

"The Custodian filed Affidavit in sur-rejoinder to the rejoinder of Smt Jyoti Mehta dated 25.03.2008 and once again falsely denied that any credit of Rs.590.83 Crores was liable to be given to HSM despite having made the payment to SBI."

PRAVIN MEHTA AND MITHI & CO. (REGD.)
ADVOCATES, SOLICITORS & NOTARY

PARTNERS

PRAVIN H. MEHTA
YUSUF H. MITHI ★
SHARAD V. KALYANI
NASEEM PATRAWALA
LEENA A. ADHVARYU
KALPESH P. MEHTA

★ NOTARY

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Ref. No.

YHM/LA/O/ 796 /2008

May 31, 2008

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

Sirs,

Re : Before the Special Court at Mumbai
M.A. No. 114 of 2007
Smt. Jyoti H.Mehta & Anr.
V/s.
The Custodian

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

Please find enclosed herewith a copy of Affidavit in Sur Rejoinder on behalf of the Custodian dated 30th May, 2008 as and by way of service upon you.

Yours faithfully,
For PRAVIN MEHTA AND MITHI & CO.


PARTNER

Encl : As above

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

Ls/

BEFORE THE SPECIAL COURT CONSTITUTED UNDER THE
SPECIAL COURTS (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992
MISC. APPLICATION NO. 114 OF 2007

Smt. Jyoti H. Mehta & Anr.

.. APPLICANTS

VERSUS

The Custodian

.. RESPONDENT

AFFIDAVIT IN SUR REJOINDER ON BEHALF OF THE CUSTODIAN

I, Shri C. B. Tripathi, Adult Indian Inhabitant working as Officer on Special Duty in the Office of the Custodian, Special Court at 10th Floor, Nariman Bhawan, Nariman Point, Mumbai 21, solemnly affirm and state as under:

1. I say that I have read the copy of Affidavit-in-Rejoinder dated 18th February 2008 filed by the Applicants and a copy of Additional Affidavit in Rejoinder dated 25th March 2008 and in reply to the same I wish to submit as under:

2. I say that I have filed a detailed Affidavit in reply dated 29th January 2008 in response to the present Application. I say that I may not be deemed to have admitted any of the submissions raised by the Applicants Notified Parties now, which have not been specifically dealt with by me herein under. I put the Applicants notified Parties to the strict proof of the submissions made in the Affidavit in Rejoinder.

3. At the outset, I say that although the applicants in the Additional Affidavit-in-Rejoinder have raised many contentious issues in relation to the records maintained by the Custodian, they (Applicants) have miserably failed to substantiate their allegations since they produced no documents in support of their allegations. I say that, on an overall view of the matter, the Custodian has no reservation in acceding to the request made by the Applicants with respect to the items listed in paragraph 2 (a), 2(b) and 2(c). However, in so far as Para 2 (d) regarding the requests made by the Applicants in the seven letters addressed to the Custodian are concerned, I say that to the extent of

availability of the material pertaining to the Applicants-Notified Parties and subject to the approval of this Hon'ble Court, the Custodian shall be willing to provide to the Notified Parties the specific information required by them.

4. At the further outset, with specific reference to the grievance made by the notified Parties in para 2 (a) of the Additional Affidavit is concerned, I say that I have dealt with the question of release of the amount of Rs.590.83 crores in my Affidavit-in-Reply particularly at Paras 3 to 5 in detail. I say that, a request was made that the proceedings and copies of all records relating to payment of Rs.590.83 crores to the State Bank of India be furnished to the Applicants. I say and reiterate that there is absolutely no reason to disbelieve the fact that under various letters sent by the Custodian to the Banks, the said amount of Rs.590.83 crores was released to State Bank of India, and to seek copies of the letters addressed to the Banks of the Applicant No.2. I reiterate that the fact remains that the amount of Rs.590.83 crores released to State Bank of India was under the Orders of this Hon'ble Court and the Hon'ble Supreme Court of India. I crave leave to rely upon these Orders to justify the action taken by the Custodian in this regard. I say that even a cursory perusal of the said orders will show that the said amount was not required to be taken into account while computing the assets and liabilities position which was drawn up subsequently in 2006 for the purpose of distribution. I say that, the question of giving any credit of the said amount to the Applicants did not therefore arise.

5. Without prejudice to the above and the Affidavit in Rejoinder dated 18th February 2008, I say that the general grievance of the Applicants is that the Custodian has not given inspection and disclosure of the documents relied upon by the Custodian pertaining to the Applicants documents and records. I say that in the Affidavit-in Rejoinder, the Applicants have now admitted and accepted that pursuant to the directions of the Hon'ble Supreme Court of India, partial inspection of records was granted to the Applicants. I say that, this statement itself qualifies the fact that inspection of the records of the concerned notified parties of Harshad Mehta Group was granted to the Applicants. This is infact contrary to the stand taken by the Applicants in their Application. I further say that the Custodian had infact allowed the Applicant's Photostat machine to be installed in the Office of the Custodian, at Mumbai, whereby the Applicants were in a position to not only to inspect the

documents, but also take copies of the all the relevant documents. The Applicants, with malafide intention, are now deliberately trying to exploit the fact, that due to constraints of work and limited staff available, the Office of the Custodian could not keep a record of the documents which the Applicants inspected and taken copies of.

6. With reference to paragraph 1 of the Affidavit in Rejoinder, I say that in so far as the seven letters mentioned therein are concerned, all the points raised by the Applicants have been effectively as also comprehensively replied in the Affidavit in Reply dated 29th January 2008. I say it is redundant to repeat and reiterate the same. However, if any further grievance remains, the Applicants can approach the Office of the Custodian for resolving the same. **I strongly deny that the Custodian and the Office of the Custodian are attempting to stonewall the issue of credit of Rs.590.83 crores as claimed and alleged by the Applicants.** In this connection a reference is invited to Hon'ble Supreme Court's order dated 1st November 2002, in IA No. 4 in Civil Appeal No. 4146 of 2002, which was based on the out-of-court settlement between the National Housing Board and the state Bank of India through terms of settlement dated 30th October 2002. The concluding Para of the Apex Court's Order dated 1st November 2002 reads as under:

"Learned Counsel for the Parties or agreed that IA No. 4 be allowed in terms of Prayer (a) (i) to (iv). Ordered accordingly".

Prayer's (a) (i) to (iv) in IA NO. 4 reads as under:

- (i) that the said securities alongwith all accruals thereon handed over by the late Harshad S Mehta to the said officers of National Housing Bank in March 1992 having then the aggregate value of Rs. 258 Crores, list whereof is annexed hereto as ANNEXURE "R-1 Colly" does not constitute the property of HSM and should be appropriated towards liquidation of his liability to SBI/NHB;
- (ii) that the Custodian, Respondent No.3 hereto, had and has no right, title or interest to in respect of the said securities in view of the fact that the said late HSM had ceased to

have any right, title or interests therein and in view of the fact that the said securities did not then belong to the late HSM;

- (iii) That the said securities not constituting the property of the late HSM and not belonging to the late HSM could not and should not have been handed over the Custodian;
- (iv) That the said securities and all securities and all accruals thereon and the liquidated proceeds, thereof should be handed over to SBI in view of the settlement arrived at between the said parties.

I say that it is crystal clear that the aforesaid amount was released under the Orders of the Court to State Bank of India. I further say that from the Hon'ble Supreme Court's order it is also clear that the said amounts released to SBI, 'ab-initio' never belonged to the Applicants. The amounts were released from the following four A/cs:-

- (i) Growmore Leasing & Investment Pvt. Ltd.
- (ii) Late (Sh) Harshad Mehta
- (iii) Growmore Research & Asset Management Ltd.
- (iv) Receipts NHB Assets - Custodian A/c (T ORTS) Act, 1992.

This entire process, in compliance of the orders of the Court was completed long before statement of Assets & Liabilities was drawn for the purpose distribution.

In view thereof it is once again clarified that the question of giving credit for the said amount to Mr. Harshad Mehta and M/s. Harshad S. Mehta did not arise since these amounts did not figure as their liability in Asset & Liability Chart prepared by M/s. Vinod K. Aggarwala & Co., Chartered Accountants. Hence, in the Distribution Report No.15, the said amount has not been shown on either side of Asset & Liability Chart relating to Late Shri Harshad S. Mehta and M/s. Harshad S. Mehta. Since the amount released by the Custodian, being an undeniable fact and not fiction, it is only a matter of appreciation and understanding by the Applicants. I say it is not correct to make any such statement alleging that Custodian was trying to hide something.

7. With reference to paragraph 2 of the Affidavit in Rejoinder, I say the Applicants have now admitted that inspection of records was taken pursuant to the Order of the Apex Court. This itself should signify that at no point of time the Custodian has resisted furnishing the required information, records and documents to the Applicants, as per orders of Hon'ble Special Court.

8. With reference to paragraph 3 to 11 of the Affidavit in Rejoinder, I say that the Applicants have denied the stand taken by the Custodian in the Affidavit in Reply. I say that the said denial has merely been stated by the Applicants in a vague, insufficient and confusing manner. I say that, the sum and substance of the paragraphs under reference relate to inspection of the required documents and records. Though the Applicants have admitted in para 2, that partial inspection was taken, still a grievance is made on non-cooperation. I say that, if the Applicants specifically point out the information and data as required by the Applicants, the same can be given to the Applicants subject to availability and approved by this Hon'ble Court. I say that the Applicants have made a request for all documents and correspondence exchanged by the Custodian with State Bank of India. I say that the said request is vague and general in nature and therefore cannot be granted. Nevertheless in the aforementioned para I have already stated that the Custodian shall cooperate with the Applicants in making available the documents / information, subject to availability and subject to approval of the Hon'ble Court. I say that for the sake of brevity, I am not dealing with each and every para as the grievances of the Applicants have only been repetitions and already dealt with.

9. With reference to paragraph 12 to 27, of the Affidavit in Rejoinder, I say that in so far as the reference to the certain proceedings is concerned, the said proceedings are pending hearing and final disposal in this Hon'ble Court. I say that MP 41 of 1999 shall be dealt with on its own merits. I say that the Applicants are attempting to mix up different issues and thereby confuse and mislead the Hon'ble Special Court. I state that it is true that the Custodian functions under the orders of the Hon'ble Court and shall abide by orders of the Hon'ble Court. I say that there is no attempt on the part of the Custodian to deny the Applicants their legitimate dues. I deny that the Custodian has attempted to exaggerate the liability of the Applicants in the last couple of

years, as alleged. I say that once again this is a wild, sweeping and vague allegation.

10. In view of the above, I say that the Custodian shall abide by the directions of this Hon'ble Court.

11. Submitted for Orders Please.

Solemnly affirmed at Mumbai,)
this 20th day of May, 2008.)

Before me,

M/s Pravin Mehta & Mithi & Co.

Partner

Advocates for the Custodian

VERIFICATION

I, Mr.C.B.Tripathi / ~~Mr. N.V.V. Suvana~~ of Mumbai, Indian Inhabitant, Officer on Special Duty in the Office of the Custodian, abovenamed solemnly declare that what is stated in the foregoing paragraphs is true to my own knowledge.

Solemnly declared at Mumbai)
dated this 20th day of May, 2008)

Before me:

M/s Pravin Mehta & Mithi & Co.

Partner

Advocates for the Custodian

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

MISC. APPLICATION NO. 114 OF 2007

Smt. Jyoti H. Mehta & Anr. .. APPLICANTS

VERSUS

The Custodian .. RESPONDENT

AFFIDAVIT IN SUR REJOINDER ON
BEHALF OF THE CUSTODIAN

DATED THIS 30th DAY OF MAY, 2008

MESSRS PRAVIN MEHTA & MITHI & CO.,
ADVOCATES FOR THE CUSTODIAN
4TH FLOOR, ORICON HOUSE
12/14, K. DUBASH MARG,
FORT, BOMBAY - 400 001.
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