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(2006) 2 Supreme Court Cases 385

(BEFORE S.B. SINHA AND P.P. NAOLEKAR, JJ.)

ASHWIN S. MEHTA AND ANOTHER .. Appellants;

Versus

CUSTODIAN AND OTHERS .. Respondents.

Civil Appeals Nos. 667-71 of 2004† with Nos. 672 to 681 of 2004, decided on January 3, 2006

A. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 9, 9-A, 3(3), (4) & 11(1) — Attachment and consequent sale of (residential) properties of appellant notified persons (all relatives of deceased *HM*, the main accused in the securities scam) — Approach adopted by Special Court — Sustainability of — Clubbing of liabilities of all notified parties including *HM* as a group — Challenge to — Inadvertence to contentions raised by parties — No analysis of material by Special Court before it — Violation of principles of natural justice — Despite appellants' assertion that figures in statement prepared by Custodian were contrary to both the books of accounts drawn by them as also the auditors' report, Special Court accepting the same without probing the basis on which the statement was prepared — Plea of some of the notified persons that they had no connection with securities transactions and that they had assets more than their individual liabilities, and so their residential properties should not have been attached, also not considered — No reasons assigned as to why assets and liabilities of all notified entities were treated to be joint assets and liabilities of entire group — Books of accounts and other documents relied on by Special Court, not allowed to be inspected by appellants — Contradictory or inconsistent stand taken by Custodian — Held, judgment and order of Special Court not supported by sufficient and cogent reasons — In the interest of justice, it is necessary to give another opportunity of hearing to appellants — Matter remitted to Special Court for consideration afresh**

[Paras 42, 46, 47, 49, 39, 44, 50 to 53 and 77(ii), (vi) to (viii)]

B. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 3(3) — Notified persons — Attachment of properties of — If automatic — Preconditions for attachment, if any — Liabilities in respect of which and extent of attachment permissible — Held, appellants being notified persons, all their personal properties stood automatically attached and any other income from such attached properties would also stand attached — Not necessary that the said persons should be accused of offences in transactions in securities — Contention that attachment should be only towards liabilities incurred in respect of transactions made during statutory period, not sustainable** **[Paras 26, 34, 35 and 77(i) & (ii)]**

L.S. Synthetics Ltd. v. *Fairgrowth Financial Services Ltd.*, (2004) 11 SCC 456; *Tejkumar Balakrishna Ruia* v. *A.K. Menon*, (1997) 9 SCC 123, *relied on*

† From the Judgment and Order dated 17-10-2003 of the Special Court (Trial of Offences Relating to Transactions in Securities at Bombay) in the Misc. Applications Nos. 41 of 1999, 4 of 2001, 265 and 266 of 2003

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Hitesh Shantilal Mehta v. *Union of India*, (1992) 3 Bom CR 716, *explained*

C. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 3(3), (4), 11(1) & 4(1) — Attachment and consequent sale of properties of appellant notified persons (all relatives of deceased *HM*, the main accused in securities scam) by clubbing their liabilities together with *HM* as *HM* group — Challenge to — Question whether individual liabilities of the appellants ought to have been separately considered — Doctrine of lifting the corporate veil — Applicability — Held, appellants could show that Custodian was not right in clubbing all the individual members of the family as a single entity styled as *HM* group — Appellants' plea that properties held by them otherwise than their residential properties attached were sufficient to meet their liabilities was required to be gone into by Special Court — Principle of lifting the corporate veil ipso facto would not apply to the individuals — However, Custodian in a case of this nature may show that the transactions entered into apparently by *HM* were intimately connected with acquisition of properties in the names of others — Benami transaction can be a subject-matter of lis in terms of S. 4(1) — Benami Transactions (Prohibition) Act, 1988, Ss. 2(a) and 3 to 5**
[Paras 41, 36 to 38 and 77(ii)]

D. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 4(2), 9 and 9-A — Right of a person notified to file an application or to raise a defence — Invocation of — Stage for — Held, plea that notified person not liable under the 1992 Act or the properties attached should not be sold in discharge of the liabilities, can be taken at the initial stage — But, at the stage when liabilities are required to be discharged, notified persons may inter alia raise a contention for the purpose of establishing that the properties held and possessed by them (other than the attached properties) are sufficient to meet their liabilities (Para 15)**

E. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Object and nature of — Mode of interpretation of provisions contained in the said Act — Interpretation of Statutes — Basic rules — Purposive construction**

Held :

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 was enacted for dealing with an extraordinary situation in the sense that any person who was involved in any offence relating to transaction of any security may be notified, whereupon all his properties stand attached. The provision contained in the said Act being stringent in nature, the purport and intent thereof must be ascertained having regard to the purpose and object it seeks to achieve. (Para 15)

F. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 11(2)(a) — Tax liabilities of appellant notified persons — Assessment of, individually on basis of best-judgment assessment — Setting aside of, by Appellate Authorities — Effect of — Held, appellants not liable to pay income tax dues so long as new orders of assessment not passed by competent assessing authorities — Since order of Appellate Authorities passed during pendency**

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of the instant appeal, court could take into consideration the subsequent events — Further, question as regards the mode and manner of disbursements of the amount so far as the tax liabilities of the appellants were concerned, not dealt with by Special Court elaborately — Matter remitted to Special Court for consideration afresh — Practice and Procedure — Subsequent events — Consideration of
[Paras 54, 58, 62 to 64 and 77(iii)]

Harshad Shantilal Mehta v. *Custodian*, (1998) 5 SCC 1; *Board of Control for Cricket in India* v. *Netaji Cricket Club*, (2005) 4 SCC 741, *relied on*

Kedarnath Jute Mfg. Co. Ltd. v. *CIT*, (1972) 3 SCC 252, *distinguished on facts*

G. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 11(2)(a) — Recovery of income tax dues — Challenge to orders of assessment in appeal — Contention that income tax dues should have been considered at the point of time when they became recoverable — Sustainability of — Held, not sustainable in view of decision in *B.C. Dalal*, (2006) 2 SCC 411, that in the absence of any order of stay granted by the higher court, the liabilities would remain (Paras 54 and 56)**

B.C. Dalal v. *Custodian*, (2006) 2 SCC 411, *followed*

Custodian v. *Union of India*, MP No. 64 of 1998 disposed of on 17-8-2000; *Harshad Shantilal Mehta* v. *Custodian*, (1998) 5 SCC 1, *relied on*

Kedarnath Jute Mfg. Co. Ltd. v. *CIT*, (1972) 3 SCC 252, *cited*

H. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 4(2) — Applications for denotification pending before Special Court — Jurisdictional question as regards maintainability of those applications, being barred by limitation — Effect of, held, would be considered by Special Court — Hence, Supreme Court not adverting to the said question — It also declining to consider as to whether remedy being not available in terms of S. 4(2) can still be determined if raised by way of defence (Paras 31 and 32)**

Fairgrowth Investments Ltd. v. *Custodian*, (2004) 11 SCC 472; *Bombay Dyeing & Mfg. Co. Ltd.* v. *State of Bombay*, 1958 SCR 1122 : AIR 1958 SC 328; *Savitra Khandu Beradi* v. *Nagar Agricultural Sale and Purchase Coop. Society Ltd.*, AIR 1957 Bom 178 : 59 Bom LR 425; *Hari Raj Singh* v. *Sanchalak, Panchayat Raj, U.P. Govt.*, AIR 1968 All 246 : (1968) 1 LLJ 407; *L.S. Synthetics Ltd.* v. *Fairgrowth Financial Services Ltd.*, (2004) 11 SCC 456, *referred to*

I. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 11(1) & 3(4) — Auction-sale of residential properties of appellant notified persons (all relatives of deceased *HM*, the main accused in securities scam) — Challenge to — Properties sold on basis of joint liabilities of appellants together with *HM* and other companies as a group — Liabilities of appellants directed to be considered afresh by Special Court in this case — Hence, direction made that confirmation of sale of the said properties be considered and appropriate order thereupon be passed by Special Court — Purchasers of those properties to wait till a final decision was made or take back the amount deposited by them, subject to any other or further order(s) by Special Court [Paras 75, 76 and 77(v), (ix) & (x)]**

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J. **Auction — Auction-sale — Decree-holder auction-purchaser himself and a third party bona fide purchaser in auction-sale — Distinction between positions of — Held, position of bona fide purchaser is different from that of a decree-holder — The interest of bona fide purchaser in an auction-sale is saved even if such decree is set aside — Civil Procedure Code, 1908, Or. 21 Rr. 92, 89, 90 & 91 and S. 144 — Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, S. 11(1) (Para 70)**

Nawab Zain-ul-Abdin Khan v. *Mohd. Asghar Ali Khan*, (1887) 15 IA 12; *Gurjoginder Singh* v. *Jaswant Kaur*, (1994) 2 SCC 368; *Janak Raj* v. *Gurdial Singh*, (1967) 2 SCR 77 : AIR 1967 SC 608; *Padanathil Ruqmini Amma* v. *P.K. Abdulla*, (1996) 7 SCC 668, *relied on*

W-M/ATZ/33691/C

Advocates who appeared in this case :

Mahesh Jethmalani, Senior Advocate (Arvind K. Nigam, Ms Kamini Jaiswal, Ms Shomila Bakshi and Ms Rani, Advocates, with him) for the Appellants;

Ashok V. Desai, Senior Advocate, Gaurav Joshi, Jay Kishor Singh, Abhay Kumar, Gopal Krishnan, Subramonium Prasad, A. Subba Rao, Mahesh Agarwal, E.C. Agarwala, Ms Indu Malhotra, Ms Savita Sinha, Ms B. Vijayalakshmi Menon, Ms Sunita and Shiv Kr. Suri, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2006) 2 SCC 411, *B.C. Dalal* v. *Custodian* 391*g-h*, 405*b-c*
2. (2005) 4 SCC 741, *Board of Control for Cricket in India* v. *Netaji Cricket Club* 406*g*
3. (2004) 11 SCC 472, *Fairgrowth Investments Ltd.* v. *Custodian* 397*f-g*
4. (2004) 11 SCC 456, *L.S. Synthetics Ltd.* v. *Fairgrowth Financial Services Ltd.* 391*e*, 397*c-d*, 400*b*, 400*e-f*
5. MP No. 64 of 1998 disposed of on 17-8-2000, *Custodian* v. *Union of India* 405*c*
6. (1998) 5 SCC 1, *Harshad Shantilal Mehta* v. *Custodian* 394*g*, 405*c-d*, 406*e-f*, 409*f*
7. (1997) 9 SCC 123, *Tejkumar Balakrishna Ruia* v. *A.K. Menon* 395*f*, 398*b*
8. (1996) 7 SCC 668, *Padanathil Ruqmini Amma* v. *P.K. Abdulla* 408*a-b*
9. (1994) 2 SCC 368, *Gurjoginder Singh* v. *Jaswant Kaur* 407*g*
10. (1992) 3 Bom CR 716, *Hitesh Shantilal Mehta* v. *Union of India* 397*b*
11. (1972) 3 SCC 252, *Kedarnath Jute Mfg. Co. Ltd.* v. *CIT* 391*g-h*, 405*d-e*
12. AIR 1968 All 246 : (1968) 1 LLJ 407, *Hari Raj Singh* v. *Sanchalak, Panchayat Raj, U.P. Govt.* 400*a*
13. (1967) 2 SCR 77 : AIR 1967 SC 608, *Janak Raj* v. *Gurdial Singh* 407*g*
14. 1958 SCR 1122 : AIR 1958 SC 328, *Bombay Dyeing & Mfg. Co. Ltd.* v. *State of Bombay* 399*h*
15. AIR 1957 Bom 178 : 59 Bom LR 425, *Savitra Khandu Beradi* v. *Nagar Agricultural Sale and Purchase Coop. Society Ltd.* 400*a*
16. (1887) 15 IA 12, *Nawab Zain-ul-Abdin Khan* v. *Mohd. Asghar Ali Khan* 407*f-g*, 408*a-b*

The Judgment of the Court was delivered by

S.B. SINHA, J.— These appeals are directed against a judgment and order dated 17-10-2003 passed by the Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short "the Act") in Misc. Applications Nos. 41 of 1999, 4 of 2001, 265, 266 and 275 of 2003.

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Background Facts

2. The appellants herein who are related to one Harshad S. Mehta (since deceased) purchased nine residential flats in a building called Madhuli Apartments in Worli area of Mumbai. The family of the appellants consists of four brothers, their wives, children and their widowed mother. The eldest among them, Harshad S. Mehta, has since expired. The said nine flats, it is said, were merged and redesigned for joint living of the entire family.

3. The appellants herein and the said late Harshad Mehta were persons notified in terms of the Act which was enacted to provide for the establishment of a Special Court for the trial of offences relating to transactions in securities and for matters connected therewith. In terms of the provisions of the Act, along with the late Harshad Mehta, the Custodian had notified 29 entities in terms of Section 3 of the Act, comprising three of his younger brothers, wife of late Harshad Mehta, wives of two of his younger brothers and other corporate entities, a partnership firm and three HUFs. However, out of the said 29 entities, only late Harshad Mehta and two of his younger brothers were cited as accused in various criminal cases filed against them.

4. The properties of late Harshad Mehta and the appellants herein being notified persons stood attached in terms of the provisions of the Act.

Proceedings before the Special Court

5. Before the learned Special Court, the parties herein filed several applications which can be sub-divided in three categories, as would be noticed shortly hereinafter. It is not in dispute that the learned Special Court on or about 3-8-1993 issued directions in various proceedings before it appointing auditors to prepare and audit the books of accounts of all notified persons for the period 1-4-1990 and 8-6-1992 i.e. the date of the notification. Three firms of chartered accountants were appointed to prepare statement of accounts and liabilities of each of the appellants herein.

6. A chartered accountants' firm was appointed by the learned Special Judge by an order dated 17-9-2003 to represent all notified entities in the family of late Harshad Mehta for the purpose of ascertaining their tax liabilities.

7. We may, at this juncture, notice the nature of the applications filed by the parties, hereinbefore the learned Special Court:

(*i*) On 26-4-1999, the Custodian filed an application being Misc. Application No. 41 of 1999 seeking permission of the Special Court for sale of residential premises commonly known as Madhuli of eight notified entities.

(*ii*) A miscellaneous application being 4 of 2001 was filed by the Custodian praying for the sale of commercial premises.

(*iii*) The appellants herein filed several miscellaneous applications praying for lifting of attachment on their residential premises on the ground that the same had been purchased much prior to 1-4-1991 and the

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same had no nexus with any illegal transactions in securities. Alternatively, it was prayed that since their asset base was greater than genuine liabilities, the said residential premises should be released from attachment.

Impugned judgment

8. By reason of the impugned order dated 17-10-2003, the learned Special Judge allowed Misc. Applications Nos. 4 of 2001 and 41 of 1999. The miscellaneous applications filed by the appellants herein for release of the residential flats as well as the commercial premises from attachment were dismissed. It was directed:

> "In case all adult members of the family of late Shri Harshad Mehta, who are presently occupying the above-referred flats, file an undertaking in this Court within a period of four weeks from today undertaking to vacate the flat occupied by them and hand over peaceful possession thereof to the Custodian within a period of four weeks from the date on which the Custodian sends them communication asking them to vacate the flats, on sale of the flats being sanctioned by the Court. The Custodian shall permit the members of family of late Shri Harshad Mehta to occupy the flats during the time that the process of the sale of the flats goes on.
>
> In case no such undertakings are filed by the adult members as directed above, within the aforesaid period, the Custodian shall stand appointed as Receiver of the flats which are described in Ext. 8 and Ext. 8-1 to Misc. Petition No. 41 of 1999."

Contentions of the parties

Appellants

9. Mr Mahesh Jethmalani, learned Senior Counsel appearing on behalf of the appellants in assailing the said judgment of the learned Special Court inter alia raised the following contentions:

(*i*) Some of the entities having their asset base much more than actual liability, the impugned judgments are unsustainable. There was no occasion for the Custodian to club all the notified entities in one block so as to be termed as Harshad Mehta Group and/or to club their assets and liabilities jointly. Although in relation to a body corporate incorporated and registered under the Companies Act, the doctrine of lifting the corporate veil would be applicable, but the same cannot be applied in case of individuals.

(*ii*) Having regard to the fact that only three entities out of eight were involved in the offences, the liability of Harshad Mehta could not have been clubbed for the purpose of directing attachment and consequent sale of the properties which exclusively belong to them.

(*iii*) The liabilities of Harshad Mehta, who was a sui generis, could have been recovered from the properties held and possessed by him or from the companies floated by him but not from the individual entities; at

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least two of whom being medical practitioners have their income from other sources.

(*iv*) The books of accounts and other documents on the basis whereof the auditor's report had been made having not been allowed to be inspected by the appellants herein on the plea that they had the knowledge thereabout, the same could not have been taken into consideration for the purpose of passing of the impugned order or otherwise.

(*v*) The appellants having preferred appeals against the income tax orders of assessment passed by the authority and the same having been set aside, no liability to pay income tax by the appellants as of now being existing, the residential properties could not have been sold.

(*vi*) Drawing our attention to a representative chart showing the discrepancies in the accounts of Mrs Deepika A. Mehta as shown in (*a*) affidavit by the Custodian; (*b*) books of accounts maintained by the appellants; and (*c*) auditor's report, it was submitted that the auditor's report could not have been relied upon.

(*vii*) A copy of the auditor's report having only been supplied during pendency of these appeals, the learned Special Judge committed a serious error in passing the impugned judgment relying on or on the basis thereof.

Respondents

10. Mr Ashok H. Desai, learned Senior Counsel appearing on behalf of the Custodian, on the other hand, would, inter alia, submit:

(*i*) In view of the decision of this Court in *L.S. Synthetics Ltd.* v. *Fairgrowth Financial Services Ltd.*[1] all properties belonging to the notified persons being subject to automatic attachment, could be applied for discharge of the joint liabilities of the Harshad Mehta Group in terms of Section 11 of the Act.

(*ii*) The applications for denotification filed by the appellants herein having been withdrawn, the contention raised by the appellants that they are not liable in terms of the provisions of the Act are not open to question, particularly in view of the fact that no application for denotification could be filed subsequently as they had become barred by limitation.

(*iii*) The order of assessment under the Income Tax Act having become final and binding as on the date when the orders of assessment were passed and, thus, mere filing of appeals, were not sufficient for raising a contention that the taxes did not become due. Reliance in this behalf has been placed on *B.C. Dalal* v. *Custodian*[2] and *Kedarnath Jute Mfg. Co. Ltd.* v. *CIT*[3].

1 (2004) 11 SCC 456
2 CA No. 2795 of 2004 dated 29-8-2005 : (2006) 2 SCC 411, below
3 (1972) 3 SCC 252

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(*iv*) The appellants herein, apart from the corporate entity which is a front company of late Harshad Mehta, have received large loans, advances and credits from the Harshad Mehta Group and there had been intermingling of the assets to the tune of crores of rupees, they cannot escape their liabilities under the Act. The affidavit filed by the appellants herein before the Special Court clearly shows that the liabilities exceed the assets in all cases. Even in the case of Dr. Pratima Mehta wherein some excesses have been shown, if the interest is calculated for the last over 13 years of the amount received, the liabilities would exceed the assets.

(*v*) The assets and liabilities of each of the entities having been audited by the chartered accountants, it is evident from the reports that in all cases liabilities exceed the assets.

(*vi*) The decretal amount against the Harshad Mehta Group also would exceed Rs 4339 crores and, thus, the assets held by the appellants are wholly insufficient to meet the liabilities.

(*vii*) Furthermore, the appellants are also unable to maintain their residential properties as the Custodian had to pay a sum of Rs 1.06 crores towards the maintenance of the said residential properties. The assets of the Harshad Mehta Group are valued at Rs 972 crores apart from the income tax dues whereas the aggregate amount of income tax dues exceed Rs 13,800 crores.

(*viii*) Dr. Hitesh Mehta and Dr. Pratima Mehta who are medical practitioners by profession having affirmed affidavits admitting that the share broking and investment businesses which were part of family businesses were undertaken and conducted by late Harshad Mehta and they had no knowledge thereabout nor were they involved therewith, they at this stage cannot be permitted to turn round and contend that they have nothing to do with the liabilities of late Harshad Mehta.

(*ix*) The sale of commercial property had never been seriously contested by the appellants and in fact the contention of the appellants herein before the Special Court was that if the commercial properties were sold, there would be no need to sell the residential properties. Even before this Court, the sale of commercial properties had not been questioned. A large number of commercial properties having already been sold and third-party rights having been created, this Court should not interfere with the impugned judgment.

The Act

11. The Statement of Objects and Reasons for enacting the Act reads as under:

"1. In the course of the investigations by Reserve Bank of India, large-scale irregularities and malpractices were noticed in transactions in both the Government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions. The said

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irregularities and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers.

2. To deal with the situation and in particular to ensure the speedy recovery of the huge amount involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992, was promulgated on 6-6-1992. The Ordinance provides for the establishment of a Special Court with a sitting Judge of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It also provides for appointment of one or more Custodians for attaching the property of the offenders with a view to prevent diversion of such properties by the offenders."

12. Section 3 of the Act provides for appointment and functions of the Custodian. Sub-section (2) of Section 3 postulates that the Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6-6-1992 (the statutory period), notify the name of such person in the Official Gazette. Sub-section (3) of Section 3 contains a non obstante clause providing that on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification and such attached properties may be dealt with by the Custodian in such manner as the Special Court may direct. In the Ordinance which preceded the Act, there was no provision for giving post facto hearing to a notified person for cancellation of notification, but such a provision has been made in the Act, as would appear from Section 4(2) thereof.

13. Sub-section (1) of Section 4 of the Act reads as under:

"4. *Contracts entered into fraudulently may be cancelled.*—(1) If the Custodian is satisfied, after such inquiry as he may think fit, that any contract or agreement entered into at any time after the 1st day of April, 1991 and on and before 6-6-1992 in relation to any property of the person notified under sub-section (2) of Section 3 has been entered into fraudulently or to defeat the provisions of this Act, he may cancel such contract or agreement and on such cancellation such property shall stand attached under this Act:

Provided that no contract or agreement shall be cancelled except after giving to the parties to the contract or agreement a reasonable opportunity of being heard."

14. Sub-section (2) of Section 4, however, provides for a hearing as regards correctness or otherwise of the notification notifying a person in this behalf, in the event an appropriate application therefor is filed within 30 days of the issuance of such notification. Section 5 provides for establishment of the Special Court. Section 7 confers exclusive jurisdiction upon the Special Court. Any prosecution in respect of any offence referred to in sub-section (2) of Section 3 pending in any court is required to be transferred to the

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Special Court. Section 9 provides for the procedure and powers of the Special Court. Section 9-A, which was inserted by Act 24 of 1994 with effect from 25-1-1994, confers all such jurisdiction, powers and authority as were exercisable, immediately before such commencement by any civil court in relation to the matter specified therein. Section 11 of the Act reads as under:

> "11. *Discharge of liabilities*.—(1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment.
>
> (2) The following liabilities shall be paid or discharged in full, as far as may be, in the order as under:
>
> (*a*) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of Section 3 to the Central Government or any State Government or any local authority;
>
> (*b*) all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund;
>
> (*c*) any other liability as may be specified by the Special Court from time to time."

Analysis of the statutory provisions

15. The Act provides for stringent measures. It was enacted for dealing with an extraordinary situation in the sense that any person who was involved in any offence relating to transaction of any security may be notified, whereupon all his properties stand attached. The provision contained in the Act being stringent in nature, the purport and intent thereof must be ascertained having regard to the purpose and object it seeks to achieve. 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.

Precedents as regards scope of the Act

16. Constitutionality and/or interpretation of the Act came up for consideration before this Court in *Harshad Shantilal Mehta* v. *Custodian*[4] wherein the following questions were framed: (SCC pp. 11-12, para 16)

> "*16.* (*1*) What is meant by revenues, taxes, cesses and rates *due*? Does the word 'due' refer merely to the liability to pay such taxes, etc., or does it refer to a liability which has crystallised into a legally ascertained sum immediately payable?
>
> (*2*) Do the taxes [in clause (*a*) of Section 11(2)] refer only to taxes relating to a specific period or to all taxes due from the notified person?

4 (1998) 5 SCC 1

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(*3*) At what point of time should the taxes have become due?

(*4*) Does the Special Court have any discretion relating to the extent of payments to be made under Section 11(2)(*a*) from out of the attached funds/property?

(*5*) Whether taxes include penalty or interest?

(*6*) Whether the Special Court has the power to absolve a notified person from payment of penalty or interest for a period subsequent to the date of his notification under Section 3. In the alternative, is a notified person liable to payment of penalty or interest arising from his inability to pay taxes after his notification?" (emphasis supplied)

17. As regards Question 1, it was held: (SCC p. 14, para 24)

"*24*. In the present case, the words 'taxes due' occur in a section dealing with distribution of property. At this stage the taxes 'due' have to be actually paid out. Therefore, the phrase 'taxes due' cannot refer merely to a liability created by the charging section to pay the tax under the relevant law. It must refer to an ascertained liability for payment of taxes quantified in accordance with law. In other words, taxes as assessed which are presently payable by the notified person are taxes which have to be taken into account under Section 11(2)(*a*) while distributing the property of the notified person. Taxes which are not legally assessed or assessments which have not become final and binding on the assessee, are not covered under Section 11(2)(*a*) because unless it is an ascertained and quantified liability, disbursement cannot be made. In the context of Section 11(2), therefore, 'the taxes due' refer to 'taxes as finally assessed'."

18. In regard to Question 2, it was opined: (SCC p. 15, para 26)

"*26*. Every kind of tax liability of the notified person for any other period is not covered by Section 11(2)(*a*), although the liability may continue to be the liability of the notified person. Such tax liability may be discharged either under the directions of the Special Court under Section 11(2)(*c*), or the taxing authority may recover the same from any subsequently acquired property of a notified person (vide *Tejkumar Balakrishna Ruia* v. *A.K. Menon*[5]) or in any other manner from the notified person in accordance with law. The priority, however, which is given under Section 11(2)(*a*) to such tax liability only covers such liability for the period 1-4-1991 to 6-6-1992."

19. In respect of Question 3, it was opined that the date of distribution arrives when the Special Court completes the examination of claims under Section 9-A and if, on that date, any tax liability for the statutory period is legally assessed, and the assessment is final and binding on a notified person, that liability would be considered for payment under Section 11(1)(*a*), subject to what follows.

5 (1997) 9 SCC 123

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20. So far as Question 4 is concerned, this Court despite upholding the contention of the Custodian that no question of any reopening of tax assessments before the Special Court would arise and the liability of the notified person to pay the tax will have to be determined under the machinery provided by the relevant tax law, observed: (SCC pp. 18-19, para 35)

> "*35.* But the Special Court can decide how much of that liability will be discharged out of the funds in the hands of the Custodian. This is because the tax liability of a notified person having priority under Section 11(2)(*a*) is only tax liability pertaining to the 'statutory period'. Secondly payment in full may or may not be made by the Special Court depending upon various circumstances. The Special Court can, for this purpose, examine whether there is any fraud, collusion or miscarriage of justice in assessment proceedings. The assessee who is before the Special Court, is a person liable to be charged with an offence relating to transactions in securities. He may not, in these circumstances, explain transactions before the Income Tax Authorities, in case his position is prejudicially affected in defending criminal charges. Then, on account of his property being attached, he may not be in a position to deposit the tax assessed or file appeals or further proceedings under the relevant tax law which he could have otherwise done. Where the assessment is based on proper material and pertains to the 'statutory period', the Special Court may not reduce the tax claimed and pay it out in full. But if the assessment is a 'best-judgment' assessment, the Special Court may examine whether, for example, the income which is so assessed to tax bears comparison to the amounts attached by the Custodian, or whether the taxes so assessed are grossly disproportionate to the properties of the assessee in the hands of the Custodian, applying the Wednesbury principle of proportionality. The Special Court may in these cases, scale down the tax liability to be paid out of the funds in the hands of the Custodian."

21. In regard to Question 5, this Court agreed with the finding of the Special Court that neither penalty nor interest can be considered as tax under Section 11(2)(*a*) of the Act.

22. So far Question 6 is concerned, it was held that the remedy of a notified person who is assessed to penalty or interest, after the notified period, would be entitled to move the appropriate authority under the taxing statute, stating: (SCC p. 20, para 38)

> "If it is open to him under the relevant taxing statute to contend that he was unable to pay his taxes on account of the attachment of all his properties under the Special Court Act, and that there is a valid reason why penalty or interest should not be imposed upon him after the date of notification, the authorities concerned under the taxing statute can take notice of these circumstances in accordance with law for the purpose of deciding whether penalty or interest can be imposed on the notified person. The Special Court is required to consider this question only from

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the point of view of distributing any part of the surplus assets in the hands of the Custodian after the discharge of liabilities under Sections 11(2)(*a*) and 11(2)(*b*). The Special Court has full discretion under Section 11(2)(*c*) to decide whether such claim for penalty or interest should be paid out of any surplus funds in the hands of the Custodian."

23. We must, however, notice that reliance was sought to be placed on para 14 of the said judgment wherein reference was made to a Bombay High Court judgment in *Hitesh Shantilal Mehta* v. *Union of India*[6] wherein it was held: (Bom CR p. 719, para 8)

"If the person ... approaches the Special Court and makes out, for example, a case that the property which is attached or a portion of it has no nexus of any sort with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/or that there are no claims or liabilities which have to be satisfied by attachment and sale of such property, in our view, the Special Court would have the power to direct the Custodian to release such property from attachment."

24. But, the said observation was held to be not laying down a law by a three-Judge Bench of this Court in *L.S. Synthetics Ltd.* v. *Fairgrowth Financial Services Ltd.*[1] holding: (SCC p. 471, para 45)

"*45*. (*i*) A notified party has the requisite locus to bring the fact to the notice of the Special Court that certain sum is owing and due to him from a third party whereupon a proceeding can be initiated for recovery thereof by the Custodian and consequent application thereof in discharge of the liability of the notified person.

(*ii*) Sub-section (3) of Section 3 should be literally construed and so construed, all properties belonging to the notified person shall be subject to attachment which may, consequently, be applied for discharge of his liabilities in terms of Section 11 of the said Act.

(*iii*) The provisions of the Limitation Act, 1963 have no application in relation to the proceedings under the said Act."

25. The ratio of the said decision as regards applicability of the Limitation Act was further considered by a Division Bench of this Court in *Fairgrowth Investments Ltd.* v. *Custodian*[7] wherein it was held that Section 5 of the Limitation Act will have no application in relation to an application falling under sub-section (2) of Section 4 of the Act stating: (SCC p. 485, para 24)

"It is enough for the purpose of this appeal to hold that Section 29(2) of the Limitation Act, 1963 does not apply to proceedings under Section 4(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. Since the appellant's petition of objection had been filed much beyond the period prescribed under that section, the Special

6 (1992) 3 Bom CR 716
7 (2004) 11 SCC 472

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Court was right in rejecting the petition in limine. The appeal is accordingly dismissed but without any order as to costs."

Attachment of properties

26. The appellants herein are notified persons in terms of the provisions of the Act. Therefore, all the properties belonging to them stand attached. Such attachment being automatic, no finding was required to be arrived at that the same had been acquired either during the notified period or the appellants were involved in offences in transactions in securities.

27. In *Tejkumar Balakrishna Ruia* v. *A.K. Menon*[5] this Court held: (SCC pp. 126-27, paras 5-8)

"*5.* In our view, the terms of sub-section (3) of Section 3 are clear. By reason thereof, the property that belongs to a notified person stands attached simultaneously with the issue of the notification that makes him a notified party. The words 'on and from the date of notification' indicate the point of time at which the attachment takes effect; this is reiterated by the words 'shall stand attached simultaneously with the issue of the notification'. This also indicates that no separate notification or order in regard to the attachment is necessary.

6. Neither the words 'on and from the date of notification' nor the word 'property' lead to the conclusion that what is attached is not only that property which the notified person owned or was possessed of on the date of the notification but also all such property as he might acquire at any time thereafter. The intention to attach property which did not belong to the notified person on the date of the notification but which he might acquire later would, had it been there, has been clearly expressed and sub-section (3) would have stated that such property would stand attached the moment it was acquired by the notified person. The Act would also have made provision for a subsistence allowance or the like for the notified person.

7. It seems to us that to give to Section 3(3) the wide meaning that has been ascribed to it in the judgment and order under appeal would render it perilously close to being held unconstitutional, for it would deprive the notified person, so long as he remained a notified person, from earning a livelihood. Even to say that such interpretation would reduce a notified person to beggary would not be accurate (sic inaccurate) because the alms that he received, being his property, would stand attached.

8. The apprehension expressed by the Special Court does not appear to be well founded: if what a notified person obtains by way of purported income or gift or inheritance is really his own money, such money would, upon establishment of the fact, stand attached automatically under the provisions of Section 3(3). In any event, it is for Parliament to enact a law that meets all contingencies. The courts must interpret the law as it reads. While a purposive interpretation is permissible where two

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interpretations are possible, the purposive interpretation must be such as preserves the constitutionality of the provision."

28. It has further been held that the property, be it shares, dividends and bonus and rights shares, would also be attached property.

Issues

(*i*) Whether the appellants being not involved in offences in transactions in securities could have been proceeded against in terms of the provisions of the Act.

(*ii*) Whether individual liabilities of the appellants ought to have been separately considered by the Special Court as not a part of Harshad Mehta Group.

(*iii*) Whether the tax liabilities could not have been held to be due as the order of assessments did not become final and binding.

(*iv*) Whether the commercial properties could have been sold in auction.

(*v*) Whether the residential properties should have been released from attachment.

29. Before adverting to the questions raised herein, we may notice that both the parties have raised several contentions before us which have not precisely been raised before the learned Special Judge. Several subsequent events have also been brought to our notice. The parties have also filed several charts before us showing individual assets and liabilities. It has, as noticed hereinbefore, further been contended that various best-judgment assessments passed by the assessing authority against some of the appellants have been set aside in appeal and the matters are pending reassessment before the assessing authority.

Application for denotification

30. The appellants' case is that the individual and corporate appellants other than Harshad Mehta, Ashwin Mehta and Sudhir Mehta filed applications, within the prescribed period, before the Special Court praying for their denotifications. However, by an order dated 14-7-2000, the said applications were permitted to be withdrawn with a permission to refile the same.

31. It is not in dispute that the said applications are pending for consideration before the Special Court. They have not been heard. What would be the effect of the jurisdictional question as regards maintainability of the said application, being barred by limitation, would indisputably fall for consideration before the Special Court. We, therefore, as at present advised, refrain ourselves from adverting to the said question.

32. The question, however, before us is as to whether any contention which may not have a direct bearing on the question as to whether the Special Court could entertain their applications for denotifications could be raised by way of defence. It is no doubt true that the law of limitation bars a remedy but not a right. [See *Bombay Dyeing & Mfg. Co. Ltd.* v. *State of*

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Bombay[8], *Savitra Khandu Beradi* v. *Nagar Agricultural Sale and Purchase Coop. Society Ltd.*[9] (AIR para 6) and *Hari Raj Singh* v. *Sanchalak, Panchayat Raj, U.P. Govt.*[10] (AIR paras 14 and 15)], but as observed hereinbefore, it would not be proper for us to consider as to whether such a remedy being not available, in terms of Section 4(2) of the Act can still be determined if raised by way of defence.

33. In *L.S. Synthetics Ltd.*[1] this Court observed: (SCC pp. 470-71, para 41)

> "*41.* A statute of limitation bars a remedy and not a right. Although a remedy is barred, a defence can be raised. In construing a special statute providing for limitation, consideration of plea of hardship is irrelevant. A special statute providing for special or no period of limitation must receive a liberal and broader construction and not a rigid or a narrow one. The intent and purport of Parliament enacting the said Act furthermore must be given its full effect. We are, therefore, of the opinion that the provisions of the Limitation Act have no application, so far as directions required to be issued by the Special Court relating to the disposal of attached property, are concerned."

34. Although, we do not intend to enter into the correctness or otherwise of the said contention of the appellants at this stage, however, there cannot be any doubt whatsoever that they being notified persons, all their properties would be deemed to be automatically attached as a consequence thereto. For the said purpose, it is not necessary that they should be accused of commission of an offence as such.

35. The contention of the appellants to the effect that their properties should have been attached only towards the liabilities incurred by the parties in respect of the transactions made during the statutory period, cannot be accepted as all the appellants being notified, the attachment of the assets would be automatic. (*L.S. Synthetics Ltd.*[1])

36. However, the contention of the appellants that the properties held by them otherwise are sufficient to meet their liabilities was required to be gone into, as, in our considered opinion, there cannot be any dispute that the appellants have such a right.

37. A corporate veil indisputably can be lifted on several grounds.

Lifting the corporate veil

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,

8 1958 SCR 1122 : AIR 1958 SC 328
9 AIR 1957 Bom 178 : 59 Bom LR 425
10 AIR 1968 All 246 : (1968) 1 LLJ 407

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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.

Liabilities of the appellants — determination

39. The fact, however, remains that the copies of the documents, books of accounts and other records on the basis whereof the auditors appointed by the Court filed their reports had not been shown to the appellants herein, on the premise that they were in the know of things. As the said question has not been gone into by the learned Judge, Special Court, it is necessary that the same be considered and appropriately dealt with. The appellants, however, raised the following contentions:

(*i*) That the statement prepared by the Custodian and exhibited as 'C' to his affidavit in the rejoinder dated 1-10-2003 was based on material, at least, all of which were not connected to the appellants as were pointed out before the Court. The learned Special Judge has accepted the figures stated by the Custodian at face value without probing the basis on which the statement was prepared, even though the appellants in their surrejoinder asserted that the figures in the statement were contrary to both the books of accounts drawn by them as also the auditor's report.

(*ii*) In para 14 of the surrejoinder, the appellants denied the asset and liability position as arrived at by the Custodian. According to the appellants, the Custodian has underestimated the assets and exaggerated and overstated their liabilities. A triable issue had been raised and the Custodian's petition should have been converted into a suit. This was not done. In fact, according to the appellants, there are gross errors in the material relied upon by the Custodian. The said contention must be properly adjudged.

40. Several charts have been filed before us by the appellants to show:

(*i*) Liabilities have been exaggerated by the Custodian. No credit for Rs 1227 crores released to the Revenue on interest are given by the Custodian.

(*ii*) Liabilities have been shown in relation to unperformed contracts.

(*iii*) Credits not given for relief obtained from income tax. Subsequent to the filing of the present appeal in a large number of cases, the Revenue demands have been set aside.

41. It is open to the appellants, herein to show that even if they continued to be notified, the Custodian was not right in clubbing all the individual members of the family as a single entity styled as Harshad Mehta Group. It is interesting to note that the properties belonging to the mother of Harshad Mehta have since been released from attachment.

42. The learned Special Court, despite such a contention having been raised by the appellants in their affidavit-in-reply, did not advert thereto. It is furthermore not in dispute that pursuant to or in furtherance of the directions issued by the learned Special Court, the accounts of all entities, be it

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corporate or individual, were drawn up separately which approach had not been disapproved by the auditor appointed by the Special Court. Even in the rejoinder filed by the Custodian, e.g. paras 14, 20, 21 and 22, before the Special Court, such contentions have been raised.

43. A surrejoinder thereto was filed on 15-10-2003 and in paras 1 to 6 thereof, the said statements were denied and disputed.

44. Our attention has also been drawn to a letter dated 7-10-2003 addressed by all the appellants to the office of the Custodian wherein the attention of the Custodian was drawn to the fact that all the documents relied upon by him had not been permitted to be inspected and he was requested to forward a report prepared by the chartered accountants in respect of the individual addressors of the letters. The said letter was replied by the Custodian by his letter dated 10-10-2003 wherein none of the queries contained in paras 3 to 8 of the said letter were even attempted to be answered. The appellants herein contended that the Custodian did not furnish the requisite particulars thereof and inspection was refused on the grounds stated therein.

45. The learned Special Court, in para 9 of the impugned order, stated:

(*i*) The grand total of the admitted liability, thus, comes to Rs 7,27,91,27,317.15.

(*ii*) The amount of priority demand of income tax liabilities comes to Rs 18,29,75,76,248.

(*iii*) The estimated value of the immovable properties of this group is Rs 18,40,30,038.

(*iv*) Thus, the total value of the assets as per the affidavit filed on behalf of the Custodian of Harshad Mehta Group is Rs 9,72,73,32,166.94.

(*v*) Thus, taking into consideration the total of the decretal amount and the income tax liability, it is clear that the total assets of Harshad Mehta Group would be far below the liabilities.

46. In arriving at the said finding, no contention of the parties raised in their respective affidavits had been adverted to nor any material filed before it was analysed. In our opinion, the learned Judge, Special Court should have analysed the respective contentions of the parties in greater detail and in particular in regard to assets and liabilities of the separate entities and having regard to the contentions raised by them that they are not part of the Harshad Mehta Group and their individual liabilities can be met from the assets held and possessed by them separately.

47. The statement annexed to the affidavit of the Custodian showed individual break-up and in that view of the matter the net asset picture of each individual of the appellants herein on individual basis and the effect thereof, in our opinion, should have received serious consideration at the hands of the learned Special Court.

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48. The Custodian in terms of the directions issued by the learned Special Court had affirmed an affidavit putting on record the assets and liabilities of each of the members of the so-called Harshad Mehta Group on an individual basis. Allegedly, therein it was shown that the individuals had received large loans, advances, credits from the Harshad Mehta Group and there had been intermingling of the assets to the tune of crores of rupees. Before us, Mr Desai had filed a chart for showing the same. The said chart, however, shows that at least Mrs Deepika Mehta held assets more than her liabilities. Mr Desai contended that if interest is calculated, liabilities would be more than assets. But, the said chart has been drawn up on the basis of the audited accounts, the correctness whereof is itself in dispute. Before us a chart has been produced by the appellants herein as regards Mrs Deepika Mehta to show her liabilities payable as on 8-6-1992 which are as under:

"Chart showing comparison of payables as on 8-6-1992

	As per Custodian's affidavit	*As per books of accounts*	*As per auditor's report*
M/s Harshad S. Mehta (payable as on 8-6-1992)	25,44,68,654	9,70,18,916	9,70,18,916
M/s Ashwin S. Mehta (payable as on 8-6-1992)	2,68,47,613	1,02,35,942	1,02,35,942
M/s Jyoti H. Mehta (payable as on 8-6-1992)	1,45,28,332	55,39,083	55,39,083
Interest payable towards three brokerage firms as on 8-6-1992	6,14,86,640	2,34,42,444	2,34,42,444"

49. We, therefore, have not been given a clear picture as to the correctness or otherwise of the affidavit filed by the Custodian vis-à-vis the books of accounts which have been maintained by the appellants themselves as well as the auditor's report. The learned Judge merely accepted the figures mentioned in the affidavit of the Custodian and relied thereupon in paras 9 to 11 of the judgment without discussing the contentions and arguments raised on behalf of the appellants herein. We, therefore, are of the opinion, in the interest of justice, that it is necessary to give another opportunity of hearing to the appellants.

50. It is true that horrendous figures as regards the liabilities of Harshad Mehta have been projected before us, but the same had been shown to be of the entire group. If the liabilities of the individual entities are not treated as that of the group, for one reason or the other, indisputably, liability of those who have nothing to do with the dealings of Harshad Mehta either in their individual capacities or as directors of some company or otherwise must be dealt with separately. The contention raised on behalf of the appellants is that Harshad Mehta should be considered to be sui generis and the Custodian may realise his dues from his personal assets as also of those with which he was concerned, together with the assets of his front companies but such liability should not be fastened upon others who had nothing to do therewith. As regards liabilities of Harshad Mehta, the appellants contended that since his death in the year 2001 his legal interests are not being defended both in the court as well as before the Revenue, as a result, liabilities have been foisted

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upon him, a large part of which is on account of interest and penalties. His death has also forced upon him bankruptcy. On the other hand, the contention of the Custodian is that the appellants had not only taken huge loans or advances from Harshad Mehta in one capacity or the other but also even transactions and shares were made by Harshad Mehta on their behalf. Further contention of the Custodian is that even Dr. Hitesh Mehta and Dr. Pratima Mehta have admitted that they had no knowledge about the transactions. This may be so, but then the effect of the rival contentions was required to be gone into by the learned Special Court. A finding of fact arrived at upon discussing and analysing the respective contentions could have gone a long way in assisting this Court in arriving at a correct conclusion. The learned Judge proceeded on the basis that the assets and liabilities, joint and collective, of all those who are related with Harshad Mehta as also the corporate entities in which he was a Director or had some other interest must be considered as a group. Even in this behalf, it was necessary for the Special Judge to assign sufficient and cogent reasons.

51. 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.

52. Furthermore, the question as regards liability of the parties should have been determined at the stage of Section 9-A of the Act. The appellants have contended that the Custodian had taken contradictory or inconsistent stand inasmuch as the liabilities of all the entities were treated to be joint liabilities of Harshad Mehta Group. He furthermore wanted to treat the liabilities of the notified entities also as their separate liabilities. He has proceeded on the basis that even if the assets and liabilities of all individuals is taken on an individual basis, the liabilities would exceed the assets in the case of each individual and corporate entity. It had, however, never been the case of the Custodian that the examination of claims of all the notified parties is complete. It does not appear that claims inter se between the entities within the so-called group had ever been taken into consideration. The Custodian does not appear to have preferred claims before the Special Court on behalf of the largest lender on the so-called group against those he had to recover loans. Such claims may also be preferred.

53. The Act confers wide power upon the Custodian and the learned Special Court and in that view of the matter, having regard to the principles

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of natural justice, the judgment and order of the learned Judge, Special Court should have furthermore been supported by sufficient and cogent reasons.

Tax liability

54. It is not in dispute that the tax liabilities of the appellants individually were assessed on the basis of best-judgment assessment. It is, furthermore not in dispute that in a large number of cases the Appellate Authorities have set aside best-judgment assessments. The contention of the appellant to the effect that the income tax dues should have been considered at the point of time when they become recoverable cannot be accepted having regard to the three-Judge Bench decision of this Court in *B.C. Dalal*[2] wherein this Court categorically held that in the absence of any order of stay granted by the higher court, the liabilities would remain.

55. We may further notice that the learned Special Court relied upon a decision in *Custodian* v. *Union of India*[11] wherein allegedly a dichotomy between sale and distribution was sought to be resolved in terms of the decision of this Court in *Harshad Shantilal Mehta*[4], the appeal whereagainst being Civil Appeal No. 5812 of 2000 was dismissed by this Court by an order dated 4-12-2000 stating that it was in agreement with the decision of the Special Court which called for no interference.

56. This Court, therefore, has laid down a law that mere filing of an appeal is not sufficient, particularly, when no order of stay on recovery has been granted and the demand is outstanding.

57. In *Kedarnath Jute Mfg. Co. Ltd.*[3], this Court has held: (SCC pp. 254-55, para 7)

> "Although that liability cannot be enforced till the quantification is effected by assessment proceedings, the liability for payment of tax is independent of the assessment. It is significant that in the present case, the liability had even been quantified and a demand had been created in the sum of Rs 1,49,776 by means of the notice, dated 21-11-1957, during the pendency of the assessment proceedings before the Income Tax Officer and before the finalisation of the assessment. It is not possible to comprehend how the liability would cease to be one because the assessee had taken proceedings before higher authorities for getting it reduced or wiped out so long as the contention of the assessee did not prevail with regard to the quantum of liability, etc."

58. But, in this case, the orders of assessment have been set aside. If the orders of assessment have been set aside, the liabilities of the appellants have to be worked out on the basis of the new orders of assessment. So long, such orders of assessment are not passed by the competent assessing authorities, it cannot be said that the appellants are liable to pay a huge amount by way of income tax dues on the basis of such orders of assessment which have since been set aside.

59. A chart has been annexed to the additional written submissions filed by Mr Desai, which originated from a letter dated 9-12-2005 issued by the

11 MP No. 64 of 1998 disposed of on 17-8-2000

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office of the Commissioner of Income Tax showing the current status of the liabilities of the individual members of the Harshad Mehta Group in the following terms:

"(I) Ashwin Mehta Rs 1396 crores,

(II) Deepika Mehta Rs 120 crores (even after deducting the amount set aside by ITAT, it exceeds Rs 63 crores)

(III) Late Harshad Mehta Rs 11,829 crores

(IV) Jyoti Mehta Rs 1457 crores

(V) Hitesh Mehta Rs 73 crores

(VI) Pratima Mehta Rs 115 crores (even after deducting the amount set aside by ITAT it exceeds Rs 35 crores)

(VII) Sudhir Mehta Rs 339 crores

(VIII) Aatur Holdings Rs 15.95 crores (even after deducting the amount set aside by ITAT, it exceeds Rs 2.7 crores)"

60. The Custodian has further brought on records that if the transactions by or on behalf of corporate entity viz. Aatur Holdings Pvt. Ltd. and Dr. Pratima Mehta by way of illustration are taken into consideration, the same would reveal their modus operandi to the effect that the moneys were diverted from banks and financial institutions by late Harshad Mehta which were in turn diverted to his family concerns and family members. These moneys were used for speculative transactions and securities and the profits generated were used for acquiring assets.

61. The learned Special Court, having not arrived at such a finding, this Court is not in a position to go into the correctness or otherwise thereabout.

62. In any view of the matter, the learned Judge, Special Court having not dealt with the question as regards the mode and manner of disbursements of the amount so far as the tax liabilities of the appellants are concerned elaborately, the same requires fresh determination in the light of the decision of this Court in *Harshad Shantilal Mehta*[4].

63. In fact, the appellants have brought on record various orders passed by the Income Tax Appellate Authorities to show that the demands of the Revenue have been set aside.

64. Furthermore, the orders of the Appellate Authority have been passed during pendency of this appeal. This Court, it is trite, can take into consideration the subsequent events. Such subsequent events could also be taken into consideration for the purpose of review.

65. In *Board of Control for Cricket in India* v. *Netaji Cricket Club*[12] this Court held: (SCC p. 766, para 93)

"*93*. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of

12 (2005) 4 SCC 741

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the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake."

66. In view of the aforementioned pronouncement of law, we are of the opinion that it is absolutely necessary to request the learned Special Court to consider the matter afresh.

Sale of commercial properties

67. Sale of commercial properties has never been seriously contested by the appellants. In fact one of the contentions raised on behalf of the appellants had been that if commercial properties are sold, there would be no need to sell the residential properties. This Court also in its order dated 5-5-2004 clarified that the interim order dated 30-1-2004 shall not be applicable as regards sale of commercial properties as even before this Court the same had not been questioned. It is, furthermore, not in dispute that third-party rights have since been created by reason of sale of a large number of commercial properties.

68. By an order dated 30-1-2004, while admitting the appeals, this Court directed:

> "The learned counsel for the Custodian brings on record the result of the bids and the orders of the Special Court dated 17-12-2003 and 20-1-2004. The learned counsel for the appellants proposes to offer his comments on the bids and the two orders of the Special Court. Let it be done within two weeks.
>
> The process of finalising the bids according to law may be proceeded ahead by the Special Court. However, the finalisation shall be subject to the result of these appeals."

69. The said order, however, was modified and clarified by an order dated 5-5-2004 that the same shall not apply to the sale of commercial properties in view of the order of the learned Judge, Special Court dated 17-10-2003 wherein it was pointed out that the notified parties did not dispute the commercial properties being put to sale by the Custodian.

70. In that view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved. (See *Nawab Zain-ul-Abdin Khan* v. *Mohd. Asghar Ali Khan*[13].) The said decision has been affirmed by this Court in *Gurjoginder Singh* v. *Jaswant Kaur*[14].

71. In *Janak Raj* v. *Gurdial Singh*[15] this Court confirmed a sale in favour of the appellant therein who was a stranger to the suit being the auction-purchaser of the judgment-debtor's immovable property in execution of an ex parte money decree in terms of Order 21 Rule 92, Civil Procedure

13 (1887) 15 IA 12
14 (1994) 2 SCC 368
15 (1967) 2 SCR 77 : AIR 1967 SC 608

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Code. Despite the fact that ordinarily a sale can be set aside only under Rules 89, 90 and 91 of Order 21, it was opined that the Court is bound to confirm the sale and direct the grant of a certificate vesting the title in the purchaser as from the date of sale when no application in terms of Rule 92 was made or when such application was made and disallowed and in support thereof *Zain-ul-Abdin Khan*[13] and various other decisions were referred to.

72. In *Padanathil Ruqmini Amma* v. *P.K. Abdulla*[16] this Court making a distinction between the decree-holder auction-purchaser himself and a third party bona fide purchaser in an auction-sale, observed: (SCC p. 672, para 11)

> "The ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the court, as a matter of policy, will protect honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. But for such protection, the properties which are sold in court auctions would not fetch a proper price and the decree-holder himself would suffer. The same consideration does not apply when the decree-holder is himself the purchaser and the decree in his favour is set aside. He is a party to the litigation and is very much aware of the vicissitudes of litigation and needs no protection."

73. We, therefore, do not interfere with that part of the order whereby and wherewith the auction-sale, as regards commercial properties, had been directed by the learned Judge, Special Court. The learned Judge, Special Court, may, therefore, proceed to pass an appropriate order as regards confirmation of the sale of such properties.

Residential property

74. In these appeals, we are concerned with sale of eight residential flats in a building known as Madhuli. The flat belonging to the mother of late Harshad Mehta has been released. The flats, however, during pendency of these appeals have been sold in auction. One of the flats being Flat No. 202, Arunachal Bhawan, Barakhamba Road, is subject-matter of a separate proceeding pending before this Court viz. Civil Appeal No. 681 of 2004. In these appeals, we are not concerned with the said flat.

75. Admittedly, the flats have been sold subject to the result of these appeals. The flats have been sold on the basis of the joint liabilities of the appellants together with Harshad Mehta and other companies as a group. The liabilities of the appellants, in view of our findings aforementioned, are required to be considered afresh by the learned Judge, Special Court. The purchasers have also filed applications for their impleadment in these appeals. We, however, have not heard the purchasers as the question as to whether the auction-sale of the said flats will be confirmed or not, will depend upon the ultimate finding of the learned Judge, Special Court upon consideration of the matter afresh in the light of the observations made hereinbefore.

16 (1996) 7 SCC 668

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76. We, therefore, would direct that the confirmation of sale of those flats be considered and appropriate order thereupon may be passed by the learned Special Court while considering the matter afresh. In the light of the directions issued herein, it would be for the purchasers of the said flats to wait till a final decision is made or take back the amount deposited by them, subject to any other or further order(s) that may be passed by the learned Special Judge.

Conclusion

77. In view of our foregoing discussions, we are of the opinion that:

(*i*) The contention of the appellants that they being not involved in offences in transactions in securities could not have been proceeded in terms of the provisions of the Act cannot be accepted in view of the fact that they have been notified in terms thereof.

(*ii*) The appellants being notified persons, all their personal properties stood automatically attached and any other income from such attached properties would also stand attached. The question as to whether the appellants could have been considered to be part of Harshad Mehta Group by the learned Special Court need not be determined by us as, at present advised, in view of the fact that appropriate applications in this behalf are pending consideration before the learned Special Court. The question as regards intermingling of accounts by the appellants herein with that of the Harshad Mehta Group and/or any other or further contentions raised by the parties hereto before us shall receive due consideration of the learned Judge, Special Court afresh in the light of the observations made hereinbefore.

(*iii*) As regards the tax liabilities of the appellants herein, we would request the learned Judge, Special Court to consider the matter afresh in the light of the observations made hereinbefore. The learned Judge, Special Court, in this behalf, having regard to the fact that several orders of best-judgment assessment have been passed by the assessing authority, may take into consideration the ratio laid down in the decision of this Court in *Harshad Shantilal Mehta*[4].

(*iv*) The learned Special Court shall proceed to pass appropriate orders as regards confirmation of the auction-sales in respect of commercial properties.

(*v*) As regards sale of residential properties, an appropriate order may be passed by the learned Judge, Special Court in the light of the observations made hereinbefore.

(*vi*) We direct the Custodian to permit the appellants to have inspection of all the documents in his power or possession in the premises of the Special Court in the presence of an officer of the court. Such documents must be placed for inspection for one week continuously upon giving due notice therefor to the appellants jointly. As the appellants have been represented in all the proceedings jointly, only one of them would be nominated by them to have the inspection thereof.

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The appellants shall be entitled to take the help of a chartered or cost accountant and may make notes therefrom for their use in the pending proceeding.

(*vii*) The appellants shall file their objections to the said report, if any, within ten days thereafter. The Custodian may also take assistance and/or further assistance from a chartered accountant of his choice. A reply and/or rejoinder thereto shall be filed within one week from the date of the receipt of the copy of the objection. The parties shall file their respective documents within one week thereafter. Such documents should be supported by affidavits. Both the parties shall be entitled to inspect such documents and file their responses thereto within one week thereafter. The parties shall file the written submissions filed before this Court together with all charts before the learned Special Judge, Special Court within eight weeks from date.

(*viii*) The learned Judge, Special Court shall allow the parties to make brief oral submissions with pointed reference to their written submissions. Such hearing in the peculiar facts and circumstances of this case should continue from day to day.

(*ix*) The learned Judge, Special Court while hearing the matter in terms of this order shall also consider as to whether the auction-sale should be confirmed or not. It will also be open to the learned Judge, Special Court to pass an interim order or orders, as it may think fit and proper, in the event any occasion arises therefor.

(*x*) We would, however, request the learned Special Judge, Special Court to complete the hearings of the matter, keeping in view the fact that auction sale in respect of the residential premises is being considered, as expeditiously as possible and not later than twelve weeks from the date of the receipt of the copy of this order. Save and except for sufficient or cogent reasons, the learned Judge shall not grant any adjournment to either of the parties.

(*xi*) The learned Judge, Special Court shall take up the matter relating to confirmation of the auction sale in respect of the commercial properties immediately and pass an appropriate order thereupon within four weeks from the date of receipt of copy of this order. If in the meanwhile the orders of assessment are passed by the Income Tax Authorities, the Custodian shall be at liberty to bring the same to the notice of the learned Special Court which shall also be taken into consideration by the learned Judge, Special Court.

78. With the aforementioned observations and directions, these appeals are allowed. The impugned judgments are set aside and the matter is remitted to the learned Judge, Special Court for consideration of the matter afresh. However, the parties shall bear their own costs.