a person cannot be held to be front or benamidar but only transactions can be declared as benami.

t) I say that the aforesaid finding of this Hon'ble Court is not binding to decide the issue of sale of my shares also because of the fact that the order in which such a finding was given had only one issue for adjudication i.e. whether I have been notified correctly or not. Thus that order was made by this Hon'ble Court only in that context and in the context to establish nexus. I say that my application before this Hon'ble Court being M.P No.1 of 2007 was a petition filed u/s 4(2) of the Act i.e. exercising my right to challenge the validity of my notification. I respectfully submit that the issue before this Hon'ble Court was not whether I had acted as a front or benamidar. I say that this becomes obvious when the order of this Hon'ble Court is examined as in the said order, this Hon'ble Court has not examined any particular transaction undertaken by me. This Hon'ble Court in fact, has come to the conclusion that loans have been advanced to me by the three





brokerage firms. I say that I have several assets many of which have not been acquired through Harshad S Mehta or by his making any payment and in fact he has played no role whatsoever, and even therefore such assets cannot be used for discharging his liabilities.

u) I say that assuming without admitting I acted as front and benamidar of Harshad S Mehta as alleged, even then as per the law laid down by the Hon'ble Apex Court in Para 66 in the case of Canbank Financial Services Ltd Vs Custodian reported as (2004) 8 SCC 355, I have become the absolute owner of such properties by applying the law laid down as under.

The Benami Transactions Act is not a piece of declaratory or curative legislation. It creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transactions and for whom new liabilities are created by the Act. A statute which takes away the rights of a party must be strictly construed.

v) I say that this Hon'ble Court in its order dated 31.03.2006 in M.A No.130 of 2006 in M.P No.4 of 2001 has been pleased to hold in Para 10 as under :-

The Court will have to consider the liability of each individual entity of Harshad Mehta group separately and the funds of that individual with the Custodian and then decide whether residential property of that individual is to be sold or not. It is only if the residential property of any individual entity is not required to be sold for satisfying the liability of that individual entity, then the question may arise whether the residential property of that individual entity is to be sold for satisfying the liability of Harshad Mehta and / or the liability of the other entity in the group.

I say that in view of what has been held above, it is obvious that even as per this Hon'ble Court, my assets are first liable to be used to discharge my liabilities and only the surplus, if any, can be used to meet the liabilities of any other notified entity. I say that the above is submitted without prejudice to my rights and contentions that my assets cannot be used in discharge of liabilities of any other notified entity and therefore my liabilities are required to be met first.





w) I say that even in the case of Ashwin Mehta V/s Custodian reported as (2006) 2SCC 385, the Hon'ble Apex Court in Para 38 has been pleased to lay down the law as under :-

Para 38 *The principle of lifting the corporate veil, however ipso facto would not apply to the individuals. The Custodian in a case of this nature may, however, show that the transactions entered into apparently by Harshad Mehta were intimately connected with acquisition of properties in the names of others. A transaction of benami indisputably can be a subject matter of a lis in terms of section 4(1) of the Act as and when such a question is raised the same may have to be dealt with by the Special Court appropriately. However, nexus between several persons in dealing with the matter may be established by the Custodian.*

x) I say that the Hon'ble Apex Court has also been pleased to lay down the law that at the stage when liabilities are required to be discharged, a notified person can raise the contention that his assets are sufficient to meet his liabilities. In support of the above contention, I rely upon the Judgment reported as (2006) 2 SCC 385 where in Para 15, the Hon'ble Apex Court has been pleased to hold as under :-

The right of a person notified to file an application or to raise a defence that he is not liable in terms of the provisions of the Act or, in any event, the properties attached should not be sold in discharge of the liabilities can be taken at the initial stage by filing an application in terms of sub section (2) of Section 4 of the Act. But, at the stage when liabilities are required to be discharged, the notified persons may raise a contention inter alia for the purpose of establishing that the properties held and possessed by them are sufficient to meet their liabilities. In terms of the provisions of the Act, the Special Court had been conferred a very wide power.

From the above, it becomes obvious that before sale of my assets, I ought to get an opportunity to show that my assets are sufficient to meet my liabilities.

y) I say that the proposal of the Custodian to use my assets to discharge the liabilities of Harshad S Mehta is liable to be rejected as the same is not in accordance with the provisions of the Act and the same violates numerous Judgments of Hon'ble Apex Court cited and relied by me earlier in my reply. I say that this Hon'ble Court has no power or jurisdiction to direct use of my assets to discharge the liabilities of any other notified person. I say

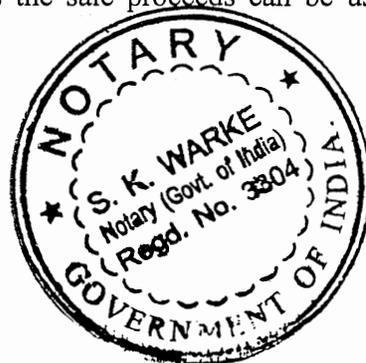




that the proposal of the Custodian is directly in teeth of the express provisions of the Act and Judgments of Hon'ble Apex Court reported as (1998) 5 SCC 1, (2004) 8 SCC 355, (2006) 2 SCC 385 and (2009) 10 SCC 564. I say that what is proposed by the Custodian is not in accordance with the finding given by this Hon'ble Court since it was held that I and Smt Rasila S Mehta were given loans by the three brokerage firms for purchase and sale of shares. I say that it is settled law that loans advanced to us would be treated as attached properties of Harshad Mehta to the extent it is not repaid on the date of his notification. I say that it is also a settled law that if loans were advanced to us then only the same would be liable to be recovered and my assets cannot be sold to meet other liabilities of the lender.

z) I say that even on diversion, this Hon'ble Court has come to the conclusion that many assets and shares were diverted to both of us by the three brokerage firms viz. M/s Harshad S Mehta, M/s Ashwin Mehta, and M/s J H Mehta. I say that in any event, the aforesaid finding of this Hon'ble Court was in respect of establishing the nexus and even therefore the proposal of the Custodian is completely misconceived. In any case, the Custodian's proposal is extremely vague and devoid of any material particulars as it does not lay down any principles known to law as to which of my assets and in what manner they can be used to meet the liabilities of Harshad Mehta. Thus the Report of the Custodian is liable to be rejected on these grounds also.

aa) I say that the present Report is also premature as some of my shares are yet to be dematerialized as I am in the process of handing over the physical shares in my possession to the Custodian. I say that the process of sale ought to therefore commence only after all the shares are dematerialized and even therefore, the present Report is liable to be rejected. In any case, as per the order of this Hon'ble Court in M.P No.64 of 1998, the sale of shares should be carried out in a phased manner over a period. I say that the above is submitted without prejudice to my contentions that my assets are not liable to be sold much less the sale proceeds can be used to discharge liabilities of Harshad S Mehta.



bb) I say that not only my liabilities are not crystallized u/s 9A but a large part of my assets are presently lying in third party hands and they are required to be collected and recovered by the Custodian. I say that several letters have already been addressed by me requesting the Custodian to cause recovery and reconcile my shareholdings and ensure that all the accruals thereon already stand recovered. I say that numerous cases have come to light where shares are found to be lying in the company or third party hands and where dividends and other accruals are yet to be recovered. In this regard, I and other notified entities have addressed a letter to the Custodian through our Counsel on 10.05.2011, a copy of which is enclosed at **Exhibit D**. I say that similar letters have also been addressed to several companies to obtain documents in order to reconcile and account for all my shareholdings and recover the same where they are lying in third party hands. A sample copy of the letter dated 26.05.2011 addressed to various companies is also enclosed at **Exhibit E**. I say that I have also initiated some recovery applications in the case shares of Reliance Industries Ltd in regard to recovery of large amount of dividends and Hero Honda Ltd. I therefore crave leave of this Hon'ble Court to refer to and rely upon all the correspondence exchanged with the Custodian as and when produced. I say that before recovery of attached assets takes place, it would be premature to sell the shares or distribute any monies u/s 11 of the Act as the same would defeat the purpose and objects of the Act.

cc) I say that the Custodian has also suppressed material fact that this Hon'ble Court upon an application by Custodian being M.A No.11 of 2007 has been pleased to appoint a firm of Chartered Accountants M/s Mukund Chitale & Co., by consent of parties. A copy of the order dated 16.03.2007 of this Hon'ble Court is enclosed at **Exhibit F**. I say that it is an admitted position that the aforesaid firm of Chartered Accountants are yet to submit their Report. I say that in the past, in respect of each and every notified entity, this Hon'ble Court has appointed independent firm of Chartered Accountants to furnish a Report so as to determine and arrive at the asset and liability picture. I say that however by filing the present Report, the Custodian has discriminated against me and made an exception where he has proposed sale of my entire assets and sought distribution without awaiting the





Report of the firm of Chartered Accountants. I say that even on this ground, the present Report is liable to be rejected.

dd) I say that in order to determine the inter se liabilities between the notified entities, the Hon'ble Apex Court in Para 52 of their Judgment in Ashwin Mehta's case reported as (2006) 2 SCC 385 had directed that the Custodian should prefer the claim on behalf of the largest lender so that inter se asset and liability gets crystallized. I say that in the present case, the Custodian has not preferred any such application and even M.P No.20 of 2006 filed earlier by him has been withdrawn by him on 23.01.2007. I say that therefore neither the asset picture nor the liability picture has attained finality and any premature sale of an appreciating asset like shares without crystallization of asset and liability picture, would cause immense harm and monetary loss to me.

ee) I say that in fact, a similar approach was adopted by the Custodian in the case of my family members and corporate entities where their shares were sold between the year 2001 to 2003 and such premature sale has already led to a loss of Rs.5130 crores. In support of my contention, I am pleased to enclose a chart at **Exhibit G** giving computation of such a loss though the actual loss would be much more. It is an admitted position that their Distribution Report for making interim distribution came to be filed by the Custodian only in the year 2010. I say that in fact, my assets and the assets of Smt Rasila S Mehta have substantially appreciated in last few years only because we were not notified until the year 2007 whereas my family members who were notified earlier, their appreciating assets were sold much ahead in time at throw away prices and the Distribution Report has in fact been filed almost nine years after sale of their shares which is responsible for the aforesaid loss of Rs.5130 crores.

ff) I say that it is a settled law as per Para 42 of the Judgment in the case of L S Synthetics Vs Fairgrowth Financial Services Ltd reported as



(2004) 11 SCC 456 that after claims against me are met as provided u/s 11 of the Act, the surplus is liable to be released to me. I say that so far as meeting the liabilities of the banks are concerned, the Hon'ble Apex Court has already given remedy to them in Para 41 of the Judgment reported as (1998) 5 SCC 1. It has been held that if according to any banks any attached property belongs to them, it is open to these banks or financial institutions to file a claim before the Special Court in that connection and establish their right to the property attached. It has also been held that until such a claim is determined, the property attached cannot be sold or distributed u/s 11. I say that during last nineteen years, not a single bank has made a claim on any of my properties and therefore this Hon'ble Court ought to presume that tainted funds belonging to the banks have not traveled to me. I say that if this Hon'ble Court proceeds on the basis that the tainted funds have been received by me, then until the claim of the bank is determined on my assets, my property though attached, cannot be sold or distributed u/s 11 of the Act in terms of the aforesaid Judgment.

gg) I say that even otherwise it ought to be noted that the Custodian has not invoked the provisions of Section 4(1) of the Act for the transactions undertaken by me. I say that similarly the investigating agencies like C.B.I have not cited me as an accused for undertaking any transactions or even for receiving any funds which are subject matter of crime. I say that therefore this Hon'ble Court ought to presume that I have not received any tainted monies. I say that this Hon'ble Court therefore may not direct sale of my assets and use of proceeds thereof to meet the liabilities of Harshad S Mehta.

hh) I say that even the asset and liability picture of Harshad S Mehta has not attained finality. I say that Smt Jyoti H Mehta, his sole legal heir has made averments before this Hon'ble Court in numerous proceedings that the assets of Harshad S Mehta are sufficient to meet his genuine liabilities. I say that a large part of his assets are yet to be recovered from third parties. I say that so far as the liabilities against him are concerned, the same are also under challenge and have not attained finality. I say that so far



as decrees awarded to banks are concerned, Smt Jyoti H Mehta have challenged and filed Civil Appeals before the Hon'ble Apex Court in which regard notices has already been issued. I crave leave of this Hon'ble Court to refer to and rely upon the said orders of Hon'ble Apex Court in this regard.



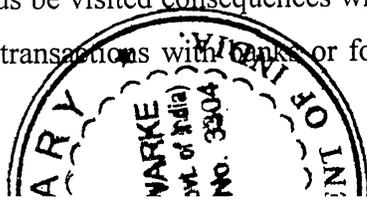
ii) I say that even as regards the liability of Harshad S Mehta towards revenue are concerned, this Hon'ble Court has come to the conclusion that so far as the assessment years of 1992-93 and 1993-94 are concerned, there is gross miscarriage of justice in framing of his assessment orders. This Hon'ble Court has in fact scaled down the liability after coming to the aforesaid conclusion. I say that the order of scaling down of this Hon'ble Court has subsequently been upheld by the Hon'ble Apex Court. I say that a large part of the liabilities of Harshad S Mehta are on account of Money Market Oversold Position where this Hon'ble Court has already held that the cost of purchase ought to be deducted. This has subsequently been upheld by the Hon'ble Apex Court and yet the revenue has not complied with the binding order of Hon'ble Apex Court and in this manner his liabilities are exaggerated by a few thousand crores. I say that in fact, the scaling down matter has been remanded to this Hon'ble Court for re-adjudication. I say that this re-adjudication is also pending before this Hon'ble Court. I say that on the other hand, the appeals challenging the demands of revenue are also pending adjudication before the appellate authorities prescribed under the Income Tax Act. I say that thus the liabilities of Harshad S Mehta are not crystallized.

jj) I say that numerous orders have already come in favour of notified entities and Harshad S Mehta in particular where high pitched assessments have been struck down. It has already been held by the Hon'ble Tribunal in a number of cases that no interest is leviable on notified entities u/s 234A, 234B and 234C which constitutes bulk of liabilities of Harshad S Mehta. The Hon'ble Apex Court has also held that no penalties are leviable on notified entities u/s 271C i.e. penalty for concealment of income. I say that all these orders are in possession of the Custodian or in any event, they are in

public domain. I say that therefore the liability picture of Harshad S Mehta as presented by the Custodian is likely to come down drastically once the ratio laid down in the aforesaid Judgments are applied to the facts of his case in the appeals which are presently pending. I say that if liabilities of interest u/s 234A, 234B and 234C are deleted, then even consequential liabilities of interest levied u/s 220 of the I.T Act will stand deleted. I say that even therefore, this Hon'ble Court ought to await crystallization of the asset and liability picture of Harshad S Mehta before directing sale of my assets.

kk) Without prejudice to the above, I once again reiterate my offer of repayment to meet each and every liability towards other notified entities. I say that this is without prejudice to my contention that I have no payables to the three brokerage firms but in fact have receivables and my claims in regard to the shares not delivered to me are already lodged before this Hon'ble Court as well as the firm of Chartered Accountants M/s Mukund Chitale & Co.

ll) I say that the Custodian is required to file a proper and detailed application establishing his case for use of any particular asset in discharge of liabilities of Harshad S Mehta and cannot rely upon the finding of this Hon'ble Court in the order dated 26.02.2008 upholding my notification. I say that in law, I am entitled to such an opportunity. I say that the aforesaid finding was given by this Hon'ble Court without any prayer by the Custodian seeking such a relief. I say that I am not an accused but I am being persecuted by the Custodian only because I am related to Harshad S Mehta and undertook some transactions with the three brokerage firms in my family. These transactions were undertaken in normal course of business and they are not impugned by the Custodian. The Custodian is seeking to achieve much more than what is provided u/s 4(1) of the Act. I say that neither the objects nor the provisions of the Act have contemplated such consequences for person like me who is not even cited as an accused. I say that the consequences of the proposal are so drastic that I would be completely deprived of my entire asset base. I would thus be visited consequences without committing any crime, or undertaking any transactions with banks or for that matter entering into any



illegal transaction. I say that I have not committed a single act which could justify such drastic consequences as are proposed by the Custodian. I therefore pray that justice may be done by this Hon'ble Court.

5. I say that taking into account the entirety of facts and circumstances, there is no justification to order sale of my assets at this stage much less direct use of sale proceeds to discharge the liabilities of Harshad S Mehta or any other notified entity. I crave leave of this Hon'ble Court to file further affidavit, if necessary.

Solemnly affirmed at Mumbai

Dated this 5th day of June 2011


(Rina S Mehta)


Advocate for _____



VERIFICATION

I, Smt Rina S Mehta. Hindu adult, Indian inhabitant, residing at 32, Madhuli, Dr Annie Beasant Road, Worli, Mumbai 400 018., do hereby declare that what is stated in the foregoing affidavit is true to my own knowledge.

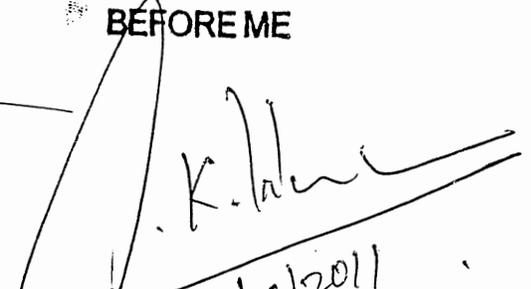


Solemnly affirmed at Mumbai)
Dated this 5th of June, 2011)


Rina S Mehta


Advocate for _____

BEFORE ME


5/6/2011

Ev. No 117/2011
Page 31 Register-2
Date 5/6/2011

S. K. WARKE
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