

"The Hon'ble Special Court passed an order in MA 270 of 1993 to appoint 3 independent firms of Chartered Accountants to draw the books of accounts and undertake verification of all the transactions with third parties and present a Report to the Special Court."

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES AT BOMBAY

MISC. APPLICATION NO. 270 OF 1993

A. K. Menon, Custodian. Applicant.

Vs.

1. Harshad Mehta,
2. Ashwin S. Mehta,
3. M/s. Ashwin S. Mehta,
4. Growmore Research & Assets Management Ltd.,
5. Sudhir S. Mehta,
6. M/s. Harshad Mehta,
7. Growmore Leasing & Investment P. Ltd.,
8. Mrs. Jyoti H. Mehta,
9. M/s. Jyoti H. Mehta,
10. C. B. I.,
11. The Chief Commnr. of Income Tax. Respondents.

Mr. A. M. Setalwad with Mr. Rajadhyaksha i/b Mithi & Co. for the Applicant.

Mr. M. R. Jethmalani with Mr. R. V. Gandhi i/b Kanga & Co. for the Respondents 1 to 9.

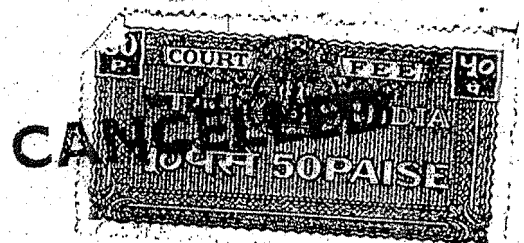
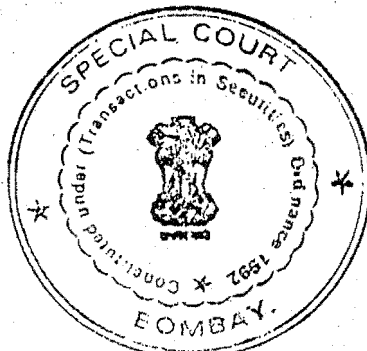
Mr. P. R. Namjoshi with Mrs. Katdare for C. B. I.

Mr. A. G. Bobade with Mr. Manjrekar for Income Tax.

CORAM: HON'BLE MR. JUSTICE
S. N. VARIAVA
3rd February 1994.

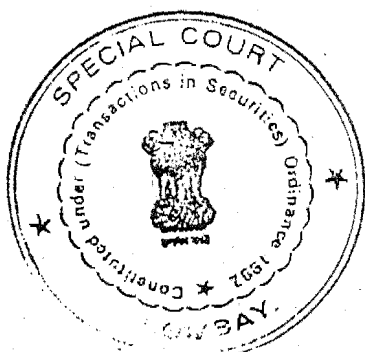
ORAL ORDER :

By this Application the Custodian seeks certain directions regarding appointment of firms of Chartered accountants and ancillary directions pursuant to nine Orders all dated 3rd August 1993.



passed in Misc. Application Nos. 118 of 1993, ~~123~~ of 1993, 126 of 1993, 129 of 1993, 130 of 1993, 140 of 1993, 151 of 1993, 152 of 1993 and 153 of 1993. By these Orders inter alia it is provided as follows :

"4. The Custodian will appoint one or more auditors to prepare and audit the accounts of the 1st Respondent from 1st April, 1990. The auditors will be entitled to obtain all requisite information and documents from the Respondents or any other person in possession of the same. They will be entitled to use the computers of Respondent No. 1 and requisite hard discs and floppy discs will be made available to the auditors by Respondents Nos. 2 and/or 3. The remuneration of the auditors will be determined by the Custodian. The persons named in Clause 2 will assist the auditors. The auditors will complete the work and submit a report to Court as expeditiously as possible and preferably within 3 months. The auditors will be entitled to furnish reports from time to time as the work is completed.



5. The remuneration payable to the auditors will be released from the bank account of the Respondent No. 1."

To be mentioned that Respondents Nos. 1 to 9 herein was Respondent No. 1 in each of those Applications.

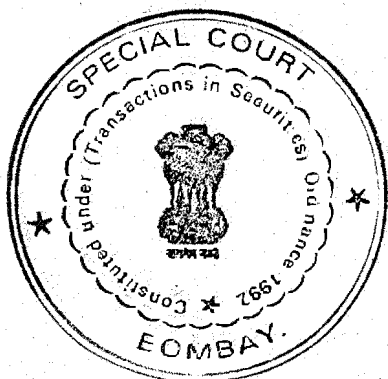
After these Orders were passed, the Custodian reported to Court that a number of firms had been approached for the purpose of ascertaining whether they were willing to prepare the accounts of the Respondents 1 to 9. It would appear that all the firms were refusing to undertake the task. The Custodian requested the Court to help in convincing a firm to undertake this task. The Court noticed that amongst the firms which had been approached was the firm of Messrs. Kalyaniwalla & Mistry. As this firm was acting as my Chartered Accountants and as I knew the partners of this firm, I spoke to a senior partner.

After that the Custodian and/or his representative has had meetings with the partners of Messrs. Kalyaniwalla & Mistry. I was then informed that Messrs. Kalyaniwalla & Mistry have agreed to undertake this task, but only on certain conditions. It would appear that one of the conditions laid down was, that looking to the enormity of the task and number of individuals



and/or firms involved, they would need assistance of other firms. It appears that between the Custodian and Messrs. Kalyaniwalla & Mistry it was agreed that the firms which would assist would be the firms of Messrs. Kapadia Damania & Co. and Messrs. Natwarlal Vepari & Co. Thereafter the Custodian has filed this Application.

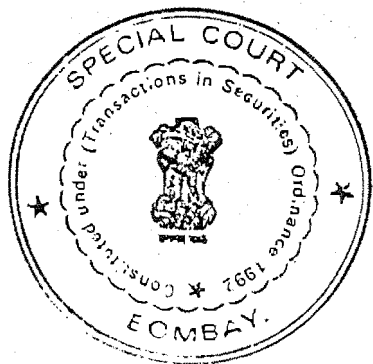
The Court has found itself in an embarrassing position inasmuch as the firm of Messrs. Kapadia Damania & Co. is a proprietary concern of Mr. Homi Damania who is my relative. This Application was on my board on 2nd February 1994 when Mr. Jethmalani was informed that Messrs. Kalyaniwalla & Mistry were my Chartered Accountants and that Mr. Homi Damania was my relative. On taking instructions, from Mr. Ashwin Mehta who was present in Court, Mr. Jethmalani stated that Mr. Ashwin Mehta is representing Respondents 1 and Respondents 3 to 9. Mr. Jethmalani stated that Respondents 1 to 9 have no objection on this ground. He however complained that the fees were exorbitant. To Court also it appeared that the fees quoted were high. However the difficulty was that nobody else was willing. The Court made it clear to Mr. Jethmalani that it was for his clients to decide whether to agree or not. The Court suggested to Mr. Jethmalani that this was a matter



AMW

which his clients could sort out with the Chartered Accountants. It was agreed that Respondents 1 to 9 would talk to the Chartered Accountants and then inform this Court what they proposed to do. This Application was therefore adjourned to yesterday. Yesterday it was kept back till today.

Today Mr. Jethmalani informs the Court that his clients have discussed with the firms of Chartered Accountants. He informs the Court that his clients are agreeable to these three firms being appointed and the fees quoted being paid. The Court enquired from Mr. Jethmalani whether his clients were agreeing under a mistaken impression that if they do not agree they would incur disfavour with the Court. The Court made it clear that the Court was not personally interested in the appointments of any of these Chartered Accountants and that if Respondents 1 to 9 so desire, an effort could be made to find other firms. Mr. Jethmalani again took instructions, from Mr. Ashwin Mehta who is in Court and assured this Court that there is no such impression. He assured the Court that his clients have agreed out of their own free will and consent. The Court again makes it clear to Mr. Jethmalani that if there is any misapprehension, the Court must be informed right now and some other Chartered Accountants can still be looked for. Mr.



Am

Jethmalani replies categorically that there is no misapprehension. Mr. Jethmalani tells the Court that this has been agreed to because it is difficult to find any other Chartered Accountants.

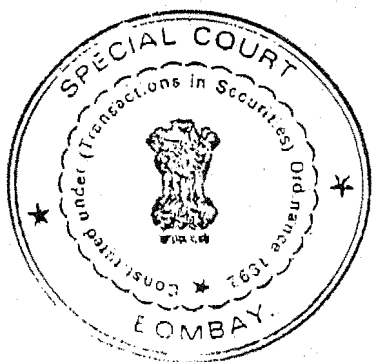
Mr. Namjoshi and Mr. Bobade state that C. B. I. and Income Tax Department will render all assistance and will follow the directions of this Court.

Under these circumstances, by consent of parties, the following Order is passed :

The firm of Messrs. Kalyaniwalla & Mistry, Messrs. Kapadia Damania & Co. and Messrs. Natwarlal Vepari & Co. are appointed for the purposes of preparing Statements of Accounts and liabilities of each of the Respondents 1 to 9, for the period 1st April 1990 to 8th June 1992. As far as possible the work to be completed within a period of 6 mths. It is agreed between the parties that space will be provided to these three firms next to the present office of the Custodian. I am informed that I. D. B. I. has agreed to do so.

The C. B. I. will hand over to the Custodian all computers together any floppy discs, hard discs and software which may have been seized from Respondents 1 to 9. All these computers to be kept in the space provided.

The Income Tax Department to render all

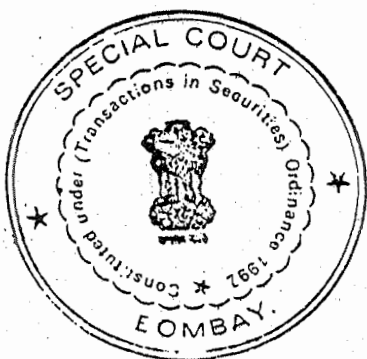


assistance and to supply such information as they have already gathered from the computers of Respondents 1 to 9.

The Custodian will be at liberty to adequately furnish the space as required by the Chartered Accountants. In the first instance the Custodian to ask the Respondents 1 to 9 to provide necessary furniture. If Respondents 1 to 9 have the furniture and can and are willing to provide it from some other office of theirs, the same to be taken from those offices. If any furniture is not available or cannot be made available, the same to be purchased by the Custodian. The monies to come out of such accounts of the Respondents 1 to 9 as directed by Respondent No. 2.

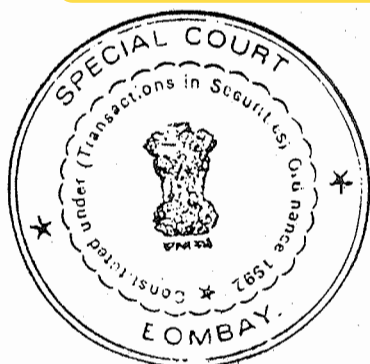
The Custodian to ensure that this space is properly secured and isolated and that this place is properly locked up and sealed at the end of each working session.

For the purpose of operation of computers, the help of National Informatic Centre, Delhi to be taken. For this purpose the Custodian at liberty to enter into a Memorandum of Understanding with National Informatic Centre. The Memorandum of understanding and charges payable to National Informatic Centre and/or the personnel deputed by them, to be settled with consent of



Respondent No. 2 and in the event of any dispute by this Court on a report to that effect by Respondents 1 to 9 as directed by Respondent No. 2. If required by the National Informatic Centre the Custodian at liberty to purchase such more computers as required at a costs not exceeding Rs. 20 lacs. The operation of the computers to be by the Custodian or his representative, the National Informatic Centre and the Chartered Accountants or their representatives in the presence of all. Any one from Respondents 1 to 9 or their representative may be allowed to remain present when these computers are being operated provided confidentiality is not being affected. The Chartered Accountants and/or the Custodian to be the Sole Judge whether at any point of time Respondents or their representatives are not to be permitted to remain present.

It is possible that in the process of preparing accounts, further information is required from the Income Tax Department or C. B. I. or from any other Financial Institutions or Bank. The Custodian is at liberty to call upon these parties to supply the relevant information. On being called upon to do so, all parties to supply the relevant information subject to a claim for confidentiality which the party claiming must



agitate before this Court.

The Order dated 3rd February 1994 to continue to apply in so far as it is not inconsistent with this Order.

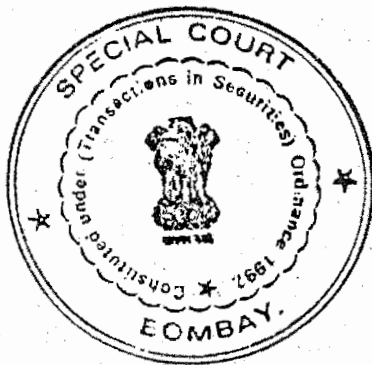
Parties at liberty to approach this Court in the event of any difficulty.

The Application stands disposed off accordingly.

--oOo.--

om

Applied on 3/2/94
 Pages (9)
 Examined by R.M. Kubal
 Compared with B.S. Kadam
 Ready on 15.2.94
 Delivered on 15.2.94



Certified to be a true copy
[Signature]
 OFFICER ON SPECIAL DUTY
 Office of the Special Court
 Bombay.