

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

MISCELLANEOUS PETITION NO.41 OF 1999

The Custodian appointed under  
the Special Court (Trial of  
Offences relating to transactions  
in securities) Act, 1992 having his  
Mumbai Office at 9<sup>th</sup> floor,  
Nariman Bhavan, Vinay K. Shah Marg,  
Nariman Point, Mumbai-400021. ...Petitioner

vs.

1. Harshad S. Mehta (Deceased)  
1(a) Mrs. Jyoti H. Mehta,  
1(b) Mrs. Rasila S. Mehta,  
1(c) Mr. Aatur H. Mehta  
2. Shri. Ashwin S. Mehta  
3. Shri. Hitesh S. Mehta  
4. Smt. Jyoti H. Mehta  
5. Smt. Deepika A. Mehta  
6. Smt. Pratima H. Mehta  
Indian Inhabitants, having their  
office at 1205-6  
Maker Chambers V, 221,  
Nariman Point, Mumbai-400021.

7. M/s. Aatur Holdings Pvt. Ltd.  
a Company incorporated under the  
Companies Act, 1956 and having  
its office at 1205-6 Maker  
Chambers V, 221 Nariman point,  
Mumbai-400021.

8. Commissioner of Income Tax.  
(Central-II, Mumbai having his  
Office at Aayakar Bhavan,  
M.K. Road, Mumbai-400020.

9. Sudhir Mehta,  
having his office at  
1205-6, Maker Chambers V,  
221, Nariman Point,  
Mumbai-400021.

10. Standard Chartered Bank  
(now owning and operating the  
business formerly known as ANZ  
Grindlays Bank Ltd. & later  
Standard Chartered Grindlays  
Bank) a company incorporated  
under the provisions of the  
laws of England and Wales and  
having its registered office  
at Aldermanbury Square,  
London EC 2V 7SB carrying  
on banking business in India  
and having one of its branches  
at 23-25, Mahatma Gandhi Road  
Mumbai-400001.

11. State Bank of India, A  
Corporation incorporated under  
the provisions of the State  
Bank of India Act, 1955 having  
its Local Head Office at  
State Bank Bhavan, Madam Cama  
Road, Fort, Mumbai-400021.

12. SBI Capital Markets Ltd. a  
Company incorporated under the  
Companies Act, 1956 and having  
its registered office at 202,  
Maker Tower, Cuffe Parade  
Mumbai 400005.

... Respondents.

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Mr. G. R. Joshi @ Mr. Shiraz Rustomjee & Ms. Leena  
Adhvaryu & Ms. Shilpa Bhate i/b. M/s. P. M. & Mithi &  
Co., for the Custodian/Petitioner.

Mr. I. H. Syed i/b. R. A. Shaikh, for the Respondents 1  
to 7, 9.

Mr.B.M.Chatterjee, for Income Tax Dept.-Respdt-8.

Mr.Zal Andhyarujina with Ms.Amrita i/b. Dave & Girish, for Respondent no.10.

Ms.Pratibha Mehta i/b. Little & Co., for Respondent nos.11,12/SBI.

Mr.Pradeep Sancheti i/b. Mulla & Mulla, for Canfina

**CORAM: D.K.DESHMUKH, J.**

**DATED: 30<sup>th</sup> April, 2010**

**JUDGMENT**

1. This is a Miscellaneous Petition taken out by the Custodian seeking directions of this Court for sale of Flat no.32A, 32B, 33, 34A and 34B, 44A, 44B and 45 in the building known as "Madhuli" situated at Annie Besent Road, Worli, Mumbai. These flats are admittedly owned by the notified parties. The facts which are relevant for deciding this petition are as under:-

On 6.6.1992, the Special Court (Trial of Offences relating to transactions in securities) Ordinance, 1992 was promulgated by the President of India. The ordinance provided for the establishment of a Special Court with a sitting Judge of a High

Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It also provides for appointment of one or more Custodians for attaching the property of the offenders with a view to prevent diversion of such properties by the offenders. This ordinance came into force on the same date viz. 6.6.1992. On 8.6.1992, the Custodian appointed under the Ordinance issued a notification notifying Mr. Harshad Mehta and his business concerns, some of the members of his family and their business concerns under the Act. The parties who own flats in the building "Madhuli" which are subject matter of this petition, were also notified by the Notification dated 8.6.1992 alongwith Mr. Harshad Mehta. A writ petition being Writ Petition no. 1547 of 1992 was filed by Mr. Hitesh Mehta who is brother of Mr. Harshad Mehta and also one of the owners of the flats which are subject matter of this petition, in this Court challenging the validity of the ordinance. That writ petition was decided by the Division Bench of this Court by

the Judgment which is reported at "Hitesh S. Mehta Vs. Union of India & Anr., 1992(3) Bom.C.R. 716. The Division Bench dismissed the petition.

2. A Bill was presented in the Parliament for replacing the above referred Ordinance and on that Bill being passed, the Special Court (Trial of Offences relating Transactions in Securities) Act, 1992 (hereinafter referred to as "the Act") was enacted and it replaced the Ordinance. One of the consequences of the name of a person being notified under the Act is that any property movable or immovable or both belonging to such person stands attached. Sub-section (4) of Section 3 of the Act provides that the Custodian shall deal with the attached property as per the directions issued by the Special Court. Sub-section (1) of Section 11 of the Act empowers the Special Court to make such orders as may be necessary directing the Custodian to dispose of the attached properties.

3. So far as the attached properties of the

notified persons are concerned, they were mainly of two types viz. (1) Shares and securities and (2) immovable properties.

4. On 20.2.1995 in Miscellaneous Application no.107 of 1993 and other similar Miscellaneous Applications the Special Court had formulated certain questions and directed the Custodian to move the Supreme Court. Hence, Civil Appeal being Civil Appeal no.5225 of 1995 was filed by the Custodian before the Supreme Court. In that appeal the notified parties had also filed Civil Applications before the Supreme Court. Those Applications were disposed of by the Supreme Court by order dated 11.3.1996. By that order, the Supreme Court directed the Custodian to draft a scheme in relation to the disposal of shares which were held by the Custodian on behalf of the notified parties and which were attached properties. The order dated 11.3.1996 passed by the Supreme Court has been referred to by the Supreme Court in paragraph 40 of its judgment in the case

"Harshad Shantilal Mehta Vs. Custodian & Ors, (1998)5 Supreme Court Cases 1". Paragraph 40 reads as under:-

"40. This Court, by an order dated 11.3.1996, had also directed the Custodian to draft a scheme in respect of the shares held by the Custodian whereby such shares can be sold from time to time. The Custodian was also directed to forward the Scheme for the approval of the Union of India. Pursuant to these directions, the Custodian forwarded a draft scheme for approval to the Union of India. The Ministry of Finance, Department of Economic Affairs (Banking Division) approved the draft scheme sent by the Custodian with certain modifications. The Final scheme incorporating the modifications by the Union of India has been filed in this Court. This scheme, with further modifications, if any, shall be considered by the Special Court and appropriate orders may be

passed by the Special Court in respect of the Scheme so submitted."

Thereafter pursuant to the above quoted order, this Court made order dated 17.8.2000 finalising the scheme for sale of the attached shares. An appeal was filed against that order of this Court, which was disposed of by the Supreme Court by its order dated 23.8.2001. Thus, the attached shares were sold by this Court including shares belonging to the notified parties who are parties in this petition, pursuant to the scheme framed by this Court as narrated above.

5. On 26.4.1999, the Custodian filed this Petition seeking permission of this Court for sale of the residential premises referred to above (hereinafter referred to as "Madhuli"). There was another miscellaneous petition taken out being Miscellaneous Petition no.4 of 2001 praying for sale of commercial premises belonging to the notified parties. Those petitions were opposed by



the notified parties on various grounds. However, I rejected those objections by order dated 17.10.2003 mainly relying on the judgment of the Supreme Court in the Harshad Mehta's case referred to above, specially paragraph 13 thereof, which reads as under:-

"13. The directions, therefore, for disposal under Section 11(1) can be given only after the Special Court has satisfied itself that the property under attachment is the property which belongs to the notified person. The directions for disposal can only be in respect of the right, title and interest of the notified person in the attached property. If, therefore, any application is filed before the Special Court by a third party claiming the property so attached and/or for releasing the right, title and interest of a third party in the property from attachment, the Special Court will have to decide the application before proceeding under Section 11."

I held that as the properties are admittedly owned by the notified parties, and therefore, they are attached properties, they will have to be sold under sub-section (1) of Section 11 of the Act.

6. In the Ordinance, there was no provision made for a person whose name has been notified under the Act, applying for cancellation of that notification or in other words seeking denotification. However, in the Act, a provision to that effect is incorporated in sub-section 2 of Section 4 of the Act, which reads as under:-

**"4. Contracts entered into fraudulently may be cancelled.-**

(2) Any person aggrieved by a notification issued under sub-section (2) of Sec.3 or any cancellation made under sub-section (1) of Sec.4 or any other order made by the Custodian in exercise of the powers conferred on him under Sec.3 or Sec.4 may file a petition objecting to the

same within thirty days of the assent to the Special Court (Trial of offences Relating to Transactions in Securities) Bill, 1992, by the President before the Special Court where such notification, cancellation or order has been issued before the date of assent to the Special Court (Trial of offences Relating to Transactions in Securities) Bill, 1992 by the President and where such notification, cancellation or order has been issued on or after that date, within thirty days of the issuance of such notification, cancellation or order, as the case may be; and the Special Court after hearing the parties, may make such order as it deem fit."

Thus the persons whose name have been notified by the Custodian under Section 3 of the Act, can file petition objecting to such notification in relation to those persons who have been notified before the commencement of the Act within thirty days of the

date on which assent was given by the President to the Special Court (Trial of Offences relating Transactions in Securities) Bill, 1992 i.e. within a period of 30 days from 18.8.1992. In case, all those persons whose names have been notified after that date, within a period of thirty days from the date of the notification. In so far as the notified parties with whom this petition is concerned, they were all notified on 8.6.1992 i.e. before commencement of the Act, therefore, they could file an application for denotification within a period of 30 days from 18.8.1992. The notified parties to whom this petition relate, had filed applications for denotification but those applications were withdrawn by the notified parties. They again filed application for denotification but that application was again withdrawn by them. In so far as the limitation provided by sub-section (2) of Section 4 of the Act for making an application for denotification is concerned, that question has been decided by the Supreme Court by its judgment in the case

"Fairgrowth Investments Ltd. Vs. Custodian, (2004)11 Supreme Court Cases 472". The Supreme Court has held that the period of limitation (Thirty days) provided by sub-section (2) of Section 4 of the Act is mandatory and that the Court has no power to condone delay in making the application. The notified parties again filed applications for denotification in the year 2009 being Miscellaneous application no.208 of 2009 "Smt.Deepika A. Mehta vs. The Custodian" and other applications. Those applications were decided by me by order dated 26.2.2010. Those applications were rejected by me relying on the judgment of the Supreme Court in the case "Fairgrowth Investments Ltd" referred to above, because they were filed beyond the period of limitation provided under sub-section (2) of Section 4 of the Act. Thus, presently there is no application pending before this Court filed by these notified parties seeking denotification.

7. Against my order dated 17.10.2003 passed in

Miscellaneous Petition no.41 of 1999 and Miscellaneous Petition no.4 of 2001, appeals were filed before the Supreme Court. Those appeals were decided by the Supreme Court by its judgment in the case "Ashwin S.Mehta & Anr. Vs. Custodian & ors., (2006)2 Supreme Court Cases 385". The Supreme Court did not disturb my order made in Miscellaneous Petition no.4 of 2001 which related to sale of commercial properties belonging to the notified parties, but order in relation to the residential properties was set aside and the matter was remanded back to this Court for fresh hearing. While this petition was pending before me, the Custodian put in a Report for sale of certain attached shares belonging to these notified parties. On that report, I made order on 2.11.2007 permitting sale of the shares. Against that order, appeal was preferred before the Supreme Court which is decided by the Supreme Court by its judgment in the case "Sudhir S.Mehta & ors., Vs. Custodian and another, (2008)12 Supreme Court Cases 84". The main challenge to my order was on the ground that

the order of sale of the attached shares were made without complying with the directions issued by the Supreme Court by its judgment in "Ashwin Mehta's Case". The Supreme Court by its judgment in "Sudhir Mehta's case" in paragraph 36 has referred to the contentions that were raised before it. Paragraph 36 reads as under:-

"36. The contentions raised by Shri.Jethmalani based on the aforementioned judgment are:

(1) That the Custodian and the Special Court have failed to comply with the directions given by this Court in the aforementioned judgment dated 3.1.2006 in Civil Appeals Nos.667-81 of 2004 (hereinafter called Ashwin Mehta case) and more particularly, in paras 41, 42, 46, 47, 51, 52 and 53, the whole argument turns practically on this very issue.

(2) That there was no reason for the Special Court to have ordered the sale of shares, and the Custodian as well as the Special Court have failed to

justify the decision to put the shares on auction and distribute the liabilities.

(3) That such decision is arbitrary and the sale of the shares shall lead to serious loss to the notified persons. The liabilities were only of late Shri. Harshad S. Mehta and not of the other notified parties and since the assets of the notified parties can meet their liabilities, the sale of the shares by auction was not justified. This is all the more true in view of the fact that the Custodian has not yet found the inter se liabilities of the notified parties, when their applications for denotification are not decided and pending before the Special Court.

(4) It was also submitted by the learned counsel that because of the earlier sale of the shares, the parties were put to the loss of 6500 crores and that though the objections for denotification were pending before the Special Court, the same have not yet been



disposed of and, therefore, the decision to sell the shares belonging to the notified parties is wholly incorrect.

(5) That the whole decision to put the shares for sale by auction is jurisdictionally, procedurally, as well as financially not correct.

It will be, therefore, our task to test these propositions on the anvil of the judgment in Ashwin Mehta case, which is treated to be the backbone of the arguments of the appellants herein." (emphasis supplied)

The Supreme Court in its judgment in "Sudhir S.Mehta's" case has, thus, examined the validity or otherwise of my order for sale of shares belonging to these notified parties in the light of the law laid down by the Supreme Court in its judgment in Ashwin Mehta's Case. The Supreme Court by its judgment in Sudhir Mehta's case upheld the order passed by me for sale of the shares.

8. From the above narration it is clear that as a result of notification of the persons who own flats in the Building "Madhuli" under Act, their moveable properties mainly shares and securities and immoveable properties i.e. residential and commercial stood attached. So far as the sale of shares and securities are concerned, they were sold pursuant to the scheme framed by this Court and approved by the Supreme Court treating them as members of Harshad Mehta group. While the bulk of shares were sold, not even an objection was raised that they should not be treated as members of the group while selling the shares. This aspect has been noted by the Supreme Court in its judgment in Sudhir Mehta's case. What is observed by the Supreme Court in paragraph 45 of its judgment in Sudhir Mehta's case, in my opinion, is pertinent. It reads as under:-

"45. This takes us to the aforementioned paragraphs heavily relied upon by the learned counsel in the judgment of Ashwin Mehta's

case. In para 41, it was stated that it was open to the appellants 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. We do not find that there was any attempt on the part of the appellants to disassociate themselves from Harshad Mehta Group. When we see the judgment dated 17.8.2000 passed by the Special Court, it is obvious that the learned counsel arguing that matter had argued it on behalf of the Harshad Mehta Group. It is for this purpose that we have quoted in the argument before the learned Special Judge in extenso. We will only quote a sentence which forms a part of the argument:

"it was contended that on a proper and legal assessment, the actual tax liability of Harshad Mehta Group would be marginal and a large portion of the amounts would have to

be refunded by the revenue. He contended that in case of Harshad Mehta Group, the demands made by the Department are based on the best judgment assessments, which are highly exaggerated. He contended that the assessment orders are ex-parte in nature. He contended that Harshad Mehta Group is contesting the demands before the Appellate Authorities." (emphasis supplied)"

It was, therefore, obvious that at that juncture, when the question was as to whether the shares should be sold or not, the move was objected to by the appellants formulating themselves as Harshad Mehta Group. No such objection to form and treat the relatives as a group was raised before the Special Court in the year 2000 when the question of sale of shares fell for consideration for the first time. At any rate, unless it is shown as to what prejudice would be caused by treating them to be a group, this

contention has no basis. We, therefore, do not think that the argument in this behalf has any basis. (emphasis supplied)

Thus, it is clear that when bulk of the shares were sold, no objection was raised that they should not be treated as members of one group while selling the shares. That objection was raised for the first time before the Supreme Court when my order dated 2.11.2007 for sale of shares was challenged. The Supreme Court by its judgment in Sudhir Mehta's case rejected that challenge. Thus, now the position obtained is that the shares have been sold and are being sold treating the above notified parties as Harshad Mehta group. The order for sale of the commercial properties was given by me by the order made in Miscellaneous Petition no.4 of 2001. That order has been upheld by the Supreme Court. Thus, while selling commercial properties, these notified parties have been treated as members of Harshad Mehta group. Therefore now, really speaking, only for the purpose of sale of residential properties, there is no reason why they

should not be treated as one group. If for the purpose of sale of residential properties they are not treated as group it will create anomalous situation that for the purpose of sale of all other kinds of properties i.e. shares, securities and commercial properties, they are to be treated as members of Harshad Mehta group, however, when it comes to sale of the residential properties, they cannot be treated as members of Harshad Mehta group. They are to be treated as Harshad Mehta group because of their involvement in securities transactions and business alongwith Harshad Mehta.

All the notified parties who are concerned with this petition were notified alongwith Harshad Mehta by notification dated 8.6.1992. They were notified by the same notification by which Harshad Mehta was notified because of their connection with Harshad Mehta and their involvement in the securities transactions with Harshad Mehta. Two of the notified parties who are involved in this petition viz. Mr.Sudhir Mehta and Mr.Ashwin Mehta were prosecuted by the Special Court for their

involvement alongwith Harshad Mehta in the offences relating to securities Scam and they have been convicted and sentenced to suffer imprisonment by this Court and their conviction has been upheld by the Supreme Court. The notified party viz. Jyoti Mehta, alongwith her affidavit dated 25.2.2010 has filed a copy of final declaration dated 24.1.1991 signed by Harshad S.Mehta, Ashwin S.Mehta, Hitesh S.Mehta, Sudhir S.Mehta, Rasila S.Mehta, Jyoti H.Mehta, Deepika A.Mehta and Pratima H.Mehta, wherein it is stated thus:-

"Our family is run as a Joint Hindu Family. We, all live together. Our joint efforts is one of the most important factors that has contributed to the growth of our business. Our business is such that it requires very close control at the operational level. The different members of the family have taken charge of various areas of crucial importance in our business e.g. Research, on-the-floor trading, dealing in Money market, Share

handling, accounts, finance, etc. My wife Mrs.Jyoti Mehta and Ashwin's wife Mrs.Deepika Mehta while handling other functions in the office, also work as authorised clerks and hold the necessary badge for entry into the trading floor of the Stock Exchange, Bombay."

Thus, involvement of these notified parties in the business with Harshad Mehta is an admitted position.

9. When, I took up this petition for consideration for second time, I again made the order for sale of the flats. The order is dated 25.7.2008. In making the order, I had heavily relied on the law laid down by the Supreme Court in its judgment in Sudhir Mehta's case.

10. An appeal against my order dated 25.7.2008 was decided by the Supreme Court by its judgment in the case "Jyoti Harshad Mehta(Mrs.) and others. Vs. Custodian and others, (2009)10 Supreme Court Cases



564". The Supreme Court set aside the order and remitted the matter back again for fresh hearing.

11. While remanding the matter back by its judgment in Ashwin Mehta's case, the Supreme Court had issued specific directions which are found in paragraphs 77 and 78 of its judgment under the heading "Conclusion".

12. While deciding the matter afresh, by order dated 25.7.2008 I had recorded finding in relation to each of the directions issued by the Supreme Court. The Supreme Court while disposing of the appeal in Jyoti Mehta's Case has referred to each of the directions issued by it, contained in paragraph 77 of its judgment in Ashwin Mehta's case, and my findings thereon, in paragraphs 11 to 27 of its judgment, which reads as under:-

"11. The Special Court in the impugned judgment noticed that it was to decide the issues in accordance with the directions of

this court in Ashwin Mehta', wherefor it quoted in extenso the conclusions and directions issued. We shall proceed to deal with each of the eleven directions that had been given by the this Court in Ashwin Mehta while remitting the matter back to the learned Judge, Special Court and how accordingly the Special Court went on to deal with them. Direction (i) of this Court in Ashwin Mehta was:- (SCC P.409.PARA 77)

"(i) The contention of the Appellants that they being not involved in offences in transactions in securities could not have been proceeded in terms of the provisions of the Act cannot be accepted in view of the fact that they have been notified in terms thereof."

The Special Court noted that this Court, as regards the first direction, had itself recorded a finding against the appellants and therefore nothing further was to be done by it in that regard.

12. Direction No. 2 of the court, which is most relevant for our purposes reads as under:- (Ashwin Mehta case.SCC p.409.para77)

"(ii) The Appellants being notified persons all their personal properties stood automatically attached and any other income from such attached properties would also stand attached. The question as to whether the Appellants could have been considered to be part of Harshad Mehta Group by the learned Special Court need not be determined by us as, at present advised, in view of the fact that appropriate applications in this behalf are pending consideration before the learned Special Court. The question as regard intermingling of accounts by the Appellants, herein with that of the Harshad Mehta Group and/ or any other or further contentions raised by the parties hereto before us shall receive due consideration of the learned Judge, Special Court afresh in the light of the observations made

hereinbefore."

13. The learned Judge, Special Court, considered the said direction into three parts. The first part of the direction being that the appellants being notified persons, all their personal properties stood automatically attached and any other income from such attached properties would also therefore get attached. As regards this part the learned Judge, Special Court noted that this was a finding recorded against the appellants and accordingly no orders were necessary to be passed by it in that respect.

14. The second part of the said direction being that the question that the appellants could have been considered to be part of Harshad Mehta Group by the learned Special Court need not be determined by the Supreme Court, in view of the fact that appropriate applications in this behalf were pending consideration

before the learned Special Court. In regard to the said direction the learned Special Judge, Special Court noted that the applications referred to in the said direction issued by the Supreme Court were a reference to the applications for de-notification filed by members of the Harshad Mehta Family.

15. The court thereafter having made reference to Sudhir S Mehta v. Custodian, noted that there were no applications for de-

notifications pending before the Special Court, as all applications had been withdrawn and therefore there was no further steps required to be taken by the learned Judge, Special Court. However in the alternative, again referring to Sudhir Mehta, the learned Judge, Special Court also noted that the contention whether the appellants should be treated as a 'group' or not would not be relevant unless they were able to show that some prejudice had been caused to them thereby.

16. The third and the final part of the said direction dealt with the question as regards intermingling of accounts by the Appellants, herein with that of the Harshad Mehta Group which in the opinion of this Court were required to be dealt with by the Special Court afresh in the light of the observations made therein. This part of the direction in the opinion of the learned Judge Special Court was the main question, which was required to be considered by him. He went on to note the observations of this court in Sudhir Mehta as regards the finding that the claim of the notified parties that their assets exceeded their liabilities was not correct. In Sudhir Mehta the court had accepted the submissions of the custodian that even the individual liabilities of the notified parties far exceeded their assets.

17. The Special Court in the impugned judgment then went on to

deal with the contention that the properties in question had been purchased before the statutory period or window period prescribed under the said act being 01.04.1991 to 06.06.1992 and they were therefore not liable to be attached. It noted that the properties of the notified parties held by them on the date of their notification got statutorily attached and became liable to be sold for discharging the liability of the notified parties, therefore, the previous contention does not stand.

18. The Special Court, thereafter, went on to deal with the argument that the properties in question had no nexus with the illegal securities transactions and the flats had been purchased by the notified parties at the relevant time by taking interest bearing loan from M/s Harshad S Mehta. These loans had been repaid either fully or substantially. As regards this contention the Special Court again referred to Sudhir Mehta to

note that properties of the notified persons stood attached irrespective of the fact whether those properties were bought by using tainted funds or not. Therefore the nexus to the illegal security transactions was irrelevant.

19. The Special Court also came to the conclusion that all the residential properties had been funded by Harshad S Mehta and they could therefore be disposed of accordingly. In this regard the Special Court relied on the report of the auditors, M/s. Vyas and Vyas who had considered the flow of funds from Harshad Mehta to various other notified parties. This was the fact that the funds had specifically been transferred for purchase of the properties just before the purchase. There was also a huge amount outstanding in the accounts of the notified parties to Harshad Mehta on the 1-4-1990 and 1-4-1991.

20. The Special Court also noted



that one of the flats in Madhuli, being No. 34-A was owned by M/s Aatur Holding Pvt. Ltd. In regard to the said company the Special Court found it necessary to pierce the corporate veil. This was based on the fact that even though the paid up capital of the said company was only Rs. 10,000/- and the highest salary paid by the company was only a meager Rs. 4,000/- p.m., the company had entered into trading security transactions running into crores of rupees. It therefore opined that the real owner of the said company was none other than Shri Harshad Mehta. In conclusion it was opined that the business and dealings of various individuals who held flats in Madhuli and the company M/s Aatur Holding were nothing but fronts of Harshad Mehta and the money that was invested for buying the flats was that of Harshad Mehta. Harshad Mehta, therefore, had merely used the names of various individuals who were related to him for buying the said flats.

21. Direction (iii) of this Court in Ashwin Mehta reads as under :- (SCC P.409, PARA 77)

"(iii) As regard the tax liabilities of the Appellants, herein, we would request the learned Judge, Special Court to consider the matter afresh in the light of the observations made hereinbefore. The learned Judge, Special Court, in this behalf, having regard to the fact that several orders of Best Judgment Assessment have been passed by the Assessing Authority, may take into consideration the ratio laid down in the decision of this Court in Harshad Shantilal Mehta v. Custodian"

As regards this direction the Special Court noted that the order had already been made on applications which were filed by the decree holder bank by it and the said matter was pending before this Court.

22. Direction (iv) of this Court reads as under:-

"(iv) The learned Special Court shall proceed to pass appropriate orders as regard confirmation of the auction sales in respect of commercial properties."

As regards this direction the Special Court noted that the necessary orders had already been passed.

23. The next direction, being Direction (v) reads:- (Ashwin Mehta case SCC p.409, para 77)

"(v) As regard, sale of residential properties, an appropriate order may be passed by the learned Judge, Special Court in the light of the observations made hereinbefore."

In respect of this direction the Special Court directed the custodian to sell Flats No. 32 A, 32 B, 33, 33A, 33 B, 44 A, 44 B and 45 in 'Madhuli' by following the procedure laid down by the

Special Court itself for sale of the property belonging to the notified parties. It also directed the custodian to seek directions, if necessary, from it in this behalf.

24. Direction (vi), (vii) and (viii) are as under:-(Ashwin Mehta case, SCC pp.409-10, para 77)

"(vi) We direct the Custodian to permit the Appellants to have inspection of all the documents in his power or possession in the premises of the Special Court in the presence of an officer of the court. Such documents must be placed for inspection for one week continuously upon giving due notice therefor to the Appellants jointly. As the Appellants have been represented in all the proceedings jointly, only one of them would be nominated by them to have the inspection thereof. The Appellants shall be entitled to take the help of a Chartered or Cost Accountant and may make notes therefrom for their use in the

pending proceeding.

(vii) The Appellants shall file their objections to the said report, if any, within ten days thereafter. The Custodian may also take assistance and/ or further assistance from a Chartered Accountant of his choice. A reply and/ or rejoinder thereto shall be filed within one week from the date of the receipt of the copy of the objection. The parties shall file their respective documents within one week thereafter. Such documents should be supported by affidavits. Both the parties shall be entitled to inspect such documents and filed their responses thereto within one week thereafter. The parties shall file the written submissions filed before this Court together with all charts before the learned Special Judge, Special Court within eight weeks from date.

(viii) The learned Judge, Special Court shall allow the parties to make brief oral submissions with

pointed reference to their written submissions. Such hearing in the peculiar facts and circumstances of this case should continue from day to day."

As regards these three directions the Special Court noted that the Custodian had already complied with the said directions and allowed for the necessary inspection. The Special Court further noted that there were no complaints made before it that the said directions had not been complied with.

25. Direction (ix) reads:-  
(Ashwin Mehta case, SCC p.410, para 77)

"(ix) The learned Judge, Special Court while hearing the matter in terms of this order shall also consider as to whether the auction sale should be confirmed or not. It will also be open to the learned Judge, Special Court to pass an interim order or orders, as it may think fit and proper, in the event any occasion

arises therefor."

As regards this the Special Court noted that necessary orders had already been passed.

26. Direction (x) of the court in Ashwin Mehta was:- (SCC p.410, para 77)

"(x) We would, however, request the learned Special Judge, Special Court to complete the hearings of the matter, keeping in view of the fact that auction sale in respect of the residential premises is being consideration, as expeditiously as possible and not later than twelve weeks from the date of the receipt of the copy of this order. Save and except for sufficient or cogent reasons, the learned Judge shall not grant any adjournment to either of the parties."

As regards the said direction the Special Court noted after the said matter had been taken up by them for hearing, the notified parties had given their consent for initiating the process of sale

of the flats. This process was set in motion and at the request of the parties, both were granted time to submit their pleadings and documents.

27. The last Direction of the Court, being (xi):- (Ashwin Mehta case, SCC p.410, para 77)

"(xi) The learned Judge, Special Court shall take up the matter relating to confirmation of the auction sale in respect of the commercial properties immediately and pass an appropriate order thereupon within four weeks from the date of receipt of copy of this order. If in the meanwhile orders of assessment are passed by the Income Tax Authorities, the Custodian shall be at liberty to bring the same to the notice of the learned Special Court which shall also be taken into consideration by the learned Judge, Special Court."

As regards this direction the Special Court noted that necessary orders had already been passed."



13. Challenging the findings recorded by me in my order dated 25.7.2008, on behalf of the notified parties contentions were raised before the Supreme Court, those contentions have been detailed by the Supreme Court in paragraph 28 of its judgment in Jyoti Mehta's case, which reads as under:-

"Mr. I.H. Syed, learned counsel appearing on behalf of the appellants contended :-

(i) That the learned Judge, Special Court misconstrued and misread the directions issued by this Court in Ashwin Mehta.

(ii) That he failed to take into consideration that the properties belonging to the appellants were not and could not have been treated as the benami properties of Harshad Mehta.

(iii) In such an event the provisions of the Benami Transactions (Prohibition) Act,

1988, should have been invoked or in any event Sub-section (1) of Section 4 of the Special Act which deals with transactions to defeat the provisions of the Act was attracted. These provisions provide for an opportunity of hearing to be given.

(iv) That Sub-section (1) of Section 4 of the Special Act postulates that the notified persons must acquire property in the name of another from the tainted money during the window period and having regard to the findings of the Auditors that Harshad Mehta had purported to have advanced amounts by way of loans or otherwise to the appellants herein much prior thereto, the impugned judgment is wholly unsustainable.

(v) That the right to keep property being a Constitutional as well as Human Right and furthermore the provisions of the Special Act being penal in nature, they deserve a strict

construction.

(vi) No finding having been arrived at, that the properties in question had any nexus with the tainted funds received from the illegal security transactions, they should have been released from attachment by the Custodian.

(vii) That the properties having not been acquired within the 'window period' i.e. during 1-4-1991 to 6-6-1992, the order of the learned Special Court for auction sale thereof must be held to be wholly illegal.

(viii) The learned Judge, Special Court, committed a serious illegality in so far as he relied upon the Janakiraman Reports and other reports, which are wholly inadmissible as evidence.

(ix) The appellants being notified persons are responsible for discharging their own liabilities from their own assets and not those of Harshad Mehta

and/or any other person and therefore it was not proper on the part of the learned Judge, Special Court to club the appellants herein as part of the Harshad Mehta Group.

(x) The learned Judge, Special Court seems to have reproduced large amounts of the Custodians' report in the Judgment, this raises the question as to whether he took into account the arguments of the appellants in the case."

14. So far as the first contention "that the learned Special Court misconstrued and misread the directions issued by this Court in Ashwin Mehta's case" is concerned, it is a general argument.

15. The contentions (ii) & (iii) that were raised before the Supreme Court were that the Custodian could not have treated the notified parties who owned flats in the Building "Madhuli" as Benamidar of Mr. Harshad Mehta and if they are so

treated, it would be contrary to the provisions of the Benami Transactions (Prohibition) Act, 1988, and the provisions of Sub-section (1) of Section 4 of the Special Courts Act would be attracted and therefore, an opportunity of being heard should have been given to the notified parties. These submissions have been dealt with by the Supreme Court under heading "Use of Section 4(1) of the Special Act". What is observed by the Supreme Court in its judgment in paragraphs 30, 31, 32 and 39 are relevant. It is clear that this contention has been rejected by the Supreme Court.

16. The Supreme Court has dealt with the contention that these residential flats were acquired before the window period and the money advanced by Mr. Harshad Mehta for purchase of these flats were not tainted funds and therefore, these properties cannot be sold under two headings viz. "(i) nexus of the properties with the illegal security transactions and (ii) statutory window period." The discussion is to be found in

paragraphs 45 to 56 of the judgment. They read as under:-

"45. It is contended by the learned counsel for the appellants Mr Syed that if any of the properties or assets of the notified parties have no nexus with the illegal security transactions, the same can be released from attachment or at least need not be sold.

46. It has further been argued that no evidence has been adduced that loans given by M/s Harshad S Mehta to his family members or monies used by Shri Harshad Mehta for purchase of his flat were acquired from the tainted funds. It is submitted by the appellants that unless it can be shown that the properties in question were acquired from the tainted funds they would be liable to be released from attachment. It is argued that the fact that the properties had been purchased much before the securities scam would

go on to show that they had no nexus with the funds diverted there from.

47. In our opinion the arguments advanced on behalf of the appellants need to be rejected at the outset because a plain reading of the sections of the Special Act would clearly point otherwise. In our opinion the attachment of all the properties in terms of sub-section (3) of Section 3 of the Special Act is automatic. The attachment restricts sale of the properties which have been acquired from illegal securities transaction. The sub-section specifically mentions that on and from the date of the notification, 'any property, movable or immovable, or both', belonging to any person notified under the Act shall stand attached. The said sub-section does not provide for any qualification that the properties which are liable to be attached should relate to the illegal securities transactions in respect of which the Act was

enacted. Had the intention of the Parliament been so, it would have clearly mentioned it. (emphasis supplied)

48. It is well settled that when the meaning of the words used in an Act is plain and clear, effect must be given thereto. This is supported by the decision of this court in LS Synthetics Ltd. v. Fairgrowth Financial Services Ltd.

49. In L.S.Synthetics case appellants had taken a loan from the respondents, Fairgrowth who had admittedly been notified under the Act. The respondent therein, Fairgrowth thereafter filed an application before the Special Court seeking attachment of the said funds due to them by LS Synthetics. It was argued on behalf of the debtors, LS Synthetics, that the loans due to the respondents had no nexus to the nature of securities transactions specified under the Special Act and they were



therefore not liable to be attached.

50. This Court while rejecting the said contention noted that having regard to the provisions of the Act, it was not required that the properties in question must have a nexus to the illegal securities transaction. Accordingly all assets of the notified parties including the loans advanced by them in the case at hand were found liable to be attached. The Court however was not concerned with the issue of whether the properties in question had been acquired before the window period or not. The loans in that case had admittedly been advanced within the window period and accordingly the only question before the court was whether the loan would be liable to be attached despite not having a nexus to the illegal securities transactions.

51. This accordingly brings us to the next submissions as regards

the statutory window period.

#### STATUTORY WINDOW PERIOD

52. It was contended on behalf of the Appellants, that the properties in question had been purchased much before the statutory window period provided under the Special Act. It is argued that the jurisdiction of the Special Court is strictly confined to the period from 01.04.1991 to 06.06.1992 and as such the Court would not have the power to investigate and give any findings pertaining to any transaction entered into prior to the statutory period. The appellants state that, the fact, no claims have been received by the custodian from any bank pertaining to the pre-statutory period, should be conclusive evidence that no monies were siphoned off in that period as falsely alleged.

53. In our opinion the interpretation advanced by the

appellants on the provisions would be a clear misreading of the Act.

We must in this regard refer to the relevant provisions of the Act. Provisions of Section 3(2) should not be read into Section 3(3). Though Section 3 (3) is dependent on Section 3(2) for its operation, but once Section 3(2) comes into operation, Section 3(3) becomes independent of it and accordingly the qualifications of Section 3(2) cannot be read into Section 3(3).

54. We must place emphasis on a plain reading of the said section. Had it been the intention of the legislature to attach only those properties acquired within the statutory period, it would have clearly said so. The statutory window period is only a relevant criterion for application of Section 3(2) and therefore has no bearing on the application of Section 3(3). A plain reading of Section 3(3) would suggest that all properties of the notified persons on the date of the said

notification would automatically stand attached irrespective of the fact as to whether they had been acquired before, during or even after the statutory period. (emphasis supplied)

55. A logical corollary of this would be that all income accruing or arising from the said property even after the date of attachment would also automatically stand attached. However property acquired by a notified person after the notification under the Special Act cannot be attached. That property does not come within the purview of the Section 3(3). [See Tej Kumar Balakrishna Ruja v. A K Menon, SCC 123 para 6]

56. The cut off date for the attachment of the property accordingly is the date of notification. All properties of the persons on the said date automatically stand attached. The statutory window period is irrelevant for the attachment of

the property. It would have no bearing on the said attachment. It is true that to such an extent all properties would be liable to be sold which are needed for redemption and not beyond the same. What should be kept uppermost in the mind of the Court is to see that the liabilities are discharged and not beyond the same. It is with that end in view that the powers of the Special Court contained in Sections 9A and 11 must be construed."

All the contentions have been rejected by the Supreme Court.

17. It was argued before the Supreme Court that each of the notified parties can discharge its liability from its own assets and the appellants before the Supreme Court could not have been clubbed as a part of Harshad Mehta Group. That contention is at paragraph 28(ix) quoted above. That contention has been dealt with by the Supreme Court under the heading "Issues regarding

nomenclature" and the discussion is to be found in paragraphs 40 to 42, which reads as under:-

"40. In Ashwin Mehta, this Court had specifically asked the learned Judge of the Special Court to decide on the issue of nomenclature of the parties, namely whether to consider them as a whole group or as individuals. The Special Court in the impugned judgment preferred to rely on the judgment of this court in Sudhir Mehta on this issue; wherein this Court observed: (SCC p.108, para 45)

"45. This takes us to the aforementioned paragraphs heavily relied upon by the learned counsel in the judgment of Ashwin Mehta case. In para 41, it was stated that it was open to the appellants 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 the Harshad Mehta Group. We do not

find that there was any attempt on the part of the appellants to disassociate themselves from the Harshad Mehta Group. When we see the judgment dated 17-8-2000 passed by the Special Court, it is obvious that the learned counsel arguing that matter had argued it on behalf of the Harshad Mehta Group. It is for this purpose that we have quoted the argument before the learned Special Judge in extenso. We will only quote a sentence which forms a part of the argument:

"It was contended that on a proper and legal assessment, the actual tax liability of the Harshad Mehta Group would be marginal and a large portion of the amounts would have to be refunded by the Revenue. He contended that in case of the Harshad Mehta Group, the demands made by the Department are based on the best-judgment assessments, which are highly exaggerated. He contended that the assessment orders are ex

parte in nature. He contended that the Harshad Mehta Group is contesting the demands before the appellate authorities."

(emphasis in original)

It was, therefore, obvious that at that juncture, when the question was as to whether the shares should be sold or not, the move was objected to by the appellants formulating themselves as the Harshad Mehta Group. No such objection to form and treat the relatives as a group was raised before the Special Court in the year 2000 when the question of sale of shares fell for consideration for the first time. At any rate, unless it is shown as to what prejudice would be caused by treating them to be a group, this contention has no basis. We, therefore, do not think that the argument in this behalf has any basis."

41. Criticism has also been made with regard to the application of the doctrine of lifting the corporate veil which was not supposed to be made applicable to the individual. The said



doctrine was applied by the learned Judge of the Special Court in the instant case in respect of the company M/s. Aatur Holding Pvt. Ltd. The abovementioned company purchased a flat, although its paid up capital was only Rs.10,000/- and the highest salary paid to the employee by it was only Rs.4000/- per month. Despite this the said company allegedly entered into security trading transactions amounting to crores.

42. The appellants were members of an H.U.F. and were seen to be working in tandem. Harshad Metha vis-à-vis the appellants was, thus, not a third party."

This contention has obviously been rejected. This contention also appears to be rejected from what is said by the Supreme Court in paragraph (31) of its judgment in Jyoti Mehta Case. The Supreme Court in paragraph 31 was considering whether sub-section (1) of Section 4 of the Act applies to the purchase of flats in the name of these notified parties with the funds advanced by Mr. Harshad Mehta. The Supreme

Court held that the provisions of Sub-section (1) of Section 4 of the Act do not apply because the properties have been acquired by the notified parties as members of Harshad Mehta group. The observations read thus:-

"But in a case where the properties have been purchased by the notified parties themselves as members of a group in the name of one or the other, the rigours of sub-section (1) of Section 4 shall not apply."

So far as the heading "Issues regarding nomenclature" used by the Supreme Court in Jyoti Mehta's case is concerned, it appears that it has its origin in the judgment of the Supreme Court in Sudhir S.Mehta's case. In paragraph 42 of its judgment in Sudhir Mehta's case, the Supreme Court has observed thus:-

"42. The second aspect, which we would like to consider is the objection which is now raised to the nomenclature 'Harshad Mehta

Group'. We do not want to go to that aspect, because for the decision of this case, that is not a relevant aspect whether any appellant is referred to as a group or not. The very fact that such appellant is a notified person would be enough for the attachment of his/her property because of the Section 3(2) of the Act. In our opinion, there would be no necessity to consider the individual liability of any such appellant being a notified person. Unless any appellant is denotified, there would be no question of raising of these defences regarding individual liability. It is obvious, that the notification covers all the properties including the shares and securities of the notified persons and, therefore, comes into the hands of the Custodian. There would, therefore, be no question of raising the issues that the individual liability of such a notified person should be arrived at first. We say this, particularly, because the claim of

the notified persons that their assets exceeds the liability, is also not correct. That is a clear cut finding given by Kapadia, J. in his judgment dated 17.8.2000, which is later on confirmed by this Court." (emphasis supplied)

The Supreme Court in its judgment in Jyoti Mehta's case quoted paragraph 45 of its judgment in Sudhir Mehta's case to reject the argument that the appellants before the Supreme Court cannot be treated as members of Harshad Mehta group.

18. Before the Supreme Court, it was contended that I was not justified in relying on Jankiraman Committee's report in my order because it is inadmissible as evidence. That contention has been considered by the Supreme Court in paragraph 57 of its judgment in Jyoti Mehta's case, and the Supreme Court has observed thus:-

"It is an accepted fact that the reports of the Jankiraman Committee, the Joint Parliamentary Committee and the Inter Disciplinary Group (IDG) are

admissible only for the purpose of tracing the legal history of the Act alone. The contents of the report should not have been used by the 1d. Judge of the Special Court as evidence."

Thus, this contention appears to have been upheld by the Supreme Court.

19. It was contended before the Supreme Court that in my judgment I had quoted from the Custodian's report and had not taken the arguments of the notified parties into consideration. This aspect of the matter has been dealt with in part in paragraph 57 and in paragraphs 58, 59 and 60 of the judgment in Jyoti Mehta's Case. It reads as under:-

" However, a lot of documents have been filed before us with regard to Audited Reports. Vyas and Vyas had filed an Audited Report in 2003. Copies whereof were supplied in 2005. Audited Report of Vyas and Vyas related only to Harshad Mehta. A Report on the Assets and Liabilities of the Appellants by

M/s. Vinod K. Agarwala and Co. as on November, 2007 has also been placed on record.

58. It does not appear that the Special Judge had considered this aspect of the matter in great detail. The learned Judge, Special Court, should consider the aforementioned two audit reports so as to arrive at a positive finding with regard to the liabilities and assets possessed by them so as to enable to pass appropriate orders.

59. The learned Judge, Special Court, in his judgment has mainly dealt with the contentions raised by the custodian in terms of the written submission filed on its behalf. The contentions of the appellants have not been considered in the impugned judgment. It is furthermore contended on behalf of the appellants, that out of the twenty six paragraphs of the impugned judgment, 15 paragraphs are near verbatim reproductions. In our opinion this clearly shows the

non-application of mind of the learned Judge, Special Court. He was required to weigh the submissions and counter-submissions of both the parties in his proper perspective and then arrive at a well reasoned opinion, which doesn't seem to be the case before us. It is well settled that "Justice must not only be done, but also must be seem to be done".

60. The Audited Reports and the objections have been filed before us. We direct the parties to file the same before the learned Judge, Special Court, so as to enable him to consider the matter afresh strictly in the light of the earlier judgment passed in Ashwin Mehta as well as the observations made herein."

It appears from the above quoted observations that the documents were filed before the Supreme Court in relation to the Audit Reports of Vyas & Vyas which relates to the audit of accounts of Harshad Mehta. The Supreme Court observed that I had not

considered this aspect of the matter in great detail and according to the Supreme Court those reports have to be considered in great detail now to arrive at the finding with regard to the liabilities and assets possessed by the notified parties.

20. From the Judgment of the Supreme Court in Jyoti Mehta's case, it appears that it was urged on behalf of the Custodian that no denotification applications are pending, and that aspect of the matter has been considered by the Supreme Court in paragraph 43 and 44 of its judgment in Jyoti Mehta Case.

21. Now, in view of the judgment of the Supreme Court in Ashwin Mehta's case and in Jyoti Mehta's case, the only aspect to be inquired into by me is whether the liability of the notified parties exceeds their assets or not. All other aspects are closed or findings have been recorded by this Court or by the Supreme Court. On behalf of the notified



parties, however, following contentions were raised:-

(i) That the notified parties are not a single group/front/benamidars of Harshad Mehta. It was contended that the Custodian in this regard has taken inconsistent stand in the pleadings at various stages.

(ii) The residential properties (Madhuli) had no nexus with the illegal securities transactions and they are in any event purchased prior to the statutory period/window period, and therefore, could not be attached and/or were liable to be released from attachment. In any event, though the attachment of those properties may be valid, they cannot be sold as they have no nexus with the illegal securities transactions.

(iii) The jurisdiction of this Court is restricted to the dealings with the

properties which have nexus with illegal securities transactions and which were acquired within the window period. It was, therefore, submitted that this Court has no jurisdiction to entertain the present petition. It was contended that the Supreme Court in its judgment in Jyoti Mehta's case has held that the notified parties are not Benamidars of Mr. Harshad Mehta and therefore, these properties cannot be sold as the properties belonging to Harshad Mehta.

(iv) The report of the auditors i.e. M/s. Vyas and Vyas and Vinod Aggarwala could not be referred to or relied on because the report of M/s. Vyas & Vyas is contrary to the directions issued by this Court and also because the auditors were not permitted to be cross-examined.

22. On behalf of the Custodian, it was contended that none of these submissions have any substance. It was contended that so far as the first submission is concerned, there is already a finding recorded by the Supreme Court that all these notified parties are members of Harshad Mehta group and there is no question of this Court recording any other finding in this regard. It was submitted that there is also no inconsistency in the stand taken by the Custodian in this regard. The stand of the Custodian was that these notified parties operated as members of one group in conducting the transactions in securities, the liabilities were incurred in the course of these transactions and therefore, the properties acquired by the members of the group were to be used for discharging the liabilities incurred by the entire group as such. So far as the second submission is concerned, on behalf of the Custodian, it was pointed out that these questions have already been decided by the Supreme Court in its judgments referred to above and they are not open to be

raised. So far as the third submission is concerned, it was contended that this Court has jurisdiction under Section 3 of the Act to deal with the attached properties, the power is also conferred on this Court by Section 9A of the Act. This Court has power to sell the attached properties under sub section (1) of Section 11 of the Act.

23. So far as the last submission is concerned, it was contended that there is nothing illegal in the report submitted by the Auditors, whatever conclusions have been drawn by the Auditors are based on the accounts maintained by the notified parties themselves. In so far as the decision on the question which was involved in this matter is concerned, support can be drawn from the original account books maintained by the notified parties themselves without reference to the conclusions reached by the Auditors.

24. Now before dealing with the rival

submissions, it will be proper to have a look at the liabilities of the notified parties. As per the written submission filed on behalf of the Income Tax Department, income tax liability of Late Harshad Mehta is Rs.1570.93 crores, Smt.Jyoti H. Mehta is Rs.27,51,98,039/-, Mr.Hitesh Mehta is Rs.1,30,94,085/-, Smt.Deepika Mehta is Rs.80,41,553/-, Mr.Sudhir S.Mehta is Rs.31,74,23,996/-, Mr.Ashwin Mehta is Rs.1,46,63,90,367/-, Smt.Rasila Mehta is Rs.17,92,11,863/- and Smt.Reena Mehta is Rs.13,56,19,044/-. Total tax liability is Rs.18,10,43,40,166/-. This tax liability is for the priority period. Tax liability for non priority period is larger than the liability for priority period. Priority period tax liability is payable under Section 11(2)(a) of the Act. Payment under decrees passed in favour of the banks and financial institutions is to be made under Section 11(2)(b) of the Act. The total decreetal amount as on 31.3.2010 against the notified parties which includes Late Harshad Mehta, Mr.Ashwin Mehta and

Jyoti Mehta comes to Rs.56,104,629,273.50. On behalf of the Custodian, a chart showing decrees passed against the notified parties has been filed, it reads as under:-

Sr no	Particulars	Decree Amount (in Rs)	Date of Hon'ble Special Court Order	Rate of interest	Interest due as on (31.03.2010)	Total as on 31.03.2010 (in Rs.)
1	2	3	4	5	6	7
1	SCB vs.HSM suit no.28 of 95	5,065,349,115.76	25.07.2003	15% from the date of Suit i.e. 21.03.1995	11,419,413,251.22	16,484,762,366.98
2	SBI vs.HSM Suit no.41 of 1995	1,371,177,578.98	03.03.2003	15% from the date of Suit i.e. 28.04.1995	3,069,559,451.46	4,440,737,030.44
3	S B of Saura Vs. HSM Suit No.52 of 1993	991,098,287.67	18.01.1999	6% upto the notified period i.e. up to 08.06.1992	45,148,953.93	1,036,247,241.60
4	CBFSL & Cus & ASM Suit no.26 of 1992	250,000,000.00	20.04.1995	7% from 22.08.1992	306,717,465.74	556,717,465.74
5	Canfin a Vs. Cus & ASM MP 22 OF 1992	29,000,000.00	14.09.1993	No interest	-	29,000,000.00

6	S B OF SAURA vs.HSM Suit no.44 OF 1995	1,441,095.92	23.09 .2002	15% with effect from 11.10.1995	3,128,658.73	4,569,754.65
7	SBI, NHB Vs.Jyo ti H.Meht a & Cus Vs. HSM MP no.63 of 92	7,069,773,179 .68	22.04 .2003	15% with effect from 13.06.1992	18,628,077,55 8.61	25,697,850,73 8.29
8	SBI Vs.HSM MP 14 of 1995	2,220,429,059 .00	14.08 .2003	15% with effect from 02.02.1995	5,048,130,257 .22	7,268,559,316 .22
9	SBI Capita l Mkt Vs. HSM MP No.61 of 92	162,500,000.0 0	25.06 .2003	15% with effect form 13.11.1992	423,685,359.5 8	586,185,359.5 8
	TOTAL	17,160,768,31 7.01			38,943,860,95 6.49	56,104,629,27 3.50

Thus, it is clear that the liabilities of the notified parties payable under Section 11(2)(a) & (b) of the Act is huge to say the least and is incapable of being paid from the funds so far collected by the Custodian by sale of various properties belonging to the notified parties, and therefore, sale of the residential property (Madhuli) is necessary. So far as the assets are

concerned, the total amount so far collected from the sale of the properties of various members of the group is Rs.1794.33 crores, and this amount has been collected by sale of the shares, securities and commercial properties. Thus, the assets of the group are not enough to pay the liabilities of the group.

25. It appears that after the Supreme Court pronounced its judgment in Ashwin Mehta's case on 3.1.2006, in this Court two affidavits were filed on behalf of the Custodian. The first affidavit is dated 1.3.2006 and the second is dated 22.3.2006. It further appears that the copies of both these affidavits were produced before the Supreme Court by the Custodian when the Supreme Court was hearing Sudhir Mehta's case. In those affidavits, the Custodian had worked out assets and liabilities position of the entire group as such as also of the individual members of the group. The Supreme Court has referred to those two affidavits in paragraph 52 of its judgment in Sudhir Mehta's case.



Paragraph 52 of the judgment of the Supreme Court in Sudhir Mehta's case reads as under:-

"52. It is the further case of the Custodian that the notified parties had shown in their accounts, that these siphoned off monies were received by them as loan, borrowings and advances, and also shown that they were paying interest thereon to Sh. Harshad Mehta with the sole idea to show that they were running their own business with their own funds and that the monies borrowed by them. The Custodian has taken a stand before us that in the affidavit dated 1.3.2006, efforts have been made to show clearly as to how much money is transferred in cash to his relatives and corporate bodies and also how much siphoned off money was utilized for the purchase of shares in the name of various notified entities including the appellants. The affidavit dated 22.3.2006 is filed before us. It is the stand of the Custodian that he has already worked out the position of the

assets and liabilities separately for individual members of the family and it is reflected in the affidavit dated 1.3.2006. The Custodian further submits that these accounts show that for the present, all the notified entities of the Harshad Mehta Group are in excess of their assets. It is thus, pointed out that all these materials were already available before the Special Court passed the orders. The Custodian further argues that these facts are known to the appellants, and there is an attempt to mislead the Special Court as well as this Court on the part of the appellants. It is then submitted that all the accounts, which are audited and reviewed by the Chartered Accountants have been prepared by the notified parties themselves and it is, therefore, that the liabilities shown therein, have been taken as admitted liabilities. In our opinion, this argument on the part of the Custodian must be accepted. It has already been shown in the earlier

part of the judgment that all these contentions were only raised before the Special Court, particularly, when the objections were raised. We do find some traces of these objections in the petition, but it is obvious that these questions were never pressed into service before the Special Court, perhaps because the appellants knew the futility thereof. We, therefore, leave the matters at that, in view of the final order that we propose to pass. (emphasis supplied)

Perusal of the above quoted paragraph shows that the Supreme Court noticed that in the Affidavit dated 1.3.2006 the Custodian had worked the position of assets and liabilities separately of the individual members of the family and it found that the assets of the individual entity in Harshad Mehta group do not exceed their liabilities, and the Supreme Court has accepted those arguments of the Custodian contained in Affidavits dated 1.3.2006 and 22.3.2006. In my opinion, in view of

the clear finding recorded by the Supreme Court in paragraph 52 of its judgment in Sudhir Mehta's case, the notified parties cannot claim that their assets exceed their liabilities and therefore, it is not necessary to sell their residential properties.

26. Now taking up the first submission for consideration i.e. the Custodian has taken inconsistent stand on the aspect of the notified parties with which this petition is concerned, being members of Harshad Mehta Group. It was contended that at some places the notified parties have been described as front of Harshad Mehta, at some places they have been described as Benamidars of Harshad Mehta and at some places they have been described as members of Harshad Mehta group. Perusal of the judgments of the Supreme Court referred to above, shows that when I first directed sale of those properties by my order dated 17.10.2003, I had taken into consideration the liabilities of Harshad Mehta. In that regard, as

can be seen from paragraph (9) of the Judgment of the Supreme Court in the Ashwin Mehta's case and the arguments in that regard was raised on behalf of the notified parties to the following effect:-

"There was no occasion for the Custodian to club all the notified entities in one block so as to be termed as Harshad Mehta Group and/or to club their assets and liabilities jointly. Although in relation to a body corporate incorporated and registered under the Companies Act, the doctrine of lifting the corporate veil would be applicable, but the same cannot be applied in case of individuals. Having regard to the fact that only three entities out of eight were involved in the offences, the liability of Harshad Mehta could not have been clubbed for the purpose of directing attachment and consequent sale of the properties which exclusively belong to them. The liabilities of Harshad Mehta, who was a sui generis, could have been recovered

from the properties held and possessed by him or from the companies floated by him but not from the individual entities."

While considering these arguments, in paragraph 41 the Supreme Court has observed thus:-

"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. "

Two things are clear from these observations viz.

(i) It was the stand of the Custodian that the members of the family of Harshad Mehta who own flats in "Madhuli" were to be treated as single entity and were to be styled as Harshad Mehta group; and (ii) the burden of establishing that they are not to be treated as members of a group was on the appellants before the Supreme Court i.e. notified parties who own flats in "Madhuli". In paragraph 50 of the same judgment in Ashwin Mehta's

case, the Supreme Court has observed thus:-

"If the liabilities of the individual entities are not treated as that of the group, for one reason or the other, indisputably, liability of those who have nothing to do with the dealings of Harshad Mehta either in their individual capacities or as directors of some company or otherwise must be dealt with separately."

The contention raised on behalf of the Appellants is that Harshad Mehta should be considered to be sui generis and the Custodian may realise his dues from his personal assets as also of those with which he was concerned, together with the assets of his front companies, but such liabilities should not be fastened upon others who had nothing to do therewith. In paragraph 51, the Supreme Court has further observed thus:-

"If those 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."

It is thus clear that it was for the appellants before the Supreme Court to establish that they had nothing to do with the transaction and business of Harshad Mehta either as individual or as Directors of the companies controlled by Harshad Mehta to establish that their properties cannot be used for satisfying the liabilities of Harshad Mehta. Pursuant to the directions contained in Ashwin Mehta's case, I had decided the issue by my order which was considered by the Supreme Court in its judgment in Jyoti Mehta's case. I have referred to that judgment in detail above. This aspect of the matter has been considered by the Supreme Court in paragraph 40 to 42 of its judgment in Jyoti Mehta's case and the Supreme Court has clearly held that these notified parties were members of Harshad Mehta group. The Supreme Court has in recording that finding relied on its own observations in



Sudhir Mehta's case. Thus, I do not find any substance in the submission that there is any inconsistency in the stand taken by the Custodian from time to time in this regard.

27. So far as the second submission is concerned, the learned Counsel relied on certain observations in the judgment of the Supreme Court in Harshad Mehta's case found in paragraph 14. It reads as under:-

"14. It has also been submitted before us by one of the notified parties (Dhanraj Mills V. custodian) that properties belonging to notified persons which have no nexus with the transactions in securities of the notified person during the "statutory period", also cannot be attached under Section 3. Reliance is placed on the decision

of the Bombay High Court in the case of Hitesh Shantilal Mehta V. Union of India (to which one of us was a party) in this connection. Our attention is drawn to the following passage in the High Court's judgment: (at p.719)

"If the person ... approaches the Special Court and makes out, for example, a case that the property which is attached has no nexus of any sort with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/or that there are no claims or liabilities which have to be satisfied by attachment and sale of such property, in our view, the Special Court would

have the power to direct the Custodian to release such property from attachment."

Hence a property not having any nexus with the illegal dealings in securities can be released from attachment by the Special Court in an appropriate case."

According to the learned Counsel, the Supreme Court has held that if the attached property does not have nexus with the illegal dealings in the securities, that can be released from the attachment, and therefore, according to the learned Counsel, such properties cannot be sold. This very aspect has been considered by the Supreme Court in its judgment in "L.S.Synthetics Ltd. Vs. Fairgrowth Financial Services Ltd. & Anr., (2004)11 Supreme Court Cases 456", in paragraphs 23 to 29, they read as under:-

"READING DOWN OF SECTION 9A OF THE ACT :

23. The primal question which,

however, arises for consideration is whether a statutory attachment in terms of Sub-section (3) of Section 3 of the said Act would apply only in relation to a property which was the subject-matter of the transactions in securities.

24. Application of all properties belonging to the notified person who, according to the Custodian, might have committed an offence within the meaning of the provisions thereof evidently for the purpose of discharge of such liabilities is obviated by reason of Section 11 of the said Act which reads as under:

"11. Discharge of liabilities. -

(1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment.

(2) The following liabilities shall be paid or discharged in

full, as far as may be, in the order 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; and

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

25. It is not a case where a third party right is involved as was the case in Kudremukh Iron Ore Co. Ltd. Vs. Fairgrowth Financial Services Ltd. and Another. The purpose of the said Act is to discharge the liabilities of the Government Banks, financial institutions, mutual funds, etc. and for the said purpose, the statute itself provides that all properties belonging to the notified person shall stand

attached. Once a statutory attachment comes into force, although the properties in question unlike the provisions of some other Acts do not vest in the Custodian but the same evidently remain under the control of the Special Court. There is, in our considered opinion, no basis to hold, as has been urged by Mr. Sanghi, that only those properties belonging to the notified person which are subject matter of the transactions in securities would stand attached and for that purpose Section 9A of the said Act is not required to be read down.

**HARSHAD SHANTILAL MEHTA:**

26. Our attention has been drawn by Mr. Sanghi to paragraph 14 of Harshad Shantilal Mehta which reads as follows: (SCC pp.10-11)

"14. It has also been submitted before us by one of the notified parties (Dhanraj Mills v. Custodian) that properties belonging to notified persons which have no nexus with the

transactions in securities of the notified person during the "statutory period", also cannot be attached under Section 3. Reliance is placed on the decision of the Bombay High Court in the case of Hitesh Shantilal Mehta v. Union of India (to which one of us was a party) in this connection. Our attention is drawn to the following passage in the High Court's judgment : (at p. 719)

"If the person ... approaches the Special Court and makes out, for example, a case that the property which is attached has no nexus of any sort with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/or that there are no claims or liabilities which have to be satisfied by attachment and sale of such property, in our view, the Special Court would have the power to direct the Custodian to release such property from attachment."

Hence a property not having any nexus with the illegal dealings in securities can be released from attachment by the Special Court in an appropriate case."

27. This Court in paragraph 14 was merely recording the submissions of one of the notified parties. Even a question as to whether all properties of notified persons would be subject to the statutory attachment under Sub-section (3) of Section 3 of the said Act or not did not arise for consideration therein.

28. Therein indisputably this Court was referring to a judgment of the Bombay High Court but did not pronounce finally on the correctness or otherwise thereof.

29. In Hitesh Shantilal Mehta the Bombay High Court appears to have merely held that in appropriate cases the Special Court would have the power to direct the Custodian to release



such property from attachment, in the event, it is found that the property which is attached has no nexus with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/ or there are no claims or liabilities which have to be satisfied by attachment and sale of such property. Once it is held that a debt can be subject matter of attachment, the provisions of Sub-section (3) of Section 3 of the said Act would squarely be applicable in view of the fact that the same was the property belonging to a notified person. This position in law is not disputed. Such attached property, thus, if necessary, for the purpose of discharging the claims and liabilities of the notified person indisputably would stand attached and can be applied for discharge of his liabilities in terms of Section 11 of the said Act."

The Supreme Court in paragraph 27 quoted above has

clearly held that in paragraph 14 of the judgment of the Supreme Court in Harshad Mehta's case, the Supreme Court has not recorded any finding but it has merely recorded submissions of the notified parties, and it has clearly held that the attached properties have to be used for discharging liabilities of the notified parties because of whose notification the properties are attached. The learned Counsel also relied on the sentence found in paragraph 47 of the judgment of the Supreme Court in Jyoti Mehta's case. The sentence reads as under:-

"The attachment restricts sale of the properties which have been acquired from illegal securities transaction."

According to him, after attachment, only those properties which have been acquired from illegal securities transaction can be sold. In my opinion, the sentence cannot be read in isolation, it has to be read alongwith what precedes it and what follows it. Paragraph 47 in the judgment of the Supreme Court in Jyoti Mehta's case reads as under:-

"47. In our opinion the arguments advanced on behalf of the appellants need to be rejected at the outset because a plain reading of the sections of the Special Act would clearly point otherwise. In our opinion the attachment of all the properties in terms of sub-section (3) of Section 3 of the Special Act is automatic. The attachment restricts sale of the properties which have been acquired from illegal securities transaction. The sub-section specifically mentions that on and from the date of the notification, 'any property, movable or immovable, or both', belonging to any person notified under the Act shall stand attached. The said sub-section does not provide for any qualification that the properties which are liable to be attached should relate to the illegal securities transactions in respect of which the Act was enacted. Had the intention of the Parliament

been so, it would have clearly mentioned it.

In this paragraph the Supreme Court has dealt with the question "as to what kind of properties stand attached on notification of a person under the Act.", and the Supreme Court has held that all the properties of a person whose name is notified under the Act stand attached and the consequence of attachment is that sale of those properties is restricted. The Supreme Court, in so far as the question of sale is concerned, has clearly held that all the attached properties that may be necessary for payment of the liabilities of the notified parties will have to be sold. That clear finding is recorded by the Supreme Court in paragraph 56 of the Judgment in Jyoti Mehta's case. It reads as under:-

" The cut off date for the attachment of the property accordingly is the date of notification. All properties of the persons on the said date automatically stand attached. The

statutory window period is irrelevant for the attachment of the property. It would have no bearing on the said attachment. It is true that to such an extent all properties would be liable to be sold which are needed for redemption and not beyond the same. What should be kept uppermost in the mind of the Court is to see that the liabilities are discharged and not beyond the same. It is with that end in view that the powers of the Special Court contained in Sections 9A and 11 must be construed."

Thus, in my opinion, in view of the clear finding recorded by the Supreme Court, it is not now debatable that all the attached properties which are necessary for clearing the liabilities of the notified parties are to be sold. The submission is, therefore, rejected.

28. So far as the third submission is concerned, the jurisdiction of this Court to deal

with the attached properties is to be found in sub-Section (4) of Section 3 of the Act, which reads as under:-

"3. Appointment and functions of Custodian:-

(4) The property attached under sub-section(3) shall be dealt with by the Custodian in such manner as the Special Court may direct."

Perusal of the above provision shows that the Custodian has to deal with the attached properties in such manner as may be directed by this Court. Thus, this provision confers jurisdiction on this Court to issue directions to the Custodian in relation to the attached properties.

Sub-section (1) of Section 9A of the Act, in my opinion, is also relevant, which reads as under:-

"9-A. Jurisdiction, powers, authority and procedure of Special Court in civil matters.-

(1) On and from the commencement of the Special Court (Trial of offences Relating to Transactions

in securities) Amendment Act, 1994, the Special Court shall exercise all such jurisdiction, powers and authority as were exercisable, immediately before such commencement by any Civil Court in relation to any matter or claim-

(a) relating to any property standing attached under sub-section (3) of Sec.3;

(b) arising out of transactions in securities entered into after the 1<sup>st</sup> day of April, 1991, and on or before the 6<sup>th</sup> day of June, 1992. In which a person is notified under sub-section (2) of Sec.3 is involved as a party, broker, intermediary or in other manner."

Section 9A of the Act, thus, clearly confers power on the Special Court to deal with all questions relating to any properties which stand attached under Section 3 of the Act. One more provision of the Act which is relevant, is sub-section (1) of Section 11 of the Act, which reads as under:-

"11. Discharge of liabilities.-

(1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment."

Perusal of the above provision makes it clear that it confers power on the Court to issue directions to the Custodian for disposal of the attached properties. I have already held above that all the properties held by the notified parties on the date of their notification stand attached as a consequence of their notification under the Act and such of that properties as may be necessary to clear their liabilities under the Act are liable to be sold under the provisions of the Act, and therefore, this Court will have jurisdiction to deal with all the attached properties. The submission, therefore, has no substance.

29. So far as the submission that as the



Supreme Court has held that these notified parties are not Benamidars of Harshad Mehta, they cannot be considered as members of Harshad Mehta group are concerned, perusal of the judgment of the Supreme Court in Jyoti Mehta's case shows that the Supreme Court has rejected the contention raised on behalf of these notified parties that the advances made by Harshad Mehta to these notified parties for the purpose of purchase of these properties would amount to benami transactions and to those transactions therefore, sub-section (1) of Section 4 of the Act will apply. Sub-section (1) of Section 4 of the Act reads as under:-

"4. Contracts entered into fraudulently may be cancelled.-

(1) If the Custodian is satisfied, after such inquiry as he may think fit, that any contract or agreement entered into at any time after the 1<sup>st</sup> day of April, 1991 and on and before the 6<sup>th</sup> June, 1992 in relation to any property of the person notified under sub-section (2) of Sec.3 has

been entered into fraudulently or to defeat the provisions of this Act, he may cancel such contract or agreement and on such cancellation such property shall stand attached under this Act:

Provided that no contract or agreement shall be cancelled except after giving to the parties to the contract or agreement a reasonable opportunity of being heard."

This section confers power on the Custodian to cancel the agreement or contract entered into in relation to the properties of a notified person between window period fraudulently or to defeat the provisions of the Act. The advances for purchase of these residential properties were not made by Harshad Mehta during the window period, they were made before that period. The Supreme Court in its judgment in Jyoti Mehta's case has held that "Section 4 applies when a notified party acquired the property in the name of third party". The Supreme Court has clearly held in its judgment in Jyoti Mehta's case that Harshad Mehta and the

notified parties who are concerned with this petition, were operating as members of joint family and were seen to be working in tandem and in relation to them, Harshad Mehta was not a third party. In other words, it is clear that, according to the Supreme Court, the properties were held by the notified parties including Harshad Mehta jointly and therefore, can be used for discharging his liabilities.

30. It was contended that reliance cannot be placed by this Court on the report of the Auditors for various reasons. It is common ground that the Auditors have prepared their report on the basis of the accounts which were maintained by the notified parties themselves. In my opinion, however, for the purpose of recording findings with regard to the liabilities and assets, it is not necessary for me to refer to the conclusion reached by the Auditors and inference drawn by them on the basis of the accounts. In my opinion, for that purpose, reference can be made to the accounts which are

maintained by the notified parties themselves. Now so far as the assets and liabilities position is concerned, I have already observed above that the total amount realised by the Custodian from sale of the shares, securities and commercial properties of the notified parties of Harshad Mehta Group is Rs.1794.33 crores as on 28.2.2010. The only major immovable properties that are still to be sold are the residential flats. This is on the assets side. So far as the liabilities are concerned, leaving aside all other liabilities, as observed above, the liabilities of the Income Tax for the statutory period under Section 11(2)(a) of the Act is huge. The amount of decrees as on the date of decrees excluding interest after the date of decrees, is Rs.17,16,07,68,317.01. Thus, the liabilities only under Section 11(2)(a) and (b) of the Act is so much that even after selling the residential flats, huge amount will remain payable to the Government on account of Income Tax as also to the Banks. Therefore, considering the assets and liabilities of the group, the properties have to be sold, and

there is no escape. I have already held above that the Supreme Court has already recorded a finding for both the purposes viz. for deciding what are the assets and what are the liabilities, all individuals and entities including the notified parties who are concerned with this petition have to be treated as group. They have to be treated as group because they were operating as group in tandem with each other. One of the owners of the flat which is subject matter of this petition is a company by name M/s.Aatur Holdings Pvt.Ltd. In paragraph 20 of its judgment in Jyoti Mehta's case, the Supreme Court has dealt with the order that I had passed holding that the real owner of this flat is Harshad Mehta. Paragraph 20 reads as under:-

"20. The Special Court also noted that one of the flats in Madhuli, being No. 34-A was owned by M/s Aatur Holding Pvt. Ltd. In regard to the said company the Special Court found it necessary to pierce the corporate veil. This was based on the fact that even

though the paid up capital of the said company was only Rs. 10,000/- and the highest salary paid by the company was only a meager Rs. 4,000/- p.m., the company had entered into trading security transactions running into crores of rupees. It therefore opined that the real owner of the said company was none other than Shri Harshad Mehta. In conclusion it was opined that the business and dealings of various individuals who held flats in Madhuli and the company M/s Aatur Holding were nothing but fronts of Harshad Mehta and the money that was invested for buying the flats was that of Harshad Mehta. Harshad Mehta, therefore, had merely used the names of various individuals who were related to him for buying the said flats.

This aspect is considered by the Supreme Court in paragraph 41 of its judgment in Jyoti Mehta's case which is quoted above. I do not find that the conclusion reached by me that the flat no.34A is owned by Harshad Mehta is disturbed by the Supreme

Court. Therefore, in my opinion, it can be assumed that so far as flat no.34A is concerned, it can be treated as property of Harshad Mehta himself. Flat no.34B is admittedly owned by Harshad Mehta, therefore, there is no question of any further inquiry being made in relation to flat nos.34A and 34B. So far as flat no.44A is concerned, it is partly owned by Harshad Mehta. Flat no.32A is owned by Ashwin Mehta. So far as Ashwin Mehta is concerned, he was an accused before the Special Court alongwith Harshad Mehta in a criminal trial. He has been convicted for an offence relating to the Scam and his conviction has been upheld by the Supreme Court. There is a decree passed against him and in favour of Canfina on admission. There is an affidavit filed by Mr.Ashwin Mehta dated 23.6.1993 which shows that the dues in relation to which the decree is passed in favour of Canfina was the forward leg of the transaction which was entered into by Harshad Mehta and to which at the ready leg stage Harshad Mehta was a party. Mr.Ashwin Mehta is the younger brother of Harshad

Mehta and had involvement in the business of securities with Harshad Mehta. He is one of the signatories to the letters addressed to the Income Tax Department which is quoted above. If one looks at the flow of funds into the account of M/s.Ashwin Mehta- a brokerage firm of which Mr.Ashwin Mehta is the owner and the individual account of Mr.Ashwin Mehta, it reveals that the funds during the year 1990-91 and 1991-92 till the date of notification i.e. 8.6.1992 went into the account from M/s.Harshad Mehta. In the affidavit dated 1.3.2006 in paragraph 18, the Custodian had given the details in relation to the source of funds of the notified parties involved in this petition. So far as Mr.Ashwin Mehta is concerned, in that affidavit following is stated:-

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad Sh.Mehta & M/s.Harshad S.Mehta as on **31.3.1991**.

"5.Name of the Notified Party: Mr.Ashwin S.Mehta

Name	Amount as % of source
M/s.HSM	43.83%
M/s.ASM	54.22%

Contribution of HSM to M/s.ASM itself is more than 90% as shown below.



6. Name of Notified party: M/s.Ashwin S.Mehta

Name	Amount as % of source
GLIL	113.5%
GRAM	9.5%

Contribution of GLIL is more than 100% because of negative capital.

Contribution of HSM to both GLIL and GRAM is more than 90% as shown below."

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.3.1992**.

"5.Name of the Notified Party: Mr.Ashwin S.Mehta

Name	Amount as % of source
M/s.JHM	17.9%
M/s.HSM	14.9%
M/s.ASM	64.8%

HSM is still the major contributor in respect of even M/s.ASM and M/s.JHM as shown below.

6. Name of Notified party: M/s.Ashwin S.Mehta

Name	Amount as % of source
M/s.HSM	73.3%
CANFINA	17.1%
LOANS FROM OTHERS	17.0%

With regard to the amount due to Canfina (Rs.25 cr), a decree on admission dated 20.4.95 has been passed against ASM for Rs.25 crores with interest @ 7% in Suit 19 of 94. In the said decree, it has been recorded that ASM had stated on affidavit dated 23.6.93 that this transaction was the reverse leg of a Ready Forward transaction where Rs.24.94

cr. had been given to Canfina by M/s.HSM in the Ready leg. In view of this, even this Rs.25 cr. is ascribable to HSM. Copies of the order of this Hon'ble Court dated 20<sup>th</sup> April 1995 in Suit no.19 of 1994 and affidavit dated 23<sup>rd</sup> June 1993 of Shri.Ashwin S.Mehta are annexed hereto and marked Exhibit 9 and Exhibit 10 respectively."

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **08.06.1992**."

"5.Name of the Notified Party: Mr.Ashwin S.Mehta

Name	Amount as % of source
M/s.HSM	9.6%
M/s.JHM	8.3%
M/s.ASM	75.06%

Contribution of HSM to M/s.ASM and M/s.JHM is more than 90% as shown below.

"5.Name of the Notified Party: M/s.Ashwin S.Mehta

Name	Amount as % of source
M/s.HSM	51.1%
Closing Balance	26.7%
Canfina	19.3%

As already pointed out in the position as on 31.3.92, with regard to the amount due to Canfina (Rs.25 cr) a decree on admission dated 20.4.95 has been passed against ASM for Rs.25 crores with interest @ 7% in Suit 19 of 94. In the said decree, it has been recorded that ASM had stated on affidavit dated 23.6.93 that this transaction was the reverse leg of a Ready Forward transaction where Rs.24.94 cr. had been given to Canfina by M/s.HSM in the Ready leg. In view of this, even this Rs.25 cr. is ascribable to HSM."

Reply has been filed to that affidavit by Mr.Ashwin Mehta which is dated 13.6.2006. Perusal of that affidavit shows that though Mr.Ashwin Mehta has denied the correctness of the chart put up by the Custodian, he has not submitted any material to show that what the Custodian has contended in paragraph 18 is wrong. Because of this denial in the affidavit of Mr.Ashwin Mehta, I went through the account books on record to find out the flow of funds from the account of Late Mr.Harshad Mehta and M/s.Harshad Mehta to the individual account of Mr.Ashwin Mehta and his brokerage firm viz. M/s.Ashwin Mehta. I found that his business was run almost entirely on the funds provided by Mr.Harshad Mehta. Perusal of the charts given below makes the position clear.

GROSS FUND FLOW IN THE ACCOUNT OF M/S.ASHWIN S. MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE PERIOD FROM 01/04/1991 TO 08/06/1992

Details	Amount in Rs.	Remarks
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>		
<b>F.Y. 1990-91</b>		

Shares purchased by M/s. Harshad S. Mehta	37,948,675.00	See page 896, 898, 899, 900, 901, 902 & 903
Funds transferred by M/s. Harshad S.Mehta	822,787,711.87	See page 895, 897, 898, 899, 900, 901, 902, 903 & 904
<b>Sub-total</b>	860,736,386.87	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	36,099,600.00	See Page 896, 905, 907, 908, 909, 910, & 911
Funds transferred by M/s. Harshad S.Mehta	2,472,891,668.65	See page 895, 905, 906 907, 908, 909, 910, 911
<b>Sub-total</b>	2,508,991,268.65	
For the period 08.06.1992		
Shares purchased by M/s. Harshad S.Mehta	6,750,000.00	See Page 896 & 912

Funds Transferred by M/s. Harshad S. Mehta	378,899,884.95	See Page 895 & 912
<b>Sub-total</b>	385,649,884.95	
<b>GROSS FLOW</b> (Sr.n.2+6+10+14)	<b>3,755,377,540.47</b>	

GROSS FUND FLOW IN THE ACCOUNT OF SHRI.ASHWIN S.  
MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE  
PERIOD FROM 01/04/1991 TO 08/06/1992

Details	Amount in Rs.	Remarks
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>		
<b>F.Y. 1990-91</b>		
Shares purchased by M/s. Harshad S.Mehta	139,103,735.25	See Page 876, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889 & 890
Funds transferred by M/s. Harshad S.Mehta	1,829,000.00	See page 877 & 890
<b>Sub-total</b>	<b>140,932,735.25</b>	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	56,688,130.00	See page 876, 891, 892 & 893

Funds transferred by M/s. Harshad S.Mehta	31,642,941.57	See Page 877, 892 & 893
<b>Sub-total</b>	<b>88,331,071.57</b>	
<b>For the period</b> <b>08.06.1992</b>		
Shares purchased by M/s. Harshad S.Mehta	30,563.00	See page 876 & 894
Funds Transferred by M/s. Harshad S. Mehta	-	
<b>Sub-total</b>	<b>30,563.00</b>	
<b>GROSS FLOW</b> (Sr.n.2+6+10+14)	<b>229,294,369.82</b>	

It is an admitted position that for purchase of this flat, loan was advanced to Ashwin Mehta by Late Harshad Mehta. The position that emerges from the account books in relation to the loan advanced for purchase of the flat is as follows:-

Name of the Property, Name of the Notified Party as per M.P.41 of 1999 and Date of Purchase	Amount paid	How paid	How much paid by Harshad S. Mehta	Remarks
Flat No.32-A, Carpet Area about 1921 sq. ft. inclusive of one	Rs.56,52,500 /- including stamp duty of	1. Rs.5,00,000/ - paid by Ashwin S.	Rs.56,52,500/ M/s. Harshad S. Mehta	As per ledger a/c of Ashwin Mehta in the

car parking space and the exclusive use of terrace (para 4.1 page No.12 of Ashwin S. Mehta's report) belonging to Ashwin S. Mehta purchased on 18.04.1990	Rs.4,67,500/- ) (para No.4.2 page No.12)	<p>Mehta as an advance in 1989-90</p> <hr/> <p>2. Rs.5,00,000 /- paid by Rasila S. Mehta to Crest Hotels.</p> <hr/> <p>3. Rs.41,85,00 0/- paid by M/s.Ashwin S. Mehta during 1990-91 (Rs.40,00,00 0/- funded by M/s. Harshad S. Mehta) page No.12 para No.4.2)</p>	(para No.6.2.6 page No.34)	books of M/s.Harshad S. Mehta . M/s.Harshad S. Mehta had also transferred Rs.55,00,000 /- and Rs.15,00,000 /- on 9 <sup>th</sup> April, 1990 and 10 <sup>th</sup> April, 1990 respectively to the account of Ashwin S. Mehta and hence it goes to prove that the purchase of flat was 100% funded by M/s. Harsad S. Mehta.
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31. Now coming to Mrs.Deepika A.Mehta, she owns flat no.45. In paragraph 18 of the affidavit of the Custodian dated 1.3.2006, the Custodian has shown thus:-

"Sources of Fund(and, therefore, of Investments) of

notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.03.1991.**"

"Name of Notified party: Deepika A.Mehta

Name	Amount as % of source
M/s.HSM	75.4%
Mr.HSM	3.01%
M/s.ASM	19.8%

Contribution of HSM to M/s.ASM itself is more than 90% as shown below."

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.03.1992.**"

"Name of Notified party: Deepika A.Mehta

Name	Amount as % of source
M/s.HSM	52.3%
M/s.ASM	23.7%
Mr.HSM	3.7%
M/s.JHM	16.5%

HSM is still the major contributor in respect of even M/s.ASM and M/s.JHM as shown below."

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **08.06.1992.**"

"Name of Notified party: Deepika A.Mehta

Name	Amount as % of source
M/s.HSM	48.8%



Closing balance	36.4%
Mr.HSM	5.8%
M/s.ASM	5.7%

Contribution of HSM to M/s.ASM is more than 90% as shown below. Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom."

Perusal of the original account books reveals that the flow of funds to her account is from M/s.Harshad Mehta. Perusal of the chart given below makes the position clear.

GROSS FUND FLOW IN THE ACCOUNT OF MRS.DEEPIKA A. MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE PERIOD FROM 01/04/1991 TO 08/06/1992

Details	Amount in Rs.	Remarks
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>		
<b>F.Y. 1990-91</b>		
Shares purchased by M/s. Harshad S.Mehta	45,177,485.50	See Page 805, 807, 809, 810, 811, 812, 813, 814, 815, 816

Funds transferred by M/s. Harshad S.Mehta	77,545,500.00	See page 806, 807, 812, 813, 814, 815, 816 & 187
<b>Sub-total</b>	122,722,985.50	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	55,311,805.25	See page 805, 818, 819, 820 & 821
Funds transferred by M/s. Harshad S.Mehta	30,517,281.71	
<b>Sub-total</b>	85,829,086.96	
For the period 08.06.1992		
Shares purchased by M/s. Harshad S.Mehta	-	
Funds Transferred by M/s. Harshad S. Mehta	800,000.00	See Page 806 & 822
<b>Sub-total</b>	800,000.00	
<b>GROSS FLOW</b> (Sr.n.2+6+10+14)	<b>209,352,072.46</b>	

It is an admitted position that for purchase of this flat, loan was advanced to Mrs.Deepika Mehta by Harshad Mehta. The position that emerges from the account books in relation to the loan advanced

for purchase of the flat is as follows:-

Name of the Property, Name of the Notified Party as per M.P.41 of 1999 and Date of Purchase	Amount paid	How paid	How much paid by Harshad S. Mehta	Remarks
Flat No.45 having carpet area of about 1405 sq. ft. and one car parking space (para 4.1, 1 and page No.9 of the report on the accounts of Deepika A. Mehta) belonging to Mrs.Deepika A. Mehta purchased on 18.04.1990	Rs.38,57,010/- - (including Stamp Duty Rs.2,99,000/- and deposits of Rs.58,010/- for society, water charges and legal expenses) (para 4.1, 2 and page No.9)	1. Rs.7,49,000/- paid by Deepika A. Mehta  2. Rs.31,08,010/- paid by M/s.Harshad S. Mehta (para 4.1, 2 and para No.9)	Rs.31,08,010/- paid by M/s.Harshad S.Mehta (para 6.2.6 page No.35 of the report on the accounts of Harshad S. Mehta)	There is opening debit balance of Rs.1,56,51,315.90 as on 1 <sup>st</sup> April, 1990 in the books of M/s.Harshad S. Mehta in the account of Deepika A. Mehta ie. Deepika A. Mehta owed Rs.1.56 crores to HSM even as on 1.4.90

32. The flat no.32B is owned by Smt.Jyoti H.Mehta. She also owns flat no.33 alongwith Mrs.Pratima H.Mehta. So far as Smt.Jyoti H.Mehta is concerned, in the affidavit of the Custodian dated 1.3.2006 the position in relation to her is thus:-

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.3.1991.**"

"Name of Notified party: Mrs.Jyoti H.Mehta

Name	Amount as % of source
M/s.HSM	79.8%
M/s.ASM	14.5%

Contribution of HSM to M/s.ASM itself is more than 90% as shown above.

"Name of Notified party: Pratima H.Mehta

Name	Amount as % of source
M/s.HSM	93.1%
Closing balance	3.7%

Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom.

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.03.1992.**"

Name of Notified party: Mrs.Jyoti H.Mehta

Name	Amount as % of source
M/s.JHM	59.3%
M/s.HSM	28.86%
M/s.JHM Current A/c.	5.3%
M/s.ASM	3.6%
Mr.HSM	1.2%

HSM is still the major contributor in respect of

even M/s.ASM and M/s.JHM as shown.

Name of Notified party: M/s.Jyoti H.Mehta

Name	Amount as % of source
M/s.HSM	55.8%
Bindi Chem Agro& Ind.Pvt.Ltd	4.7%
Chikki Fert.& Ind Pvt.Ltd.	5.2%
Clarion Investments	10.01%
Dabhich Texfab	6.3%
Hansdhvani Trading	6.8%
Kunjvan Texfab	6.8%
Orator Trading	7.3%
Aavatan Textiles	3.6%
Saki Agencies	0.7%

HSM is the major contributor to M/s.JHM; in respect of the other investment companies, the credit position of the companies gets wiped out in the next period (as on 8.6.92) as the source of funding of M/s.JHM as on 8.6.92 is 99.97% HSM."

Name of Notified party: Pratima H.Mehta

Name	Amount as % of source
M/s.HSM	48.2%
M/s.JHM	40.8%
Closing balance	4.4%
M/s.ASM	3.3%

HSM is still the major contributor in respect of even M/s.ASM and M/s.JHM as shown below; Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom.

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **08.06.1992.**"

Name of Notified party: Mrs.Jyoti H.Mehta

Name	Amount as % of source
M/s.JHM	55.9%
M/s.HSM	28.1%
M/s.JHM Current A/c.	7.9%
M/s.ASM	3.7%
Closing balance	3.08%

Contribution of HSM to M/s.ASM and M/s.JHM is more than 90% as shown below. Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom.

Name of Notified party: M/s.Jyoti H.Mehta

Name	Amount as % of source
M/s.HSM	99.77%

Name of Notified party: Pratima H.Mehta

Name	Amount as % of source
Closing balance	54.4%
M/s.HSM	29.1%
Mr.HSM	3.3%
M/s.JHM	2.4%

Contribution of HSM to M/s.JHM is more than 99% as shown below. Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom.

Perusal of the original account books reveals that the flow of funds to Mrs.Jyoti H.Mehta and M/s.Jyoti H.mehta as also to Dr.Pratima H.Mehta is from Mr.Harshad Mehta and M/s.Harshad

Mehta. Perusal of the charts given below makes the position clear.

GROSS FUND FLOW IN THE ACCOUNT OF MRS.JYOTI H. MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE PERIOD FROM 01/04/1991 TO 08/06/1992

Details	Amount in Rs.	Remarks
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>	14,133,163.49	
<b>F.Y. 1990-91</b>		
Shares purchased by M/s. Harshad S. Mehta	31,936,818.50	See page 794, 796, 797, 798 & 799
Funds transferred by M/s. Harshad S. Mehta	73,555,000.00	See page 795, 796, 797, 798 & 799
<b>Sub-total</b>	105,491,818.50	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	46,165,150.00	See page 794, 800, 801 & 802
Funds transferred by M/s. Harshad S.Mehta	36,427,663.83	See page 795, 800, 801 & 802
<b>Sub-total</b>	82,592,813.83	
For the period 08.06.1992		

Shares purchased by M/s. Harshad S.Mehta	204,820.00	See page 794 & 803
Funds Transferred by M/s. Harshad S. Mehta	-	
<b>Sub-total</b>	204,820.00	
<b>GROSS FLOW</b> (Sr.n.2+6+10+14)	<b>202,422,615.82</b>	

GROSS FUND FLOW IN THE ACCOUNT OF M/S.JYOTI H.  
MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE  
PERIOD FROM 01/04/1991 TO 08/06/1992

Details	Amount in Rs.	Remarks
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>	-	
<b>F.Y. 1990-91</b>		
Shares purchased by M/s. Harshad S.Mehta	-	
Funds transferred by M/s. Harshad S.Mehta	-	
<b>Sub-total</b>	-	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	105,240,900.00	See page 780, 787, 788 & 789



Funds transferred by M/s. Harshad S.Mehta	6,668,174,866.00	See page 781, 783, 784, 785, 786, 787, 788, 789 & 790
<b>Sub-total</b>	<b>6,773,415,766.00</b>	
For the period 08.06.1992		
Shares purchased by M/s. Harshad S.Mehta	-	
Funds Transferred by M/s. Harshad S. Mehta	839,455,670.00	See page 781, 791 & 792
<b>Sub-total</b>	<b>839,455,670.00</b>	
<b>GROSS FLOW</b> (Sr.n.2+6+10+14)	<b>7,612,871,436.00</b>	

GROSS FUND FLOW IN THE ACCOUNT OF DR.PRATIMA H.MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE PERIOD FROM 01/04/1991 TO 08/06/1992

Details	Amount in Rs.	Remarks
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>	-	
<b>F.Y. 1990-91</b>		
Shares purchased by M/s. Harshad S.Mehta	30,001,549.50	See page 836, 837, 838 & 839

Funds transferred by M/s. Harshad S.Mehta	87,507,000.00	See Page 836, 837, 838 & 839
<b>Sub-total</b>	117,508,549.50	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	45,347,894.15	See page 836, 840, 841 & 842
Funds transferred by M/s. Harshad S.Mehta	28,655,000.00	See page 836, 840, 841 & 842
<b>Sub-total</b>	74,002,894.15	
For the period 08.06.1992		
Shares purchased by M/s. Harshad S.Mehta	213,842.00	See Page 836 & 843
Funds Transferred by M/s. Harshad S. Mehta	200,000.00	See Page 836 & 843
<b>Sub-total</b>	413,842.00	
<b>GROSS FLOW</b> (Sr.n.2+6+10+14)	<b>191,925,285.65</b>	

It is an admitted position that for purchase of these flats, loan was advanced to Jyoti H.Mehta and Pratima H.Mehta by Late Harshad Mehta. The position that emerges from the account books in relation to the loan advanced for purchase of these flats is as follows:-

Name of the Property, Name of the Notified Party as per M.P.41 of 1999 and Date of Purchase	Amount paid	How paid	How much paid by Harshad S. Mehta	Remarks
Flat No.32-B, 80.50 sq.mtrs. (para 4.1,1.1 page No.12 of Jyoti Mehta's report) belonging to Jyoti H..Mehta purchased on 18.04.1990	Rs.47,75,110/- including stamp duty of Rs.3,61,100/- and Rs.73,010/- for which details not available) (page No.4.1,1.2 page No.12)	1. Rs.5,00,000/- paid by Jyoti H. Mehta as an advance in 1989-90 to Crest Hotels Ltd.  2. Rs.42,75,110/- was paid by Jyoti H. Mehta in 1990-91 to Crest Hotels Ltd. (Rs.8,94,010/- funded by M/s.Ashwin S. Mehta and Rs.30,00,000/- funded by M/s. Harshad S. Mehta (para No.4.1.1.2 and page No.12)	Rs.30,00,000/- paid by M/s. Harshad S. Mehta for purchase of Flat No.32-B in Maduli (para No.6.2.6 page No.34 & 35)	There is opening debit balance of Rs.1,41,33,16 3.49 as on 1 <sup>st</sup> April, 1990 in the books of M/s.Harshad S. Mehta in the account of Jyoti H. Mehta i.e. Mrs. Jyoti H. Mehta owed Rs.1.41 crores to HSM even as on 1.4.90 .
Flat No.33, having Carpet Area of about 74.41 sq.mtrs. alongwith exclusive use of terrace	Rs.44,10,410/- including stamp duty of Rs.3,48,400/-) and deposits of Rs.68,010/- for	1. Pratima H.Mehta has paid Rs.39,10,410/-  2. Mrs.Jyoti H.	Rs.6,60,000/- - and Rs.31,50,000/- was transferred from the	As per Report on the account of Aatur Holding Pvt. Ltd. Flat No.33 was part of big

admeasuring 1479 sq.ft. (para 4.1 page No.9 of Pratima H. Mehta's Report) belonging to Pratima H. Mehta jointly with Jyoti H. Mehta purchased on 07.08.1990	society, water, electricity and legal expenses) (para No.4.1.2 page No.9 of Pratima H. Mehta Report)	Mehta has paid Rs.5,00,000/- (page No.4.1.2 page No.9 of Pratima Mehta's Report)	account of M/s.Harshad S.Mehta to Pratima H. Mehta on 18.04.1990 and 22.05.1990 respectively and the said amount has been utilised for purchase of Flat No.33. Besides this there was already an opening debit balance of Rs.1,07,92,1 17.50 as on 01.04.1990 in the books of M/s.Harshad S. Mehta in the accounts of Pratima H.Mehta i.e. Pratima H. Mehta owed Rs.1.08 crores to HSM even as on	Flat No.32 comprising Flat No.33, 34A and 34B having built up area of 3961.94 sq.ft. and open terrace admeasuring 5,000 sq.ft. attached to the flat. This big flat was used for personal residence of Harshad S. Mehta and/or member of his family at No 34-B, was purchased by Harshad S,Mehta and 34-A was purchased by Aatur Holding Pvt. Ltd. Funds for the purchase of Flat were received from Harshad S. Mehta (para No.3.1, 1.4, 3.1, 1.7 and 3.1, 1.8 page
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			01.04.1990	No.8 and 9 of the Report on the accounts of Aatur Holding Pvt. Ltd.
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33. The flat no.44B is owned by Mr.Sudhir S.Mehta. So far as Mr.Sudhir S.Mehta is concerned, in the affidavit of the Custodian dated 1.3.2006 the Custodian has shown the position in relation to him, thus:-

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.03.1991.**"

"Name of Notified party: Mr.Sudhir S.Mehta

Name	Amount as % of source
M/s.HSM	62.6%
M/s.ASM	31%
Mr.HSM	3.9%

Contribution of HSM to M/s.ASM itself is more than 90% as shown below."

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.03.1992.**"

"Name of Notified party: Mr.Sudhir S.Mehta

Name	Amount as % of source
M/s.HSM	58.8%
M/s.ASM	21.8%

Mr. JHM	20.9%
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HSM is still the major contributor in respect of even M/s.ASM and M/s.JHM as shown below."

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **08.06.1992**."

"Name of Notified party: Mr.Sudhir S.Mehta

Name	Amount as % of source
M/s.HSM	57.3%
M/s.ASM	22.3%
Closing balance	14%

Contribution of HSM to M/s.ASM is more than 90% as shown below. Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom."

Perusal of the original account books reveals that the flow of funds to Mr.Sudhir S.Mehta is from M/s.Harshad Mehta and Mr.Harshad Mehta. Perusal of the charts given below makes the position clear.

**GROSS FUND FLOW IN THE ACCOUNT OF SHRI.SUDHIR S. MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE PERIOD FROM 01/04/1991 TO 08/06/1992**

Details	Amount in Rs.	Remarks
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>	-	
<b>F.Y. 1990-91</b>		

Shares purchased by M/s. Harshad S.Mehta	23,017,676.35	See page 856, 858, 859, 860, 861, 862, 863, 864 & 865
Funds transferred by M/s. Harshad S.Mehta	66,521,984.20	See page 857, 858, 859, 860, 861, 862, 863 & 864
<b>Sub-total</b>	89,539,660.55	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	98,514,528.00	See page 856, 866, 867, 868 & 869.
Funds transferred by M/s. Harshad S.Mehta	34,284,634.38	See page 857, 866, 867, 868, 869, 870
<b>Sub-total</b>	132,799,162.38	
For the period 08.06.1992		
Shares purchased by M/s. Harshad S.Mehta	-	
Funds Transferred by M/s. Harshad S. Mehta	150,000.00	See page 857 & 871
<b>Sub-total</b>	150,000.00	

<b>GROSS FLOW</b>	<b>222,488,822.93</b>
(Sr.n.2+6+10+14)	

It is an admitted position that for purchase of this flat, loan was advanced to Mr.Sudhir S.Mehta by Late Harshad Mehta. The position that emerges from the account books in relation to the loan advanced for purchase of the flat is as follows:-

<b>Name of the Property, Name of the Notified Party as per M.P.41 of 1999 and Date of Purchase</b>	<b>Amount paid</b>	<b>How paid</b>	<b>How much paid by Harshad S. Mehta</b>	<b>Remarks</b>
Flat No.44-B having carpet area of about 119.53 sq.mtrs. (para 2.1.1.1 and page No.4 of the report on the accounts of Sudhir S.Mehta) belonging to Sudhir S.Mehta (Sudhir S.Mehta with Mrs.Pratima H.Mehta purchased Flat No.44-B. Shri Sudhir S. Mehta stated that he was using the flat for residential purpose) (para 2.1,	Rs.57,03,610/- (including Stamp Duty of Rs.4,64,600/-)	Sudhir S. Mehta has paid Rs.50,47,610/- and Rs.6,56,000/- paid by Pratima H. Mehta (para 2.1.1.3 page No.5 of the Report on the accounts of Sudhir s. Mehta)		There is opening debit balance of Rs.86,27,97 6.63 as on 1 <sup>st</sup> April, 1990 in the books of M/s.Harshad S. Mehta in the account of Sudhir S. Mehta ie. Sudhir S. Mehta owed Rs.86.27



1.1 page No.4 of Report on the accounts of Sudhir S. Mehta) purchased on 18.04.1990				lakhs to HSM even as on 1.4.90
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34. Now coming to Mr.Hitesh S.Mehta, he owns flat no.44A alongwith Mr.Harshad Mehta jointly. In paragraph 18 of the affidavit of the Custodian dated 1.3.2006, the Custodian has shown thus:-

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.03.1991.**"

"Name of Notified party: Mr.Hitesh S.Mehta

Name	Amount as % of source
M/s.HSM	84.7%
M/s.ASM	9%
Mr.HSM	3.2%

Contribution of HSM to M/s.ASM itself is more than 90% as shown below"

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **31.03.1992.**"

"Name of Notified party: Mr.Hitesh S.Mehta

Name	Amount as % of source
M/s.HSM	39.6%

M/s.JHM	20.2%
M/s.ASM	32.5%
CLOSING BALANCE	6.7%

HSM is still the major contributor in respect of even M/s.ASM and M/s.JHM as shown below;

Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom.

"Sources of Fund(and, therefore, of Investments) of notified parties other than Harshad S.Mehta & M/s.Harshad S.Mehta as on **08.06.1992.**"

"Name of Notified party: Mr.Hitesh S.Mehta

Name	Amount as % of source
M/s.HSM	34.4%
M/s.ASM	34.7%
CLOSING BALANCE	29.3%

Contribution of HSM to M/s.ASM is more than 90% as shown below.

Closing balance is also on account of transfer of funds from HSM and/or generation of funds therefrom.

Perusal of the original account books reveals that the flow of funds to his account is from M/s.Harshad S.Mehta and Mr.Harshad Mehta. Perusal of the charts given below makes the position clear.

GROSS FUND FLOW IN THE ACCOUNT OF DR.HITESH S. MEHTA ONLY FROM M/S.HARSHAD S.MEHTA DURING THE PERIOD FROM 01/04/1991 TO 08/06/1992

Details	Amount in Rs.	REMARKS
<b>GROSS FLOW</b>		
<b>OPENING BALANCE</b>	14,265,588.00	
<b>F.Y. 1990-91</b>		
Shares purchased by M/s. Harshad S.Mehta	38,353,920.00	See page 825, 827, 828 & 829
Funds transferred by M/s. Harshad S.Mehta	81,739,274.00	See page 826, 827, 828 & 829
<b>Sub-total</b>	120,093,194.00	
<b>F.Y. 1991-92</b>		
Shares purchased by M/s. Harshad S.Mehta	64,908,848.00	See page 825, 830, 831, 832 & 833
Funds transferred by M/s. Harshad S.Mehta	45,114,413.00	See Page 826, 830, 831, 832 & 833
<b>Sub-total</b>	110,023,261.00	
<b>GROSS FLOW</b> (Sr.no.2+6+10)	244,382,043.00	

It is an admitted position that for purchase of this flat, loan was advanced to Mr.Hitesh S.Mehta by late Harshad Mehta. The position that emerges from the account books in relation to the loan

advanced for purchase of the flat is as follows:-

Name of the Property, Name of the Notified Party as per M.P.41 of 1999 and Date of Purchase	Amount paid	How paid	How much paid by Harshad S. Mehta	Remarks
Flat No.44-A, having a carpet area about 1046.53 sq. ft. belonging to Mr.Hitesh S.Mehta, jointly with Harshad S. Mehta purchased on 18.04.1990	Rs.37,95,410/- - (including Stamp Duty of Rs.2,93,400/- and deposit amounting to Rs.58,010/- for Society, water legal and electricity charges) (para 4.1.2 page No.9 of the report on the accounts of Hitesh S.Mehta)	Rs.9,81,000/- were paid by Hitesh S. Mehta and Rs.28,14,010/- were paid by Harshad S. Mehta (para 4.1.2 and page No.9 of the report on the accounts of Hitesh S. Mehta)	Rs.28,14,010/- - and Rs.4,00,000/- paid by M/s.Harshad S.Mehta (para 6.2.6 page No.34 of the Report on the accounts of Hrashad S. Mehta)	As per ledger account of Hitesh Mehta in the books of M/s.HSM, M/s.Harshad S.Mehta has also transferred Rs.24,15,000/- and Rs.23,56,000/- on 18 <sup>th</sup> April, 1990 to Hitesh S. Mehta besides transfer of Rs.4,00,000/- on 17 <sup>th</sup> April, 1990 being payment made by M/s.Harshad S. Mehta on behalf of Hitesh S. Mehta for purchase of Flat No. 44-A. In addition to this there was already a

				opening debit balance of Rs.14265588.2 1 on 1 <sup>st</sup> April, 1990 in the books of M/s.Harshad S.Mehta i.e. Hitesh Mehta owed Rs.1.42 crores to HSM even as on 1.4.90 This goes to prove that the Flat was purchased from 100% funds provided by M/s.Harshad S. Mehta
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35. Analysis of various figures available in the account books shows that huge amounts were owed by each individuals and entity to Harshad Mehta and other entities in the group as on the date of their notification i.e. 8.6.1992. I find that as on 8.6.1992 Mrs.Jyoti H.Mehta and M/s.Jyoti H.Mehta owed an amount of Rs.71,75,000/- to Mr.Harshad S.Mehta, an amount of Rs.2,36,09,68,965/- to

M/s.Harshad S.Mehta, an amount of Rs.2,18,55,629/- to M/s.Ashwin S.Mehta and an amount of Rs.10,000/- to Mrs.Deepika A.Mehta and an amount of Rs.5,58,07,745/- to group companies. Thus, Mrs.Jyoti H.Mehta and M/s.Jyoti H.Mehta owed an amount of Rs.2,44,58,17,339/- either to Mr.Harshad S.Mehta, M/s.Harshad S.Mehta or to group of companies and the members of the family. Similarly Mrs.Deepika A.Mehta as on 8.6.1992 owed an amount of Rs.11,27,93,939.50 to Mr.Harshad S.Mehta, M/s.Harshad S.Mehta, M/s.Ashwin S.Mehta and M/s.Jyoti H.Mehta. Similarly, Mr.Hitesh S.Mehta as on 8.6.1992 owed an amount of Rs.20,30,52,642.96 to Mr.Harshad S.Mehta, M/s.Harshad S.Mehta, M/s.Ashwin S.Mehta, M/s.Jyoti H.Mehta, Mrs.Deepika A.Mehta. Similarly, Mrs.Pratima H.Mehta on 8.6.1992 owed an amount of Rs.8,70,92,233.58 to Mr.Harshad S.Mehta, M/s.Harshad S.Mehta, M/s.Ashwin S.Mehta, M/s.Jyoti H.Mehta, Mrs.Jyoti H.Mehta, Mrs.Deepika A.Mehta. Similarly Mr.Sudhir S.Mehta as on 8.6.1992 owed an amount of Rs.18,11,43,714.25 to Mr.Harshad S.Mehta, M/s.Harshad S.Mehta, M/s.Ashwin S.Mehta, M/s.Jyoti

H.Mehta and Growmore Research & Asset Management.

Similarly, Mr.Ashwin S.Mehta as on 8.6.1992 owed an

amount of Rs.1,58,44,25,919/- to Mr.Harshad

S.Mehta, M/s.Harshad S.Mehta, M/s.Jyoti H.Mehta and

M/s.Ashwin S.Mehta. Similarly, M/s.Ashwin S.Mehta

as on 8.6.1992 owed an amount of Rs.94,81,03,009/-

to M/s.Harshad S.Mehta, Mr.Ashwin S.Mehta,

Mrs.Jyoti H.Mehta, Dr.Pratima H.Mehta, Harsh

Estates Pvt.Ltd., Growmore Leasing & Investment

Ltd., HUF's of HSM group and also towards loans

from others (including Canfina). So also, M/s.Atur

Holdings Pvt.Ltd. as on 8.6.1992 owed an amount of

Rs.16,98,08,752/- to M/s.Harshad S.Mehta, M/s.Jyoti

H.Mehta, M/s.Ashwin S.Mehta and Harsh Estates. If

these figures are considered togetherwith the

statements to be found in the letter of Harshad

Mehta written to the Income Tax Department portion

from which has been quoted above, it becomes clear

that they were carrying on business in shares and

securities as members of joint family. If one

looks at closing balance as on 1.4.1990 in the

books of accounts of the notified parties with

which we are concerned in this petition, it becomes clear that their business increased manifold after 1.4.1990 only because of flow of funds into their business and accounts from Harshad Mehta. As on 1.4.1990 the opening balance/share capital in so far as Mrs.Jyoti H.Mehta is concerned was Rs.21,34,810/-, Mrs.Deepika A.Mehta is concerned was Rs.22,39,096/-, Dr.Hitesh Mehta is concerned was 7,58,218/-, Dr.Pratima Mehta is concerned was Rs.8,12,225/-, Mr.Sudhir S.Mehta is concerned was Rs.30,17,768/-, M/s.Ashwin S.Mehta is concerned was Rs.20,81,985/-, Mr.Ashwin S.Mehta is concerned was Rs.22,91,617/-, M/s.Atur Holding Pvt.Ltd. is concerned was Rs.10,000/-. The figures that I have given above show that after 1.4.1990 there was tremendous flow of funds from Harshad Mehta to these notified parties which in most of the cases exceeded 90% of the funds of the concerned notified party, the details of which I have already given above. What is pertinent to be noted herein is that the principal business of the family was dealing in shares and securities. The liabilities



referred to above are arising out of the transactions in securities and shares. The properties have been purchased also by using the funds from the same business. In my opinion, therefore, for clearing the liabilities that have arisen because of the transactions undertaken, the properties of all the members of the family who are notified, will also have to be disposed of.

36. To sum up, the residential properties which are subject matter of this petition have to be sold because

(i) these properties are admittedly attached properties and in view of the law laid down by the Supreme Court in Harshad Mehta's case and reaffirmed in Sudhir Mehta's case, before selling the properties under Sub-section (1) of Section 11 of the Act only satisfaction that the Special Court has to record is that the properties are the attached properties;

(ii) The liabilities of the notified parties

exceed their assets firstly because it is so found by me by referring to the various figures of liabilities and assets and secondly because such a finding is already recorded by the Supreme Court in its judgment in Sudhir Mehta's Case;

(iii) Various notified parties with whom this petition is concerned, are members of Harshad Mehta group and therefore, the properties of each notified party and entity can be sold for discharge of the liabilities of Harshad Mehta. That they constitute a group, is a finding recorded by the Supreme Court already, firstly in its judgment in Sudhir Mehta's case and secondly in its judgment in Jyoti Mehta's case. By referring to the account books maintained and the pattern of the transactions, I have also recorded a finding that all the notified parties and entities with whom this petition is concerned, operated in tandem with Harshad Mehta in conducting the securities transactions as members of one family and therefore, they constitute a group.

37. For all these reasons, therefore, the petition of the Custodian is granted. The Custodian is directed to take steps to sell the flats which are subject matter of this petition in "Madhuli" in accordance with the procedure that is settled by the Court for sale of the attached immovable properties. Because these properties are attached properties and as per the judgment of the Supreme Court in Jyoti Mehta's case, the Custodian is entitled to receive income from the attached properties and because the notified parties are occupying those properties, the Custodian is not getting any income from these properties, the Custodian shall initiate the process of sale immediately and complete it as soon as possible and submit a report to the Court. The petition is disposed of.

~ Judge,  
Special Court.

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