CANCELLED

Certified Copy Charges Rs 22.50

178

REP9/10

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

REPORT NO.9 OF 2010

REPORT OF CUSTODIAN WITH REGARD TO ASSET-LIABILITY POSITION OF HARSHAD MEHTA GROUP FOR THE PURPOSE OF DISTRIBUTION

Mr G.R. Joshi with Mr Milind Jadhav, Mr S.M. Parmar i/b M/s A.K. Tiwari and Associates for Custodian - Applicant.

Mr Parag Tripathi, Additioinal Solicitor General with Ms Manisha Honda and Mr B.M. Chatterjee for Income Tax Department.

Mr I.A. Sayyad i/b Mr R.A. Shaikh for Notified Parties.

Mr Janak Dwarkadas, Sr. Counsel with Mr Zal Andhyarujina, Mr Girish Dave, Mr Ankit Rajput, Ms

CANCELLED

SPECIAL COURT (Trial of Offences relating to Transactions in Securities) Ordinance

Amruta Hajarnis i/b M/s Dave and Girish for Standard Chartered Bank.

Mr Tushar Cooper with Ms Pratibha Mehta and Mr Zubin Morris i/b M/s Little and Co. for S.B.I. Capital Market.

Mr Pradeep Sancheti, Sr. Counsel with Mr Sriniwas Deshmukh i/b M/s Mulla and Mulla and Craigie Blunt and Caroe for Canbank Financial Sevices Ltd.

Ms Nilima Mansukhani, Chief Commissioner, Income Tax Department present.

Mr Sandeep Kumar, Additional Commissioner, Income Tax Department present.

Mr Anil Sant, Assistant Commissioner of I.T., Central Circle 23, Mumbai present.

Mr S.K. Soni, Assistant Commissioner of I.T., Central Circle 31, Mumbai present.

Mr D.D. Patil, DC/T(OSD) II, Mumbai present.

CORAM : D.K. DESHMUKH

JUDGE, SPECIAL COURT

DATE : 25TH FEBRUARY 2011.

SPECIAL COURT

P.C. :-

1] This is a report taken out by the Custodian for distribution of money from accounts of notified parties of the Harshad Mehta group under section 11 of the Special Court Act 1992. Heard learned counsel appearing for notified parties, learned counsel appearing for Income Tax Department as also the learned counsel appearing for decree holder banks. There are orders passed by the Supreme Court dated 6th January 2011 and 21st February 2011. It is apparent from those orders of the Supreme Court that the amounts which are lying with the Custodian in the notified accounts are permitted to be distributed by the Supreme Court subject to undertaking as interim measure. According to section 11(2)(a) and the judgment of the Supreme Court, the first priority is to be given to the demand of Income Tax Department for the priority period. As per the chart submitted by the Custodian, the demand of Income Tax Department for the priority period is of Rs.1995.66 crores. It may

SPECIAL COURT

be pointed out here that the learned Additional Solicitor General appearing for Income Tax Department has stated that amount of approximately Rs.686 crores has been previously released to the Income Tax Department on the Department submitting undertaking. The release of amount of Rs.1995.66 crores in favour of Income Tax Department as an interim measure is opposed by the decree holder banks on the ground that their applications for scaling down the liability of the Income Tax Department as also for payment of liabilities of banks are pending. They tried to submit that 'I should take prima facie view of those applications before making an order for payment of amount to the Income Tax Department as interim measure. However, in my opinion, it will not be appropriate to expression any opinion, even prima facie opinion, in relation to the pending applications of the banks because the pleadings in those applications are not yet completed, however, I propose to release the amount in favour of the Income Tax Department after taking from them proper undertaking so that the

interest of the decree holder banks is fully protected. The release of the amount in favour of the Income Tax Department is also opposed on behalf of the notified parties because according to them, for recording a finding that the notified parties were operating in tandem, therefore they are to be treated as a group, is recorded by this Court after hearing only eight notified parties who hold flats in Madhuli, other notified parties have not been heard on that question. However, it is not pointed out by them to me how interest of others will be adversely affected by making interim distribution in favour of the Income Tax Department and the banks on their furnishing undertakings. In my opinion, as the amount is not being finally distributed and it is only interim distribution subject to the condition that the amount will be brought back at the direction of the Court, release of the amount in favour of the Income Tax Department and the decree holder banks is not likely to cause prejudice to the interest of any party. Therefore, in my opinion, it will be appropriate to direct the

Custodian to release the amount of Rs.1995.66 crores in favour of the Income Tax Department subject to the condition that the Income Tax Department will file an undertaking of the Revenue Secretary undertaking therein to bring back the amount on such condition as may be directed by this Court. In the undertaking, it should be specifically mentioned that in case the Court directs the Income Tax Department to bring back the entire or part of the amount by an order made on the applications filed by the decree holder banks for scaling down the Income Tax Department's demand or for payment of decretal amount, the amount would be brought back first before filing appeal against the order of the Court directing the Department to bring back the amount. The undertaking to be filed by the Income Tax Department within a period of one week from today.

2] After distribution of the aforesaid amount in favour of the Income Tax Department, an amount of approximately Rs.225 crores is available for

distribution because amount of approximately Rs.15 crores to Rs.16 crores will have to be kept in attached accounts. There are various decree holder banks. The decrees in favour of the banks run in hundreds of crores of rupees. In my opinion, however, it will be appropriate to distribute the remaining amount depending on the date of decree that has been passed in favour of the decree holder banks. From the record it appears that the decree in favour of Canbank Financial Services Ltd. in suit No.26 of 1992 is the earliest and is dated 20th April 1995 and the principal amount of decree is Rs. 25 crores. The judgment debtor is Ashwin S. Mehta who is a member of Harshad Mehta group. The Custodian is therefore directed to pay to Canbank Financial Services Ltd. an amount of Rs.25 crores. The next decree according to the date on which decree was passed is the decree in favour of State Bank of Saurashtra (which is merged in State Bank of India) in miscellaneous petition No.52 of 1993. The date of decree is 18th January 1999. The principal amount of decree is Rs.99,10,98,287.67.

The Custodian is directed to release the said amount in favour of State Bank of India. The third decree is in favour of State Bank of Saurashtra (which is merged in State Bank of India) in suit No.44 of 1995. The date of decree is 23rd September 2002. The principal amount of decree is Rs.14,41,095.92. The Custodian is directed to release the said amount in favour of State Bank of India. The next two decrees are in favour of State Bank of India, one dated 3rd March 2003 and the other dated 22nd April 2003 in suit No.41 of 1995 and miscellaneous petition No.63 of 1992 respectively. The approximate principal amounts of these decree is more than Rs.800 crores. The balance amount out of Rs.225 crores which is available for distribution is approximately Rs.100 crores. Therefore, the Custodian is directed to release the amount of Rs. 100 crores in favour of State Bank of India towards part payment of principal amounts in the above referred decrees. Though there are decrees in favour of banks, in my opinion, as I am not making final distribution and it is interim distribution,

it will be appropriate to direct the banks to furnish undertaking before the amounts are released in their favour undertaking to this Court to bring back the amounts if so directed by this Court and on such terms as may be directed by the Court. The undertakings shall be submitted by the Directors of the banks. For paying these amounts, if necessary, the Custodian is permitted to break the fixed deposit receipts.

3] At this stage, a request is made by the learned counsel appearing for notified parties' and the Standard Chartered Bank to stay the effect of this order. This order is made pursuant to the order made by the Supreme Court. Therefore, in my opinion, it will not be appropriate to stay this order. Put up after eights weeks.

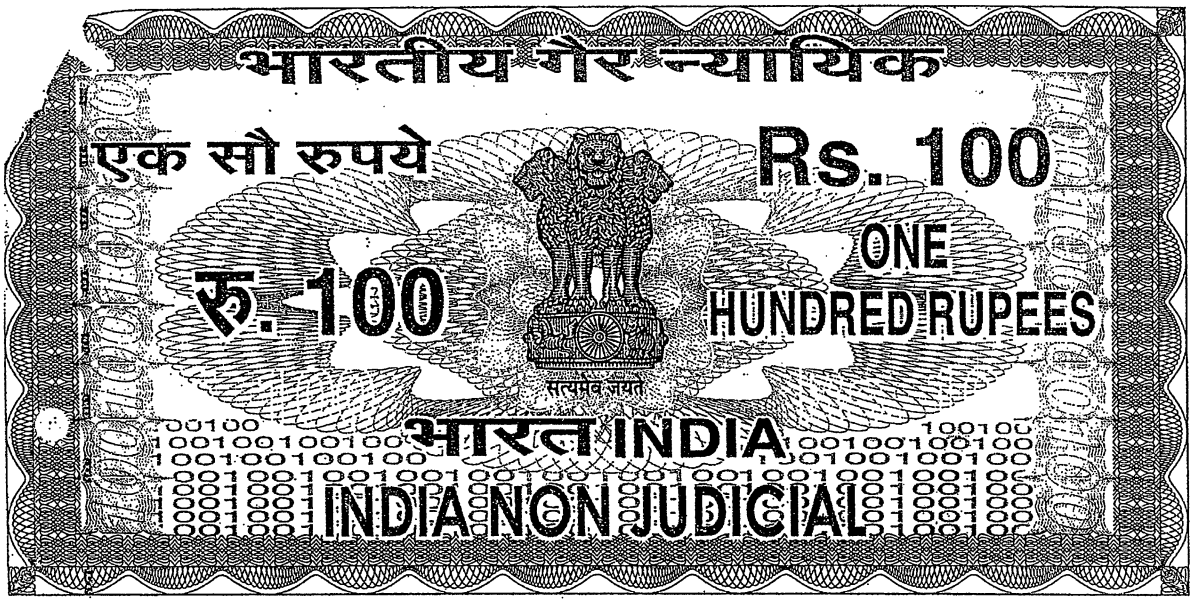
Certified copy expedited.

Sdl-XXX
(D.K. DESHMUKH)
JUDGE, SPECIAL COURT

Applied on 28/02/2011.
Pages 9
Examined by M.S. Mhatre
Compared with DESHMUKH
Ready on 01/03/2011
Delivered on 01/03/2011

SPECIAL COURT

Certified to be a true copy
OFFICER ON SPECIAL DUTY 2011
Officer of the Special Court
Bombay
01/03



दिल्ली DELHI

N 428140

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING

TO TRANSACTIONS IN SECURITIES), ACT, 1992

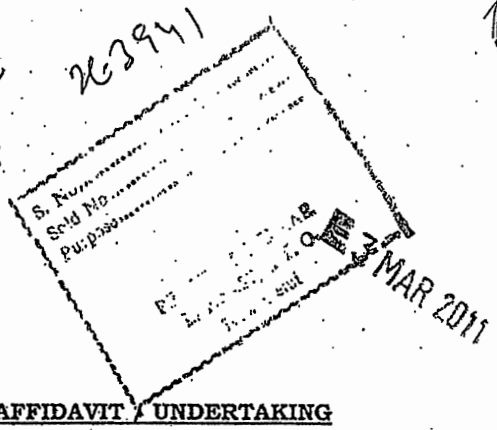
AT BOMBAY

Report No. 9 of 2010

REPORT OF CUSTODIAN WITH REGARD TO ASSET – LIABILITY POSITION OF HARSHAD MEHTA GROUP FOR THE PURPOSE OF DISTRIBUTION

92

Sh. Sunil Mitra
S/o Sri S. N. Mitra,
R/o, Bunglow no. 70,
Moti Bagh,
New Delhi-110023



AFFIDAVIT / UNDERTAKING

I, Sunil Mitra, aged about 59 years S/o. Late Shri S N Mitra, R/o. Bunglow No. 70, New Moti Bagh, New Delhi – 110023, do hereby affirm and state as under:

1. I am the Secretary (Revenue), Ministry of Finance, Govt. of India, New Delhi. I am competent to give this undertaking on behalf of the Government of India.

2. I say that the Custodian has submitted a Report No. 9 of 2010 of the Special Court (TORTS) Act, 1992 for distribution of assets of the Notified Parties, Harshad S Mehta Group. The Hon'ble Special Court vide order dated 25th February, 2011 directed the Custodian to release an amount of Rs. 1995.66 crores (Rupees One Thousand Nine Hundred Ninety Five Crores and Sixty Six Lakhs only) in favour of the Income Tax Department.

3. That this Hon'ble Court further directed to release in favour of Income Tax Department the said amount from the account of said Notified Parties to the Income Tax Department on filing an undertaking to bring back the amount, on such conditions as may be directed by this Court. Therefore, I render following undertaking.

दिल्ली DELHI

N 428141

4. I, the Secretary (Revenue), Ministry of Finance, Govt. of India, New Delhi, do hereby undertake before this Hon'ble Court for and on behalf of Union of India that I shall, on being called upon so to do by this Court or under any other proceedings under the Special Court (TORTS) Act, 1992 bring back to the Court the money so paid or part or parts thereof, on such conditions as may be directed by the Hon'ble Court.

SUNIL MITRA
Revenue Secretary
Ministry of Finance
Government of India
New Delhi

5. I specifically undertake that in case the Court directs the Income Tax Department to bring back the entire or part of the amount by an order made on the applications filed by the decree holder banks for scaling down the Income Tax Department's demand or for payment of decretal amount, shall be brought back first before filing appeal against the order of the Court directing the Department to bring back the amount.

SUNIL MITRA
Revenue Secretary
Ministry of Finance
Government of India
New Delhi

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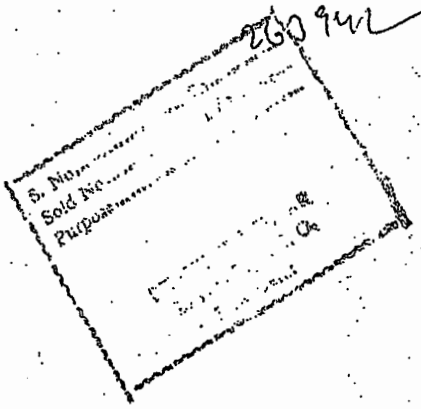
Sh. Sunil Mitra
S/o Sri S.N. Mitra
R/o 70 (Bungalow No.)
Moti Bagh,
New Delhi-110023.



- 3 MAR 2011

6. All the averments made herein above are true to my knowledge and no material has been concealed here from.

Deponent

VERIFICATION

SUNIL MITRA
Revenue Secretary
Ministry of Finance
Government of India
New Delhi

I, Sunil Mitra, in my capacity as the Secretary (Revenue), Ministry of Finance, Govt. of India, New Delhi, the deponent above mentioned, do hereby verify on this 3rd day of March, 2011 that the contents of paragraphs 1 to 6 are true and correct to my knowledge based on records and this undertaking hereby given is in my official capacity as Secretary (Revenue), Ministry of Finance, Govt. of India, New Delhi.

Deponent

SUNIL MITRA
Revenue Secretary
Ministry of Finance
Government of India
New Delhi