

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

MISCELLANEOUS APPLICATION NO.15 OF 2021

Smt. Jyoti H. Mehta & Ors. ... Applicant

Versus

The Custodian ... Respondent

AFFIDAVIT IN REPLY ON BEHALF OF THE CUSTODIAN TO
THE APPLICATION

I, Shri N. V. Sawant working as an Under Secretary in the Office of the Custodian and having my office at 10th Floor, Nariman Bhavan, Nariman Point, Mumbai 400021, do hereby solemnly affirm and state as under:

1. I say that, I have read a copy of the Miscellaneous Application No. 15 of 2021 dated 12th April 2021(hereinafter referred to as 'the said Application') and in reply thereto I wish to state as under:
2. The Applicants viz. 1) Jyoti H. Mehta legal heir of late Shri. Harshad S. Mehta, 2) Shri. Ashwin Mehta, 3) Smt. Bhavan Manish Shah, 4) Dr, Hitesh S. Mehta, 5) Shri. Sudhir S. Mehta and 6) Shri. Aatur Harshad Mehta have filed the said Application and inter alia prayed for :

(a) to direct Custodian to release a sum of Rs. 3 Crores each from attached accounts of late Shri. Harshad Mehta and late Smt.

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Rasila Mehta and pay the same to Applicant Shri. Ashwin Mehta acting for and on behalf of the Applicants or in the alternative to prayer (a) above.

(b) to direct Custodian to release a sum of Rs. 1.5 Crs. each from the attached accounts of Applicants Smt. Jyoti H. Mehta, Shri. Ashwin Mehta, Dr, Hitesh S. Mehta and Shri. Sudhir S. Mehta and pay the same to the Applicant Shri. 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 Hon'ble Court.

3. At the outset, I deny each and every statement/submission/allegation made in the said Application which are contrary to and inconsistent with what I have stated herein below as if the same are specifically set out herein and denied in seriatim, excepting those which are specifically admitted herein below. I further humbly submit that nothing in the present Application shall be deemed to be admitted by or on behalf of the Custodian for want of specific traverse, save and except those expressly admitted by me herein below.
4. I say that the Applicants who are the family members of the Late Harshad Mehta are seeking release of the said moneys from the attached accounts of members of the Harshad Mehta Group in which case liabilities far exceeds their assets.

5. I say that the present Application is also bad for non-joinder of necessary parties. I say that the Income Tax Department and Banks to whom the Harshad Mehta Groups owe monies and who will be adversely affected with the granting of the prayers in the present Application, and who have to be heard before any reliefs as sought for in the present Application is granted, have not been made parties in the present Application. I say on that ground also, the present Application ought to be dismissed.
6. I say that the moneys sought to be released in the present Application from the attached accounts of the said notified parties is purportedly for the payment of Advocates Fees of Mr. Ashwin Mehta who according to him has represented the other Applicants and himself in various and all matters before this Hon'ble Court.
7. I say that if the concerned notified parties are agreeable to pay the same from their future income which is not attached, then the said issue is a matter between the said notified parties forming the Harshad Mehta Group and the Applicants and the present Application can be disposed of accordingly.
8. Without prejudice to what I have stated herein above, I say that it is pertinent to note that there are no details given whatsoever in the said Application to substantiate the figure sought to be released in the present Application or for that matter to substantiate any other figure and unless the said details in the form of documents or otherwise are placed on record, it will not be possible to ascertain the authenticity or veracity thereof for the purpose of adjudicating upon the same. I say

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that till such time the same is done, the prayers made in the said Application cannot be considered.

9. I say that if said details in the form of documents or otherwise are placed on record, to substantiate the figure mentioned in prayers of the Application, or for that matter to substantiate any other figure, even if the Applicants prove their case to the satisfaction of this Hon'ble Court, then for distributing the same, the procedure laid down by this Hon'ble Court on the said issue will have to be followed.

10. I say that amounts prayed to be released from the attached assets of notified parties who are part of the Harshad Mehta Group and whose liabilities on record as on 31.07.2021 far exceeds their assets. It is pertinent to note here that since the demands of outstanding tax against members and corporate entities of Harshad Mehta Group are not confirmed, the O/o Custodian vide letter no. 373 CUS/BOM/Report of Distribution/HMG/2195-XII-B-6-6 dated 06.07.2021 has requested Addl. CIT to clarify and expedite the position of outstanding demands of HMG. It is therefore stated that in view of above position and until the revised position of outstanding demands against HMG is intimated the liability informed by the Income Tax Department vide their letter dated 06.02.2018 & 05.02.2018 as on 31.01.2018 has been shown in the statement of Assets & liabilities as on 31.07.2021. Hereto annexed and marked "**Exhibit - A**" is the chart showing the assets and liability position of the Harshad Mehta Group and "**Exhibit - B**" is a copy of letter dated 06.07.2021 to Additional Commissioner Income Tax.

11. I say that the attached assets of a notified party can only be released as per section 11(2) of the Special Courts (TORTS) Act. I say that the

claim made in the present application if allowed by this Hon'ble Court, can only be considered under section 11(2)(c) of the said Act at the stage of distribution. Hence, the present Application is premature and ought to be dismissed.

12. I say that issue relating to release of fees to professionals i.e. Advocates, Tax Consultants, Counsel was considered by this Hon'ble Court in its Judgement & Order dated 12th February 1996 passed in Miscellaneous Petition No.215 of 1995 and as per the said Judgement & Order, the prayers as prayed for in the present Application cannot be granted and hence, the present Application ought to be dismissed. Paragraphs Nos. 56, 57, 62, 66, 70, 74, 80, 82, 83 & 84 of the said order of 12th February 1996 are relevant in the present Application also. A copy of this Hon'ble Court order dated 12th February 1996 is enclosed at Exhibit 'D' to para 11 of present Application.
13. I say that it is the case of the Applicants that they are entitled to reliefs in the present Application as purportedly, their assets exceed their liabilities without in any manner substantiating the same. I say that on just bald and incorrect statements that the assets are more than their liabilities, the prayers as sought for in the present Application cannot be granted.
14. I say that to wrongly substantiate the prayers made in the said Application, the Applicants have also relied upon several judgments, in the said Application, of this Hon'ble Court and the Hon'ble Supreme Court of India and has wrongly interpreted the same to suit their convenience, which is not the correct interpretation of the said Judgements/Orders and I deny the interpretation as submitted by the

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Applicants. I crave leave to refer to and rely upon the said Judgements/Orders for its true meaning and interpretation.

15. I say that similarly, most of the facts mentioned in the said Application have no relevance with the facts in issue arising in the present matter which facts I deny which are not in consonance with what is stated by me herein.
16. I also strongly deny the allegations levelled against the Custodian in the said Application which are incorrect as the same are made with the malafide intent of discrediting and browbeating the Custodian into submission. I say that the Custodian has been diligently doing his duties as is required under law and as is ordered and directed by this Hon'ble Court and the Hon'ble Supreme Court of India.
17. I say that in any case, the subject matter of the present Application and the issues involved therein were subject matters of earlier Applications viz. Misc. Applications Nos. 108/2012, 109/2012, 110/2012, 111/2012, 112/2012, 113/2012, 114/2012, 119/2012, 120/2012 and 122/2012 filed by notified entities of the Harshad Mehta Group viz. Jyoti H. Mehta, Rina S. Mehta, Deepika A. Mehta, Ashwin S. Mehta, Sudhir S. Mehta, Growmore Research & Assets Management Ltd. & Ors., Hitesh S. Mehta, Cascade Holding Pvt. Ltd. & Ors., Pratima H. Mehta etc. filed for the following reliefs:

“a) This Hon'ble Court be pleased to sanction and grant her permission to engage the services of Counsel mentioned in para 2 of the present application and any other counsels and Advocates of her

choice in view of the fact that she has a clear and vast surplus of assets over liabilities.

- b) The Hon'ble Court may be pleased to sanction and grant permission to the Applicant to engage the services of Counsel and Advocates of her choice for the existing as well as any fresh matters which she may initiate or may be initiated against her by informing the custodian the details in that regard.*
- c) This Hon'ble Court may be pleased to direct the Custodian to release payment of fees as and when the Applicant presents bills and memos received from the counsels which would spell out the particulars of the matter and the scale of fees and expenses charged in each matter, and direct the custodian to make payment of the same from the attached bank account of the Applicant."*

18. I say that similar Applications were also filed by notified entities of the Harshad Mehta Group viz. Misc. Application Nos. 62/2012, 75/2012, 76/2012, 79/2012, 80/2012, 81/2012, 114/2012 and 115/2012 in which the following reliefs were claimed: -

- "a) This Hon'ble Court be pleased to sanction and release payment of fees of Shri Vijay Mehta, Shri Dharmesh Shah, Shri Nilesh Mehta Chartered Accountants and Shri Dhiren Jangla – Tax Consultant to represent the Applicant for contesting appeals filed by the Applicant as are listed at Exhibit-G.*
- b) This Hon'ble Court be pleased to direct the Custodian to release the fees to the aforesaid professionals as and when their bills are received and forwarded for payment by the Applicant from the bank account of the Applicant in MA 62/12.*

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19. The said Applications were dismissed of by Justice Shri. V.M. Kanade (as he then was) of this Hon'ble Court by his Judgement dated 31st January, 2013 which has not been challenged in the Hon'ble Supreme Court except in the case of late Smt. Rasila S. Mehta in-her MA 95 of 2012 vide CA No. 799 of 2014. The order dated 31.01.2013 is annexed hereto and marked "**Exhibit - C**". The relevant portions of the said judgement which will have a direct bearing on the present Application are paraphrased hereinbelow:

"5. Applicants in this group of Applications, therefore, have urged for release of fees/monies/shares on out of turn basis for the purpose of permitting them to avail the services of Counsels and Consultants. The quantum of fees which is desired to be released has been mentioned in various Applications and the same is as under: -

(a) For Tax Consultant: Rs 2 lacs per month or Rs 3 crores per year approximately.

(b) For Counsel and Advocates: Rs 2,50,000/- per month or Rs 3 crores per year approximately.

15. After having heard both, Mr. Ashwin Mehta who is appearing in person and the learned Counsel Mr. G. R. Joshi appearing on behalf of the Custodian at length, in my view, it is not possible to grant any relief in all these Applications, firstly on account of categorical observations made by the learned Special Judge D.K.Deshmukh J. (as he then was) in MP No.41 of 1999 and observations made by the Apex Court that Harshad Mehta was a front/Benamidar on behalf of members of his family i.e. Applicants herein and that they acted as a group. The learned Special Judge while deciding MP No.41 of 1999 as well as MP No. 1 and 2 of 2007 has taken into consideration the audited accounts submitted by the notified parties and on the basis of

analysis of these accounts and comparison of the position of Harshad Mehta and other members of his family has noted that as of 1990 position of other family members of Harshad Mehta was such that they had negligible assets whereas in subsequent years, monies were pumped in through Harshad Mehta and/or his proprietary firms and the monies were rolled in various accounts of various family members of Harshad Mehta and then by showing independent transactions, it was shown that they had earned profits when, in fact, monies were supplied by Harshad Mehta. Apart from the finding of the learned Special Judge, the Apex Court in various proceedings has also given a clear finding that they are acting as a group and, as such, therefore, the contention of Mr. Ashwin Mehta that they are separate entities cannot be accepted. Once it is held that Mr. Mehta was a front and Benamidar and all the members of his family were working as a group, the contention of the Applicants that their position is such that they have surplus assets over liabilities falls to the ground since the liabilities of Harshad Mehta will have to be added to the assets and liabilities of individual members of Harshad Mehta family and the liabilities would far outweigh the total assets of all the members of his family. This being the position, submission made by Mr. Ashwin Mehta on behalf of the Applicants that fees be released as a matter of right cannot be accepted.

16. Now I shall deal with individual submissions made by Mr. Ashwin Mehta who is appearing in person. The first and most important point which needs to be considered is whether individual members of Harshad Mehta group i.e. the Applicants are fronts/Benamidars of Harshad Mehta and the entire group should be treated as one for the purposes of present Applications as well as for determining the assets/liabilities position.

18. On the other hand Mr. G.R. Joshi, the learned Counsel appearing on behalf of the Custodian has submitted that this issue is no longer

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res integra and has been conclusively determined by this court by its judgment and order dated 30/04/2010 passed in Misc. Petition No. 41 of 1999 as well as in Misc Petition Nos. 1 and 2 of 2007. It is further contended that the said issue has been considered by the Hon'ble Supreme Court in the case of Sudhir S. Mehta reported in (2008) 12 SCC 84, in Smt. Rasila S. Mehta reported in (2011) 6 SCC 220 and in Smt. Jyoti H. Mehta reported in (2009) 10 SCC 564.

19. *After having gone through the judgments on which reliance has been placed by the learned Counsel for the Applicants and the Counsel appearing on behalf of the Respondents, in my view, there is much substance in the submissions made by the learned Counsel appearing for the Respondents/Custodian.*

21. *It is then contended that the Custodian had filed a Petition dated 01/03/2006 in Misc. Petition No. 41 of 1999 setting out detailed facts in support of his submissions and more particularly para 15 to 21. It is clear that these submissions made in paragraphs 15 to 21 of the affidavit dated 01/03/2006 of the Custodian have been confirmed and approved by the Supreme Court in Sudhir S. Mehta V/s Custodian reported in AIR 2008 SC 84 and para 52 of the said judgment reads as under: -*

"52 It is the further case of the Custodian that the notified parties had shown in their accounts, that these siphoned off monies were received by them as loan, borrowings and advances, and also shown that they were paying interest thereon to Sh. Harshad Mehta with the sole idea to show that they were running their own business with their own funds and that the monies borrowed by them. The Custodian has taken a stand before us that in the affidavit dated 1.3.2006, efforts have been made to show clearly as to how much money is transferred in cash to his relatives and corporate bodies

and also how much siphoned off money was utilized for the purchase of shares in the name of various notified entities including the appellants. The affidavit dated 22.3.2006 is filed before us. It is the stand of the Custodian that he has already worked out the position of the assets and liabilities separately for individual members of the family and it is reflected in the affidavit dated 1.3.2006. The Custodian further submits that these accounts show that for the present, all the notified entities of the Harshad Mehta Group are in excess of their assets. It is thus, pointed out that all these materials were already available before the Special Court passed the orders. The Custodian further argues that these facts are known to the appellants, and there is an attempt to mislead the Special Court as well as this Court on the part of the appellants. It is then submitted that all the accounts, which are audited and reviewed by the Chartered Accountants have been prepared by the notified parties themselves and it is, therefore, that the liabilities shown therein, have been taken as admitted liabilities in our opinion, this argument on the part of the Custodian must be accepted. It has already been shown in the earlier part of the judgment that all these contentions were only raised before the Special Court, particularly when the objections were raised. We do find some traces of these objections in the petition, but it is obvious that these questions were never pressed into service before the Special Court, perhaps because the appellants knew the futility thereof. We, therefore, leave the matters at that, in view of the final order that we propose to pass."

It can also be seen that these observations were confirmed and approved by this Court in Misc. Petition No. 41 of 1999 in paragraph Nos. 30, 35, and 36.

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28. *After having heard both the parties at length on this issue, in my view, submissions made by the Applicants cannot be accepted. As I have already held that the Applicants are fronts/Benamidars of Harshad Mehta and it has been so held by this Court as well as the Apex court and, as such, individual assets of these entities cannot be taken into consideration for the purpose of deciding whether the assets exceeded their individual liabilities and liabilities of Harshad Mehta will have to be clubbed along with the liabilities of these Applicants and only then the assets of these Applicants will have to be taken into consideration and if that is done the assessed liabilities of the Applicants are more than 30 times than the realizable assets and, therefore, release of fees cannot be ordered on this ground. This Court in its judgment dated 12/02/1996 has held that though every entity has a constitutional right to defend by choice of his lawyer, in the case of notified party he is entitled to do so from his future income and not from his attached assets, if liabilities exceeded the assets. In my view, it cannot be said that amount which is sought to be released is for preservation, protection and/or augmentation of the attached assets since it is clear that the Applicants are seeking to diminish the liability of revenue and, as such, their case is not covered by the observations made by the learned Special Judge in his judgment dated 12/02/1996. The Apex Court in Rasila Mehta and Ors vs. Custodian reported in (2011) 6 SCC 220 has held that there could be no release of assets otherwise than by following the procedure under section 11(2) of the Act. It is then contended by the Applicants that the properties not having nexus with illegal securities transactions during statutory period could not be attached or in any event be sold.*

31. *It must be pointed out that earlier all these matters were before Justice D.K. Deshmukh (as he then was) and he was dealing with all these cases and only after his retirement these cases have been assigned to me. I was, therefore, required to patiently hear the submissions made by the Applicants and had to go through each and every judgment of this Court and the Supreme Court on various issues and as such, lot of time was taken for hearing all these Applications. Practically 7 to 8 days were taken for hearing the arguments of the Applicants and the Counsel appearing on behalf of the Custodian. Since the Applicant (Mr. Ashwin Mehta) was appearing in person, lot of latitude had to be given to him and, as such, in order to ensure that proper opportunity is given to him, practically all the judgments on which reliance was placed by him and which are referred to in the written submissions and written submissions in-rejoinder and also in the Volumes of submissions which have been tendered. In my view, it is not necessary to go and refer to those judgments since the issue which has been raised in these Applications has been dealt with and decided by this Court and the Apex court, reference of which has been made in my detailed order and, as such, I do not deem it necessary and fit to refer to all the judgments and the paragraphs which the party in person has referred to. I again say that my time was not wasted as a result of various judgments which were cited before me since after going through the judgments, I am now aware about the various stages and the proceedings which have taken place in Harshad Mehta Group of matters which form a large chunk of cases pending before this Court.*
32. *Though lot of material has been produced before me to show that as a result of efforts taken by Mr. Ashwin Mehta, revenue liabilities*

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have been reduced the fact remains that as a result of observations of the Apex court that the Applicants are fronts/Benamidars of Harshad Mehta and are to be treated as one group, the principal contention of the Applicants that the individual assets are more than liabilities cannot be accepted. Much grievance also was made regarding the orders of attachment which could be passed under section 3(4) of the Act. The said issue also has been conclusively held and decided in various judgments of the Apex Court. Number of matters of this group are pending before the Apex Court and unless any new directions are given by the Apex Court in those cases, findings and observations made by the Supreme Court even if it is obiter are binding on this Court and position in law is quite well settled on this point and it is not necessary to refer to various judgments on which reliance is sought to be placed by the Applicants appearing in person. The efforts were also made to show that findings given by my brother D.K. Deshmukh, J. (as he then was) have to be treated as obiter and, therefore, are not binding on me. The said submission is also without any substance since detailed reasons have been given by the learned Special Judge in Misc. Petition No. 41 of 1999.

33 For the aforesaid reasons all the Applications are dismissed.”

20. I say that the Hon'ble Supreme Court by its order dated 02.05.2017 in CA 6326 of 2010 against Hon'ble Special Court order dated 30.04.2010 in MP No. 41 of 1999 has finally confirmed group issue by linking it to its earlier order dated 06.05.2011 (2011) 6 SCC 220 in the case of late Smt. Rasila S. Mehta.

21. I say that from the above-mentioned judgement of this Hon'ble Court dated 31st January 2013, it becomes abundantly clear that after having agitated the issues that are the subject matter of the present Application earlier and the same having been rejected by this Hon'ble Court through the above-mentioned judgement, the Applicants herein are again seeking similar relief from this Hon'ble Court by reagitating the same issues. Hence, the present Application is liable to be rejected on the principles of res-judicata.

22. I say that in view of what I have stated herein above, I am not replying to the said Application paragraph wise, as the same is verbose, and a major portion of which is not relevant to the facts in issue and the same ought to be rejected. I say that all that is stated in the said Application which is not admitted by me and which not in consonance with what is stated by me herein above should not be deemed to have been admitted by me and hence denied and put the Applicant to strict proof for proving the contents and relevance thereof.

23. I say that in the said circumstances and in view of what is stated by me hereinabove, and in view the Judgement & Order of this Hon'ble Court on the said issue in its Judgement & Order dated 12th February 1996 passed in Miscellaneous Petition No.215 of 1995, and the Judgement of this Hon'ble Court mentioned herein above dated 31st January 2013, the present Application made and the reliefs sought therein ought to be dismissed.

Drafted by Mr J. Chandran
Counsel for the Custodian

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Solemnly affirmed at Mumbai,
this _____ day of September, 2021)

Before me,



Shilpa Bhate & Associates
Advocates of the Custodian

Verification

I, N. V. Sawant of Mumbai Indian inhabitant, Under Secretary in the Office of Custodian above named, solemnly declare that what is stated in the forgoing paragraphs 1 to 4, 6 to 8, 10, 12, 13, 16, 18, 19 & 21 are true to my own knowledge and paragraphs 5, 9, 11, 14, 15, 17, 20, 22 & 23 are stated on information and belief which I believe to be true.

Solemnly declared in Mumbai

This _____ day of September 2021



Shilpa Bhate & Associates
Advocates for Respondent No.1