

“SBI filed Application before Hon’ble Supreme Court claiming securities of Rs.258 Crores back from Custodian recovered by him from NHB. SBI urged that the said securities were delivered by HSM to NHB in March 1992 towards discharge of his liabilities and thereby the title had transferred to NHB and therefore when HSM got notified on 08.06.1992 these securities did not belong to him. SBI sought declaration of said securities as not belonging to HSM and undertook that it will give credit in respect of them in claim made on HSM.”

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I A NO. 4 OF 2002

IN

CIVIL APPEAL NO. 4146 OF 2002

National Housing Bank

... Appellate

V/s.

State Bank of India & Ors.

... Respondents/

Applicants

APPLICATION FOR DIRECTIONS

TO,
THE HON’BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICE OF THE
HON’BLE SUPREME COURT

THE HUMBLE APPLICATION OF THE
RESPONDENT ABOVENAMED

MOST RESPECTFULLY SHOWETH:-

1. The State Bank of India (“SBI”) had filed a suit against National Housing Bank (“NHB”) BEING Suit No.35 of 1995 seeking recovery of an amount of Rs.707,56,39,000/- with interest thereon from NHB on the basis that the said amount had been received by NHB on 13th June 1992 from SBI pursuant to directives issued by the Reserve Bank of India in June, 1992 and which amounts had been paid by SBI to NHB without prejudice to the rights of SBI to initiate appropriate proceedings to claim recovery of the said amount from NHB.

2. The brief facts relevant to the present Application are as under:
 - (a) In 1991-92 one Harshad S. Mehta, now deceased, (“late HSM”), a broker had brought to SBI various cheques drawn in favour of SBI from diverse counter-party banks in respect of certain transactions. The late HSM had then represented that the said cheques had been brought by the said late HSM on his own account and against his own transactions and had requested for the credits of the amounts and the proceeds of the said cheques. The late HSM had then sought such credit on the basis that by having the cheques drawn in favour of SBI instead of in his own name, he was in a position to obtain same day credit of the proceeds of the said cheques. It may be noted that according to SBI, during the relevant period 1991-92 it was a common practice amongst the bankers to afford such same day credit to constituents by the banks concerned.

- (b) In the course of such dealings the said late HSM, inter alia, brought a large number of cheques including 13 cheques from NHB and one cheque from the State Bank of Patiala drawn in favour of SBI and availed of the proceeds thereof. The aggregate value of the cheques thus brought in respect of the aforesaid transactions aggregated to Rs.707,56,39,000/-.
- (c) After the outbreak of the security scam in April/May 1992, NHB, claimed the said amount of Rs.707,56,39,000/- back from SBI.
- (d) Subsequently on a reference made to the Reserve Bank of India and on the Reserve Bank of India's intervention, SBI pursuant to the directions received from the Reserve Bank of India in this regard paid the amount of Rs.707,56,39,000/- to NHB in June, 1992. This payment, as stated hereinabove was made without prejudice to the rights of SBI to initiate appropriate proceedings against NHB for recovery of the said amount.
- (e) After receipt of the said monies, NHB on a closer scrutiny of its books of account alleged that the said payments had been made by NHB to SBI not in respect of any securities transactions but on account of the fraudulent connivance of two of its employees viz., one

Suresh Babu and one Ravi Kumar, acting in concert and collusion with late HSM and thereby diverted the said amount of money from NHB to SBI and that the said late HSM had thereafter received the benefits of the said amount.

- (f) In view of the contentions raised by NHB to the effect that the said amount had been wrongfully taken away by late HSM, SBI filed proceedings before the Special Court being Misc. Petition No.63 of 1992 which petition is pending before the Special Court at Mumbai.
- (g) After an attempt to resolve their difference with NHB, but failing to secure such resolution, SBI in order to save the bar of limitation was ultimately constrained to file Suit No.35 of 1995 against NHB claiming recovery return from NHB of the amount paid by SBI as directed by the Reserve Bank of India in June, 1992.
- (h) Whilst the said proceedings were pending SBI came to learn that on or about March 1992, the said late HSM had (deposited) packets containing securities of the ten aggregate value of Rs.258 crores which according to NHB were handed over by HSM to two of its officers who comprised the Funds Management Group. NHB subsequently handed over the said packets of securities to the Custodian appointed under the provisions of the Special Court Act, 1992. The said securities and / or the

amounts realized by the Custodian on their liquidation are currently lying with the Custodian. In this connection the Applicant crave leave to refer to and rely upon the papers and proceedings in Misc. Petition No. 63 of 1992 filed by SBI against the late HSM. The Applicant also crave leave to refer to and rely upon the papers and proceedings in Suit No.35 of 1995.

- (i) SBI by its Chamber Summons No.35 of 1999 dated 26th November 1999 sought an amendment to its Suit No.35 of 1995 which application for amendment was permitted by His Lordship Mr. Justice Kapadia by his order dated 17th February 2002. It is submitted that unfortunately, SBI and NHB had adopted adversarial positions concerning the loss caused by HSM as a result of the wrongful diversion of monies from NHB/SBI and the subsequent utilization of the same by HSM. It is submitted that what is of absolute consequence and that which cannot be controverted is that HSM wrongly caused the diversion of moneys from NHB/SBI and subsequently utilized the diverted sums of money and that the late HSM had in March 1992 attempted to hand over Rs.258 crores worth of securities to two of the officers of NHB.
- (j) It may be noted that it has consistently been the case of Respondent No.1 viz. NHB that certain officers of NHB comprising the Fund Management Group (hereinafter

for brevity's sake referred to as **"FMG"**) conspired and colluded HSM and enabled HSM to divert vast amount of monies from NHB to himself in conspiracy and collusion with certain officers of SBI.

- (k) It is equally an admitted position in so far as HSM is concerned, that the package of securities then aggregating approximately to Rs.258 crores was handed over by HSM to the said officers of the FMG of NHB.
- (l) That being the admitted conspectus, it is the Applicant's contention that the said securities were handed over by HSM to reduce his outstanding liability for the amounts diverted by him from NHB in collusion of the officers of the FMG of NHB and certain officers of SBI.
- (m) The Applicants submit that, as more particularly set out herein, HSM by his act in handing over the said securities to the two Officers of NHB did so with the clear intent of divesting himself of any right, title or interest to the said securities and with the further intent of reducing his outstanding liabilities for the amounts diverted by him.
- (n) It may be noted that in respect of the amounts diverted by HSM from NHB through SBI, NHB was, pursuant to the directives of the RBI reimbursed in or about June, 1992.

- (o) As stated hereinabove, this resulted in a suit being filed against NHB being Suit No.35 of 1995 which, has, pursuant to the directions given by the Hon'ble Supreme Court of India and by the Hon'ble Special Court constituted under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, resulted in a settlement being reached between NHB and SBI. Pursuant thereto, the parties are agreed that the benefit of realisation of the said securities at their current net value be permitted to be appropriated by SBI in partial liquidation of their outstanding claims against HSM.
- (p) The Applicant state that Misc. Petition No. 63 of 1992 has been filed by SBI against HSM and Others raising a claim on HSM in an amount of Rs.707 crores together with interest thereon at the rate of 21% per annum from 1992, which claim, as on date would aggregate to Rs.2193.45 crores.
- (q) The Appellant state that in the event of their claim being allowed, the outstanding claim against HSM would stand reduced to the extent of the value realised on a sale of the said securities to the extent of realisation of the proceeds of the said securities.

- (r) It is submitted that in view of the fact that the said securities have been handed over by the late HSM in March 1992 prior to his notification in June 1992, the title to the said securities has passed from the late HSM and as on the date of notification the said late HSM had no right, title or interest to or in respect of the said securities as HSM had handed over the securities to enable the same to be appropriated against his liability in respect of the sums diverted from NHB/SBI and subsequently utilized by him and consequent upon delivery of the said securities. It is submitted by the Applicants that the same should have been rightly appropriated for reduction of HSM's liability concerning the sum of Rs.707 crores used by him.
- (s) It is submitted that the said securities should and/or could have been and/or even now can applied by NHB/SBI against reduction of the amounts claimed by NHB/SBI from HSM. However, owing to the then prevalent atmosphere between various banks and the uncertain stage of knowledge of the various protagonists, instead of mitigating their loss by adjusting their dues against the said securities, the banks traded charges and counter-charges to the resultant benefit of the broker concerned, viz., the late HSM.

3. The Applicant, therefore state and submit as follows:-

In the events that have now transpired and pursuant to the exhortation made by the Special Court and this Hon'ble Court NHB and SBI have compromised and settled their differences and have agreed to withdraw their claims one against the other and to jointly pursue efforts in recovering the losses sustained by them against the late HSM and to appropriate the amounts thus received.

4. The Applicant submit that any such order would manifestly be in the interests of justice inasmuch as the same securities were evidently purchased out of the funds made available through NHB/SBI as admitted and acknowledged by the late HSM by his conduct and handing over of the said securities to the said officers of NHB in March 1992. It is further submitted that because of the hazy situation then prevalent and the uncertainties governing the stands adopted by the parties in the matter, the Custodian ought not to be permitted to lay claim to the said securities.
5. In this context it may further be noted as follows:
 - i. Both NHB and SBI have consistently taken the stand that the monies were diverted from both the banks by the late HSM through the active collusion of certain employees namely Mr. Ravikumar & Mr. Sureshbabu of NHB and Mr. R. Sitaraman of SBI. The amounts thus diverted by HSM acting in concert/collusion with the abovementioned employees were utilised for his own benefit. It is clear that the act of HSM in handling over

the securities worth Rs.258 crores was in order to discharge his liability in connection with the diversion of funds from the said two banks and consequently the same should be deemed to have been appropriated towards reduction of HSM's liability. By HSM, handing over the said securities in March, 1992 i.e. well before the date of his notification on 8th June 1992, has resulted in a situation where HSM cannot claim any right to the said securities or in respect of the said securities in as much as the same cannot be said to belong to the late HSM. In the premises the Applicants submit that the said securities could not be said to constitute attached property and the fact that the same were handed over by NHB to the Custodian cannot and does not create any right in favour of the Custodian to these securities. The Applicants respectfully submit that the handing over of the securities by HSM was an act on the part of HSM to mitigate the loss suffered by NHB/SBI on account of the wrongful act perpetrated by HSM in siphoning the money belonging to NHB/SBI. The Applicants submit that the fact that HSM took no steps thereafter whatsoever to recover or claim any right to the said securities itself bears out the contentions of the Applicants. As stated hereinafter, in view of the settlement arrived and as per the terms thereof it is just, convenient and necessary that the Hon'ble Court be pleased to pass suitable orders and directions as prayed for herein.

ii. The preamble of the Special Court Act, 1992 itself stipulates that the said Act has been enacted to punish the guilty and to restore confidence in the banking system, inter alia, by restoration of the moneys to the banks from whom the said moneys had been diverted. This fact has also been upheld by this Hon'ble Court in its judgment reported as **(9918) 5 SCC**, where this Hon'ble Court has held as follows:

“18. The last question can be answered first. As stated above, Section 3(3) clearly provides that the properties attached are properties which belong to the person notified. The words “belong to” have a reference only to the right, title and interest of the notified person in that property. If in the property “belonging to” a notified person, another person has a share or interest, that share or interest is not extinguished. Of course, if the interest of the notified person in the property is not a severable interest, the entire property may be attached. But the proceeds from which distribution will be made under Section 11(2) can only be the proceeds in relation to the right, title and interest of the notified person in that property. The interest of a third party in the attached property cannot be sold or distributed to discharge the liabilities of the notified person. This would also be in the position when the property is already mortgaged

or pledged on the date of attachment to a bank or to any third party. This, however, is subject to the right of the Custodian under Section 4 to set aside the transaction of mortgage or pledge. Unless the Custodian exercises his power under Section 4, the right acquired by a third party in the attached property prior to attachment does not get extinguished nor does the property vest in the Custodian whether free encumbrances or otherwise. The ownership of the property remains as it was.”

6. The Applicants further respectfully state and submit as under:
 - a) In Suit No.35 of 1995 which SBI has filed against NHB for recovery of sum of Rs.707 crores from NHB, one of the contentions raised by SBI is that the Packet of Securities worth Rs.256 Crores was deposited and/or must be presumed to have been deposited/handed over by HSM with/to NHB as and by way of a security towards the reduction/discharge of HSM's liabilities to NHB pursuant to various transactions in securities which NHB and HSM were entering into.
 - b) HSM in his Reply filed in Misc. Petition No.63 of 1992 has averred that he has dealings and transactions in securities with NHB.

- c) If SBI is right in its contention, then the Packet of Securities worth Rs.258 Crores deposited/handed over by HSM could not be said to “belong to” HSM and was intended to reduce his liability towards NHB/SBI arising out of monies diverted from NHB/SBI then NHB/SBI would in fact be entitled to appropriate the same towards its dues/liabilities of HSM to NHB/SBI in preference/priority to other credits of HSM.
- d) The said parties, i.e. NHB and SBI have now expressly agreed that NHB has assigned to SBI the right, if any, of NHB to recover and appropriate the securities worth Rs.258 crores which were deposited with two officers of NHB and which NHB has subsequently deposited with the Custodian.
- e) Suit No.35 of 1995 filed by SBI against NHB has in fact been compromised and under the Memorandum of Settlement between NHB and SBI, the parties have agreed that the said suit shall be withdrawn by SBI.
- f) The direct consequence of such a withdrawal would be that SBI would not be in a position to obtain a declaration and/or relief from the Special Court with regard to the Packet of Securities worth Rs.258 crores.
- g) The object and intent of the settlement between the NHB and SBI is, as held by the Special Court and reiterated by

the Supreme Court, that instead of two public sector undertakings litigating amongst themselves, they should on the contrary jointly pursue their remedies against the notified party viz. HSM. With this objective in mind SBI and NHB have resolved the differences and entered into a Memorandum of Settlement.

- h) Since the object of the settlement is that SBI and NHB should jointly pursue the remedies against the notified party, viz. HSM, it stands to reason that if HSM deposited these securities with two officers of NHB, the Custodian must be ordered and directed to hand over the same to SBI and SBI must be permitted to appropriate the same in reduction of the liability of HSM. NHB has agreed that it has no objection if SBI were to do so.
- i) If the relief as prayed for in the application were not granted, the only beneficiary would be HSM because HSM would become entitled to utilize the Packet of Securities worth Rs.258 Crores for discharging his other liabilities even though these securities were meant to **recuse** his liabilities to NHB/SBI.
- j) It is therefore in the interest both of NHB as well as SBI that the reliefs sought for in the Application filed be granted so as to complete justice between the parties under Article 42 of the Constitution of India as well as the Public Policy underlining the Special Court Act.

7. In the circumstances the Respondent/Applicant herein state and submit that it is proper, just and necessary and the interest of justice demand and the balance of convenience requires that this Hon'ble Court be pleased to:
- (a) declare that the said securities along with all accruals thereon handed over by the late HSM to the two officers of NHB in March 1992 having the then aggregate value of Rs.258 crores, list whereof is annexed hereto as ANNEXURE R-1 Colly does not constitute the property of HSM and should be appropriated towards liquidation of his liability to SBI/NHB;
 - (b) declare that the Custodian, Respondent No.3 hereto, had and has no right, title or interest to or in respect of the said securities in view of the fact that the said late HSM had ceased to have any right, title or interest therein and in view of the fact that the said securities did not then belong to the late HSM;
 - (c) declare that the said securities not constituting the property of the late HSM and not belonging to the late HSM could not and should not have been handed over to the Custodian;

- (d) that the said securities and all accruals thereon and the liquidated proceeds thereof should be handed over to SBI in view of the settlement arrived at between the said parties.

8. In the circumstances it is respectfully submitted that this Hon'ble Court be pleased to issue the following orders and directions:

PRAYER

- (a) The Applicant therefore pray that this Hon'ble Court be pleased to order and direct/declare:
- i) that the said securities alongwith all accruals thereon handed over by the late Harshad S. Mehta to the said officers of National Housing Bank in March 1992 having then the aggregate value of Rs.258 crores, list whereof is annexed hereto as ANNEXURE "R-1 Colly" does not constitute the property of HSM and should be appropriated towards liquidation of his liability to SBI/NHB;
 - ii) that the Custodian, Respondent No.3 hereto, had and has no right, title or interest to in respect of the said securities in view of the fact that the said late HSM had ceased to have any right, title or interests therein and in view of the fact that the said securities did not then belong to the late HSM;

- iii) that the said securities not constituting the property of late HSM and not belonging to the late HSM could not and should not have been handed over to the Custodian;
 - iv) that the said securities and all accruals thereon and the liquidated proceeds thereof should be handed over to SBI in view of the settlement arrived at between the said parties.
- (b) for ad-interim reliefs in terms aforesaid;
- (c) for such further and other reliefs as the nature and circumstances of the case may require.

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