

“The Hon’ble Special Court passed an order on 23.06.2020 in MA 4 of 2020 filed by Smt Jyoti Mehta against the Custodian to subscribe to the attractive right shares issued by Reliance Industries Ltd. (RIL) against 5,34,612 shares out of 27,99,612 shares which were physically not available with the Custodian and which were transferred in his name without any permission of Hon’ble Special Court. The shares were traced by Mehtas and further claim for recovery of 4,80,008 shares of RIL was also made by Smt Jyoti Mehta. The Custodian disputed the claim but supported subscription to rights which was allowed and both the Custodian and the company were directed to ascertain the facts.”

LD-VC-SPMA-4-2020

wadhwa

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

LD-VC-MISCELLANEOUS APPLICATION NO.4 OF 2020

Smt. Jyoti H. Mehta & Ors.

.. Applicants

Vs.

The Custodian & Ors.

.. Respondents

Mr. Ashwin Mehta for the applicants.

Mr. Gandhar Raikar a/w Ms. Shilpa Bhate i/b. Leena Adhvaryu for respondent no.1.

Dr. Milind Sathe, Senior Advocate a/w Vipul Shukla for respondent no.2.

Mr. Ashwin Dave, representative from Reliance Industries Limited.

Ms. Pushpa Iyer representative from Kfin Technology Pvt. Ltd.

CORAM : A.K. MENON

JUDGE, SPECIAL COURT.

DATE : 23RD JUNE, 2020

(THROUGH VIDEO CONFERENCE)

P.C. :

1. **By this application, the applicants who are notified parties, seek a direction to the Custodian to subscribe to the rights shares pursuant to the issue announced by the 2nd respondent company in respect of a block of 27,99,612 shares which are all stated to be in physical form. There is a controversy today as to who is in**

possession and custody of these shares as between the Custodian's office and the company. While neither the company nor Custodian claim that the shares are with the notified party or with any other third party, this aspect is kept open. Dr. Sathe submits that the shares are under 17 Folios described in Exhibit "F". Save and except 220 shares shown to the credit of one of the notified parties, the rest have generally described as under;

Sr. No.	Folio No.	Name of the Holder
1	42260045	OFFICE OF THE CUSTODIAN SPECIAL COURT
2	42260061	"OFFICE OF THE CUSTODIAN THE SPL COURT"
3	45998363	OFFICE OF THE CUSTODIAN
4	46123891	OFFICE OF THE CUSTODIAN
5	47676061	OFFICE OF THE CUSTODIAN, THE SPECIAL
6	80654031	CUSTODIAN A/C HARSHAD MEHTA GROUP - BENAMI SHARES

2. The application today is on behalf of the three notified parties to direct the Custodian to subscribe to the entitlement pertaining to 5,34,612 shares forming subject matter of six folios listed at item no.1 to 6 of Exhibit F as above. There is no dispute as between the Custodian, the company, their transfer agents or the notified party that these 5,34,612 shares pertain to the folios set out in item no.1 to 6 of Exhibit F extracted above. Mr. Mehta has however, contended that in addition to the aforesaid 5,34,612 shares, there

are a further 4,80,008 shares which the company ought to have disclosed as part of Exhibit F but has failed to do so.

3. The Custodian has no instructions on this aspect. Dr. Sathe on behalf of the company also seeks time to ascertain whether the 4,80,008 shares have already been considered by this court in earlier applications which have been disposed. Mr. Raikar submits that without prejudice to the contention that the shares do not belong to the Applicants or Harshad Mehta Group, the Custodian is willing to subscribe to the entitlement pertaining to the 5,34,612 shares in the following manner;

- (a) 32000 shares are to be applied for and on behalf of Jyoti H. Mehta
- (b) 3625 shares by Growmore Leasing & Investments Ltd. and
- (c) 15 shares in the name of Harshad S Mehta-Benami.

4. Thus a total of 35,640 shares are liable to be issued by the company towards the 5,34,612 shares. Dr. Sathe has slightly different figures. He has instructions that the entitlement is only

35638 shares. The amount to be paid will be a multiplier of 35,638 or 35640 as the case may be and Rs.314.25 payable as on date. Further amounts are payable after about one year.

5. In order to ensure that the parties do not have to come back to Court for seeking further clarifications, it is suggested that the order to be passed today may provide for further payments to be made to the company on account of these three notified parties. Although Mr. Raikar suggested that the amounts may be paid from one account in order to avoid premature encashment penalties, Mr. Mehta is of the view that in order to avoid any accounting difficulties, amounts may be released from the accounts of the three notified parties notwithstanding payment of any premature encashment penalty occasioning from funds falling short in the current accounts and the resultant need to encash fixed deposits.
6. In this view of the matter, since and in order to ensure clarity of the applicants' claim to additional shares, time can be granted to the company to ascertain the factual aspects pertaining to the alleged non-disclosure of 4,80,008 shares. I therefore pass the following Order;

- (i) By consent of the parties, but without prejudice to the contentions of the Custodian and of the company that neither the applicants nor the other individuals and entities of the Harshad Mehta Group are owners of the 5,34,612 shares, the Custodian is permitted to apply for the rights entitlement in respect of the 5,34,612 shares.
- (ii) The applicants shall ensure that the necessary forms, payments from the individual accounts of the three applicants are made out and as prayed in prayer clause (d) except with the clarification that the total number of shares for computation of entitlement shall be treated as 5,34,612. The claim pertaining the additional 4,80,008 shares will be considered after the Company obtains instructions and without prejudice to the Company' contention that there are not such additional shares.
- (iii) The company shall file their reply specifically on the aspect pertaining to the alleged non-disclosure of 4,80,008 shares on or before 29th June, 2020. Copies of the affidavit shall be served by email along with compilation of orders which Dr. Sathe seeks to rely upon.

- (iv) Meanwhile, parties are at liberty to exchange computations of shares supported by the relevant documents as far as the alleged non-disclosure is concerned.
- (v) By consent, stand over to **30th June, 2020**.
- (vi) The copy of this order shall be uploaded in due course. In the meantime, all parties shall act on a copy of the order digitally signed by the Personal Secretary of the Court.

(A.K. MENON, J.)

Sneha A.  Digitally signed
by Sneha A. Dixit
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“The Hon’ble Special Court passed an order in MA 4 of 2020 examining the claim of Smt Jyoti Mehta and granted the same in respect of 9.60 lakh shares of RIL and also allowed subscription to the right shares. The Hon’ble Court criticized the conduct of Custodian by observing that repeated applications are required to be made in view of the lack of clarity on the part of the Custodian and the resultant inaction insofar as the entitlement of these notified parties including Applicants are concerned and therefore it would be necessary for the Custodian to file a comprehensive report.”

LD-VC-SPMA-4-2020-Order

Dixit

IN THE SPECIAL COURT

[TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES] ACT 1992

LD-VC-MISCELLANEOUS APPLICATION NO.4 OF 2020

1. Jyoti H. Mehta
2. Sudhir S. Mehta
3. Growmore Leasing & Investments Ltd. ... Applicants

V/s.

1. The Custodian
2. Reliance Industries Ltd.
3. Kfin Technologies Pvt. Ltd.,
(Formerly Karvy Fintech Pvt. Ltd.) ... Respondents

Mr. Ashwin Mehta for the Applicants.

Mr. Gandhar Raikar, with Ms. Shilpa Bhate, i/by Leena Adhvaryu, for Respondent No.1.

Dr. Milind Sathe, Senior Advocate, with Mr. Vipul Shukla, for Respondent No.2.

Mr. Ashwin Dave, Representative from Reliance Industries Limited.

Ms. Pushpa Iyer, Representative from Kfin Technology Pvt. Ltd.

**CORAM : A.K. MENON, J.
(JUDGE, SPECIAL COURT)**

DATE : 30TH JUNE, 2020.

(THROUGH VIDEO CONFERENCE)

P.C. :

1. This is an adjourned application. On 23rd June 2020, the Custodian was permitted to apply for rights shares of the 2nd respondent accruing on 5,34,612 shares.. The matter was thereafter adjourned to date in order to enable the

company to obtain instructions on the 1st applicant's claim to be entitled to a further 32,000 shares arising out of 4,80,008 shares said to be forming part of her claim to 9,60,000 shares including bonus shares accrued on 1,20,000 base shares. Mr. Mehta has placed reliance upon the orders dated 3rd September 1993 and 29th March 1994 passed by the Special Court in Miscellaneous Application No.103 of 1993, wherein the Special Court considered the Custodian's plea to direct the Income Tax Authorities, who were party-respondents in that application, to release certain shares seized by the Income Tax Authorities from respondent nos.2 to 4 in that application - respondent no.2 being Jyoti H. Mehta - the 1st applicant herein.

2. Dr.Sathe contends that the company not being party to MA 103 is unaware of the basis of the claim for 32,000 rights shares. Dr. Sathe's response is simple: he has instructions to state that the company will honour and issue shares if the Custodian applies but the shares would be issued under the same names as are currently appearing in Exhibit "F" to this Application. Mr.Raikar on the other hand opposed the application on the basis that applicants are not owners of the shares. Both the learned counsel, Mr. Raikar for the respondent Custodian and Dr.Sathe for the company oppose the reliefs of disclosure sought this application since orders passed in MA 475 of 1998, MA 41 of 2001, MA nos 274 to 279 of 2006 (which were withdrawn) and finally MA 76 of 2011 which records that all disclosures sought were made by the Custodian and the company.

3. The order passed in the last of these applications MA 76 of 2011 dated 14th December 2017 clearly records that Mr.Mehta for the notified parties was satisfied with the disclosures and the liberty to seek further disclosures if the information provided was insufficient. The respondents in that MA were to comply with any such further request within six weeks. Today on a query from the court the respondents state that no request for further disclosure or information had been received. They further submit that the applicants are misusing liberty granted in earlier orders to once again raise and agitate the same issue i.e. non- disclosure of details of shareholding of the applicants.

4. In my view the opposition is fully justified, but Mr. Mehta confirms that he is not seeking to reapply on the basis any such liberty to right reserved to the applicants at all. He states that his claim today is only based on the order in MA 103 of 1993 wherein the Custodian had sought to take custody of the 1.20 lakh shares. The accrual on these shares and the base shares cumulatively entitle the first applicant to 9.60 lakh shares and therefore rights shares in the ratio on offer. Of these 9.60 lakh shares the rights shares offered on 5,343,612 shares has already been provided for in the order dated 23rd June 2020. The order dated 23rd June 2020 is self-explanatory.

5. We are today concerned only with the rights' entitlement, if any, of Jyoti H. Mehta on 4,80,008 shares. As on date, Mr. Raikar for the Custodian confirms

that 4,79,992 out of 5,34,612 shares would be part of the 9,60,000 shares including the base 1,20,000 shares and forming subject matter of MA/103/1993. He has therefore no objection if an application is made for rights pertaining to 4,80,008 shares. In that view of the matter there is not dispute that 9,60,000 shares resulted from the order dated 29th March 1994 passed in MA 103 of 1993.

6. Respondent no. 2 and 3 are therefore bound to honour the application for 32,000 rights shares in addition to the 35,638 shares contemplated in the order dated 23rd June 2020. The only aspect that Mr. Raikar has reserved his rights is based on his contention that ownership of the shares has not been established. This is a fact which Mr. Mehta has contested since according to Mr. Mehta, MA/103/1993 proceeded on the basis that 1,20,000 shares “belonged” to Jyoti H. Mehta. The computation of 1,20,000 shares was not evident from MA/103/1993, but, as it transpires, the 1st applicant held 1,00,000 shares of the 2nd respondent as on that date and 2,00,000 shares of one Reliance Petroleum Limited, which has since merged with the 2nd respondent. The merger ratio resulted in 20,000 shares of the 2nd respondent being allotted to the 1st applicant. It is in this manner that has total of 1,20,000 base shares that have been arrived at. The rights’ entitlement therefore today is sought on the basis of 4,79,992 shares and 4,80,008 shares (collectively 9,60,000 shares).

7. The company represented by Dr. Sathe confirms that a total of 32,000 shares are liable to be issued against the aforesaid 4,80,008 shares. Exhibit-F to the present application is an admitted table of 17 folios, under which numerous shares of the 2nd respondent are being held. The folio numbers, which are provided in Exhibit-F, all do not attribute the shares to any one notified party save and except for the 220 shares under Item 6.

8. In view of the fact that the Custodian and the company are handicapped in identifying the correct folio in which these 32,000 shares under the current rights issue are to be allocated, it is today agreed between all parties that without prejudice to the rights and contentions of the Custodian, these 32,000 shares may be issued under Folio No.790000001 at item no.7 Exhibit "F" to this MA.

9. As far as the other directions sought by Mr. Mehta are concerned, they arise out of the alleged inaction of the Custodian in explaining failure to subscribe to the rights' entitlement. In this respect, Mr. Mehta has at the very outset stated that this application has not been made pursuant to any liberty granted in the numerous other applications, to which the affidavit of the company makes reference. Thus, Mr. Mehta has very clearly taken a position that this is an independent application arising out of the order passed in MA/103/1993. I may observe here that repeated applications are required to be made in view of the lack of clarity on the part of the Custodian as and

resultant inaction insofar as the entitlement of these notified parties including the applicants are concerned. It will be necessary for the Custodian to file a comprehensive report.

10. The only other prayer that survives in this application is prayer clause (e), by which the applicants have sought a direction against the respondents to provide a complete account in respect of shareholdings of RIL held by the applicants under Folio No.42260053 and explain how dividends were paid into Harshad Mehta Group A/c. instead of to the 1st applicant.

11. Dr. Sathe on behalf of the company states that paragraph 19 of the affidavit of one Venugopal dated 29th June 2020 filed in reply to the above application provides the necessary particulars. In that view of the matter, the only surviving prayer is worked out. Dr. Sathe confirms that all disclosures sought by the notified parties have been made as in the past and that any information required by the Custodian shall be promptly furnished by the 2nd respondent.

12. In view of the aforesaid, I pass the following order :-

- (i) The Custodian shall apply for 32,000 rights shares accruing from 4,80,008 shares forming part of the claim of the 1st applicant. The procedure to be followed shall be the same as in the order dated 23rd June 2020.

- (ii) Mr. Raikar on behalf of the Custodian confirms that the necessary application money shall be drawn from the account of the 1st applicant in terms of the earlier orders including that of encashing fixed deposits, if necessary.
- (iii) The Custodian shall file a comprehensive report after taking into consideration all previous orders passed by this court and the disclosures made by the 2nd respondent-the shareholding of the applicants and other notified parties in the 2nd respondent company. Let such report be filed by 30th September 2020.
- (iv) Miscellaneous application is disposed in the above terms subject to Mr. Mehta's undertaking on filing the hard copy and complying with all office requisitions.
- (v) Since a certified or authenticated copy may not be available for some time, all concerned shall act on a copy of this order digitally signed by the Personal Secretary of the court.

(A.K. MENON, J.)

Sneha
A. Dixit

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by Sneha A. Dixit
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