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

MISCELLANEOUS APPLICATION NO. 436 OF 2002

IN

MISCELLANEOUS PETITION NO. 64 OF 1998

THE CUSTODIAN .. APPLICANT  
VERSUS  
UNION OF INDIA & ORS. .. RESPONDENTS

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IN

MISCELLANEOUS PETITION NO. 64 OF 1998

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

Versus

- 1. Union of India )
- 2. The Commissioner of Income- )  
tax, Central Circle, having his )  
office at Aayakar Bhavan, )  
Queen's Road, Mumbai 400020 )
- 3. (a) Jyoti H. Mehta )  
(b) Rasila S. Mehta )  
(c) Aatur H. Mehta )  
legal heirs of )  
Late Mr. Harshad S. Mehta, )
- 4. Jyoti H. Mehta )
- 5. Ashwin S. Mehta )
- 6. Deepika A. Mehta )
- 7. Hitesh S. Mehta )

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8. Pratima H. Mehta )
9. Sudhir S. Mehta )
10. Growmore Research & Assets Management Ltd.)
11. Growmore Leasing & Investments Pvt. Ltd.)
12. Growmore Exports Pvt. Ltd. )
13. Aatur Holdings Pvt. Ltd. )
14. Harsh Estates Pvt. Ltd. )
15. Cascade Holdings Pvt. Ltd. )
16. Orion Travels Pvt. Ltd. )
17. Fortune Holdings Pvt. Ltd. )
18. Treasure Holdings Pvt. Ltd. )
19. Velvet Holding Pvt. Ltd. )
20. Eminent Holding Pvt. Ltd. )
21. Pallavi Holding Pvt. Ltd. )
22. Zest Holding Pvt. Ltd. )
23. Topaz Holding Pvt. Ltd. )
24. Divine Holding Pvt. Ltd. )
25. M/s. Harshad S. Mehta )
26. M/s. Ashwin S. Mehta )
27. M/s. Jyoti H. Mehta )  
having their Office at 1205-06 )  
Maker Chamber V, )  
Nariman Point, Mumbai - 21 )
28. M/s. Apollo Tyres Ltd., )  
Apollo House, )  
7, Institutional Area, Sector 32 )  
Gurgaon 122 001 (Haryana). )
29. Associated Cements Company )  
ACC Limited, Cement House )  
121, Maharehi Karve Road )  
Mumbai 400 020. ) ... Respondents

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

THE HUMBLE APPLICATION OF  
THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHEWETH :

1. The Applicant is the Custodian appointed under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, (hereinafter referred to as the "said Act").
2. The Respondent No.1 is Union of India and Respondent No.2 is the Income Tax Officer concerned with the Tax Assessment of the notified parties. The Respondent No.3 to 27 are notified under the provisions of the said Act and accordingly all properties belonging to them stand statutorily and automatically attached as and from the date of the notification. Respondent Nos.28 & 29 are Companies incorporated under the provisions of the Companies Act, 1956 and having offices at the addresses as in the cause title.
3. By an order dated 17th August, 2000 passed in Miscellaneous Petition No. 64 of 1998, this Hon'ble Court had approved the scheme for sale of shares belonging to notified parties in the manner stipulated therein. Hereto annexed and marked EXHIBIT "A" is a copy of the said order.

... of the notified parties

No.5612 of 2000. The said Appeal was dismissed by the Hon'ble Supreme Court of India by an order dated 4th December, 2000 a copy whereof is annexed hereto and marked EXHIBIT "B".

5. Thereafter, the Disposal Committee constituted by this Hon'ble Court has met on several occasions. The last occasion pertaining to present Application being the meeting of the 2nd May, 2002. The Applicant craves leave to refer to and rely upon copies of the Minutes of the Meeting held when produced.

6. In para 10 of the Order dated 17th August, 2000 this Hon'ble Court classified the shares to be sold into three categories viz. "Routine Shares", "Bulk Shares" and "Controlling Block of Shares". The order stipulated that "Routine Shares" can be disposed of through the Disposal Committee where as sale of "Bulk Shares" and "Controlling Block of Shares" would come before this Hon'ble Court for approval. Norms for preparation of lots/for sale of Bulk Shares as well as Controlling Block of Shares as also norms in respect of "Routine Shares" are also laid down in the said order.

7. The scheme approved by the Special Court for sale of shares was challenged by Apollo Tyres Ltd., Respondent No.28, herein, in the Supreme Court. The Supreme Court by its order dated 23rd August, 2001 in Civil Appeal No. 7629 of 1999 upheld the scheme for sale of shares as approved by the Special Court with certain modifications. The order of the Supreme Court is annexed hereto and marked EXHIBIT "C".

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8. As regards the sale of shares under the Controlling Block Category the Supreme Court under its order above has inter alia mentioned ;

"In respect of the sale of Controlling Block of shares the only method laid down by the Special Court is to offer the sale of shares in a composite block. It is not known whether such a sale will get the best price in respect thereof. We, therefore, direct that it will be open to the Special Court to decide whether to have the sale of the Controlling Block of shares either by inviting bids for purchase of Controlling Block as such or by selling the said shares according to the norms fixed for the sale of bulk shares or by the norms fixed in respect of routine shares. The object being that the highest price possible should be realized, it is left to the Court to decide what procedure to adopt. If the Court thinks that it is best to adopt the norms laid down by it for sale of Controlling Block of shares (the 3rd method) then when highest offer is received and the Management of the Company is given an option to buy those shares at that price, then if the Management so desires the Court should give the Company an opportunity to buy back the shares at the highest price offered by complying with the provisions of Section 77A of the

the Court will give an opportunity, if it chooses to consider the offer, to the Management to buy or to the Company to buy back under section 77A of the Companies Act. No other change in the Scheme as formulated by the Special Court is called for".

The Supreme Court has further directed that it will be open to the Special Court to decide whether to have the sale of the Controlling Block of shares either by inviting bids for purchase of Controlling Block as such or by selling the said shares according to the norms fixed for sale of bulk shares or by the norm fixed in respect of routine shares.

9. The sale of 9,82,040 shares of Killick Nixon Limited (being attached assets of the said Dhanraj Mills Limited) of face value of Rs.10/- each which constitute a Controlling Block shares was advertised. The Applicant craves leave to refer to and rely upon the Notices inviting offers as also the general terms and conditions of sale, when produced.

10. Tender forms, terms and conditions for sale were collected by the following three parties :-

- a) Triveni Management Consultancy Services Limited ;
- b) Mr. Vikram Poddar ;
- c) Snowcem India Limited.

Offers were received from Mr. Vikram Poddar and Triveni Management Consultancy Services Limited.

11. At the meeting of the Disposal Committee held on 2nd May, 2002 tenders received were opened. The

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tenderers quoted a rate of Rs.9/- (Triveni Management Consultancy Services Limited) and Rs.9.50 per share (Mr. Vikram Poddar). The Disposal Committee noted that the shares were quoted on the Mumbai Stock Exchange @ 97.25 as on 30th April, 2002. The 52 week high/low was Rs.142/69. In view of the fact that the offers received were extremely low, that the main objective was to obtain the best possible price, the Disposal Committee was of the opinion that the offer of Mr. Vikram Poddar need not be accepted. Hereto annexed and marked EXHIBIT "D" is a copy of the Minutes of the Meeting of Disposal Committee dated 2nd May, 2002. The Applicant craves leave to refer to and rely upon the offers received and correspondence exchanged with the offerers, when produced.

12. The Applicant submits that the offer received was hopelessly under valued. The objective of the scheme for sale of shares even as approved by the Supreme Court is to obtain the highest possible price. The Applicant submits, it is clear that by accepting alleged offer the price realization for the shares would be extremely poor. The Applicant submits that by sale through the market, a higher price realization per share is possible. In terms of the orders of the Supreme Court the Applicant seeks an amendment/modification to the Scheme sanctioned by the Order of 17th August, 2000 pertaining to the sale of Controlling Block of shares of Killick Nixon Limited in order to obtain the highest price. The Applicant has made a request



Limited be sold as routine shares in terms of the procedure approved by this Hon'ble Court for sale of such shares. The Applicant craves leave to refer to and rely upon the said Application produced.

13. Disposal Committee in its eighth meeting held on 26th March, 2002 had also discussed the issue regarding sale of shares under Bulk Category and under Controlling Block Category. Keeping in view that the response to advertisement calling for bids through public notices had been nil or very lukewarm and even the prices quoted as in case of Killick Nixon had been hopelessly under valued, the Disposal Committee was of the view that in order to get the best price for sale of shares under the Bulk as well as under Controlling Block Category, the procedure as approved for sale of shares under Routine Category may be adopted subject to the approval of the Special Court. An Application for modification in procedure for shares under Bulk Category has been separately filed.

14. In view of the recommendation of the Disposal Committee, it is submitted that the procedure for sale of shares under Controlling Block Category as approved by the Hon'ble Special Court and subsequently modified by the Supreme Court, may be amended in respect of Respondent Nos.28 & 29 so as to permit the sale of such shares under the procedure prescribed for sale of Routine Shares. However, in order to ensure that sale of such shares does not affect the market and best price is realized, it is also submitted that the period prescribed for sale of such shares by the brokerage

firms under Controlling Block Category may be extended to six months as compared to three months for sale of shares under Routine Category. It is also proposed that the shares under Controlling Block Category will be sold in smaller lots and will not be sold in one lot.

15. The present Application seeks to deal with attached assets of Respondent Nos.3 to 27. This Hon'ble Court, therefore, has exclusive jurisdiction to entertain, try and dispose off this Application.

16. This Application is being signed and verified by Mr. M.P. Purushu, Officer on Special Duty and the constituted Attorney of the Custodian appointed under the said Act, who is well conversant with the facts of the case and is able to depose to the same.

17. The Applicant craves leave to refer to and rely upon documents that may be in their possession, when produced.

The Applicant therefore prays :

- (a) that all the shares of Respondent Nos.28 and 29 under the Controlling Block Category be sold as Routine Shares by the Disposal Committee as per procedure approved by this Hon'ble Court for sale of such shares ;
- (b) that all shares under the Controlling Block Category in respect of other Companies as well Respondent Nos.28 and 29 to this

procedure approved by the Special Court for sale of such shares and such shares may be sold in smaller lots over a period of time and may not be sold in one lot with a view to ensuring that the sale of such shares does not affect the market ;

(c) that such further and other orders and directions be passed as this Hon'ble Court may deem fit and proper ;

(d) that the cost of this Application be provided for.

*sdf*

Constituted Attorney  
to the Applicant

Application drawn by us.

M/s. Pravin Mehta & Mithi & Co.

(Partner)  
Advocates for the Applicant

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VERIFICATION

I, M.P. Purushu, of Mumbai, Indian Inhabitant, Officer On Special Duty in the Office of the Applicant, and Constituted Attorney of the Applicant, am well conversant with the facts of the case and am able to depose to the same, do hereby solemnly declare that what is stated in paragraphs 1 to 13, 16 and 17 is true to my own knowledge and what is stated in paragraphs 14 & 15 is stated on information and belief, and I believe the same to be true.

Solemnly affirmed at Bombay )  
Aforesaid this day of June, 2002 )

sd/—

Before me,

Officer on Special Duty

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

(Partner)  
Advocates for the Applicant.

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VERSUS  
UNION OF INDIA & ORS. . . RESPONDENTS

To,  
The Officer on Special Duty,  
Special Court,  
Bombay.

Sir,

BE PLEASED to enter our appearance on behalf of  
The Custodian, the Applicant in the Captioned matter on  
record.

Dated this                      day of June, 2002.

Yours faithfully,  
M/s. Pravin Mehta & Mithi & Co.,

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.. APPLICANT

VERSUS

UNION OF INDIA & ORS.

.. RESPONDENTS

MEMORANDUM OF REGISTERED ADDRESS OF THE APPLICANT

THE CUSTODIAN,  
C/o M/s. Pravin Mehta & Mithi & Co.,  
4th floor, Oricon House,  
12/14, K. Dubash Marg,  
Fort, MUMBAI-400 001.

for M/s. Pravin Mehta & Mithi & Co.,

(Partner)  
Advocates for the Applicant.

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LIST OF DOCUMENTS ON WHICH THE APPLICANT WILL RELY

1. Exhibits annexed to the application.
2. Other relevant correspondence prior to the Application.

For Pravin Menta and Mithi & Co.

(Partner)  
Advocates for the Applicant.