

PRAVIN MEHTA AND MITHI & CO. (REGD.)

ADVOCATES, SOLICITORS & NOTARY

PARTNERS

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YHM/LA/O/ 189/2008

January 30, 2008

Ref. No.

To,
M/s.M.P.Vashi & Associates
Advocates for the Applicant

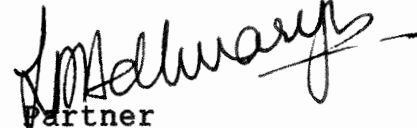
Dear Sirs,

Re : Before the Special Court at Mumbai
Misc. Application No.114 of 2007
Jyoti H.Mehta
Versus
The Custodian

We are concerned for the Custodian appointed under
the provisions of the Special Court (TORTS) Act 1992.

Please find enclosed herewith a copy of Affidavit-
in-reply on behalf of the Custodian dated 29th January,
2008 as & by way of service upon you.

Yours faithfully,
For Pravin Mehta & Mithi & Co.


Partner

Encl : As above
c.c. To,
Mr.C.B.Tripathi
O.S.D.,
Custodian's Office,
Mumbai.

ls/

CORRESPONDENCE AT : 4TH FLOOR, ORICON HOUSE, 12/14, K. DUBASH MARG, MUMBAI - 400 023.

BEFORE THE SPECIAL COURT CONSTITUTED UNDER
THE PROVISIONS OF SPECIAL COURT (TRIAL OF OFFENCES
RELATING TO TRANSACTION IN SECURITIES) ACT, 1992
MISCELLANEOUS APPLICATION NO. 114 OF 2007

Jyoti H. Mehta & Another ... Applicants

Versus

The Custodian ... Respondent

AFFIDAVIT IN REPLY ON BEHALF OF THE CUSTODIAN,
THE RESPONDENT ABOVENAMED

I, C. B. Tripathi, working as an Officer on Special Duty in the Office of the Custodian and having my office at 11, Nariman Bhavan, Nariman Point, Mumbai 400 021, do hereby solemnly affirm and state as under :

1. At the outset, I say that, the present Application has been allegedly filed by the Applicants to conduct a fishing enquiry into the facts and records maintained in the office of the Custodian. I say that, under the provisions of the Special Courts (TORTS) Act, 1992 (hereinafter referred to as "the said Act"), the Custodian functions under the orders and directions of the Hon'ble Special Court. I say that, during the past two years, despite the Applicants taking inspection of all records pertaining to the notified parties' data base and documents maintained in the office of the Custodian, offered in compliance of orders of Hon'ble Supreme Court the Applicants have filed the present Application for reasons best known to them. I say that, the prayers prayed for by the Applicants in the present Application are a matter of record. The said record is maintained in the office of the Custodian as well as the Hon'ble Special Court's office. The present Application is, therefore, nothing but a vague and baseless enquiry by the Applicants without any supporting records.

2. At the further outset, I say that, the principal ground for filing the present Application is that the Applicants should be provided with all records which affect the asset and liability position of the Applicants in the distribution proceedings pending before this Hon'ble Court. I say that, this ground is erroneous in much as the Applicants have collected enormous records pertaining to the Applicants as well as the Harshad Mehta Group of notified entities from the office of the Custodian pursuant to the order dated 3rd January 2006 of the Hon'ble Supreme Court in Civil Appeal No.672-681 of 2004 for giving inspection of all the documents in his power and possession in the premises of the Hon'ble Special Court. In compliance to the above orders, inspection was granted in the presence of an Officer of the Court. The Officers of the Custodian were also present for rendering assistance in making documents available to the representatives of the Harshad Mehta Group. The Apex Court had directed for providing only inspection of documents, but the Office of the Custodian permitted the nominee of Harshad Mehta Group not only to inspect but also to take photocopies of various documents to remove any cause for grievance. I say that, the Applicants cannot time and again approach this Hon'ble Court to file vague and insufficient applications without any basis. I say that, the Applicants have always been kept informed and given all available documentary evidence, inter alia, relating to the Applicants' assets and liabilities position. In this regard, Pages 39 to 46 of the Application are relevant which are copies of Official letters from the Mumbai office of the Respondent which clearly suggest that the documents relating to assets and liabilities were made available to the applicants. I say that, the Applicants being notified parties are entitled to every communication which pertains to their the assets and liabilities position. I say that, in the distribution report filed by the Custodian, every piece of documentary evidence is referred to and relied upon and also inspection of the same is granted to the Applicants as and when desired. The practice followed by the Custodian's office is to endorse copies of correspondence to the notified parties concerned and hence there is no need for further direction on this ground as prayed for by the Applicant.

3. Without prejudice to the above, with reference to paragraphs 1 and 2, I say that, the Applicants have addressed several letters to the Respondent, inter alia, seeking details of payment of an amount of Rs. 590.83 Crores to

State Bank of India. I say that, the aforesaid payment had been made under the various orders of the Hon'ble Special Court and the Hon'ble Supreme Court in the following matters:

- i. Suit No.35 of 1995
- ii. Misc. Application No.185 of 1993 (Suit No.41 of 1995)
- iii. Misc. Petition No.88 of 1998
- iv. Misc. Application No.657 of 2004 and
- v. Misc. Petition No.101 of 2000
- vi. Civil Appeal No.4146 of 2006

Copy of letters dated 21.02.2003, 25.02.2003, 27.02.2003, 25.03.2003, 26.03.2003, 27.03.2003 & 28.03.2003 addressed to various banks for making payment to State Bank of India in this regard are annexed hereto and marked as Exhibit A (colly.). It can be seen that copies of these letters were marked to the concerned notified parties, hence their allegation that the notified parties are not informed about the transactions relating to their assets and liabilities is incorrect. I say that, the question as to whether the payment of the above amount of Rs. 590.83 Crores would affect the assets and liabilities position of the Applicants is absolutely clear from Exhibit '3' at page 83 of Affidavit of the Respondent dated 1st March 2006 in Misc. Petition No.41 of 1999.

4. ✓ With reference to paragraphs 3 and 4, I say that, the amount of Rs. 590.83 Crores has been paid to State Bank of India as per the various orders of the Hon'ble Special Court as well as Hon'ble Supreme Court of India. As stated above, copies of relevant letters were endorsed to the concerned Notified Parties. It is pertinent to note that even copy of bank statements as and when received are being provided to them on regular basis. In the light of above, the allegation made by the Applicants that they came to know about the payment of Rs.590.83 crores to State Bank of India in July 2006 only is far from truth and not acceptable. In this regard it is pertinent to set out that the Custodian has filed an Affidavit on 1st March 2006 in Misc. Petition No.41 of 1999, wherein a statement showing decretal amount to be paid by the entities of Harshad Mehta Group under decrees passed in various Misc.

Applications/ Misc. Petitions/ Suits is enclosed as Exhibit '3'. In the said statement, relevant details have also been stated. Annexed hereto is the said Statement and marked as Exhibit 'B'. It is evident from the particulars of the aforesaid statement that the amount so far paid to the State Bank of India (as has been marked in the Applicant's Exhibit 'A & C') has not been reflected in any manner excepting the one decree that has been passed in Misc. Petition No.41 of 1995 dated 3rd March 2003, whereunder the original amount of the decree was Rs.189 crores which has been now reported as Rs.137 crores and accordingly Rs.52.09 crores were paid to the State Bank of India. To put it differently, Rs.590.83 crores against decrees paid to the State Bank of India do not constitute a part of the aforesaid statement being Exhibit '3' of the Affidavit of the Respondent filed on 1st March 2006 in Misc. Petition No.41 of 1999.

Rs 538 Crores

5. In view of what has been described hereinabove, it is not correct for the Applicants to say that they have not been given any information regarding the payment of Rs.590.83 crores made to State Bank of India from the Applicants' Accounts. It may further be emphasized that a careful perusal and analysis of the Exhibit '3' of the Respondent's Affidavit filed on 1st March 2006 in Misc. Petition No.41 of 1999 would have clarified to the Applicant that the amount of Rs.590.83 crores paid to State Bank of India, has already been excluded from the Asset and Liability chart that was prepared subsequent to the date of filing of the above-referred Affidavit.

6. It is significant to note that the Asset & Liability position is prepared as on a particular date and in the instant case it was on 30th June 2006. Hence payments made to State Bank of India under various decrees from the accounts of notified entities of Harshad S. Mehta will not reflect in Asset Liability Chart in respect of notified entities of Harshad S. Mehta as submitted in the Report No.15 of 2006 dated 30th June 2006 to the Hon'ble Special Court, as a large part of the total payment was made under different orders as stated hereinabove as early as in 2003. Hence such payments can never be included either under the assets or liabilities position of the Applicants as the Asset-Liability position is as on a specific date and any completed transaction taken place prior to that date will not reflect in the said statement. I, therefore, say that there is no question of now giving credit of the said amount to Harshad S.

Mehta or M/s. Harshad S. Mehta as it has already been reduced from the liability of concerned notified party.

7. With reference to paragraphs 5 and 6, I deny that, the Respondent has not been responding to the letters addressed by the Applicants. I say that, pursuant to the directions of the Hon'ble Supreme Court of India, the Applicants were given and copies of all the records were made available for inspection for about ten days during January/ February 2006 in the Hon'ble High Court premises and subsequently copies of all the documents, as requested for by them were made available. In fact, photocopier machine of Harshad Mehta Group was also allowed to be installed in the Office premises of Respondent so that photocopies of various documents could be taken expeditiously by the Applicants. Despite of all these efforts, the Applicants continue to make false allegations against the Respondent. Apart from above, whenever the Applicants' representatives have visited the office of the Respondents and not only taken physical inspection but also photo copies of all the relevant data/ material required by the Applicants, have been furnished. Hence, the allegation made by the Applicants is misplaced, incorrect and malicious.

8. With reference to paragraph 7, I have no comments to offer. However, I say that the said Chartered Accountants were appointed by the Special Court and were independent of the Respondent.

9. With reference to paragraph 8, I say that, the proceedings pertaining to the Civil Appeal as stated in the para under reference is a matter of record. I say that, if the Applicants still desire to have the copies of the letters addressed by the Respondent to the bankers of Applicant No. 2 as stated, the Applicants can seek the permission of the Hon'ble Special Court for the same. However, I say that, there is no relevance for the Applicants to seek copies of the letters addressed by the Respondent to the bankers of Applicant No. 2, when the said amounts were paid as per the orders passed by the Hon'ble Special Court in Suit No.35 of 1995 and the Hon'ble Supreme Court of India has ratified by its order in the Appeal proceedings which were finally disposed of by the Hon'ble Supreme Court of India.

10. With reference to paragraph 9, I say that, the contents thereof pertain to letters which are a matter of record and I have no comments to offer on the same.

11. With reference to paragraph 10, I say that, the Applicants and/or the other group members of the Harshad Mehta Group has filed several similar applications in this Hon'ble Court seeking the details pertaining to the attached accounts. I say that pursuant to the orders of this Hon'ble Court, the Respondent has been regularly communicating about the relevant details to the applicants.

12. With reference to paragraph 11, I say that, the Applicants have themselves stated that being aggrieved by the order passed by the Hon'ble Supreme Court of India, the Applicants would proceed on the basis of the advice received by the Applicants from their Counsel. I say that this admission itself may be considered as adequate for the present application to be disposed off at the outset.

13. With reference to paragraph 12, I say that, the decision of the Hon'ble Supreme Court of India would continue to be operative unless and until the Applicants desire to seek modification and/or any further directions from the Hon'ble Supreme Court of India. I say that, the various ramifications mentioned by the Applicants in the paragraph under reference are irrelevant/insufficient and vague in the present context. I say that, if the Applicants desire, they can bring the said ramifications to the notice of the Hon'ble Supreme Court of India and seek modification of the order and any further directions to protect the interests of Applicants, as may be advised.

14. With reference to paragraph 13, I say that, to the extent possible, the data and documents pertaining to the proceedings in Civil Appeal No. 4146 of 2002 which are in possession of the Custodian, will be given to the Applicants.

15. With reference to paragraph 14, I say that, the representatives of the Applicants have been taking inspection from the office of the Custodian with respect to the records required by them. I say that, if certain records are relevant and required by the notified parties, the notified parties have approached this Hon'ble Court by way of applications. I however say that,

there cannot be a blanket permission to the notified parties to come to the office of the Respondent and take all data/ documents as deemed relevant by the notified parties. I say that, the office of the Respondent is a statutory office and functions solely under the orders and directions of this Hon'ble Court. I however clarify that in the event if any relevant material which has been directed to be given to the notified parties has been not given and/or left out by inadvertence, the office of the Respondent shall ensure that the said relevant data is furnished to the notified parties / Applicants.

16. With reference to paragraph 15, I say that, the Applicants cannot quote the ground of urgency in view of the period that has lapsed between the cause of action and filing of their application. I say that, had the Applicants been serious, the Applicants should have come to this Hon'ble Court immediately after the first letter of 22nd July, 2006 written by the Applicants. However, I am not aware as to what information is required by the Applicant No. 2 to contest the several assessment orders as stated in the para under reference. In this regard, it can only be asserted that the Respondents have already marked copies of letters addressed to the Banks to the concerned notified party and also furnished Banks statements giving relevant debit/ credit entries.

✓ 17. With reference to paragraph 16, I say that, in previous paragraphs, I have stated that to the extent possible and available, the relevant documents pertaining to the release of monies to S.B.I. shall be given to the Applicants subject to the permission of this Hon'ble Court. I say this because the internal correspondence from the office of the Respondent has no relevance to the Applicants and therefore, it would be incumbent upon the Applicants to obtain permission of the Hon'ble Special Court.

18. With reference to paragraph 17, I say that, the submission made in the para under reference is general in nature. I say that, such submissions have been made time and again in the past by the Applicants in several applications which has been filed in this Hon'ble Court for seeking records pertaining to their assets and income, earned thereon.

19. With reference to paragraph 18, I say that, once again the Applicants have desired a direction to the Respondent to furnish every details, data, documents and records pertaining to their assets and liabilities and incomes

earned thereof. I say that, every relevant details and documents are always endorsed to the Applicants pertaining to the above.

20. With reference to paragraph 19, I say that, the statutory audit report has been filed by the Court appointed Chartered Accountants. The payment made to State Bank of India has been excluded from the computation of the asset & liability of Harshad S. Mehta. I say that, there is no question of the Respondent confirming the same as the said report speaks for itself and shall be argued at the time of arguments. It may further be asserted that the Asset & liability chart was prepared and submitted to the Hon'ble Special Court much after the aforesaid payment of Rs.590.83 crores was made to State Bank of India.

21. With reference to paragraph 20, I say that, no credit of the payment of Rs. 590.83 Crores can be granted to the Applicants as desired as in the asset-liability position submitted by the Respondent as this amount has already been excluded and as such double credit cannot be given. The said position has already been explained in earlier paragraphs.

22. With reference to paragraph 21, I say that, the order dated 12th February 1996 passed in Miscellaneous Petition No. 215 of 1995 speaks for itself and I crave leave to refer to and rely upon the same.

23. With reference to paragraph 22, I say that the submissions made by the different Counsels appearing for parties in Miscellaneous Petition Nos. 46, 47 and 52 of 1992 have been mentioned. I say that the said submissions are irrelevant in the context of the reliefs claimed in the present case.

24. With reference to paragraph 23, I say that, the Applicants are merely making wild conjectures. I say that, a perusal of Exhibit B collective as referred to by the Applicants to show that the three letters therein are in respect of the same case. I say that, there are no lapses on the part of the Respondent in managing the assets of the Applicants and other notified entities. I say that the Respondent being a statutory authority under Special Court (TORTS) Act, 1992 deals with matters relating to attached properties in the manner directed by the Hon'ble Court and therefore, there can never be any question of suppression of records, as alleged. I put the Applicants to the strict proof of

the fact that the Respondent has kept this Hon'ble Court in the dark about the compliance of its orders in the numerous cases.

25. With reference to paragraph 24, I say that, it is incorrect to state that numerous orders of this Hon'ble Court are not complied with for years together. I say that, instead of making such wild and general statements the Applicants should categorically point out an order and seek compliance thereof if the Respondent has committed a breach. I say that, insofar as the question of granting inspection is concerned, the Applicant cannot be entitled to inspection of all material and documents and records desired by the Applicants unless the same is proved to be relevant to the Applicants' case. It is pertinent to mention here that the Office of the Respondent had not only given inspection of documents as per the directions of Hon'ble Supreme Court but also provided copies of thousands of documents, as requested.

26. With reference to paragraph 25, I say that, duly explaining the relevancy; the Applicants can always approach the Respondent. However, it is reiterated that copies of all documents which are relevant are endorsed to the Applicants regularly by the office of the Respondent.

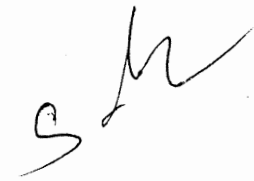
27. With reference to paragraph 26, I say that, the grievance mentioned in the said paragraph pertains to the apprehension of the Applicants with respect to the amount of Rs. 590.83 Crores. However, in one breadth, the Applicants have in para 11 of the application stated that they shall approach the Hon'ble Supreme Court for redressal whereas in the para under reference, the Applicants are seeking a solution in this Hon'ble Court. It is for this Hon'ble Court to take an appropriate view.

28. With reference to paragraph 27, I say that, since the record pertaining to the Civil Appeal is a matter of record maintained in the office of the Respondent, all relevant documents shall be handed over to the Applicants as desired.

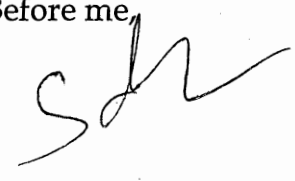
29. With reference to paragraph 28, I once again repeat and reiterate that the Respondent will not deny copies of any documents/records, which are proved to be connected to the asset/liability position of the Applicants or as directed by the Hon'ble Special Court.

30. In view of the above, I say that, the present application be disposed off.

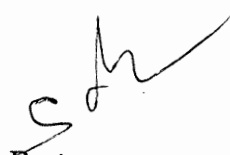
Solemnly affirmed at Mumbai,)
this ^{29th} day of January, 2008.)



Before me



M/s Pravin Mehta & Mithi & Co.



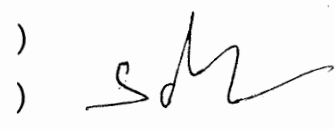
Partner

Advocates for the Custodian

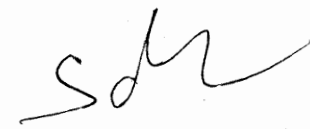
VERIFICATION

~~I, C. G. Tripathi~~ of Mumbai, Indian Inhabitant, Officer on Special Duty in the Office of the Custodian, abovenamed solemnly declare that what is stated in paragraphs 1 to 30 is true to my own knowledge.

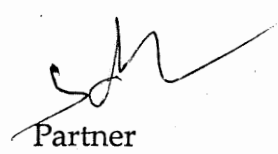
Solemnly declared at Mumbai)
Aforesaid this ^{29th} day of January, 2008)



Before me



M/s Pravin Mehta & Mithi & Co.



Partner

Advocates for the Custodian

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

M. A. NO. 114 OF 2007

Jyoti H. Mehta & Anr. ... Applicants

Versus

The Custodian ... Respondent

~~~~~  
AFFIDAVIT IN REPLY ON BEHALF OF THE  
CUSTODIAN, THE RESPONDENT  
ABOVENAMED

~~~~~  
DATED THIS 29th DAY OF JANUARY, 2008

M/s. Pravin Mehta Mithi & Co.
Advocates for the Custodian,
4th Floor, Oricon House,
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