BEFORE THE SPECIAL COURT AT BOMBAY

CONSTITUTED UNDER THE SPECIAL COURT

(TRIAL OF OFFENCES RELATING TO

TRANSACTIONS IN SECURITIES) ACT, 1992

MISCELLANEOUS APPLICATION NO.36 OF 2011

IN

MISCELLANEOUS APPLICATION NO.210 OF

2003

State Bank of India .. Applicant

Vs

The Custodian & Ors. .. Respondents

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SPECIAL COURT BOMBAY CONSTITUTED
UNDER THE SPECIAL COURT (TRIAL OF
OFFENCES RELATING TO TRANSACTIONS IN
SECURITIES) ACT, 1992
M.A.NO. 36 OF 2011
IN
M.A. NO.210 OF 2003

State Bank of India .. Applicant

Vs

The Custodian & Ors. .. Respondents

MISC. APPLICATION

Dated this 24th day of February 2011

Little & Co.,
Advocates for the Applicant

BEFORE THE SPECIAL COURT AT BOMBAY

CONSTITUTED UNDER THE SPECIAL COURT

(TRIAL OF OFFENCES RELATING TO

TRANSACTIONS IN SECURITIES) ACT, 1992

MISCELLANEOUS APPLICATION NO 36 OF 2011

IN

MISCELLANEOUS APPLICATION NO. 210 OF

2003

State Bank of India)
a Body Corporate incorporated under the)
provisions of the State Bank of India)
Act, 1955 and having its Corporate Office)
at State Bank Bhavan, Madame)
Cama Road, Mumbai 400 021.)
...Applicant

Versus

1. The Custodian, appointed under)
the Special Court (Trial of Offences)
relating to Transactions in Securities) Act)
1992 and having his Mumbai Office at)
9th Floor, Nariman Bhavan, 227,)
Vinay K. Shah Marg, Nariman Point,)
Mumbai 400 021.)

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2. Mrs. Jyoti Harshad Mehta,)
Indian Inhabitant, residing at 32,)
Madhuli, Dr. Annie Besant Road,)
Worli, Mumbai 400 018, and)
having her office at 1205/6, Maker)
Chamber V, 221, Nariman Point,)
Mumbai 400 021.)

3. Mr. Aatur Harshad Mehta,)
Indian Inhabitant, residing at 32,)
Madhuli, Dr. Annie Besant Road,)
Worli, Mumbai 400 018, and)
having his office at 1205/6, Maker)
Chamber V, 221, Nariman Point,)
Mumbai 400 021.)

4. Mrs. Rasila Shantilal Mehta,)
Indian Inhabitant, residing at 32,)
Madhuli, Dr. Annie Besant Road,)
Worli, Mumbai 400 018, and)
having her office at 1205/6, Maker)
Chamber V, 221, Nariman Point,)
Mumbai 400 021.)

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4A. Shri Ashwin S. Mehta)

4B. Shri Hitesh S. Mehta)

4C. Smt. Jyoti H. Mehta)

4D. Smt. Deepika A. Mehta)

4E. Smt. Pratima H. Mehta)

4F. Shri Sudhir S. Mehta)

all of Bombay Indian Inhabitant, residing)

at 32, Madhuli, Dr. Annie Besant Road)

Worli, Bombay 400 018)

4G. Growmore Research & Assets)

Management Ltd.)

4H. Growmore Leasing & Investments)

Pvt. Ltd)

4I. Growmore Exports Pvt. Ltd)

4J. Aatur Holdings Private Ltd.)

4K. Harsh Estates Pvt. Ltd.)

4L. Cascade Holdings Pvt. Ltd.)

4M. Orion Travels Pvt. Ltd.)

4N. Fortune Holdings Pvt. Ltd.)

4O. Treasure Holdings Pvt. Ltd.)

4P. Velvet Holdings Pvt. Ltd.)

4Q. Eminent Holdings Pvt. Ltd.)

4R. Pallavi Holdings Pvt. Ltd.)

4S. Zest Holdings Pvt. Ltd.)

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4T. Topaz Holdings Pvt. Ltd.)

4U. Divine Holdings Pvt. Ltd.)

4V. M/s. Sunrise Enterprises)

4W. M/s. Harshad S.Mehta)

4X. M/s. Ashwin S. Mehta)

4Y. M/s. Jyoti H. Mehta)

all of Bombay Indian Inhabitant, residing)

at 32, Madhuli, Dr. Annie Besant Road)

Worli, Bombay 400 018)

AND having their registered offices at)

Maker Chambers V, 221 Nariman Point)

Bombay 400 021)

5. Assistant Commissioner of)

Income Tax, Central Circle,)

32, Old CGO Building Annexe,)

7th Floor, Maharishi Karve Road,)

Mumbai 400 020.)

6. SBI Capital Markets Ltd.,)

a company incorporated under)

the Companies Act, 1956 and)

wholly owned subsidiary of State)

Bank of India, having its registered)

office at 202, Maker Tower 'E',)

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Cuffe Parade, Mumbai 400 005.)

7. State Bank of Saurashtra,)
a body corporate constituted)
under the State Bank of India)
(Subsidiary Banks) Act, 1969 and)
wholly owned subsidiary of State)
Bank of India, having its Head)
Office at Nilambang Chowk,)
Bhavnagar, Gujarat State and a)
Branch at 11, S.A. Brelvi Road,)
Fort, Mumbai 400 001.)

8. Canbank Financial Services Ltd.,)
a limited company under the)
Companies Act, 1956 and wholly)
owned subsidiary of Canara Bank)
having its registered office at)
19/5 & 19/6, Cunningham Road,)
Bangalore and a branch amongst)
other places at Raja Bahadur)
Mansion, 32, B.S. Marg, Mumbai 23)

9. Standard Chartered Bank,)
a company incorporated with a)

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limited liability under the laws of)
United Kingdom, having its Head)
Office at United Kingdom and a)
branch office amongst other)
places at M.G. Road, Fort, Mumbai21.)

10. National Housing Bank,)
a body corporate and wholly)
owned subsidiary of Reserve)
Bank of India and constituted)
under National Housing Bank,)
1987, having its place of office at)
Veer Nariman Road, Fort,)
Mumbai 400 021.)

11. All Bank Finance Ltd.)
A company incorporated and/or existing)
Under the provisions of law, having its)
Office at 18, Pedder Road, Cumbala Hill)
Mumbai 400 026)

12. Central Bureau of Investigation,)
a Central Investigating Agency)
incorporated and constituted)
under the Delhi Special Police)

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Force Establishment Act, 1946)
having its office at Jolly Maker)
Chamber II, Nariman Point, Mumbai 21)

13. The Chief Commissioner of)
Income Tax (Central) – II, (HQ),)
Mumbai, having his office at)
Room No. 102, Aayakar Bhavan,)
M.K. Road, Mumbai 400 020.)

...Respondents

THE HUMBLE APPLICATION OF THE APPLICANT ABOVENAMED:

MOST RESPECTFULLY SHEWETH:

1. The Applicant herein abovenamed is the State Bank of India, a banking corporation established under the provisions of the State Bank of India Act, 1955. The Applicant, in the course of its businesses, was engaged in various security transactions, inter alia, during the period of the security scam, that is, 1st April 1991 to 8th June 1992. In the course of the said period, the Applicant suffered huge losses owing to large scale diversion of moneys by the late

HS Mehta against whom, various banks including the Applicant bank filed various suits and proceedings and obtained decrees aggregating to approximately Rs.1716 crores.

2. The Applicants are State Bank of India. The 1st Respondent is the Custodian appointed under the provisions of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992. The Respondent Nos. 2 to 4 are the legal heirs of late Mr. Harshad Mehta. The Respondent Nos.4A to 4Y are Notified Parties having been notified under the provisions of The Special Court Constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. Respondent No. 5 is the Assistant Commissioner of Income Tax. Respondent Nos. 6 to 11 are various other creditors of the late Harshad Mehta. Respondent No. 12 is the Central Bureau of Investigation who is a formal party. Respondent No. 13 is the Chief Commissioner of Income Tax, Central-II (HQ), Mumbai.

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3. In this connection the Applicant states that the Applicant herein had filed following suits and proceedings against late HS Mehta:

i) MP 63 of 1992;

ii) Suit 41 of 1995;

iii) MP 14 of 1995;

iv) MP 52 of 1993;

v) Suit 44 of 1995.

4. It may be noted that the proceedings at (iv) and (v) mentioned hereinabove were filed by the erstwhile State Bank of Saurashtra which has since been merged and amalgamated into the Applicant bank. The aforesaid proceedings came to be decreed by the Special Court as per particulars set out hereinbelow:

Sr. No	Case No.	Decree Date	Decree Amount (Rs in crores)
(a)	MP No.63 of 1992 (SBI)	22nd April 2003	706.98
(b)	Suit No.41 of 1995 (SBI)	3rd March 2003	189.11
(c)	M.P. No.14 of 1995 (SBI)	14th August 2003	407.28
(d)	MP No.52 of 1993 (SBS)	18th January 1999	99.11
(e)	Suit No.44 of 1995 (SBS)	23rd September 2002	0.14
		TOTAL	1,402.62

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The amounts considered by the Custodian in the Custodian's Report No.9 of 2010 dated 11th August 2010, filed in the Special Court as the principal amount of each of the decree is as under:

Sr. No.	Case No.	Decree Date	Decree Amount (Rs in crores)
(a)	MP No.63 of 1992 (SBI)	22nd April 2003	706.98
(b)	Suit No.41 of 1995 (SBI)	3rd March 2003	137.12
(c)	M.P. No.14 of 1995 (SBI)	14th August 2003	222.04
(d)	MP No.52 of 1993 (SBS)	18th January 1999	99.11
(e)	Suit No.44 of 1995 (SBS)	23rd September 2002	0.14
		TOTAL	1,165.39

5. Certain other decrees have been obtained by Standard Chartered Bank, SBI Capital Markets Limited and Canbank Financial Services Limited as more particularly set out hereinbelow:

i) Standard Chartered Bank - Suit No.28 of 1995 – Rs.506.53 crores;

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ii) SBI Capital Markets Limited – MP No.61 of 1992 – Rs.16.25 crores;

iii) Canbank Financial Services Limited – Suit No.26 of 1992 – Rs.25 crores.

iv) Canbank Financial Services Limited – MP 22 of 1992 – Rs.2.90 crores.

6. All the assets of the late HS Mehta post June 1992 stood attached pursuant to the enactment of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. Under Section 11 of the said Act, the distribution of the assets of late HS Mehta is to be made in the manner and priority laid down under Section 11(2) of the said Act.

7. Based on the plain reading of Section 11, the Income Tax Department being Respondent No.5 herein, claimed priority in respect of its claims of assessments, which claims according to Banks and Financial Institutions and other creditors, were highly inflated and at the relevant time aggregated to approximately in excess of Rs. 5,000/- crores. Thereafter and in order to resolve the dispute between the Income Tax and other institutional

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creditors which are banks and financial institutions, the Special Court after hearing all concerned parties, passed an order dated 20th February 1995 wherein, it sought to interpret the provisions of Section 11 of the Special Court Act.

8. The said judgment was carried in appeal by various parties and ultimately the question of interpretation of Section 11 was authoritatively laid down by a bench of three Judges by the Supreme Court vide its judgment dated 13th May 1998 [reported in 1998 (5) SCC 1].

9. Before the Supreme Court, the principle contention of the banks was that given the demands of the Income Tax and in the event of the said demand being required to be met under Section 11(2)(a), the entire rationale underlying the establishment of the Special Court and the raison d'etre for the same would stand frustrated as the Special Court Act was enacted primarily to ensure that the amounts diverted from the banks and financial institutions were realized from the amount attached by the Custodian and returned to the said banks and financial institutions. In this connection,

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the Supreme Court in paragraphs 28 and 29 observed as under:

> *"28. ..... They (banks) point out that at the time when the said Act was enacted ..... full extent of the funds involved in malpractices leading to diversion of funds from banks and financial institutions to the pockets of the brokers was not known. Even after the submission of the report by the Jankiraman Committee a special group known as Interdisciplinary Group was required to be set up to trace the end use of funds involved in this fraud. Auditors were appointed to check instances of differences where the attached assets were short of problem exposure. It was, therefore, expected that the available funds from attached assets would be speedily restored to the banks and financial institutions. It was also expected that even after the discharge of tax liabilities for the relevant period, substantial funds would be left over for being paid to the banks and financial institutions concerned".*
>
> *"29. It is submitted that the Act*

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was not intended to secure taxes and, therefore, if the Special Court finds that the tax liabilities are such, and their manner of assessment is such, that it would result in the entire funds being paid over to the taxing authorities, the Special Court would have discretion in deciding how much should be paid over to the taxing authority and how much should come to the banks and financial institutions. It is submitted with some justification that Section 11 should be construed in the context of the purpose for which it was framed; as was done by this Court in the case of Tejkumar Balakrishna Ruia v. A.K. Menon where the Court said that if two interpretations are possible, purposive interpretation should be resorted to. The Court in that case held that the income or property obtained by a notified person after the date of the notification could not be attached under Section 3(3). The purposive interpretation in the present case is to be resorted to for the purpose of ensuring that amounts realised from the properties attached come back to the banks and financial institutions".

15.

10. It may also be noted that one of the banks, viz. Standard Chartered Bank, filed a writ petition before the Delhi High Court challenging the constitutional validity of Section 11. The said petition was transferred to and heard along with the said appeals by the Supreme Court and in view of the purposive interpretation and construction placed on the said Act as set out by the Supreme Court in paragraphs 34 to 36 of its said judgment, the Supreme Court in paragraph 41 of its judgment held as follows:

> "41. *In view of the interpretation which we have put under Section 11 of the Special Court Act and Section 3(3) of the Special Court Act the challenge to the constitutional validity of Section 11 read with Section 3(3) does not survive ..... Transfer Case 5 of 1998 is therefore dismissed".*

11. In this connection, it is pertinent to note the interpretation which the Supreme Court placed on Section 11(2) which is to be found at paragraphs 34 to 36 of the said judgment. For the sake of

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convenience the relevant paragraphs 34 to 36 of the said judgment are reproduced hereinbelow.

> *"34. While we respectfully agree with the finding that the Special Court cannot sit in appeal over the assessment of taxes by the tax authorities, we would like to qualify the Court's subsequent observations relating to payment in full of all assessed taxes under Section 11(2)(a). There is undoubtedly no question of any reopening of tax assessments before the Special Court. There is also no provision under the Special Court Act for proof of debts as in insolvency. The provisions in the Special Court Act for examination of claims are under Section 9-A. A claim in respect of tax assessed, therefore, cannot he reopened by the Special Court. The liability of the notified person to pay the tax will have to be determined under the machinery provided by the relevant tax law. The extent of liability, therefore, cannot be examined by the Special Court".*
>
> *"35. <u>But the Special Court can</u>*

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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 he 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

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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".

"36. Although the liability of the assessee for the balance tax would subsist, and the taxing authorities would be entitled to realise the remaining liability from the assessee, the same will not be paid in priority over the claims of everybody else under Section 11(2)(a). If the Special Court so decides, it may direct payment of the balance liability under Section

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11(2)(c). Otherwise the taxing authorities may recover the same from any other subsequently acquired property of the assessee or in any other manner in accordance with law. Such scaling down, however, should be done only in serious cases of miscarriage of justice, fraud or collusion, or where tax assessed is so disproportionately high in relation to the funds in the hands of the Custodian as to require scaling down in the interest of the claims of the banks and financial institutions and to further the purpose of the Act. The Special Court must have strong reasons for doing so. In fact, the Income Tax Authorities have also accepted that exorbitant tax demands can be ignored, applying the Wednesbury Principles".

12. Finally, the Supreme Court also clarified the question as to what tax liabilities were to be considered at the time of distribution and also categorically defined the date of distribution at paragraphs 24 and 27 of the judgment. For the sake

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of convenience the provisions of paragraphs 24 and 27 are reproduced hereinbelow.

> *"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*

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and quantified liability, disbursement cannot be made. In the context of Section 11(2) therefore, "the taxes due" refer to "taxes as finally assessed".

"27. At what point of time should this tax liability have become quantified by a legal assessment which is final and binding on the notified person concerned? It is contended before us by some of the parties that only that liability which has become ascertained by the final assessment on the date of the Act coming into force should be paid under Section 11(2)(a). Others contended that it should have been so ascertained on the date of the notification. The third contention is that it should have been so ascertained on the date of distribution. Since we have held that tax liability under Section 11(2)(a) refers to only to such liability for the period 1-4-1991 to 6-6-1992, it would not be correct to hold that the

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liability arising during this period should also be finally assessed before 6-6-1992 (the date of the Act) or the date of the notification. It must refer to the date of distribution. The date of distribution arrives when the Special Court completes the examination of claims under Section 9-A. If on that date, any tax liability for the statutory is legally assessed, and the assessment is final and binding on the notified person, that liability will be considered for payment under Section 11(2)(a), subject to what follows.".

13. Based thereon this Applicant took out the aforesaid application for the purpose of laying down principles of distribution and scaling down of the tax assessments for the purpose of distribution as provided for in paragraphs 34 to 36 of the aforementioned judgment.

14. M.A. No.210 of 2003 was thereafter heard by the Special Court and disposed off vide judgment dated 29th September 2007. Hereto annexed and

marked **EXHIBIT "1"** is a copy of the said judgment dated 29th September 2007. By the said judgment the Special Court held that the claims of the Income Tax were required to be scaled down with regard to four specified amounts in all aggregating to Rs.3122 crores.

15. Against the said order dated 29th September 2007, appeals were filed by various parties to the Supreme Court. Pending the hearing of the said appeals, however, the assessments orders which were subject matter of discussions and determination before the Special Court in the said judgment dated 29th September 2007, the Income Tax Appellate Tribunal set aside the said assessments orders and remanded them for fresh hearing to CIT (Appeals).

16. It is pertinent to note that the factum of the Income Tax assessments orders having been set aside, at the relevant time, were not known to this Applicant and were not disclosed to the Supreme Court during the entire course of hearing either by the notified party or by the Revenue Authority. In this connection, it is further pertinent to note that the

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orders of the Income Tax were passed in June and July 2008 and the hearing before the Supreme Court took place in late August 2008.

17. In this view of the matter the Supreme Court disposed off the appeals premised on the assessments orders which were then not in existence. Hereto annexed and marked **EXHIBIT "2"** is a copy of the said order dated 3rd December 2008 passed by the Supreme Court. The Supreme Court by the said judgment upheld the scaling down on two counts. However, insofar as balance two counts were concerned, it directed a remand of the matter to the Special Court.

18. The Custodian had also filed MP No.41 of 1999. The said petition has also been disposed off by the Special Court vide its order dated 30th April 2010. By the said judgment, the Special Court held that Respondent No. 2 to 4Y herein constituted a group and that consequently all the assets and properties of the said notified parties could be held for discharging the liability of late HS Mehta. The Applicant craves leave to refer to and rely upon the said judgment when produced. Although the said

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judgment has been appealed against by the notified parties, the said judgment has not been stayed and therefore continues to be in force.

19. In the meanwhile the Custodian being Respondent No.1 herein has in exercise of the powers conferred on him under Section 3 of the Special Court Act sold various properties and assets belonging to the aforementioned notified parties and as per the report of the Custodian dated 11th August 2010 being Custodian Report No.9 of 2010, an amount of approximately Rs.1865 crores is currently lying with the Custodian. It may be noted that the said amount of Rs.1865 crores which is lying with the Custodian is after payment to the income-tax of an amount of Rs.1228 crores which has been paid to the income-tax from time to time under various directions from this Hon`ble Court or the Hon`ble Supreme Court but subject to an undertaking by the said income-tax authority to return the amount so paid with interest if and when directed by the Special Court upon a final order of distribution being passed by the Special Court.

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20. In view of the fact that the substantial moneys were lying with the Custodian and further in view of the fact that inspite of the fact that with the lapse of almost 18 years has taken place since the outbreak of the scam the banks and financial institutions have failed to recover the amounts lost by them and bearing in mind the fact that the said Special Court Act had been enacted and the Special Court constituted thereunder for the purpose of effecting a speedy recovery of moneys lost to the bank, this Hon`ble Court vide its order dated 3rd April 2009 passed the order directing the Custodian to move the Supreme Court to seek appropriate orders in relation to the amount lying with the Custodian which were available for distribution in particular to seek appropriate orders from the Supreme Court whereby the said amount could be distributed pro rata amongst the decree holder banks. Hereto annexed and marked **EXHIBIT "3"** is a copy of the said order dated 3rd April 2009. It may be noted that the said order was passed in context of effecting an interim distribution pending resolution of various issues including appeals filed by the notified parties against the income-tax orders of assessment.

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21. Subsequent thereto, various parties filed various appeals and applications before Supreme Court. The Supreme Court has by its order dated 6th January 2011 in I.A. No.2 of 2010 in Civil Appeal No.2672 of 2009 directed as follows:

> *"In case an application for disbursement of funds is made by the Revenue or by the creditor banks, it will be open to the Special Court to pass appropriate orders in accordance with law, after hearing objections, if any, raised against the request for disbursements"*

Hereto annexed and marked **EXHIBIT "4"** is a copy of the said order.

22. Hence the Applicant is moving the present application seeking interim payment out of the amounts lying in the hands of the Custodian towards the satisfaction of their decretal claims set out hereinabove. In this connection it is pertinent to note that the Applicant has also taken out Execution Applications seeking execution of the decrees

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referred to hereinabove. Particulars of the said application are set out hereinbelow:

i) MP No.63 of 1992 – Execution Application No.211 of 2003;

ii) Suit No.41 of 1995 – Execution Application No.205 of 2003;

iii) MP No.14 of 1993 – Execution Application No.438 of 2003;

23. The Applicant states that as more particularly set out in the Custodian Report NO. 9 of 2010, the principal amount due to the Applicant bank aggregates to Rs.1165.39 crores. However, it may be noted that pursuant to the various orders of the Special Court/ Supreme Court diverse amounts aggregating to Rs.592.49 crores have been received by the Applicant bank which have been appropriated towards the outstanding liability of late HS Mehta to the bank. It is submitted that the said amount of Rs.592.49 crores received by the Applicant bank encompass both the principal value of the securities held to belong to State Bank of India together with the accruals and accretions thereto. The Applicant submits that the amount of

accruals, additions and accretions is liable to be deducted from the amount of Rs.592.49 crores and only the principal amount of securities should be taken into account for the purposes of interim distribution. It is not out of place to mention that till date the Custodian has not provided the break-up of amount of Rs.592.49 crores inspite of request for the same. This aspect will be dealt with by the Applicant Bank at the time of final distribution and/or at the stage of hearing and disposal of the aforementioned execution applications taken out by the Applicant Bank.

24. However for the purpose of the present application even assuming without admitting that the entire amount of Rs.592.49 crores received by the Applicant bank is liable to be deducted from the decretal claims, there remains a balance amount of Rs.572.90 crores receivable by the Applicant bank under various decrees obtained by it. In this view of the matter, it is submitted that this Hon`ble Court be pleased to direct the Custodian to pay over to the Applicant bank the amount of Rs.572.90 crores or such other amount as this Hon`ble Court may deem fit and proper as and by way of an interim

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distribution subject to determination of final liability after final adjudication of all disputes by appropriate forums and further on appropriate undertakings being furnished to the satisfaction of this Hon`ble Court.

25. The Applicant respectfully states and submit that in view of the fact that it has been conclusively held by the Supreme Court that the Special Court Act has been enacted for the purpose of effecting a speedy recovery of moneys by the banks and financial institutions from whom such moneys were siphoned and that the moneys lying in the hands of the notified parties were in fact the moneys which have been so diverted from the banks and financial institutions for whose benefit the Special Court Act was enacted and under which the Special Court has been constituted, it is just, fit, necessary, convenient and proper that directions, as afore-stated, be passed by this Hon`ble Court.

26. The Applicant respectfully states and submits that in the event of such reliefs being granted, no harm or prejudice would be caused to the Respondents. In this connection, it may be noted

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that both the Hon'ble Special Court and the Supreme Court have recognized the vital interest of the creditors such as the Applicant herein and the question of assets and assessments of the Notified Party. It is accordingly submitted that the interests of justice demand and the balance of convenience requires that the present Application be allowed by this Hon`ble Special Court. In the circumstances, it is submitted that it is just proper, convenient and necessary that directions be passed as aforesaid by this Hon'ble Special Court.

27. The Applicant, therefore, prays:

i. that this Hon`ble Court be pleased to direct an interim payment to the Applicant bank in the amount of Rs.572.90 crores or such other sum as this Hon`ble Court may deem fit and proper on such terms and conditions as this Hon`ble Court may be pleased to direct;

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ii. for costs;

iii. for such further and other reliefs as the nature and circumstances of the case may require.

Little & Co..

Partner
Advocates for the Applicant

For State Bank of India

Chief Manager
Applicant

A. K. NIMESH
Chief Mgr-(IR-NPI)
SBI, SSB (09277)
Mumbai - 400 001.

VERIFICATION

I, Arun Kumar Nimesh of Mumbai, Indian Inhabitant, the Chief Manager of the Applicant abovenamed, having my office at State Bank of India, Securities Services Branch, 2nd Floor, Mumbai Main Branch, Mumbai Samachar Marg, Fort, Mumbai 400 023, do hereby solemnly declare and state that what is stated in the foregoing paragraphs hereinabove are true to my knowledge and belief and I believe the same to be true.

Solemnly declared at Mumbai,)
this 24th day of February 2011)

Little & Co.

Partner
Advocates for the Applicant

For State Bank of India

Chief Manager

A. K. NIMESH
Chief Mgr-(IR-NPI)
SBI, SSB (09277)
Mumbai - 400 001.

Before me
24/2/2011
Associate
Special Court, Bombay.

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BEFORE THE SPECIAL COURT AT BOMBAY

CONSTITUTED UNDER THE SPECIAL COURT

(TRIAL OF OFFENCES RELATING TO

TRANSACTIONS IN SECURITIES) ACT, 1992

MISCELLANEOUS APPLICATION NO. 76 OF 2011

IN

MISCELLANEOUS APPLICATION NO.210 OF

2003

State Bank of India)
a Body Corporate incorporated under the)
provisions of the State Bank of India)
Act, 1955 and having its Corporate Office)
at State Bank Bhavan, Madame)
Cama Road, Mumbai 400 021.)
...Applicant

Versus

1. The Custodian, appointed under)
the Special Court (Trial of Offences)
relating to Transactions in Securities) Act)
1992 and having his Mumbai Office at)
9th Floor, Nariman Bhavan, 227,)
Vinay K. Shah Marg, Nariman Point,)
Mumbai 400 021.)

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2. Mrs. Jyoti Harshad Mehta,)
Indian Inhabitant, residing at 32,)
Madhuli, Dr. Annie Besant Road,)
Worli, Mumbai 400 018, and)
having her office at 1205/6, Maker)
Chamber V, 221, Nariman Point,)
Mumbai 400 021.)

3. Mr. Aatur Harshad Mehta,)
Indian Inhabitant, residing at 32,)
Madhuli, Dr. Annie Besant Road,)
Worli, Mumbai 400 018, and)
having his office at 1205/6, Maker)
Chamber V, 221, Nariman Point,)
Mumbai 400 021.)

4. Mrs. Rasila Shantilal Mehta,)
Indian Inhabitant, residing at 32,)
Madhuli, Dr. Annie Besant Road,)
Worli, Mumbai 400 018, and)
having her office at 1205/6, Maker)
Chamber V, 221, Nariman Point,)
Mumbai 400 021.)

4A. Shri Ashwin S. Mehta)

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4B. Shri Hitesh S. Mehta)

4C. Smt. Jyoti H. Mehta)

4D. Smt. Deepika A. Mehta)

4E. Smt. Pratima H. Mehta)

4F. Shri Sudhir S. Mehta)

all of Bombay Indian Inhabitant, residing)

at 32, Madhuli, Dr. Annie Besant Road)

Worli, Bombay 400 018)

4G. Growmore Research & Assets)

Management Ltd.)

4H. Growmore Leasing & Investments)

Pvt. Ltd)

4I. Growmore Exports Pvt. Ltd)

4J. Aatur Holdings Private Ltd.)

4K. Harsh Estates Pvt. Ltd.)

4L. Cascade Holdings Pvt. Ltd.)

4M. Orion Travels Pvt. Ltd.)

4N. Fortune Holdings Pvt. Ltd.)

4O. Treasure Holdings Pvt. Ltd.)

4P. Velvet Holdings Pvt. Ltd.)

4Q. Eminent Holdings Pvt. Ltd.)

4R. Pallavi Holdings Pvt. Ltd.)

4S. Zest Holdings Pvt. Ltd.)

4T. Topaz Holdings Pvt. Ltd.)

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4U. Divine Holdings Pvt. Ltd.)

4V. M/s. Sunrise Enterprises)

4W. M/s. Harshad S.Mehta)

4X. M/s. Ashwin S. Mehta)

4Y. M/s. Jyoti H. Mehta)

all of Bombay Indian Inhabitant, residing)

at 32, Madhuli, Dr. Annie Besant Road)

Worli, Bombay 400 018)

AND having their registered offices at)

Maker Chambers V, 221 Nariman Point)

Bombay 400 021)

5. Assistant Commissioner of)

Income Tax, Central Circle,)

32, Old CGO Building Annexe,)

7th Floor, Maharishi Karve Road,)

Mumbai 400 020.)

6. SBI Capital Markets Ltd.,)

a company incorporated under)

the Companies Act, 1956 and)

wholly owned subsidiary of State)

Bank of India, having its registered)

office at 202, Maker Tower 'E',)

Cuffe Parade, Mumbai 400 005.)

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7. State Bank of Saurashtra,)
a body corporate constituted)
under the State Bank of India)
(Subsidiary Banks) Act, 1969 and)
wholly owned subsidiary of State)
Bank of India, having its Head)
Office at Nilambang Chowk,)
Bhavnagar, Gujarat State and a)
Branch at 11, S.A. Brelvi Road,)
Fort, Mumbai 400 001.)

8. Canbank Financial Services Ltd.,)
a limited company under the)
Companies Act, 1956 and wholly)
owned subsidiary of Canara Bank)
having its registered office at)
19/5 & 19/6, Cunningham Road,)
Bangalore and a branch amongst)
other places at Raja Bahadur)
Mansion, 32, B.S. Marg, Mumbai 23)

9. Standard Chartered Bank,)
a company incorporated with a)
limited liability under the laws of)

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United Kingdom, having its Head)
Office at United Kingdom and a)
branch office amongst other)
places at M.G. Road, Fort, Mumbai21.)

10. National Housing Bank,)
a body corporate and wholly)
owned subsidiary of Reserve)
Bank of India and constituted)
under National Housing Bank,)
1987, having its place of office at)
Veer Nariman Road, Fort,)
Mumbai 400 021.)

11. All Bank Finance Ltd.)
A company incorporated and/or existing)
Under the provisions of law, having its)
Office at 18, Pedder Road, Cumbala Hill)
Mumbai 400 026)

12. Central Bureau of Investigation,)
a Central Investigating Agency)
incorporated and constituted)
under the Delhi Special Police)
Force Establishment Act, 1946)

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having its office at Jolly Maker)

Chamber II, Nariman Point, Mumbai 21)

13. The Chief Commissioner of)

Income Tax (Central) – II, (HQ),)

Mumbai, having his office at)

Room No. 102, Aayakar Bhavan,)

M.K. Road, Mumbai 400 020.)

... Respondents

To
The Officer on the Special Duty
Special Court
Mumbai.

Sir,

We, State Bank of India, the Applicant abovenamed do hereby appoint M/s. Little & Co., Advocates and Solicitors having their office at Central Bank Building, 3rd Floor, M.G. Road, Mumbai : 400 023 to act, plead and engage counsel on our behalf in the above matter.

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IN WITNESS WHEREOF I, Arun Kumar Nimesh, the Chief Manager of the Applicant abovenamed have set my hands to this writing.

Dated this day of February 2011.

We Accept
Little & Co.,

Partner
Advocates for the Applicant

For State Bank of India

Chief Manager

A. K. NIMESH
Chief Mgr-(IR-NPI)
SBI, SSB (09277)
Mumbai - 400 001.

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BEFORE THE SPECIAL COURT AT BOMBAY

CONSTITUTED UNDER THE SPECIAL COURT

(TRIAL OF OFFENCES RELATING TO

TRANSACTIONS IN SECURITIES) ACT, 1992

MISCELLANEOUS APPLICATION NO. OF 2011

IN

MISCELLANEOUS APPLICATION NO.210 OF

2003

State Bank of India .. Applicant

Vs

The Custodian & Ors. .. Respondents

MEMORANDUM OF REGISTERED ADDRESS OF THE APPLICANT

State Bank of India
C/o. Little & Co.,
Advocates & Solicitors
Central Bank Building
3rd Floor, M.G.Road
Mumbai 400 001

Little & Co.

Partner

Advocates for the Applicant

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BEFORE THE SPECIAL COURT AT BOMBAY

CONSTITUTED UNDER THE SPECIAL COURT

(TRIAL OF OFFENCES RELATING TO

TRANSACTIONS IN SECURITIES) ACT, 1992

MISCELLANEOUS APPLICATION NO. OF 2011

IN

MISCELLANEOUS APPLICATION NO.210 OF

2003

State Bank of India .. Applicant

Vs

The Custodian & Ors. .. Respondents

LIST OF DOCUMENTS

1. All orders, papers, proceedings, documents, pleadings including affidavits passed/filed therein in the Special Court and the Supreme Court.

2. Copy of the judgment passed by the Special Court on 29.9.2007 in Miscellaneous Application No. 210 of 2003.

3. Copy of the order dated 3rd December 2008 passed by the Hon'ble Supreme Court in Civil Appeal D No. 32945 of 2007.

4. Copy of the order dated 3rd April 2009 passed by the Special Court in Custodian Report No. 15 of 2006.

5. Copy of the order dated 6th January 2011 passed by the Hon'ble Supreme Court in I.A. No. 2 of 2010 in Civil Appeal No. 2672 of 2009.

6. All other relevant documents.

Little & Co.

Partner

Advocates for the Applicant