

**“Smt Rasila Mehta filed Affidavit in MP 20 of 2006 to strongly oppose the reliefs prayed for by the Custodian. Similar affidavit was also filed by Smt Rina Mehta but the Affidavit of only Smt Rasila Mehta is enclosed (without annexures) to represent both the affidavits.”**

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

MISC. PETITION NO.20 OF 2006

THE CUSTODIAN

V/s

SMT RASILA S MEHTA & ORS

..PETITIONER

..RESPONDENTS



LED

AFFIDAVIT IN REPLY OF SMT RASILA S MEHTA,  
RESPONDENT NO.1

I, Smt Rasila S Mehta, Adult, Indian Inhabitant residing at 32 Madhuli, Dr Annie Besant Road, Worli, Mumbai 400 018., do hereby in affidavit in reply state on solemn affirmation as under

1. I say that nothing contrary or inconsistent should be deemed to have been admitted by me unless so specifically stated by me.
2. I say that after perusing through the petition, I have to state that I oppose the main prayer of declaring me as benamidar of late Shri Harshad S Mehta and his Group. The Group however is not defined. I state that I support the prayers seeking relief of repayment to the notified entities subject to proper adjudication of my liabilities taking into account my claims for the unperformed contracts and my counter claims. I also oppose prayer seeking levying of interest on me from 08.06.1992 i.e. the date from which my assets and bank balances are being treated as attached. I also oppose the interim reliefs.
3. I say that so far as the alternative prayer is concerned, I deny the liabilities as computed by the Petitioner as they are factually incorrect to his own knowledge. In fact, if my claims and counter claims are taken into account, in some instances, I have a receivable. The Petitioner has been aware about pending and

unperformed contracts as well as the fact that late Shri Harshad S Mehta has handed over vast quantities of shares belonging to me and others of both unregistered as well as registered. which fact he has suppressed from this Hon'ble Court in his present petition, and therefore the same is liable to be dismissed with costs. The Petitioner is guilty of suppressio veri and suggestio falsie. In support of my contentions, I am pleased to enclose copies of letters addressed by the three brokerage firms of M/s Harshad S Mehta, M/s Ashwin Mehta and M/s J H Mehta on 07.09.2001, 04.06.2001 and 27.07.2001 respectively to the Petitioner along with the books of accounts forwarded by them duly explaining the fact that the performance of contracts is pending on their part at Exhibit A colly, I therefore put the Petitioner to the strict proof thereof. Notwithstanding the above, I have always been ready and willing as well as capable of meeting all my obligations.

4. I say that I am not notified by the Petitioner but since all my liquid and movable assets in the form of bank and term deposit balances and investment in shares are jointly held with other notified persons as second holders, they are being treated as attached assets. I say wherever I am the first holder, the bank and term deposit balances and shares are my properties with complete legal and beneficial rights in my favour. I say that I have preferred a Misc. Application No.291 of 2006 explaining the complete facts regarding the acquisition of assets and reasons and circumstances under which my family members have joined as second holders. I crave leave of this Hon'ble Court to refer to and rely upon the same as and when produced. I say that in any event, the joint holders of my assets are not claiming any right, title or interest in such jointly held assets.
5. I say that though I am not a notified person but since June 1992, I have suffered the same consequences as have been suffered by the notified entities due to the attachment of my assets. I say that I have always been a very solvent person capable of discharging my obligations but due to the attachment of my assets, a legal disability has been cast upon me. I am

aggrieved that due to the fact that I am the mother of late Shri Harshad S Mehta, I have been victimised by various authorities including the revenue who has foisted upon me large but totally untenable demands by making a series of high pitched assessments. I say that my records and assets were all kept at the offices where the business of all my family members was conducted and our interests were looked after by a large number of staff. I say that there have been multiple actions by the revenue department and the C.B.I and thereafter even by the Petitioner where under my records, data and computers came to be seized, electricity was cut off for a number of years, offices came to be locked up or were opened only for a limited time, and the services of staff also came to be dispensed with or some of the staff members left under fear and due to non-payment of salary. I say that thus during past fifteen years, I have passed through a very turbulent time where my affairs have been dislocated and I have been rendered incapable of properly defending both my business and legal interests.

6, I say that since the Petitioner has been managing my assets, I have lost freedom to manage my investment portfolio which has enjoyed complete neglect. I say that this has impacted the generation of returns which also suffered due to the neglect of the portfolio. I say that after the abrupt stoppage of office due to completely unforeseen events, there has been no normalcy since last about fifteen years. I say that records of assets and income for the last fifteen years have not been fully furnished to me by the Petitioner.

7. I say that the present petition is liable to be rejected with cost on the following amongst other grounds which are set out without prejudice to one another.

a) I say that the present petition is contrary to law and facts. I say that this Hon'ble Court has no jurisdiction or power to deal with the assets of third parties in the manner as sought for by the Petitioner. I say that the Petitioner can initiate recovery proceedings on behalf of notified persons but there is no

5 provision in the Special Courts Act whereby the assets of third parties and non-notified persons like me can be taken away. I say that the Hon'ble Supreme Court of India has held in (1998) 5 SCC in Page 9, Para 9 as under :-

*“ Therefore, the jurisdiction of the Special Court in civil as well as criminal matters is in respect of transactions during the statutory period of 01.04.1981 to 06.06.1992; and in relation to the properties attached, of a notified person. The entire operation of the said Act, therefore, revolves around the transactions in securities during this statutory period.”*

b) I say that this Hon'ble Court has no jurisdiction in dealing with my assets which is supported by what the Hon'ble Supreme Court of India has laid down in (1998) 5 SCC in para 12 on page no.9/10.

*“ Before the Special Court makes any order under Section 11(1), the Special Court must be satisfied that the property which is attached and is being disposed of is the property belonging to the notified person. If any person other than the notified person has any share or any right, title or interest in the attached property on the date of notification under Section 3, that right of a third party cannot be extinguished. There is no provision in the Special Court Act which extinguishes the right, title and interest of a third party in any property which is attached as a consequence of a notification under Section 3. The only right which the Custodian has in respect of the rights of third parties in such properties, is conferred by Section 4 under which if the Custodian is satisfied that any contract or agreement which was entered into by the notified party within the “statutory period” in relation to an attached property, is fraudulent or entered into for the purpose of defeating the provisions of the Special Court Act, he can cancel such contract or agreement. There is no other provision under the Special Court Act which affects the existing rights of a*

third party on the date of attachment, in the property attached. The attached property also does not vest in the Custodian. In this regard, the position of a Custodian is different from that of an official liquidator of a company in winding up. Had the Act provided for the extinguishment of any subsisting rights of other persons in the attached property, the Act could well have been considered as arbitrary or unconstitutional.”

I say that the Petitioner by praying for declaring me as a benamidar has sought a relief which extinguishes my rights in my assets which is contrary to law.

c) I say that the Custodian has prayed to declare all my assets as benami assets without establishing its nexus with the bank funds or even ascertaining the period when they were acquired. He has also not specified fully as to whose benamidar I am in terms of parties other than late Shri Harshad S Mehta.

d. I say that the Petitioner has been treating the first holder as the legal and beneficial owner of property. In support of my contention, I cite the conduct of the Petitioner who has sold off shares standing in my name as second or third holder along with other notified entities, without even taking permission of this Hon'ble Court and seeking any adjudication on my rights in such shares and assets. In all such cases of sale, he has deposited the sale proceeds in the account of the first holder. I am pleased to enclose a copy of my letter dated 16.09.2006 addressed to the Petitioner on the subject at Exhibit B.

e. I say that to deal with issues relating to creation of benami properties, the Government of India has promulgated a special statute titled as "The Benami Transactions Prohibition Act, 1988" which has exclusive jurisdiction relating to benami properties. I say that thus by filing the present petition, the Petitioner is seeking to bypass this statute. In the above statute, a benami transaction has been defined but there is no

provision to declare a person benamidar for hundreds and thousands of transactions undertaken by him.

f. Assuming without admitting, I have acted as a Benamidar, then under Section 4 of the above special statute, there is an express bar on the right to recover property held benami. The relevant section reads as under :-

**Section 4 : (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property."**

Thus this section also bars recovery even by someone else on behalf of a person claiming to be the real owner of such property. The Petitioner being conscious of the above express provisions of law is seeking the assistance of this Court to grant relief which is not only contrary to law but in fact specifically barred in law. I say that Petitioner being an officer of this Court is duty bound to disclose the above provisions of law and not suppress them from this Hon'ble Court as he has sought to do. I say that thus what is expressly barred in law, the Petitioner seeks to achieve it by invoking nonexistent powers under the Special Courts Act.

g. I say that the Petitioner has based his case on the alleged diversion of funds by late Shri Harshad S Mehta suggesting intermingling of funds with me. I say that the Hon'ble Supreme Court even in the case of intermingling of funds inter se between notified entities have laid down a strict test for treating an entity as a joint entity with another entity in their landmark Judgment dated 03.01.2006 in the case of Ashwin S Mehta & Anr Versus Custodian & Ors in Appeal (civil) 667-671 of 2004 as under :-

**"A question may 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 these 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 of funds 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 regard the involvement of the individuals with Harshad Mehta, if any, and the extent of his liability as such."*

The Hon'ble Supreme Court has further held that "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." I say that even applying the ratio of above judgment, the Petitioner ought to justify taking away my assets by showing my involvement with late Shri Harshad S Mehta, if any, and the extent of my liability through such an involvement. I say that the Hon'ble Supreme Court of India has deprecated treating any entity as a group. I say that since I am not notified, it ought to be presumed that I am not involved in any illegal transactions in securities during the specified period, much less being involved with late Shri Harshad S Mehta.

h. I say that since I am not a notified person, it ought to be presumed that I am not involved in any offence relating to transactions in securities as is the precondition for notification. I say that thus the test applicable in my case would be far more rigorous than laid down for notified entities. I say that the Petitioner has failed to adduce any evidence in support of his allegations besides merely explaining some flow of funds to me. I say that under the Benami Transactions Act 1988, it is the onus of the person making the allegation to establish beyond reasonable doubt the evidence of benami transactions. I say

§ that in the present petition, some bald and sweeping allegations are made encompassing all my transactions for all periods and undertaken with all parties which are sought to be declared as benami transactions without discharging his onus. I say that this would be the grossest abuse of the machinery of law

i) I say that the essence of benami transaction is the intention of the parties. I say that the Petitioner has failed to adduce any evidence on record to establish that I and late Shri Harshad S Mehta had any intention of creating benami transactions. I say that the intentions of my late son already stands established through his acts while he was alive. These acts include the manner of accounting of our transactions, his levying interest for monies advanced by him, his books of accounts which were drawn by him under the orders of this Hon'ble Court which clearly discloses his monies and assets as separate from my monies and assets, and last but not the least, his several representations particularly to the revenue authorities where he has clearly specified that he has lent monies to me in the normal course of business carrying interest and some of these monies have been utilised by me to acquire assets whose ownership is mine. I say that the books of accounts drawn by him treats me as a client like every other client of his and his covering letter sent along with the books of accounts as cited in Exhibit-A, also explains as to what would constitute my liability to him as a client. I say that being conscious of this factual situation, the Petitioner has built up an alternative case of M/s Harshad S Mehta being a lender of monies to me. I say that this alternate case is factually the right case except that the liabilities arrived at by the Petitioner are grossly incorrect. After the demise of late Shri Harshad S Mehta, it is not open to the Petitioner to step into his shoes claiming rights and interest contrary to the arrangement that was existing between us and the Petitioner cannot build his case of benami transaction without establishing his intentions of undertaking benami transactions through me. The contemporary evidence and documents are overwhelmingly against the case of the Petitioner. I say that I have not acted as his benami can

be easily and incontrovertibly established by a letter dated 22.01.1991 at **Exhibit C** addressed by late Shri Harshad S Mehta to the Asst. Commissioner of Income Tax. I say in this vital and clinching letter, late Shri Harshad S Mehta has explained the acquisition of assets and the arrangement between the family members. In the last paragraph, he has stated as under :-

*"In view of the above, it will be noticed that each and every member of my family is a separate entity by himself or herself having distinct functions in the business and separate accounts; the ownership of various assets rest in their own names and I am not the owner of their self acquired properties legally or beneficially. The income out of such amounts have been enjoyed by the respective individuals only."*

I say that the above letter clinches the issue as it is addressed to the revenue authorities, it pertains to a period prior to the statutory period and it is addressed at a time when admittedly no bank funds were diverted to him. I say that in fact the revenue authorities have accepted our stands by treating each one of us as a separate and distinct legal entity and assessed the income on the assets held by us in our own respective hands.

j. I say that this Hon'ble Court is also bound by several precedents laid by it which is cited herein after. I say that it has released from attachment shares of one Mrs Rekha Bhupen Dalal which was held jointly with Shri Bhupen Dalal as a second holder. This was ordered on the ground that Smt Rekha Bhupen Dalal had paid the consideration for the purchase of the shares and that she had shown these shares as her property in her representations to the revenue. This relief was granted even when Shri Bhupen Dalal had a large liability to meet towards banks and even when he continued to be an accused person charged with an offence that he had diverted monies of the banks to his own self. I rely upon two orders dated

23.07.2002 in Misc Petition No.54 of 1999 and the order dated 30.04.2002 in Misc. Petition No.55 of 1999. I am pleased to enclose copies of the above two orders at **Exhibit D colly**. I say that in Misc. Application No.65 of 1995, by a consent order dated 09.08.1996, this Hon'ble Court released shares seized by the C.B.I and directed them to write to Bank of Karad as well as Bank of India to permit one Smt Usha Gandhi, wife of notified and accused person Shri Jagdish Gandhi to operate her bank accounts free from the attachment of the Custodian and the C.B.I. I am pleased to enclose a copy of the Minutes of order dated 09.08.1996 at **Exhibit E**. I say that in yet another case involving Mrs R Meenakshi, wife of Mr S Ramaswamy, an accused and a notified person, she filed a Misc. Application No.144 of 1998 seeking relief of lifting of orders of freeze on her bank account made by C.B.I. She made out two grounds that she was not an accused person and that there was no nexus found with alleged suspicious security transactions and this Hon'ble Court was pleased to pass an order on 20.06.2003 permitting the Applicant to freely operate her bank account. A copy of the application together with the said order dated 20.06.2003 is enclosed at **Exhibit F colly**. The above also establishes my contention that the Custodian is discriminating against me as in the above cases, he had neither challenged the relief before this Hon'ble Court or filed any appeal against the above cited orders of this Hon'ble Court. The above judgments are therefore binding on this Hon'ble Court as they are a settled law squarely applicable in my case. I say that my assets also have no nexus with the bank funds and that I have shown these assets in my books of accounts as my assets. In the representations to the revenue, the income earned on these assets have been disclosed by me as my taxable income and even the revenue has accepted my representations and treated me as the owner of these assets. The Petitioner for last fourteen years have been treating these assets as my assets and depositing the income earned thereon into my bank accounts. Since its value has grown now, it does not become the assets of late Shri Harshad S Mehta by the Petitioner making certain bald and sweeping allegations.

G.D.  
G.H.M.

k. I say that the present petition is liable to be rejected on the grounds of misjoinder of parties. I say that the Petitioner has joined the creditors of late Shri Harshad S Mehta viz. the revenue and banks. I say that they are not necessary or proper parties and therefore should not have any say in the present proceedings. The fact that they are not necessary and proper parties is established from the petition itself as no relief is sought from them or no prayer is made in regard to them. The Petitioner is conscious of the legal and factual weakness of his case and with a view to create prejudice against me, has joined the creditors of late Shri Harshad S Mehta to make my task onerous. I say that since I am not a notified person, they have no locus in my case. I have not had any transactions with them and their remedy lies only against late Shri Harshad S Mehta. I say that no decree has been passed against me in favour of other notified entities and therefore I am not even a judgment debtor of late Shri Harshad S Mehta. Thus at best, their joining at the present stage in the proceedings is premature.

l. I say that the Petitioner has set out two alternative cases of me being a benamidar and also a borrower of funds which are contrary and cannot co-exist. The evidence cited in both the cases is common though the two cases cannot mutually co-exist. The first case is in fact contrary to law. I say that in the circumstances, the Petitioner must be directed by this Hon'ble Court to elect between the two diametrically opposite cases canvassed by him.

m. I say that the petition suffers both from vagueness as well as lack of evidence which is made up by making several presumptive averments. I say that a benami transaction is defined in law and its ingredients are not met by the Petitioner. I say that rather than establishing the transactions as benami, the Petitioner has presumed all my transactions are benami including those undertaken independently with the brokerage firms of M/s Ashwin Mehta and M/s J H Mehta. I say that the allegation of diversion of funds also lacks evidence such as the

amount, time and the manner of diversion. Even the parties for whom my assets have to be utilised are not specified.

8. I say that the present petition is not bonafide on the following grounds which are urged below and even on this score, the present petition is liable to be dismissed.

i) The Petitioner has filed the present petition after a lapse of a period of fourteen years governed by a motive to take away my assets to pay for the liabilities of late Shri Harshad S Mehta. I say since fourteen years, Petitioner has been aware about all my facts and has in fact not notified me. I say that earlier on 25.10.1999, the Petitioner filed his affidavit in reply to my Misc. Application No.467 of 1999 which is annexed to the petition as Exhibit-N at Page No.709, wherein I had sought a relief from this Hon'ble Court of release of my assets. In his entire affidavit in reply, the Petitioner has nowhere alleged that I am a benamidar of late Shri Harshad S Mehta. I say that therefore the Petitioner ought to be estopped from now making out a new case which is only an after thought and opportunistic. I say that in Para 13 of his affidavit at Page No.715, the Petitioner has laid the following two conditions to declare my assets free from attachment which reads as follows :-

*It is further submitted that unless the Applicant is able to show that her properties have no nexus with diverted funds and that she owes no moneys to any notified party, the same are to be treated as attached.*

I say that through my present reply and through my Misc. Application No.291 of 1996, I am establishing that my properties have no nexus with diverted funds. So far as monies owed to other notified party, I say that the same is matter to be adjudicated upon by this Hon'ble Court. I state that this cannot become a ground for continued attachment of my assets.

ii) The Petitioner is seeking to somehow bridge the hole created in the case of late Shri Harshad S Mehta. His paper

liabilities are far in excess of his assets but his genuine liabilities would be less than his assets. The revenue has foisted upon him false and exaggerated claims and have secured ex parte orders after his death. Similarly, banks have also succeeded in obtaining decrees for false and exaggerated claims and further more an award for interest running into thousands of crores which they were not entitled to in law. The legal heirs of late Shri Harshad S Mehta viz. his wife is a notified person and a house wife. After the sudden death of my son in judicial custody, his entire defence machinery has collapsed and all the claims of his creditors have gone uncontested. I say that even the Petitioner who was supposed to contest them and point out the legal position to this Hon'ble Court has failed in discharging his duties and obligations. The Petitioner has thus acted partisan. I say that Smt Jyoti H Mehta and I have dealt with the subject in our affidavits filed before this Hon'ble Court in M.P No.41 of 1999 and I crave leave of this Hon'ble Court to refer to and rely upon the same when produced. I say that therefore I should not be made to suffer further due to sudden and untimely demise of my late son Shri Harshad S Mehta.

iii) I say that the brokerage firm of late Shri Harshad S Mehta has advanced large sums of money to several of his clients including banks, financial institutions and corporate entities as his firm was engaged in the business of lending monies. I say that in all instances the Petitioner has only sought recovery of money together with interest and only in my case, he has discriminated against me just because I happen to be mother of late Shri Harshad S Mehta.

iv) I say that in fact, this issue whether to chase asset or money arose before this Hon'ble Court in Misc. Petition No. Misc. Petition No.46, 47 and 52 of 1992 where this Hon'ble Court delivered its judgment on 24.04.1997. I say that Mr Jethmalani representing the notified entities on a question whether corporate veil could be lifted or not submitted as under

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 “the custodian is seeking to use the assets of the petitioners for payment of liabilities of other notified parties because there has been appreciation in the value of the assets. He submitted that in cases of other companies or bodies, it is possible that the value of the assets may have been decreased. He submitted that in those cases, the custodian would be applying for recovery of the loans given to the parties and not claiming those assets. He submitted that the custodian cannot be allowed to have double standards and claim assets where they have appreciated and claim return of monies where the assets have been depreciated.”

To this submission, Mr Setalvad representing the custodian had categorically asserted that “the custodian will not adopt double standard and in all cases where the companies have been incorporated only with nominal share capital and where there have been three or four transactions which transactions have been undertaken by other main notified parties and where like in the case of petitioners, the petitioners have neither received the proceeds nor the assets, the Custodian will insist that those assets be treated as the assets of the other notified parties.”

I say that my case squarely falls within the parameters suggested by the Custodian to this Hon'ble Court as recorded in the above judgment. I say that thus the Petitioner is bound by the above undertaking given by him to this Hon'ble Court. I say that I have undertaken a large number of transactions for a long period of seven years and in several instances, cheques have been exchanged according to the bill amount and the shares have been sent for registration in my name. In fact, I have also made payment of a large sum of Rs.50,51,575/- as and by way of interest for borrowing the monies and further made a provision for payment of interest upto 08.06.1992 of an amount of Rs.3,43,48,114/- which was on an adhoc basis and without ascertaining the fact of unperformed contracts. I am pleased to

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enclose a chart depicting details of interest actually paid to the three brokerage firms and a chart depicting details of interest provided for in the books of accounts as Exhibit G. I also crave leave of this Hon'ble Court to refer to and rely upon the relevant extracts of my books of accounts reflecting the payment and provisions of interest as and when produced. Thus Petitioner ought to make good their undertaking given to this Hon'ble Court in the above cited matter.

v) I say that during last three years in particular, my asset base has appreciated sharply due to an unprecedented boom in the capital market. I therefore have a large surplus of assets over my liabilities which has now belatedly motivated the Petitioner to file the present petition so as to deprive me of my legitimate share of gains.

vi) I say that the Petitioner has suppressed both law and facts in filing the present petition. So far as facts are concerned, the Petitioner was bound to disclose that late Shri Harshad S Mehta by way of two letters and two affidavits disclosed and handed over vast quantities of unregistered and other shares stating that they belonged to him, his family members who are clients of the three brokerage firms in the family and certain other clients. The value of these shares runs into hundreds of crores. I say that the liability claims claimed to have been computed on the basis of the books of accounts are also grossly incorrect which is explained herein after. Similarly, the Petitioner is aware that the registered shares belonging to me have come to be utilised in discharge of liabilities of Harshad S Mehta towards M/s V B Desai and All Bank Finance Ltd as per the orders of this Hon'ble Court in Misc Petition No.49 of 1993 and that I ought to be given credit for my share claim against him as I had not authorized the sale of the same. The Petitioner has also failed to disclose letters and correspondence informing the Petitioner that contracts have remained to be performed by the three brokerage firms and therefore the amounts disclosed in the books of accounts are not admitted liabilities. In fact, the Petitioner has filed several applications before this Hon'ble

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Court for the purposes of registration of unregistered shares seeking disclosure of names of the purchaser parties for the unregistered and benami shares handed over by late Shri Harshad S Mehta to the Petitioner. The Petitioner is therefore fully aware about the claims of ownership of such shares against the brokerage firms. The claim amounts arrived at by the Petitioner is without taking into account such unperformed contracts i.e. he has preferred claims even on account of those contracts where the concerned brokerage firm is yet to tender the delivery to the clients like me in fulfillment of their contractual obligation. These facts when taken into account would lead to a situation of my receivables rather than payables.

9. I say that the Petitioner is not entitled to relief of declaration that I am a benamidar of late Shri Harshad S Mehta even for the following grounds.

a. I say that till Shri Harshad S Mehta was alive, no criminal case establishing any diversion of funds to him was decided. I say that since his demise, the criminal cases against him stand abated. I say that now it can never be established that any illegal diversion of funds was made by him.

b. I say that the Petitioner has failed in giving evidence on alleged diversion of funds to me. I say that however I am pleased to enclose a date wise chart of all the transactions for which funds have been received by late Shri Harshad S Mehta from the banks for which decrees have been passed against him at **Exhibit H**. I say that during the period when late Shri Harshad S Mehta was alleged to have received the funds from banks as shown in above exhibit, I have actually repaid monies to him and therefore there could not have been any diversion of bank funds to me. In support of my contention, I am pleased to enclose a period wise chart of gross borrowing of funds made by me from the brokerage firm of M/s Harshad S Mehta at **Exhibit I**. I am also pleased to enclose a period wise chart of gross borrowing of funds made by me from all the brokerage firms of M/s Harshad S Mehta, M/s Ashwin Mehta and M/s J H

Mehta at Exhibit J. These charts conclusively establish that I have borrowed monies prior to the statutory period and during the statutory period, I have actually repaid monies to these firms if the credit for unperformed contracts is given. Thus the funds received by me from M/s Harshad S Mehta has no nexus with the funds allegedly diverted by him from banks which as per Exhibit H has commenced only from 18.06.1991. I say that these charts have been drawn from the relevant heads of my books of accounts containing transactions with the three brokerage firms and includes both the completed and unperformed contracts. I crave leave of this Hon'ble Court to refer to and rely upon the books of accounts as and when produced. I say that thus the allegation made by the Petitioner is grossly incorrect and in fact, contrary to evidence cited by him in his petition.

c. I say that Petitioner ought to have specified the date and the quantum of funds diverted to me but he has failed to discharge his onus in making his case. This vital flaw is sought to be overcome by making presumptive statements and creating confusion. I say that all the assets acquired by me prior to receipt of bank funds stated in Exhibit H ought to be excluded from the purview of the petition. I say that the Petitioner ought to be called upon to link the receipt of funds by late Shri Harshad S Mehta to the flow of funds to me. I say that the shares purchased by me through M/s Ashwin S Mehta and M/s J H Mehta can also not fall within the ambit of benami purchases of late Shri Harshad S Mehta.

d. I say that assuming without admitting that late Shri Harshad S Mehta did divert funds from the banks, even then the Petitioner would have to further discharge the onus of establishing that I was involved with him in the diversion of such funds to establish my role and participation. I say that no such evidence has been cited by the Petitioner.

e. I say that the flow of money from late Shri Harshad S Mehta to me is in the nature of interest bearing loan taken by

me in the normal course of business and the bulk of it has been taken before the year ended 31.03.1991 i.e. prior to the statutory period. I say that I am pleased to furnish the particulars of flow of money both ways during the period of one year ended 31.03.1991 as under :-

**Particulars of flow of money from Shri. Harshad S. Mehta**  
**and its repayment during the period 01.04.1990 to**  
**31.03.1991**

Sr. No.	Bank Name	Payment Date	Paid	Received
1	Bank of America	16-Apr-1990		3000000
2	Bank of America	18-Apr-1990		1165000
3	State Bank of Mysore	11-Sep-1990		7400000
4	Bank of America	14-Sep-1990		15700000
5	State Bank of Mysore	14-Sep-1990		7058000
6	State Bank of Mysore	15-Sep-1990		300000
7	State Bank of Mysore	17-Sep-1990		4940000
8	Bank of America	18-Sep-1990		20000000
9	Bank of America	18-Sep-1990		20000000
10	Bank of America	1-Nov-1990	350000	
11	Bank of America	14-Dec-1990		500000
12	Bank of America	29-Dec-1990		310000
13	Bank of America	16-Feb-1991		33000
14	State Bank of Mysore	26-Mar-1991	1250000	
	<b>Net Received</b>		<b>78806000</b>	
			<b>80406000</b>	<b>80406000</b>

I say that it can be observed there from that an amount of Rs.7,88,06,000/- has come to me on a net basis during this period.

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SSR  
GIRLU

I say that similarly for the statutory period ended 08.06.1992, I am pleased to furnish the particulars of flow of money both ways which is as under :-

**Particulars of flow of money from Shri. Harshad S. Mehta and its repayment during the Statutory period i.e.01.04.1991 to 08.06.1992**

Sr. No.	Bank Name	Payment Date	Paid	Received
1	Bank of America	4-Apr-1991		550000
2	Bank of America	2-May-1991		50000
3	State Bank of Mysore	7-May-1991	200000	
4	Bank of America	16-May-1991		300000
5	Bank of America	20-Jun-1991		50000
6	State Bank of Mysore	4-Jul-1991	250000	
7	Bank of America	15-Jul-1991	400000	
8	Bank of America	1-Aug-1991		450000
9	Bank of America	12-Sep-1991		3000000
10	ANZ Grindlays Bank	13-Nov-1991		2000000
11	ANZ Grindlays Bank	17-Dec-1991		500000
12	ANZ Grindlays Bank	8-Jan-1992		5200000
13	ANZ Grindlays Bank	3-Feb-1992	12500000	
14	Bank of America	17-Mar-1992		500000
15	Bank of America	24-Mar-1992		500000
16	Bank of America	30-Apr-1992		500000
17	Bank of America	5-May-1992		200000
	<b>Net Received</b>		<b>18450000</b>	
			<b>31800000</b>	<b>31800000</b>

I say that it can be observed there from that an amount of Rs.1,84,50,000/- has come to me on a net basis during this period. I say that in September 1991, I had placed my registered shares with M/s Harshad S Mehta to arrange a loan of about Rs.3 crores against the same. I say that late Shri Harshad S Mehta in fact raised a loan of Rs.14 crores from M/s

V B Desai on my behalf as well as on behalf of other entities in my family. I say that accordingly late Shri Harshad S Mehta advanced me against the above arrangement, a sum of Rs.30 lacs and Rs.2 crores on 12.09.1991 and 13.11.1991 respectively. I say that the fact of borrowing of the above sum against the security of my shares has been confirmed by late Shri Harshad S Mehta in his affidavit dated 19.06.1995 in Misc. Petition No.49 of 1993, a copy of which is annexed hereto and marked Exhibit K. I say that thus if the above amount of Rs.2.30 crores is excluded, I have repaid Rs.45.50 lacs on a net basis to him during the statutory period. I say that on the dates on which late Shri Harshad S Mehta has received funds through the impugned transactions with banks as described in Exhibit H, there is no flow of funds to me (except Rs.5 lacs received on 24.03.1992 which is received from another bank) from him on those dates which also completely demolishes the case of the Petitioner.

f. I say that besides above, during the statutory period, I have made a net sale of shares of an amount of Rs.1,27,23,254/- and thereby repaid the loan of M/s Harshad S Mehta. In support of my above contention, I am pleased to enclose a chart at Exhibit L giving particulars of shares purchased and sold by me through the brokerage firm of M/s Harshad S Mehta during the statutory period of 01.04.1991 to 08.06.1992. I say that the above also conclusively establishes that I am not a recipient of any funds belonging to the creditor banks of late Shri Harshad S Mehta much less part of any diversion or a front of late Shri Harshad S Mehta..

g. I say that the fact of my borrowing of funds is also conclusively established from the evidence of payment of interest by me to lenders on my borrowings. I say that the evidence cited by me earlier disproves the case of my acting as a benami as well as being a recipient of monies diverted from the banks. The set of transactions undertaken by me with M/s Harshad S Mehta are independent of any other transactions

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undertaken by him and are governed purely by commercial terms.

h. I deny that I have ever acted as a benamidar or front of late Shri Harshad S Mehta or for that matter any other person including all the entities in my family. I say that I am a separate and distinct legal entity and an independent tax payer in my own right. I say that I have never lent my name for any transaction or to any person. I say that neither there was ever such a need or an occasion to do so. I therefore deny each and every allegation to that effect

i. I say that it was only logical to engage the brokerage firms within the family to undertake transactions which have been undertaken from the time of commencement of each brokerage firm. In case of M/s Harsahd S Mehta, these transactions have been undertaken for a period of more than seven years. These brokerage firms were engaged in the business of portfolio management and money lending. I say that my contention is established by the copies of letter heads, contracts and bills of all the three brokerage firms, a sample of which is enclosed at **Exhibit M colly**. I say that these brokerage firms were also arranging finance for a large number of their other clients. I say that these firms extended credit to me for purchase of shares and charged me interest @ 12% p.a. for actual utilisation of credit. I say that there existed a running account between me and these brokerage firms where mostly the account was not settled on a transaction to transaction basis but by bunching of several transactions on a periodical basis. The brokerage firms extended credit to me to earn interest and to enhance their brokerage income. I am pleased to enclose a chart at **Exhibit N** giving particulars of brokerage paid by me in the bills to the three brokerage firms between the period 01.04.1990 upto 08.06.1992 which amounts to Rs.30,83,809/-. I say that this does not include brokerage paid in the price. I say that even today, all the leading brokerage firms extend credit to their clients and the financing product is used to generate additional brokerage income.

j. I say that I obtained funding progressively of larger amounts after obtaining good returns on my investments and borrowed monies always within the most conservative limits of prudence. In support of my contention, I am pleased to enclose the valuations of my portfolio for the year ended 31.03.1990, 31.03.1991, 31.03.1992 and 08.06.1992 at Exhibit O colly. As against this, I am pleased to enclose a chart giving the particulars of my gross borrowings at Exhibit P.

k. I say that the years 1990, 1991 and 1992 witnessed an unprecedented boom in the stock market as a result of which, the value of my portfolio grew rapidly. In order to capture the opportunities presented by the market, initially I resorted to higher borrowings and made repayments by liquidating my portfolio when stock prices appreciated. I say that thus the risk taken by me of investing got rewarded and I am entitled to these gains. I say that my source for purchase of shares were my own capital, proceeds from the sale of shares, my booked profits supplemented by borrowings. I say that I had no knowledge about the source of funds of the above three brokerage firms and my transactions have no nexus or concern with the same and I put the Petitioner to the strict proof thereof.

l. I say that the loans taken by me were secured by the security of my registered and unregistered shares. I say that late Shri Harshad S Mehta handed over unregistered shares to the Petitioner for a very sizeable value which fact is disclosed by him in the covering letters making the disclosure of shares. In support of my contention, I am pleased to enclose copies of these letters dated 25.10.1994 and 31.01.1995 at Exhibit Q colly. I also rely upon three affidavits filed by late Shri Harshad S Mehta in M.A No.191 of 1994, M.A No.53 of 1994 and I have already cited earlier his affidavit in M.P No.49 of 1993. I say that even my shares were utilized as security but no authority for selling them was given. I am pleased to enclose a copy of my affidavit dated 22.05.1996 in Misc .Petition No.49 of 1993 at Exhibit-R where I have confirmed placing my registered shares

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with M/s Harshad S Mehta for security. I therefore have claims for the same against M/s Harshad S Mehta which is dealt with herein after. I say that further in an action carried out on 28.02.1992 by the revenue, a vast quantity of unregistered shares came to be seized by the revenue. In this regard, on 02.12.1994, late Shri Harshad S Mehta has addressed a detailed letter to the Assessing Officer which is enclosed at **Exhibit S** where inter alia, he has disclosed that these shares belonged to him, his family members and corporate entities and clients. I say that thus it would be abundantly clear that the title and beneficial interest in the shares purchased by me always remained with me and even the custody of assets remained with me save and except when it was handed over to the brokerage firms as and by way of security for monies borrowed by me.

m. I say that on 22.03.1996 in the course of my assessment proceedings for A/Y 1993-94, I have made submissions to the Assessing Officer covering several aspects including the arrangement existing between me and the three brokerage firms in my family. Further, I have also secured the confirmation letters from all the three brokerage firms in my family on 21.03.1996 in support of my submissions being made to the Assessing Officer. I am pleased to enclose at **Exhibit T colly** copy of my above letter dated 22.03.1996 together with the enclosures of letters of all the three brokerage firms referred to above.

n. I say that under the Benami Transactions Prohibition Act 1988, benami transactions have been defined. I say that the ingredients required to declare a benami transaction are completely missing in my case. I say that there is complete absence of intention or motives both on the part of late Shri Harshad S Mehta or on my part to create benami transactions. I say that the normal motives are to avoid tax or to avoid creditors which is not alleged by the Petitioner. I say that in fact late Shri Harshad S Mehta being a very solvent person chased creditors which fact is well documented. In support of my contention, I am pleased to enclose at **Exhibit U colly**, copies of letters

addressed by him to the Finance Minister, Deputy Finance Minister, R.B.I Governor, Janakiraman Committee, C.B.I, Chairman of State Bank of India, and the country head of ANZ Grindlays Bank (the two principal creditor banks) and a public statement dated 17.05.1992 making an offer to settle all his dues. I also rely upon copy of M.A No.215 of 1993 filed by late Shri Harshad S Mehta offering a repayment plan. I say that it was post notification that false and exaggerated liabilities came to be foisted upon him and the same went uncontested because of his sudden demise in judicial custody. I say that thus his death has brought upon him bankruptcy. I say that Smt Jyoti H Mehta in the capacity as legal heir has filed her affidavit on 13.06.2006 in Misc. Petition No.41 of 1999 where she has set out the facts and circumstances which has been responsible for the current state of the estate of late Shri Harshad S Mehta. I crave leave of this Hon'ble Court to refer to and rely upon the same as and when produced.

o. I say that since the Petitioner cannot establish on a transaction wise basis that they are benami transactions, he has opted to make a sweeping and presumptive allegation that all my transactions are benami transactions. Thus the Petitioner is seeking to declare a person as a benamidar rather than establishing the transactions as benami.

10, I have earlier contended that my registered shares used to lie with M/s Harshad S Mehta on account of which I have counter claims on him. I say that my registered shares were utilized by him to offer as security for borrowing Rs.14 crores from M/s V B Desai for myself as well as other family members. I say that in Misc. Petition No.49 of 1993, this fact has been admitted by late Shri Harshad S Mehta in his affidavit dated 19.06.1995 at Exhibit K. I say that in my case, 11900 shares of Castrol India Ltd, 7449 shares of Reliance Industries Ltd and 17550 shares of Tata Tea Ltd have been utilized to discharge the liabilities of M/s Harshad S Mehta. I say that by an order dated 01.11.2002, this Hon'ble Court has disposed of Misc Petition No.49 of 1993 whereby it has been held that Allbank Finance Ltd can

appropriate the above and other shares towards the receivables from M/s V B Desai at the rates recorded in their books and has further held that accordingly credit may be given to M/s Harshad S Mehta while settling the account between M/s V B Desai and him. I say that I have been directed to deposit all the accretions received by me on the registered shares with Allbank Finance Ltd. Accordingly, on 04.02.2004, the Petitioner has debited my account by an amount of Rs.2,01,58,195.60 and paid to Allbank Finance Ltd on account of dividends received by me on the above three registered shares. I say that the accrual of bonus on my registered shares lying in the custody of the Petitioner has also been transferred by him in favour of Allbank Finance Ltd, whose particulars have not been fully furnished to me. However, on the basis of details made available to me, I find that the Petitioner has made an excess payment of Rs.73,52,781.60 on account of dividends and has excess delivered 81920 shares of Castrol India Ltd. I have therefore recorded the fact of this excess payment of monies and shares by a letter dated 05.10.2006 addressed to the Custodian, a copy of which is annexed hereto and marked **Exhibit V**.

11. I say that the above cited registered shares were placed by me with M/s Harshad S Mehta merely as security and he had no right to sell the same which fact he has disclosed in his affidavit dated 19.06.1995. I say that the Hon'ble Special Court had not framed any issue in the above matter regarding adjudication between me and M/s Harshad S Mehta. I say that thus I have a claim to receive back my registered shares together with accrued benefits thereon in the form of bonus and dividends. I say that I am also entitled to receive excess payment of monies and shares effected by the Petitioner as recorded by me in my letter at Exhibit-V. I say that thus on 04.02.2004, I have debited the account of M/s Harshad S Mehta by an amount of Rs.2,01,58,195.60 treating that payment to Allbank Finance Ltd on account of M/s Harshad S Mehta. I say that therefore on and from 04.02.2004, I am claiming a set off of this amount against his claims. I say that in the event any amount is determined to be payable to M/s Harshad S Mehta by this Hon'ble Court then

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in that event, my claim of set off may be allowed. In the event any interest is adjudicated to be payable, then in that event, interest at the same rate may be awarded to me for the above payment made to Allbank Finance Ltd. I state that by my letter to the Petitioner, I have requested him to recover the excess payment of monies and shares from Allbank Finance Ltd. I state that in the event if the same is not recovered, the brokerage firm of M/s Harshad S Mehta would be liable to make good the same to me.

12. I am also pleased to enclose the computation of my claim for shares of an amount of Rs.9,75,35,407/- as on 25.09.2006 and a money claim of Rs.49,05,617/- on account of dividends in the charts enclosed at **Exhibit W colly**. I say that I am entitled to receive the shares of above three companies together with bonus shares and other accrued benefits like dividends as well as the excess shares delivered to Allbank Finance Ltd together with dividends thereon. I say that my claim is in the form of shares and the monetary value has been computed to arrive at an indicative value of the claim. I say that I am entitled to receive all the benefits till the above shares together with bonus and other accrued benefits are delivered to me alongwith the dividends i.e. my claim quantities and amount will stand updated till the date of actual payment to me.

13. I say that on 31.03.1992, I purchased 2 lac shares of Revathi Equipment .Ltd @ Rs.162.50 through the brokerage firm of M/s Harshad S Mehta, I say that I am pleased to furnish the particulars of my purchase in an enclosed chart at **Exhibit X**. I say that the total purchase consideration of Rs.3,25,00,000/- has been debited to my account in the books of M/s Harshad S Mehta though the delivery of shares have not been made to me and thus the contracts remained unperformed till date. I say that thus I have a claim on the firm of M/s Harshad S Mehta for the performance of the above contract where under, I am entitled to receive delivery of 2 lac shares of Revathi Equipment Ltd together with all the accrued benefits thereon in the form of bonus and dividends earned thereon. The company has issued

bonus in the ratio of 1:1 in the year 1997 and has regularly paid dividend except for the year 2003. I am pleased to enclose computation sheets of my claim of Rs.29,70,00,000/- as on 25.09.2006 against the brokerage firm of M/s Harshad S Mehta at Exhibit Y which figure will need to be updated until the actual date of payment to me. I clarify that my claim is in respect of shares and the accrued benefits thereon but I have computed the money value of the same as on 25.09.2006. I state that Smt Jyoti H Mehta, the legal heir of late Shri Harshad S Mehta had informed the Office of the Custodian by a letter dated 28.10.2004 that the shares of Revathi Equipment Ltd should not be sold as the brokerage firm of M/s Harshad S Mehta had purchased it for me. I say that ignoring this letter, the Petitioner still proceeded to sell the above shares without even making me a party or adjudicating my rights on these shares. I say that thereafter when the sale was being confirmed by this Hon'ble Court, my Counsel Shri Ajay Khandhar pointed this fact to this Hon'ble Court which fact is also recorded in the Judgment dated 15.03.2005 delivered by this Hon'ble Court confirming the sale of above shares. I am pleased to enclose a copy of letter of Smt Jyoti H Mehta dated 28.10.2004 and the above cited order of this Hon'ble Court at Exhibit Z colly.

14. I say that through the brokerage firm of M/s Harshad S Mehta, since 01.04.1991, I have purchased 123500 shares of Hero Honda Motors Ltd. I am pleased to furnish the complete particulars of purchase of shares in an enclosed chart at Exhibit AA. I am also pleased to enclose copies of contract notes in confirmation and support of purchase of the claimed shares at Exhibit BB colly. Against my above purchase, I have received a delivery of 67450 shares which stands duly registered in my name and I have been receiving dividends and other benefits on the same. I have not received delivery of 56050 shares and therefore I have a claim on the brokerage firm of M/s Harshad S Mehta for receipt of above shares together with all the accrued benefits thereon. I am pleased to give computation of my claim at Exhibit CC. I say that the above company issued bonus shares in the ratio of 1:4 in the year 1995 which was followed up

by another bonus issue in the year 1999 in the ratio of 1:1. I say that thereafter in the year 2001, the company has split the face value of the shares from Rs.10/- to Rs.2/- F.V, and therefore exchanged one share for five shares. I say that thus I have a claim for receipt of 756675 shares after taking into account the above benefits and a money claim of Rs.7,19,20,548/- on account of dividends issued on the shares. The value of the above 756675 shares as on 25.09.2006 comes to Rs.55,20,92,500/- and together with the dividend amount, the present monetary value of the claim would be Rs.62,40,13,048/- . I clarify that my claim remains for shares and the monetary value is computed to arrive at the present indicative value of the claim.

15. I say that through the brokerage firm of M/s Ashwin Mehta, since 01.04.1990, on a net basis, I have purchased 41800 shares of Tata Motors Ltd. I am pleased to furnish the complete particulars of purchase of shares in an enclosed chart at **Exhibit DD**. I am also pleased to enclose copies of contract notes in confirmation and support of purchase of the claimed shares at **Exhibit EE colly**. I have also effected purchase of Tata Motors Ltd shares through the brokerage firm of M/s Harshad S Mehta. Against my purchases from M/s Ashwin Mehta, I have not received a delivery of 38483 shares and therefore I have a claim on the brokerage firm of M/s Ashwin Mehta for receipt of above shares together with all the accrued benefits thereon. I am pleased to give computation of my claim at **Exhibit FF**. I say that the above company issued bonus shares in the ratio of 3:5 in the year 1995. I say that thus I have a claim for receipt of 61573 shares after taking into account the above bonus and a money claim of Rs.45,02,461/- on account of dividends issued on the shares. The value of the above 61573 shares as on 25.09.2006 comes to Rs.5,23,98,623/- and together with the dividend amount, the present monetary value of the claim would be Rs.5,69,01084/-. I clarify that my claim remains for shares and the monetary value is computed to arrive at the present indicative value of the claim.

16. I say that through the brokerage firm of M/s Ashwin Mehta, since 01.04.1990, on a net basis, I have purchased 2600 shares of Larsen & Toubro Ltd. I am pleased to furnish the complete particulars of purchase and sale of shares in an enclosed chart at **Exhibit GG**. I am also pleased to enclose copies of contract notes in confirmation and support of purchase of claimed shares at **Exhibit HH colly**. Against my purchases from M/s Ashwin Mehta, I have not received a delivery of 1950 shares and therefore I have a claim on the brokerage firm of M/s Ashwin Mehta for receipt of above shares together with all the accrued benefits thereon. I am pleased to give computation of my claim at **Exhibit II**. I say that the above company issued bonus shares in the ratio of 1:1 in the year 2006. I say that in the year 2004, on account of de-merger, shares of Ultratech Cement were offered to share holders of Larsen & Toubro in the ratio of 4:10. I say that thus I have a claim for receipt of 3900 shares of L & T and 1560 shares of Ultratech Cement Ltd after taking into account the above bonus shares. I have a money claim of Rs.2,60,617/- on account of dividends issued on the above two shares. The value of the above 1950 pre bonus shares of L & T and 1560 shares of Ultratech Cement as on 25.09.2006 comes to Rs.63,27,360/- and together with the dividend amount, the present monetary value of the claim would be Rs.65,87,977/-. I clarify that my claim remains for shares and the monetary value is computed to arrive at the present indicative value of the claim.
17. I say that through the brokerage firm of M/s J H Mehta, since 01.04.1991, on a net basis, I have purchased 20455 shares of A.C.C Ltd. I am pleased to furnish the complete particulars of purchase of shares in an enclosed chart at **Exhibit JJ**. I am also pleased to enclose copies of contract notes in confirmation and support of purchase of the claimed shares at **Exhibit KK colly**. I have also effected purchase of A.C.C Ltd shares through the brokerage firm of M/s Harshad S Mehta and M/s Ashwin Mehta. Against my purchases from M/s J H Mehta, I have not received a delivery of 986 shares and therefore I have a claim on the brokerage firm of M/s J H Mehta for receipt of above shares together with all the accrued benefits thereon. I

I am pleased to give computation of my claim at **Exhibit LL**. I say that the above company issued bonus shares in the ratio of 2:5 in the year 1992, made a rights issue in 1995 in the ratio of 1:10, bonus issue in 1996 in the ratio of 3:5, and one more rights issue in 1999 in the ratio of 1:4. This was also followed up in the year 1999 by a split in the F.V of shares from Rs.100/- to Rs.10/-. I say that thus I have a claim for receipt of 30369 shares after taking into account the above bonus, rights and split and a money claim of Rs.8,78,458/- on account of dividends issued on the shares. The value of the above 33369 shares as on 25.09.2006 comes to Rs.2,93,06,085/-/- and together with the dividend amount, the present monetary value of the claim would be Rs.2,92,98,528/-. I clarify that my claim remains for shares and the monetary value is computed to arrive at the present indicative value of the claim.

18. I say that through the brokerage firm of M/s J H Mehta, since 01.04.1991, on a net basis, I have purchased 105600 shares of Reliance Industries Ltd. I am pleased to furnish the complete particulars of purchase and sale of shares in an enclosed chart at **Exhibit MM**. I am also pleased to enclose a copy of contract note in confirmation and support of purchase of the claimed shares at **Exhibit NN colly**. I have also effected purchase of Reliance Industries Ltd shares through the brokerage firm of M/s Harshad S Mehta and M/s Ashwin Mehta. Against my purchases from M/s J H Mehta, I have not received a delivery of 23105 shares and therefore I have a claim on the brokerage firm of M/s J H Mehta for receipt of above shares together with all the accrued benefits thereon. I am pleased to give computation of my claim at **Exhibit OO**. I say that the above company issued bonus shares in the ratio of 1:1 in the year 1997 and issued shares in four companies pursuant to the de-merger in the year 2006. I say that thus I have a claim for receipt of 46210 shares of Reliance Industries Ltd after taking into account the above bonus issue and shares of four companies in the ratios as described in the claim exhibit. I also have a money claim of Rs.28,99,677/- on account of dividends issued on the shares. The value of the above 46210 shares as

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- well as the de-merged four shares as on 25.09.2006 comes to Rs.6,35,55,545./- and together with the dividend amount, the present monetary value of the claim would be Rs.6,64,55,222/-. I clarify that my claim remains for shares and the monetary value is computed to arrive at the present indicative value of the claim.
19. I say that through the brokerage firm of M/s J H Mehta, on 09.10.1991, I have purchased 12000 shares of Tata Tea Ltd. I am also pleased to enclose particulars of the transaction in an enclosed chart at **Exhibit PP**. I have also effected purchase of Tata Tea Ltd shares through the brokerage firm of M/s Harshad S Mehta and M/s Ashwin Mehta. Against my purchases from M/s J H Mehta, I have not received the delivery of 12000 shares and therefore I have a claim on the brokerage firm of M/s J H Mehta for receipt of above shares together with all the accrued benefits thereon. I am pleased to give computation of my claim at **Exhibit QQ**. I say that the above company issued bonus shares in the ratio of 1:2 in the year 1992 and bonus shares in the ratio of 1:2 in 1994. I say that thus I have a claim for receipt of 27000 shares of Tata Tea Ltd after taking into account the above bonus issue in the ratios as described in the claim exhibit. I also have a money claim of Rs.32,42,700/- on account of dividends issued on the shares. The value of the above 27000 shares as on 25.09.2006 comes to Rs.1,99,80,000./- and together with the dividend amount, the present monetary value of the claim would be Rs.2,32,22,700/-. I clarify that my claim remains for shares and the monetary value is computed to arrive at the present indicative value of the claim.
20. I say that the above facts clearly establish that I have several claims against all the three brokerage firms on account of counter claim or unperformed contracts whose cumulative value is far greater than the claim made by the Petitioner against me. I have thus no payable to the three brokerage firms. I am pleased to enclose in a chart a summary of all the above claims at **Exhibit RR**. I clarify that the claims filed in this affidavit in

reply cover only the large amounts and the list is not exhaustive. I have been ascertaining facts regarding the deliveries, registration and receipt of benefits to crystallize these claims. The books of accounts of the brokerage firms reflect amounts of even unperformed contracts and even as per the brokerage firm themselves, the liabilities were not crystallized pending delivery of shares. This fact is narrated a number of times by these brokerage firms. I humbly pray to this Hon'ble Court to permit completion of these contracts failing which the monetary value of the unperformed contract may be arrived at on a specified date and the credit may be given to me on the lines of claims made by me. I also pray that after taking into account my claims, if no monies are payable by me to the concerned brokerage firms, it should be declared by this Hon'ble Court that the assets purchased by me are entirely paid for and free of attachment and I may be permitted to transfer the same in my single name.

21. I now deal with the contents of the affidavit on a para wise basis.
22. As regards what is stated in para 1 is concerned, I say that it is only a formal paragraph and I have nothing to state.
23. As regards what is stated in para 2 is concerned, I say that I am the mother of late Shri Harshad S Mehta and his legal heir.
24. As regards what is stated in para 3 is concerned, I state that the petition is liable to be rejected on the ground of misjoinder of parties for reasons cited earlier in para 7(k). I deny that Respondent No.10 has huge claims of arrears of tax liabilities against me. I say that Respondent No.10 has made some patently illegal and high pitched assessments against me some of which have already been set aside. I say that this Hon'ble Court is neither concerned nor required to cause a recovery from me on behalf of the revenue as I am not a notified person. I say that so far as joining of Respondent Nos.10 and 11 to 13 as creditors of notified parties are concerned, they are neither

- necessary or proper parties and are therefore not required to be joined in the present petition for the reasons stated earlier. I say that even in the case of notified parties, this Hon'ble Court declined to join them as parties in Misc. Petition No.41 of 1999 by an order dated 31.03.2006. I say that these creditors were only made intervenors in the above cited matter. I say that since I am not a notified person or a judgment debtor of a notified person, they need not be joined even as intervenors. I say that an unnecessary burden is being cast upon me to face the creditors of notified parties only to create prejudice against me. I say that even as a matter of practice, the Petitioner in last fourteen years have not been joining creditors to bolster his case of recovery against the non-notified persons and to that extent, he has discriminated against me
25. As regards what is stated in para 4 is concerned, I have earlier denied the alleged diversion and therefore I put the Petitioner to the strict proof thereof.
26. As regards what is stated in para 5 is concerned, I deny what has been stated by the Petitioner who has not disclosed the fact that the revenue has been disbursed Rs.1227 crores by notified entities, the State Bank of India has received a sum of about Rs.590 crores as admitted by them to the Auditors M/s Vyas & Vyas appointed by this Hon'ble Court who have narrated this fact in para 13.4 of their report. I am pleased to enclose a copy of the relevant extract of the same at **Exhibit SS**. I state that the causes of delay, if any, in payment to the banks are manifold. I say that the unconditional offers of repayment made by my late son were spurned by the banks themselves. In support of my contention, I am pleased to enclose a copy of the letter addressed by ANZ Grindlays Bank dated 18.06.1992 to late Shri Harshad S Mehta in response to his offer for payment at **Exhibit TT**. In this letter, this creditor refused to acknowledge that he had receivables from late Shri Harshad S Mehta. I understand that even after demise of my late son, Smt Jyoti H Mehta, the widow, also made offers to this Hon'ble Court for repayment of monies to the banks, but yet again she did not

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✓ succeed. I say that so far as the other causes of non-payment to the banks are concerned, it is Respondent No.10 who is responsible for causing the delay by making high pitched demands against my late son as well as other members of my family and thereby took away all the liquid balances amounting to Rs.1227 crores which monies could otherwise belong to banks. I say that the premature sale of the shares alone have caused loss of about Rs.4748.79 crores to the notified entities which monies would have been more than sufficient to meet all the legitimate liabilities of all the notified persons. I am pleased to enclose a chart giving computation of such losses in respect of bulk deals at Exhibit UU. I say that the Petitioner has been responsible in wrongly espousing the cause of the revenue at the cost of banks and pushing through the sale of shares even before crystallisation of liabilities under the false pretext of liabilities towards the revenue. I say that the Petitioner has thereafter also failed in contesting false claims of the banks and has failed to bring to the notice of this Hon'ble Court that interest is not leviable on notified persons in terms of the order of Hon'ble Justice Shri S N Variava in M.A No.107 of 1993. I say that thus the banks have been incorrectly awarded interest running into thousands of crores. I say that in several instances, the Petitioner has failed to cause recovery running into hundreds of crores and as observed by the Hon'ble Supreme Court of India in their Judgment dated 03.01.2006 in the case of Ashwin S Mehta & Anr V/s Custodian & Ors in Appeal (Civil) 667-671 of 2004, the Petitioner has failed to prefer claims inter se amongst the notified entities. I say that after creation of the above hole in the asset and liability of my late son, the Petitioner is pleading before this Hon'ble Court through the present petition to take away my assets on grounds completely contrary to law, facts and equity. I also understand that there is no admitted diversion by late Shri Harshad S Mehta as alleged by the Petitioner and I put him to the strict proof thereof. I say that as my son has not survived, it is not possible to establish any illegal diversion of monies to him I say that the Petitioner has also not defined as to who are the members of Harshad Mehta Group.

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27. As regards what is stated in para 6 is concerned, I deny that any monies have been diverted to me by my late son and put the Petitioner to the strict proof thereof. I have earlier narrated the facts relating to transactions undertaken by me and therefore, I am not repeating the same.
28. As regards what is stated in para 7 is concerned, I say that it is true that on my investment portfolio, there has been accretion and that my liquid balances were deployed under term deposits. I say that however since this portfolio has remained attached, I never had the freedom to manage the investments. I could never sell the shares which were not performing nor could I acquire shares in lieu thereof which could have appreciated. I say that in case of some investments, I have also incurred losses. I say that besides this, there has been great loss of opportunity. I say that such vast investments always need the services of Portfolio Managers. I say that so far as claim of interest is concerned, I deny my liability to pay interest from the time my assets and bank accounts have been treated as attached. I deny this liability on the following amongst other grounds which are set out without prejudice to one another :-
- a. That while I have not been notified, due to the attachment of my banks accounts and my share holdings, I have suffered the consequences that of a notified entity only. I say and submit that at all points of time, I was solvent and capable of discharging my liability but I have been prevented from doing so due to the above legal disability cast upon me. In support of my contention, I rely upon the ratio of the Judgment of this Hon'ble Court in Misc. Appeal No.107 of 1993 delivered on 20.02.1995 by Hon'ble Justice Shri S N Variava in Paras Nos.72 and 98.
- b. I say that all my assets have remained in frozen and attached condition and thereby I have been prevented to utilise the assets or bank balances and my business activity came to a complete halt. I say that thus I should not be made liable to pay any interest during this period of my legal disability.

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- c. I say that there are several other consequences that I have faced because of the fact that I happen to be mother of late Shri Harshad S Mehta. I say that the revenue has foisted upon me high pitched liabilities running into hundreds of crores which are false and legally not tenable. I say and submit that I have been deprived of peaceful possession and use of my assets. I say that my portfolio of investment has been neglected for a period of fourteen years and I have been deprived of making any shuffling of portfolio to capture opportunities of investment. I say that the income from investment has been my main source of income which stood deeply affected.
- d. I say that the basis of computation of interest adopted by the Petitioner leads to charging of interest on interest which is impermissible in law.
- e. I say that the agreed rate of interest between me and the notified entities was only @ 12% p.a. chargeable on the actual usage of funds.
29. As regards what is stated in para 8 is concerned, I state that the decrees awarded in favour of banks are grossly incorrect for the following reasons :-
- a. I say that the decrees are largely ex parte and have not been contested by the legal heirs of late Shri Harshad S Mehta as they have not been in a position to do so. I say that Smt Jyoti H Mehta, widow of late Shri Harshad S Mehta is a notified person and a house wife. I say that she has not been extended any assistance of office staff, computers and records that was required to contest the decrees and to present the factual picture. I say that the Petitioner who was aware of several facts regarding the claims of the banks have failed to bring them before this Hon'ble Court. In support of my contention, I cite my affidavit dated 22.03.2006 filed in Misc. Petition No.41 of 1999 wherein I have explained the circumstances under which the

4 decrees have been passed and the factual errors about the exaggeration of liabilities.

b. I say that in terms of the order dated 20.02.1995 of Hon'ble Justice Shri S N Variava in Misc. Appeal No.107 of 1993, a solvent notified person is not liable to pay interest. I say that this Judgment of the Hon'ble Special Court is a binding law and the Petitioner ought to have pointed this out to this Hon'ble Court as the same was not applied in awarding of decrees of interest against late Shri Harshad S Mehta. I say that a large claim of damages has been awarded with interest in favour of State Bank of India which ought to have been contested as the claim was not tenable. I say that thus the liabilities of late Shri Harshad S Mehta are grossly exaggerated and factually incorrect and in fact his negative net worth is no justification for taking away my assets merely because I happen to be his mother.

30. As regards what is stated in para 9 is concerned, the same does not relate to me. However, I understand that this Hon'ble Court had appointed three firms of Chartered Accountants to draw the asset and liability position of notified entities. I understand that the assignment was given to these firms to draw the books of accounts but they failed to do so. I understand that thereafter, with a view to give co-operation, the notified entities themselves drew the accounts and placed it before the three firms of Chartered Accountants. I say that even my late son, given innumerable problems, also managed to draw his books of accounts and forward it to the three firms of Chartered Accountants on 07.09.2001. I understand that these firms thereafter refused to undertake the assignment in respect of late Shri Harshad S Mehta and therefore new auditors have come to be appointed after his demise. I deny that the notified party themselves showed in the books of accounts diversion from banks and financial institutions in excess of Rs.1700 crores. I say that the amount of decrees passed against late Shri Harshad S Mehta on account of the principal sums owed to banks is much less than Rs.1700 crores at Rs.1466.13 crores. I

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I say that there are excess claims of about Rs.149.33 crores. I say that late Shri Harshad S Mehta himself deployed for purchase of money market assets of an amount of Rs.345.03 crores and for purchase of shares of a value of Rs.354.99 crores, thus totaling Rs.700.02 crores. I am pleased to enclose at **Exhibit VV** a list containing particulars of money market assets purchased by late Shri Harshad S Mehta. I say that besides this, late Shri Harshad S Mehta had lent monies under the ready forward transactions a total amount of Rs.3294.93 crores, the particulars of which are enclosed in two lists (not exhaustive) at **Exhibit WW colly**. I say that therefore the case made out by the Petitioner is totally false and contrary to the evidence in his own possession. I say that if the monies were used by him to the extent of Rs.700 crores for purchase of assets and they were also utilized for lending under the ready forward mechanism, then how could they have been diverted to me and other notified entities or family members. I state that the books of accounts of my late son only discloses liability pending performance of contracts. I say that some of the transactions undertaken by late Shri Harshad S Mehta had remained outstanding to be performed and the amounts received by him pending performance constituted his liabilities and there is no diversion or admitted diversion of monies as the Petitioner is seeking to make out. I deny that the amounts shown under the heading Securities receipts / payment account discloses diversion in excess of Rs.1700 crores and put the Petitioner to the strict proof thereof. I say that so far as the report drawn by the new auditor is concerned, the same is grossly incorrect in many of its findings. This report is not reliable and in fact, the Auditor himself has so stated in his qualification. I say that this report also suffers for the following reasons :-

- a. That the same has been drawn after the demise of late Shri Harshad S Mehta who had the first hand knowledge about the business undertaken by him. The report has been drawn without referring to the staff members working with late Shri Harshad S Mehta who had the first hand knowledge about

§ several transactions undertaken by him. The auditor has failed in understanding the business of late Shri Harshad S Mehta which is evident from his conclusions. The Auditor perfunctionarily addressed some letters to Mrs Jyoti H Mehta, a house wife, who herself had no knowledge about the transactions or business of late Shri Harshad S Mehta and therefore could not have effectively replied to the queries raised by the auditor. The report is therefore grossly incorrect in making several observations about the business undertaken by late Shri Harshad S Mehta.

b. The report is also biased. His remarks about the business undertaken by late Shri Harshad S Mehta with his family members, the auditor has jumped to the conclusion without even raising a single query on me or any one of us. It is pertinent to note that for the purposes of verification and obtaining versions, the Auditor has written letters (Page No.143) to all the other parties except the members my family as the same would have prevented him from achieving his predetermined finding. There are other grossly incorrect findings that no interest was charged / paid to Shri Harshad S Mehta for monies given by him to his family member (Para 12.2 and 12.3 on Page 127).

c. The original task assigned by the Hon'ble Special Court was to draw the books of accounts and arrive at the asset and liability picture. Instead of undertaking this, the auditor has sought to investigate the transactions undertaken by late Shri Harshad S Mehta without being equipped with the skills and knowledge about the money market business

d. In any event, the auditor at the end has qualified the report in Para Nos.15.10 and 15.11 as under

***“Our scope of work does not enable us to accept responsibility for the accuracy and completeness of the information / particulars provided to us nor do we accept such responsibility.***

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*Because of all the above, we are unable to comment about the true and fair state of affairs of HSM."*

I say that thus the findings of the report cannot be and ought not to be binding upon any party as the same is not a reliable document. In any event, the Chartered Accountants who have prepared the report have not deposed to the contents of the same before this Hon'ble Court and even on this ground, the same cannot be admitted for evidence or treated as a reliable document.

31. As regards what is stated in para 10 is concerned, I deny the same as the averments are grossly incorrect as well as contrary to the evidence. I say that as per the books of accounts of the three brokerage firms, the total monies advanced by them to the individual family members as on 08.06.1992 is Rs.134,23,71,985/- crores, particulars of which are enclosed at **Exhibit XX**. This chart also discloses the monies advanced by these brokerage firms as on 31.03.1991 which totals at Rs.85,74,40,209/- Thus during the notified period, the monies advanced by the three brokerage firms to the family members is only Rs.48,49,31,781/-, the break up of which is Rs.16,34,53,932/- by M/s Harshad S Mehta, Rs.15,61,56,468/- by M/s Ashwin Mehta and Rs.16,53,21,381/- by M/s J H Mehta. The amounts cited in this chart are gross figures and the net figures of lending would be much less after excluding unperformed contracts and counter claims. I say that thus during the statutory period, the gross lending by M/s Harshad S Mehta was only about Rs.16,34,53,932/- covering the entire period from 01.04.1991 to 08.06.1992 whereas the Petitioner has alleged that monies in excess of Rs.1700 crores were diverted to the family members of late Shri Harshad S Mehta. The above chart completely demolishes the false case of the Petitioner which is claimed to be made on the basis of books of accounts, but the real figures are not produced before this Hon'ble Court as presented in the above cited chart. So far as I am concerned, he has alleged that I have received in all an

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amount of Rs.24,68,58,437.65 i.e about Rs.24.68 crores from other notified entities I deny the accuracy of this amount as the principal amount shown due to the brokerage firm of M/s J H Mehta Rs.11,78,99,544/- (say Rs.11.79 crores) is grossly incorrect even as per the books of accounts of M/s J H Mehta herself, the same is Rs.14,43,090.50. I say that while the books of accounts of M/s J H Mehta discloses a receivable amount of only about Rs.14.43 lacs , the Petitioner has claimed an amount of Rs.11.79 crores. Thus the excess claim on account of principal is about Rs.11.65 crores. On this false principal amount, the Petitioner has claimed an interest of Rs.29.09 crores. I say that the above amount disclosed in the books of account does not take into account and give credit for the pending contracts where shares are yet to be delivered to me and it is further subject to my counter claims. I say that thus the Petitioner has drawn the present claim contrary to the evidence he himself has relied upon. In support of my contention, I am pleased to enclose the relevant page of the books of account of M/s J H Mehta as **Exhibit YY**. So far as the money claim made on me, I deny that there is any diversion but the funds have been received by me in the normal course of business as a part of commercial lending transaction as explained earlier.

32. As regards what is stated in para 11 is concerned, I deny the gross flow of fund as stated by the Petitioner and put him to the strict proof thereof. I say that as stated earlier, the books of accounts do not truly reflect the actual flow of funds as the same can be determined by taking into account the performance of contracts. I say that therefore pending receipt of delivery of shares, the above amount is not my admitted liability towards M/s Harshad S Mehta. I say that I have claims on his brokerage firms for the delivery of shares together with accretions thereon in the nature of bonus, rights, dividends etc till date. I say that this fact is known to the Petitioner and yet he has not brought the same to the notice of this Hon'ble Court. In support of my contention, I am pleased to enclose a copy of letter addressed by Smt Jyoti H Mehta to the Petitioner on 28.10.2004 being **Exhibit ZZ**. I say that therefore, I deny the

- liability figure as arrived at by the Petitioner. I say that alongwith this affidavit in reply, I am filing the particulars of some of my claims and counter claims. I say that I am in the process of further crystallising my claims on account of unperformed contracts and counter claims and I crave leave of this Hon'ble Court to file a further affidavit for the purpose. I say that in the Misc. Application No.291 of 2006, I have already offered to keep my share holdings upto a value of Rs.40 crores as and by way of security to meet the contingency of any liability if they so get established. I say that in view of my claims for receivables, there is no liability to any of these three brokerage firms.
33. As regards what is stated in para 12 is concerned, I once again deny that there was any diversion of monies. I say that in fact, a part of the loan was extended to me for purchase of shares and debentures. I say that however a large part of my purchase was also financed by profits and by re-sale of existing holdings
34. As regards what is stated in para 13 is concerned, I deny the liability figure arrived at by the auditors as the same does not take into account whether the contracts for my purchase of shares have been completed or not. I say that late Shri Harshad S Mehta in several proceedings and correspondence has already admitted to holding shares on behalf of other notified entities, family members and clients which have been handed over by him subsequently. I say that besides this, I have a counter claim against late Shri Harshad S Mehta in respect of my registered shares utilised by him to settle his liabilities against the brokerage firm of M/s V B Desai and one All Bank Finance Ltd. The same formed a part of Misc. Petition No.49 of 1993 in which this Hon'ble Court has already given a Judgment on 01.11.2002. I say that thus a large number of unregistered shares and alleged benami shares have subsequently been transferred in the name of late Shri Harshad S Mehta under two separate accounts – unregistered shares and alleged benami shares, and I understand that the same have been sold and the credits have been deposited under separate accounts. I say that this fact is obviously known to the

7 Petitioner as well as ought to have been known to the firm of Chartered Accountants, but the same has not been dealt with by either of them. I say that the Petitioner has conveniently suppressed these details from this Hon'ble Court which itself establishes my contentions about absence of bonafides of the Petitioner. I say that thus the figures and the basis cited by the Petitioner in making out his case is to the above extent absent.

35. As regards what is stated in para 14 is concerned, I once again deny the liabilities on the same grounds as explained earlier by me in this affidavit.

36. As regards what is stated in para 15 is concerned, I deny that I am liable to produce my books of accounts as I am not a notified person. I say that the Petitioner being conscious that his petition lacks evidence is now seeking to obtain evidence from me to prove his case which may not be allowed by this Hon'ble Court. As stated earlier, I deny that the ultimate source of funds is late Shri Harshad S Mehta and put the Petitioner to the strict proof thereof. I say that I have also availed loans from the brokerage firms of M/s Ashwin Mehta and M/s J H Mehta. I say that I have funded acquisition of my shares through my own capital, sale of existing holdings and booked profits. However, after taking into account my counter claims, I have receivables from all the three brokerage firms and presently there is no liability towards them.

37. As regards what is stated in para 16 is concerned, the analysis made by the Petitioner does not disclose the time of borrowings of funds. I am therefore pleased to give in an enclosed charts at Exhibit AAA colly, an age analysis of my borrowings which establishes that after taking credit of unperformed contracts during the statutory period, I have actually repaid monies to M/s Harshad S Mehta. The Petitioner has conveniently suppressed this fact by presenting a combined analysis commencing from period 01.04.1990 upto 08.06.1992 rather than confining himself to the period when late Shri Harshad S Mehta received funds

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from banks as earlier described by me at Exhibit H. The Petitioner has therefore sought to mislead this Hon'ble Court.

38. As regards what is stated in para 17 is concerned, the same does not pertain to me and therefore I am not dealing with it.
39. As regards what is stated in para 18 is concerned, I deny that I am a front or benami of late Shri Harshad S Mehta or that the detailed analysis of the sources and application of funds establishes this fact. I have elaborately dealt with the issue earlier and therefore I am not repeating my submissions. I say that the revenue has also treated my assets as belonging to me. I say that even this Hon'ble Court as well as the Petitioner have for last fourteen years treated me as a separate legal entity. I say that for the rights issue, this Hon'ble Court has released monies from my account for subscribing to the shares offered to me by various companies. I say that the Petitioner has also treated our assets separately and deposited incomes generated by them separately to each one's separate account. I say that the redemption proceeds have also been so deposited.
40. As regards what is stated in para 19 is concerned, I say that while it is true that I am a mere housewife. I deny that I have no knowledge or could not have knowledge regarding purchase and sale of shares. I say that I have been maintaining my books of accounts separately, making representations before the revenue and several other authorities and signing each and every transfer deed as a transferee for getting the shares registered in my name. I say that this Hon'ble Court may in fact, obtain the transfer deeds from each and every company and verify that I have actually participated in transferring the shares in my name. I say that for undertaking business of purchase and sale of shares, there is no educational qualifications required and crores of house wives in this country regularly make investments. I say that I happen to have made investments at a time when the market was about to boom and because of the risk undertaken by me, my portfolio of investments appreciated rapidly in the boom years. I say that in

any event, the brokerage firms of my family members were undertaking portfolio management for investors under which they were required to make research and give advise regarding the purchase and sale of shares and render complete services for management of portfolio. I say that in fact, the three brokerage firms have charged much higher scale of brokerage than that was prevalent at the relevant time only because they were offering services of portfolio management where under they also enjoyed discretion to undertake decisions on behalf of the clients. I say that there are several firms who extend the services of portfolio management on discretionary basis where the decision regarding purchase and sale of shares are taken by the Portfolio Manager. I say that therefore the suggestion of the Petitioner is either naïve or completely mischievous. So far as the affidavit of Dr Hitesh S Mehta and Dr Pratima H Mehta is concened, it pertains to them and is binding upon them only. However, I understand that they have also filed their affidavits in Misc. Petition No.41 of 1999 denying the interpretation given by the Petitioner to their affidavits. I say that conveniently the Petitioner has not brought on record of this petition, the copies of their reply thereby once again supressing facts from this Hon'ble Court. I also once again cite letter addressed by late Shri Harshad S Mehta on 22.01.1991 to the Asst. Commissioner of Income Tax at Exhibit C to disprove the false allegations of the Petitioner.

41. As regards what is stated in para 20 is concerned, I admit that I had filed Application No.467 of 1999 and to which the present Petitioner had filed a reply on 25.10.1999. I say that as per the legal advise received by me, I withdrew the application from this Hon'ble Court with the liberty to file a fresh application. I say that this was due to the fact that my application was not exhaustive on facts. I say I have now once again preferred a modified and updated version of this application on 11.09.2006 being Misc. Application No.291 of 2006. I say that it may be pertinent to note from the reply of the Petitioner to my previous application, that there is no allegation made by him in the year 1999 that I am a benami or front of late Shri Harshad S Mehta. I

say that the affidavit of the Petitioner in that case was filed after more than seven years of the notification of the members of my family. I say that during this period, the Petitioner had obviously acquired complete knowledge about the facts governing each notified person and yet he then chose not to allege that I am a benami of my son. I say that the only change in circumstance that I can see between then and now is that my son died in the custody at a young age of 47. After his demise, all the decrees in favour of the banks came to be awarded together with interest without there being any contest whatsoever from the Petitioner. As stated earlier, the legal heirs of late Shri Harshad S Mehta were incapable of putting up a contest. I say that even the revenue liabilities have virtually got confirmed by ex parte orders. I say that thus the sudden demise of my late son has brought upon him bankruptcy although he was a solvent person. I say that now to meet these false and uncontested exaggerated liabilities in favour of alleged creditors of my late son, the Petitioner has filed the present petition with an ulterior motive to take away my assets to fill up the shortage in my late son's account. I say and submit that therefore the Petitioner ought to be estopped from alleging now after a period of fourteen years that I am a benami of late Shri Harshad S Mehta. I say that so far as the contentions narrated in respect of Respondent No.2 are concerned, since the same does not concern me, I am not dealing with them.

42. As regards what is stated in para 21 is concerned, I say that the Petitioner has not furnished any particulars of share holdings but only provided consolidated sums. In absence of any particulars, I am unable to contest the same. I have sought the particulars from the Petitioner and I crave leave of this Hon'ble Court to permit me to file a further affidavit after these particulars are made available.
43. As regards what is stated in para 22 is concerned, I deny that I am a benami or front of late Shri Harshad S Mehta for the facts and reasons stated by me earlier. I pray to this Hon'ble Court that the reliefs sought by the Petitioner are neither in

§ accordance with law nor justified and therefore the relief of declaration sought by the Petitioner ought to be denied.

44. As regards what is stated in para 23 is concerned, I say that it is true that I have purchased in my single name the Flat No.31 at Madhuli. The same flat has an area of 1533.88 sq.ft and comprise of one Living Room, One Bed Room, and one Kitchen. I say that this is the only residential premises that I own. I say that the same flat has come to be merged with other flats of the family members since the families of my four sons live as a joint family. I say that since the above flat is acquired in my single name, the same is not treated as an attached asset. I say that the same has been acquired in April 1990 much prior to the notified period of 01.04.1991 to 08.06.1992. I say that the same could therefore not have any relevance or nexus with the alleged diversion of monies which in any event, as explained by me earlier, commenced only from August 1991, almost after fourteen months from the date of purchase of my flat. I say that since the above flat is not an attached asset, this Hon'ble Court has no jurisdiction to declare it as a benami asset. I have earlier elaborately dealt with the allegations of the Petitioner and therefore I am not repeating my submissions. I state that in fact, I have already repaid an amount of Rs.1.25 crores on 03.02.1992 to M/s Harshad S Mehta by transferring this amount from my account maintained with ANZ Grindlays Bank. This represents the repayment of loans obtained from him including for the purchase of the flat. I therefore deny that my flat ought to be sold by this Hon'ble Court and that the sale proceeds out to be used to discharge the liabilities of late Shri Harshad S Mehta or of other notified entities. I say that my other assets and liquid balances are sufficient to meet my liabilities if they are so established by this Hon'ble Court.
45. As regards what is stated in para 24 is concerned, I have dealt with the issues and therefore I am not repeating my submissions.

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46. As regards what is stated in para 25 is concerned, I submit that the Petitioner has made out two diametrically opposite cases in the present petition and the same cannot mutually co-exist. I state that I cannot be a benamidar, front or trustee on one hand or borrower of monies for purchases of assets on the other. I say that therefore the Petitioner ought to be called upon by this Hon'ble Court to elect his case. I say that so far as I am concerned, I have no liability but in fact, have receivables from the brokerage firms of M/s Harshad S Mehta, M/s Ashwin Mehta and M/s J H Mehta. I admit my liability of principal sum towards Smt Deepika A Mehta. I say that the claim of liabilities on account of the brokerage firms needs to be adjudicated upon after taking into account my claim on account of unperformed contracts, my counter claims for my shares lying with these brokerage firms. I am also contesting and denying my liability to pay interest for the reasons already given by me earlier. So far as the amount of Rs.51,215/- payable to Smt Deepika A Mehta as principal is concerned, I am submitting to the decree and pray to this Hon'ble Court that the same may be paid forthwith from my bank account.
47. As regards what is stated in para 26 is concerned, I state that I have already made submissions in respect of the interest liability and I am not repeating the same. I say that notwithstanding what I have stated earlier and without prejudice, the contract rates as per the understanding between me and the other three brokerage firms was only 12% p.a. I say that the argument advanced by the Petitioner tantamounts to charging interest on interest which is impermissible in law. I say that during the last fourteen years, the fixed deposit rates have hovered between 4% and 8%. I say that in any event, even the Hon'ble Supreme Court in their Judgment 2005-AIR (SC)-94 dated 10.10.2004 have observed as under :-

***Citibank becomes entitled to restitution of the total amount paid by it to Standard Chartered Bank (principal and interest) along with interest @ 12% p.a. from the date of receipt of payment of scb provided it is paid on or before***

*01.09.2004 and in default to pay the interest @ 15% p.a. from the date of receipt of payment till it is paid by the Standard Chartered Bank. Citibank would also be entitled to receive back the amount of costs it had paid to Standard Chartered Bank under the decree of the Special Court but the same would not carry any interest. Though the appellant had prayed that the interest be granted at the same rate at which it was granted by the Special Court (i.e. 20% p.a.) but we have reduced the same keeping in view that interest rates have come down substantially in the recent years.”*

I say that I have not committed any default nor the entire amount was deployed in fixed deposits. It is also not true that I have earned interest at the higher rate and that I am making payment at a lower rate. As stated earlier, as far as I am concerned, I am not notified and there ought to be a presumption that I am not involved in any offences relating to transactions in securities. I say that therefore the averments made by the Petitioner and the reasons advanced by him are not applicable to me. In view of the above and in the interest of justice, I may not to be penalised as I have already suffered enormously for the last fourteen years.

48. As regards what is stated in para 27 is concerned, I say that I have made elaborate submissions earlier and therefore I am not repeating the same.
49. As regards what is stated in para 28 is concerned, I deny that my assets including my flats should be sold under the orders and directions of this Hon'ble Court and the net proceeds should be utilised to discharge my liabilities to the respective notified parties. I say that since I have receivables from the three brokerage firms, there is no question of selling my assets to meet my liability.
50. As regards what is stated in para 29 is concerned, I deny that pending the hearing and final disposal of the present petition,

- my assets may be sold under the orders of this Hon'ble Court. I say that there is no justification for the same in law and in facts.
51. As regards what is stated in para 30 is concerned, I deny that pending the hearing and final disposal of the present petition, I ought to be restrained by an order of injunction from this Hon'ble Court in any manner whatsoever from dealing with, alienating, transferring, creating third party rights, encumbering, selling any of the assets. I say that since I have claims of receivables from the three brokerage firms, there is no question of restraining me by an order of injunction. I say that my assets are presently attached and good part of it is presently in the custody of the Petitioner. The total value of assets in the custody of the Petitioner as admitted by him in Exhibit Q is far greater than money claims made by him in the present petition. I say that therefore in the interest of justice and balance of convenience suggest that such an order of injunction is not warranted or justified.
52. As regards what is stated in para 31 is concerned, I deny that pending the hearing and final disposal of the present petition, I should be required to file accounts before this Hon'ble Court from 01.04.1990 till date. I say that recently I have addressed several letters to the Petitioner calling upon him to make available to me all the data and records relating to the debits and credits effected by the Petitioner in my account. I say that since all my assets are under the management of the Petitioner, the facts relating to it are already known to him. I say that the Petitioner ought to prove his case on the basis of evidence in his possession and it would be unreasonable and against the law to direct me to assist him in establishing his case. I say that in any event, since the books of accounts are not ready and the cause for the same happens to be the Petitioner, this Hon'ble Court may direct the Petitioner to make available to me all the data, details, documents and records pertaining to management of my assets which records are solely in his possession. I say that since I do not have any liability but in fact have receivables

from other notified parties, there is no justification for granting this relief to the Petitioner.

53. As regards what is stated in para 32 is concerned, I deny that grave and irreparable loss, harm and injury would be caused to the Petitioner and all the creditors of late Shri Harshad S Mehta if the interim reliefs as prayed for are not granted. I state that all the assets, data and documents pertaining to me are already in the possession and management of the Petitioner. I say that the assets in the possession of Petitioner are also greater than the claims made against me. I say that thus the interest of creditors of late Shri Harshad S Mehta has already been taken care of. I say that the allegations about the possibility of concealment and misappropriation are also not justified more so since the Petitioner had already a period of more than fourteen years to safeguard the interests of late Shri Harshad S Mehta and his creditors. I say that since I do not have any liability but in fact have receivables from other notified parties, there is no justification for granting this relief to the Petitioner.
54. As regards what is stated in para 33 is concerned, I deny that the period of limitation is not applicable to the Petitioner for recovery of attached money. I also deny that the monies held by me are held in trust for and on behalf of creditors of late Shri Harshad S Mehta and his group. I say that there is no allegation of non-cooperation on my part in any way. I say that so far as late Shri Harshad S Mehta is concerned, he has drawn his books of accounts and furnished it to the Petitioner way back on 07.09.2001. I say that thus a long period of six years have been available to the Petitioner since he has drawn his books of accounts and placed it before the Petitioner. I deny that the Petitioner has gained knowledge only since 30.11.2005 as claimed by him as the books of accounts of late Shri Harshad S Mehta has been filed with him almost six years ago. I say that even the Hon'ble Supreme Court of India in their Judgment dated 03.01.2006 in Civil Appeal No.667-671, 672-675, 676-680 and 681 of 2004 has held that the Custodian may prefer claims against other notified entities on behalf of the so called largest

creditor of the group. I say that the Petitioner has been merely waiting to see how the scene emerges and thus accordingly prefer such applications apparently with ulterior motive of taking away the assets of related persons since I am mother of late Shri Harshad S Mehta.

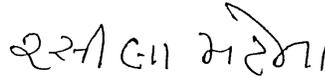
55. As regards what is stated in para 34 is concerned, I deny that this Hon'ble Court has jurisdiction to deal with my assets as I am not a notified person. I have earlier dealt with the issue of jurisdiction of this Hon'ble Court and therefore I am not repeating my averments in respect of the same.

56. As regards what are stated in paras 35 and 36 are concerned, the same are customary averments and I am not dealing with the same.

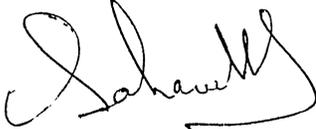
57. Under the circumstances and for the reasons cited by me, the present petition atleast so far as it pertains to prayer (a) is concerned, the same may be dismissed. I say that so far as it relates to money claim, this Hon'ble Court may adjudicate on the issue of pending and unperformed contracts and my counter claims and after taking into account my submissions relating to interest. I say that since I have receivables from the three brokerage firms, the present petition is liable to be dismissed. I also submit to the decree for an amount of Rs.51,215/- as prayed for in prayer (c) in favour of Smt Deepika A Mehta.

58. I state that I have sought inspection of the material relied upon by the Petitioner and the process of inspection is presently continuing. I therefore crave leave of this Hon'ble Court to file additional affidavit in future if the occasion so arises.

I say that whatever stated herein above is true and correct to my own knowledge and belief

  
(Smt Rasila Mehta)  
(Rasila S Mehta)

Before me



S AJAY KHANDHAR & Co.  
ADVOCATE HIGH COURT

  
Associate Justice  
Special Court, Bombay,

INTERPRETED by me in Gujarati

  
Sworn Interpreter

High Court, Bombay

Date ..... 06/10/2006

VERIFICATION

*Sus*

I Smt Rasila S Mehta, Adult, Indian Inhabitant, residing at 32, Madhuli, Dr. Annie Besant Road, Worli, Mumbai, 400 018., Respondent No.1 herein, do hereby solemnly declare that what is stated in the foregoing affidavit is true to my own knowledge and belief.

Solemnly declared at Mumbai

Dated this 6<sup>th</sup> day of Oct 2006

*22 Me 11 21 06*  
*(i.e. Rasila Mehta)*  
Before me

For Ajay Khandhar & Co

*[Signature]*

(Ajay Khandhar)  
Adv. for Respondent No.1

*sr. Advocate*  
*6/10/06*  
Associate  
Special Court, Bombay,

INTERPRETED by me in Gujarati

*[Signature]*  
Sworn Interpreter  
High Court, Bombay

Date ..... 06.10/2006

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*[Signature]*

*4*  
*8/10/06*