

**“The I.T. department filed MA 21 of 2011 before Hon’ble Special Court to seek release of Rs.1865.72 Crores towards its demands for AY 1992-93 and AY 1993-94 for all entities of Mehtas and misrepresented that the incomes are determined after giving each and every opportunity and providing all the documents/records to the assessee.”**



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

**MISC. APPLICATION NO. 21 OF 2011**

IN THE MATTER OF ad-hoc disbursement of funds to Income Tax Department against Tax dues of Late Shri Harshad Mehta and other Notified Parties.

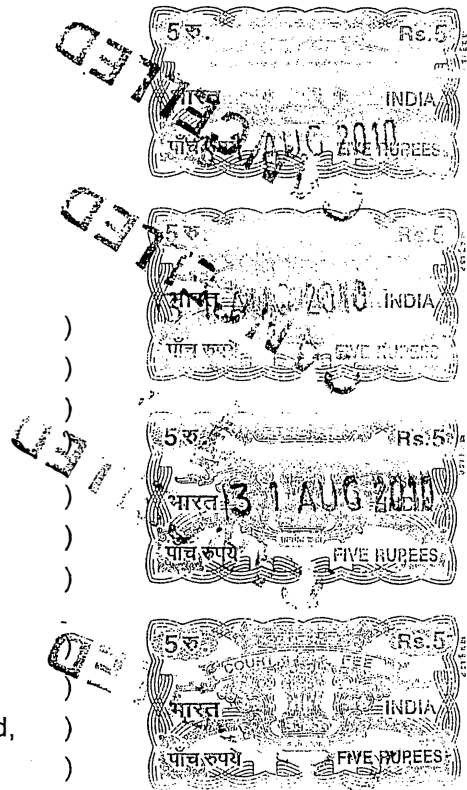
**Assistant Commissioner of Income Tax,**

Central Circle – 23, Mumbai  
Room No. 464, 4<sup>th</sup> Floor,  
Aayakar Bhavan, M K Marg,  
Mumbai – 400 021.

... Applicant

Versus

1. **State Bank of India** )  
State Bank Bhavan, )  
Madam Cama Road, )  
Mumbai – 400 020. )
2. Standard Chartered Bank )  
23-25, Mahatma Gandhi Road, )  
Mumbai – 400 021. )
3. Late Shri Harshad S Mehta )  
(Through L/H. Smt. Jyoti H Mehta) )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
4. The Custodian )  
having its office at )  
10<sup>th</sup> Floor, 221, Nariman Bhavan, )  
Nariman Point, Mumbai – 400 021. )



... Respondents

5. Harshad S Mehta Group )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
6. Smt Jyoti Mehta )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
7. Shri Hitesh Mehta )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
8. Smt. Pratima Mehta )  
32, Madhuli, Dr. Annie Besant Road. )  
Worli, Mumbai – 400 018. )
9. Smt. Deepika Mehta )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )

- 10. Shri Sudhir Mehta )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 11. Shri Ashwin Mehta )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 12. Smt. Rasila Mehta )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 13. Smt. Rina Mehta )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 14. M/s. Zest Holdings Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 15. M/s. Treasure Holdings Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 16. M/s. Velvet Holdings Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 17. M/s. Topaz Holdings Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 18. M/s. Pallavi Holdings Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 19. M/s. Orion Travels Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 20. M/s. Harsh Estate Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 21. M/s. Growmore Leasing & Inv. Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 22. M/s. Growmore Research & Assets )  
Management Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 23. M/s. Growmore Exports Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 24. M/s. Fortune Holdings Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )
- 25. M/s. Eminent Holdings Pvt. Ltd. )  
32, Madhuli, Dr. Annie Besant Road, )  
Worli, Mumbai – 400 018. )

26. M/s. Divine Holdings Pvt. Ltd. )  
 32, Madhuli, Dr. Annie Besant Road, )  
 Worli, Mumbai – 400 018. )
27. M/s. Cascade Holdings Pvt. Ltd. )  
 32, Madhuli, Dr. Annie Besant Road, )  
 Worli, Mumbai – 400 018. )
28. M/s. Aatur Holdings Pvt. Ltd. )  
 32, Madhuli, Dr. Annie Besant Road, )  
 Worli, Mumbai – 400 018. )
29. State Bank of Saurashtra )  
 Now Merged with State Bank of India )  
 State Bank Bhavan, )  
 Madam Cama Road, )  
 Mumbai – 400 020. )
30. Canbank Financial Services Ltd. )  
 No. 14, 6<sup>th</sup> Floor, Naveen Complex, )  
 M G Road, Bangalore – 560 001. )
31. State Bank of India Capital Market )  
 202, Maker Tower – E, Cuffe Parade , )  
 Colaba, Mumbai – 400 005. )
32. National Housing Bank )  
 Bombay Life Building, )  
 Veer Nariman Road, )  
 Mumbai – 400 023 )
- ... Respondents

To

THE HON'BLE JUDGE APPOINTED UNDER THE SPECIAL COURT  
(TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN  
SECURITIES) ACT 1992

THE HUMBLE APPLICATION OF  
THE APPLICANT ABOVENAMED

MOST RESPECTFULLY SUBMITTED:

1. I am filing this application in view of the directions given by the Hon'ble Supreme Court of India in the case of I.A. No. 2 of 2010 in Civil Appeal No. 2672 of 2009 dated 06/01/2011. A copy of the order/directions is annexed as **EXHIBIT-A**.
2. It is most respectfully submitted that as per the Custodian's report dated 11/08/2010, the asset position of Harshad S Mehta Group is as under:

(A) <u>Assets</u>	(Rs. in crores)
(i) Immovable assets	44.34
(ii) Movable Assets (Shares)	801.58
(iii) Bank Balances :	
(1) Current Account	6.70
(2) Fixed Deposit	1768.44
(iv) Bank Balance on Benami shares (Current A/c. & FD)	231.37
(v) Amounts receivable (Loans & Advances, Sundry Debtors and Miscellaneous Assets)	142.71
(vi) Surplus TDS amount with income tax	<u>25.04</u>
<b>Total Assets</b>	<b><u>3020.18</u></b>

- 2.1 It is respectfully submitted that as per report, out of total assets as above, liquid assets readily available for distribution are as under :

(i) Balance in Current A/c.	Rs. <b>4.96 crores</b>
(ii) Fixed Deposit in Bank	Rs. <b>1629.39 crores</b>
(iii) Balance on account of benami shares	Rs. <b>231.37 crores</b>
<b>Total</b>	<b><u>Rs.1865.72 crores</u></b>

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- 2.2 It is most respectfully submitted that income tax demand for **Priority Period** (A.Yrs. 1992-93 & 93-94), against the aforesaid funds available for distribution, is ascertained at **Rs. 2285.03 crores.**
- 2.3 It is respectfully submitted that as per report, priority demand of **Harshad Mehta Group** to Income Tax may reduce by **Rs. 50.15 crores** in view of the order of this Hon'ble Court dated 13<sup>th</sup> February, 2002 in Civil Appeal No.7672 of 1999 with Chief Commissioner of Income Tax Vs. Custodian wherein it is ordered that Income Tax Department shall be entitled to appropriate the amounts of TDS received by it only towards the tax liability of the **Notified Party** for the statutory period from 01.04.1991 to 06.06.1992. Therefore, as per Custodian, total ascertained demand is at **Rs. 2234.88 crores (Rs. 2285.03 crores minus Rs.50.15 crores).**
3. It is respectfully submitted that pending final distribution Hon'ble Supreme Court and Hon'ble Special Court have been releasing funds from time to time to the Income Tax Department with the undertaking of Revenue Secretary to bring back the said amount with such rate of interest as the Hon'ble Courts as direct, if it feel necessary at the time of final distribution.
4. It is respectfully submitted that after the enactment of the **Special Court (Trial of Offences related to Transactions in Securities) Act, 1992** and several round of litigations right up to Hon'ble Supreme Court finally the total Income Tax demand for the statutory priority period i.e. 1.4.1991 to 6.6.1992 has been **crystallized effectively at Rs.2234.88 crores. This amount has**

been crystallized based on Assessment Orders/Appellate Orders passed after giving full opportunity to the respective assesseees. I crave leave to refer to rely upon the Assessment Orders and orders of Commissioner of Appeals for the relevant year.

5. It is respectfully submitted that as per the aforesaid directions by the Hon'ble Supreme Court of India, this Hon'ble Court be pleased to pass the appropriate orders in accordance with the Law after hearing objections, if any, raised against the request for disbursement.

5.1. It is respectfully submitted that as per Special Courts (Trial Of Offences Relating to Transactions in Securities) Act, 1992, priorities for discharging the liabilities are ascertained in Sec.11(2) as under :

"(a) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of section 3 to the Central Government or any State Government or any local authority.

(b) All amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund

(c) Any other liability as may be specified by the Special Court from time to time."

5.2 It is respectfully submitted that as per the aforesaid provisions, Income Tax liability for the Priority Period has to be given first priority over and above the liabilities of Banks and other creditors. Unless the liability of Income Tax is paid, Banks and other creditors can't get any amount out of the funds attached by Custodian.

6. It is respectfully submitted that various decisions of Hon'ble Supreme Court, have decided the priority in confirmation to the provisions of Special Courts Act, 1992 for discharging the liabilities out of the funds available with Custodian.

6.1 In the case of Asstt. C.I.T. Vs. A.K. Menon, reported in 215 ITR 364, the Hon'ble Supreme Court has observed that **'the claims relating to the tax liabilities of a notified person are, along with revenues, cesses and rates entitled to be paid first in order of priority and in full, as far as may be. The Hon'ble Court has further observed to the extent that 'if a particular tax claim cannot at any time be paid in full, provision would have to be made for the balance, so far as may be, so that it is not jeopardized.'**

6.2 Hon'ble Court in the case of DCIT vs. State Bank of India and others vide order dated 03.12.2008 reported in 308 ITR 001 has observed vide Para 20 that **'the claims relating to the tax liabilities of a notified person, alongwith revenues, cesses and rates entitled, for the statutory period, to be paid first in the order of priority and in full, as far as may be, depending on various circumstances'**.

7. **It is respectfully further submitted that in the case of HSM group, ascertained Liability of Income Tax or the priority period as reflected in Custodian is report amounts to Rs 2234.88 crores. This amount has been arrived at after passing the appellate order after giving each and every opportunity and providing all the documents/records to the assessee. In this way, appellate order is well contested order in which now the assessment order has been merged. As per the interpretation of**



Hon'ble Supreme Court in the case of Harshad S Mehta vs. Custodian and others as mentioned above, since it does not remain a best judgment assessment, liability of Income Tax cannot be scaled down by the Special Court, hence the same has to be paid in full.

8. In view of the above, it is respectfully submitted that the Income Tax liability as on date is ascertained by the Custodian at Rs.2234.88 crores for the priority period which is after a well contested order passed by the CIT (A), whereas the liquid assets, readily available for distribution, amounts to Rs.1865.72 crores. Since, the Income Tax liability of Priority Period is much more than the funds readily available, the same has to be paid to the Department in full.


#### PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to,

- a. Direct the Custodian to release the funds of Rs. 1865.72 crores, in favour of Income Tax Department against the priority period liability of Rs. 2234.88 crores under section 11 (2) (a) of Special Courts (TORTS) Act, 1992 under such terms & conditions as this Hon'ble Court deem fit and proper.
- b. Pass such other and further orders/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- c. Cost of the application.

Dated this 1<sup>st</sup> day of February 2011.

  
Applicant



from attached annex of Harshad Mehta vs. Custodian

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VERIFICATION

I, ANIL SANT, Assistant Commissioner of Income-Tax, Central Circle - 23, Mumbai, do solemnly declare and state that the statements made in paras 1 to 8 of the above application are based on information available from the records of the case and I believe the same to true.

*declared.*  
Solemnly affirmed at Bombay

On this *1<sup>st</sup>* day of *February* 2011

*[Signature]*  
Applicant

*[Signature]*  
Advocate for the Applicant

Before me

*[Signature]*  
Associate *1/21/11*  
Special Court, Bombay.  
Special Court Bombay.

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*1/21/11*