

"The Hon'ble Special Court passed an order in Report 19 of 2008 filed by the Custodian directing Mehtas to vacate the 8 residential flats at Madhuli for failure to pay maintenance charges of Rs.1.63 Crores."

1

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

REPORT NO.19 OF 2008

**REPORT OF THE CUSTODIAN, THE SPECIAL COURT (TORTS)
ACT, 1992 IN RESPECT OF OUTSTANDING DUES TOWARDS FLAT
NOS.32A, 32B, 33, 34A, 34B ON 3RD FLOOR AND 44A, 44B
AND 45 ON THE 4TH FLOOR TOGETHER WITH TERRACE AREA ON
THE 3RD FLOOR FOR EXCLUSIVE USE AS PER AGREEMENT AND
EIGHT CAR PARKING SPACE IN "MADHULI CO-OP.
HSG.SOC.LTD." BELONGING TO LATE SHRI.HARSHAD S.MEHTA,
AS WELL AS OTHER RELATED NOTIFIED ENTITIES OF HARSHAD
MEHTA GROUP.**

Mr.G.R.Joshi i/b. M/s.P.M.& Mithi & Co., for the
Custodian-applicant.

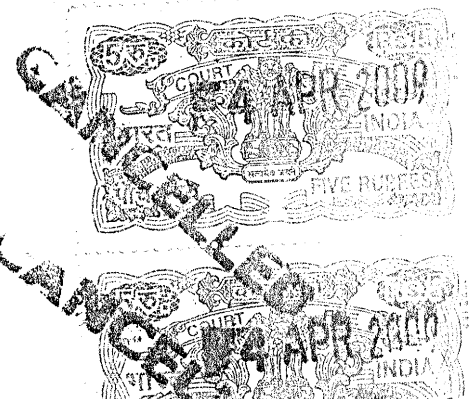
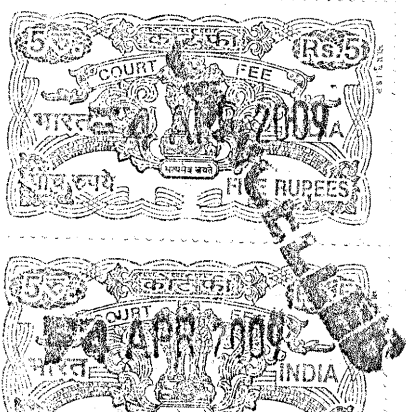
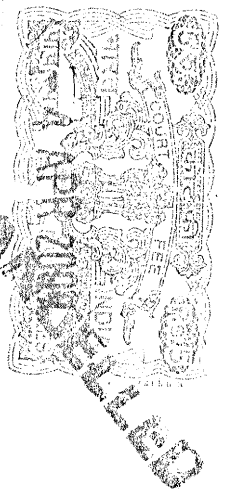
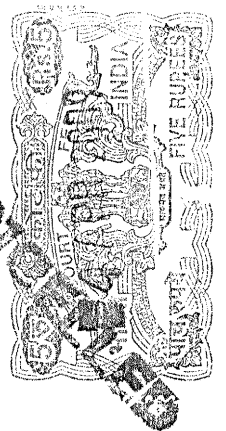
Mr.M.M.Vashi i/b. M.P.Vashi & Associates, for the
notified parties.

CORAM: D.K.DESHMUKH, J.

DATED: 13th March, 2009.

P.C.:-

1. **This report is submitted by the Custodian
seeking appropriate orders in relation to payment of
maintenance charges payable to Madhuli Co-operative**



Housing Society Ltd. in relation to the flats belonging to Harshad Mehta group. This report relates to eight flats, the flats numbers and names of their owners are given below:-

32A	Mr.Ashwin S. Mehta
32B	Mrs.Jyoti H. Mehta
33	Mrs.Pratima H. Mehta
34A	M/s.Aatur Holdings Pvt. Ltd.
44A	Mr.Hitesh S.Mehta
44B	Mr.Sudhir S. Mehta
45	Mrs.Deepika A.Mehta
34B	Harshad H.Mehta (deceased).



All the abovenamed notified parties were notified under the Special Courts (Trial of offences relating to transactions in securities) Act in June,1992. The above mentioned flats owned by them stood statutorily attached in view of the provisions of sub-section 3 of Section 3 of the Special Courts Act. Miscellaneous Petition no.41 of 1999 was taken out by the Custodian seeking orders of the Court for sale of those attached residential flats. The Court disposed of the application by order dated 17.10.2003 directing



the Custodian to sell the flats. Paragraph (15) of that order is relevant for the present purpose which reads as under:-

"15. In case, all adult members of the family of late Shri.Harshad Mehta, who are presently occupying the above referred flats, file an undertaking in this Court within a period of four weeks from today undertaking to vacate the flat occupied by them and hand over peaceful possession thereof to the custodian within a period of four weeks from the date on which the custodian sends them communication asking them to vacate the flats, on sale of the flats being sanctioned by the Court. The custodian shall permit the members of family of late Shri.Harshad Mehta to occupy the flats during the time that the process of the sale of the flats goes on."

This is an admitted position that the notified parties who are occupying the flats have submitted undertaking as per that order and they continued to occupy the flats. The order dated 17.10.2003 passed by this Court was challenged before the Supreme Court



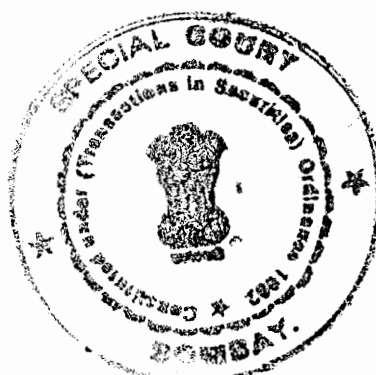
by the notified parties. The judgment of the Supreme Court is reported at "2006(2) Supreme Court Cases 385, Ashwin Mehta and another Vs. Custodian & others". The Supreme Court by that judgment set aside the order passed by this Court and remitted the matter back to this Court for first deciding the question whether various entities whose names are mentioned above to which these flats belong, really constitute a group. However, in that order neither paragraph (15) of the order dated 17.10.2003 is referred to nor anything is said about that part of the order. The position, thus, as it stands today is that the flats which are mentioned above are the attached properties. The notified parties are permitted to occupy those flats because they have undertaken to give vacant possession to the purchasers. The highest bid in relation to those flats has already been accepted by this Court and the matter is presently pending before the Supreme Court seeking confirmation of the Supreme Court for sale of the flats. The question that arises for consideration because of this report is that as to from where and by whom the outgoing of the flats for the period during which the notified parties are occupying the



said flats is to be paid. According to the notified parties, they are liable to pay the outgoings. In other words, they do not dispute their liability to pay the amount of outgoings, but according to them the amount of outgoings should be paid from their attached accounts and they cannot be made to pay the amount of outgoings from their future income i.e. post notification income. Therefore, the question to be decided is "whether this Court can issue a direction to the Custodian to pay the amount of outgoings for those flats from the attached accounts or a direction is to be issued by the Court to the notified parties who are occupying those flats to pay the amount of outgoings from their future income."

At this stage it may be noted that as per the statement submitted by the Custodian, the demand made by the Society towards maintenance of these flats is Rs.1,62,80,811/- and an amount of Rs.25,16,200/- is claimed towards repairs fund. Thus total demand is of Rs.1,87,97,011/-.

2. According to the Custodian, the amount of maintenance of the flats cannot be paid from the



attached accounts because what payment can be made from the attached accounts is governed by the provisions of the Special Courts Act which do not permit payment of amount of maintenance of the flats from the attached account. It is submitted that the properties have been attached so that the properties can be used for paying creditors of the notified parties. Therefore, if the notified parties had not chosen to continue to occupy the flats, the Custodian would have been able to take possession of the flats. The flats are situated in prime locality and therefore, the flats could have been given by the Custodian on agency basis. Had that happened not only the Custodian would have been able to recover the amount of outgoings from the occupiers to whom the properties would have been given but even some additional amount could have been added to the attached amount. But that could not be done because the notified parties chose to continue to occupy the flats. According to the Custodian, now therefore, they cannot be turn around and say that the amount of outgoings should be paid from the attached account. According to the notified parties, they do not dispute their liability to pay the outgoings. Two



submissions are made in support of their contention that payment of outgoings should be made from the attached accounts, viz. firstly that because they are notified parties they have no future income, and secondly that in the advertisements that were issued by the Custodian previously in one advertisement it was stated that the outgoings are payable by the purchasers and in the other advertisement it was stated that the outgoings will be paid by the Custodian, and therefore, now the Custodian cannot claim that the notified parties should pay the amount of outgoings from their future income. It was further submitted that, in any case, from the attached accounts, amount can be paid for preserving the attached assets. An amount of Rs.25,16,200/- has been charged for repairs i.e. for preserving the attached assets and therefore, in any case that payment has to be made from the attached accounts.

3. Now from the rival submissions and perusal of the record, the following emerges as admitted facts:-

(i) The flats which are mentioned above are



owned by the notified parties.

(ii) By operation of the provisions of subsection (3) of Section 3 of the Act, since 1992 these flats have been statutorily attached.

(iii) By order dated 17.10.2003 when this Court directed the Custodian to initiate the process for sale of the flats in order to be in possession, to give vacant possession to the purchasers, the Custodian should have taken possession of the flats from the notified parties, but has not taken possession because of the order made by this Court that the notified party may be permitted to continue to occupy the flats subject to giving an undertaking that they will vacate the flats and shall hand over possession of the flats to the purchaser.

(iv) It is an admitted position that the liability to pay maintenance is of the notified parties.

In view of these admitted positions, the only question that arises for consideration is



"whether the payment of maintenance can be made from the attached accounts."

Perusal of the provisions of sub-section (3) of Section 3 of the Special Court Act shows that on a person being notified, the property of that person gets statutorily attached and then because of the provisions of sub-section (4) of Section 3 of the Act that property is to be dealt with by the Custodian in such a manner as this Court may direct. Perusal of the provisions of Section 11 of the Act shows that the Special Court has to take steps to dispose of the attached property and sub-section (2) of Section 11 of the Act lays down as to how the liabilities of the notified parties are to be cleared by making payment from the amount received on realisation of the assets. Considering the scheme of the Special Court Act, the Supreme Court in its judgment in "Harshad Shantilal Mehta Vs. Custodian & others, (1998)5 Supreme Court Cases 1" has observed thus in paragraph (11):-

"11. This section obviously deals with disbursement of properties attached under Section 3(3). Since the property (movable or immovable or both) which is attached is of the person



notified, the liabilities which are to be paid or discharged under Section 11(2) are also liabilities of the person notified - whether these liabilities be in respect of payment of revenues, taxes, cesses or rates, or whether they be the liabilities to any bank, financial institution or mutual fund."

Then the Supreme Court in paragraph 15 has observed thus:-

"In fact, it has been so held by this Court while interpreting Section 11 in the case of "B.O.I.Finance Ltd. V. Custodian". Referring to Section 11(2) of this Act, this Court has said that sub-section (2) of Section 11 provides for the priorities in which the liabilities of the notified party are to be discharged from out of the attached properties. Considering that the Act has been passed because of the diversion of funds from the banks and financial institutions to the individual accounts of certain brokers, the implication of Section 11(2)(b) clearly is, that after the discharge of



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the liabilities under Section 11(2)(a), the amounts which are paid to the banks would probably be those funds which were diverted from the banks by reason of malpractice in the security transactions. However, before the amounts can be paid to the banks or financial institutions under Section 11(2)(b), the liabilities under Section 11(2)(a) are to be discharged."

It is, thus, clear that the amounts that have been realised and are lying in the attached accounts on disposal of the attached assets are to be paid and distributed according to the provisions of Section 11(2) of the Act. If one peruses the provisions of sub-section (2) of Section 11 of the Act, it is obvious that the amount which becomes due and payable by the notified parties after the date of notification of the notified parties, because the notified parties chose to occupy the properties, cannot be paid from the attached accounts. Once the property is attached, it is obvious that the property is to be sold, and if the Custodian has to sell the property, it is obvious that he has to be in possession of the property so that he can deliver



vacant possession to the purchaser, and therefore, for that purpose the Custodian is entitled to take possession of the property. If the Custodian finds that it is not possible to sell the property immediately, the Custodian will have to find some way to put the property to some use so that the property does not create liability on the attached accounts.

In my opinion, therefore, it is obvious that when the notified parties decided to continue to occupy the property, they knew that they will have to pay the amount of outgoings from their future income and not from their attached accounts.

Perusal of the application filed by Rasila Shantilal Mehta who is mother of the deceased Harshad Mehta in this Court which is miscellaneous application no.467 of 1999 shows that Rasila S.Mehta states that she is a member of joint family which consists of individuals from the Harshad Mehta group. Payment of outgoings is her liability and she has to make that payment from her account. It is pertinent to be noted that when that application was filed Rasila Mehta was not the notified party but her accounts were attached by the Court because they were in joint names. In paragraph (11) of that application, she states thus:-



"11. The Applicant states that her sons and their wives and their grant children are staying together for past several years as a joint family. The Applicant states that 9 flats belonging to herself and her family members have been merged for the purpose. From the time these flats were acquired some time in April/May 1990 the payment towards maintenance was being made regularly until the time that her bank accounts were frozen and her family members were declared as notified persons some time in May/June 1992. Since then the payments to the builders in respect of maintenance is not being paid regularly for last seven years. The Applicant states that a huge amount has piled up as arrears and she is not able to meet her contractual obligation. So much so that the residents of the building have started taking coersive action against herself and her family members which is disturbing their daily life and causing enormous hardship to her family as well as residents of the building. The Applicant states that statutory dues and liabilities of her building towards the government authorities has remained outstanding due to the outstandings of



her family. The applicant and her family members are suffering from acute stress and stand publicly discredited. The applicant states that the situation is so grave that the authorities may even auction the entire building. The applicant states but for the freezing of her bank accounts she would have met the liabilities towards the maintenance and therefore, is very keen that payment is effected from her bank account towards the outstanding arrears of maintenance which amounts to about Rs.75,00,000/-. The Applicant craves leave of this Hon'ble Court to produce correspondence with/ concerning society as and when produced."

It is, thus, clear that the notified parties were aware that the payment of outgoings is to be made by them and not from their attached accounts. They were seeking orders of the Court for making that payment from Rasila Mehta's account who, then, was not a notified party. In my opinion, therefore, in law, it is impossible for this Court to issue direction to make all that payment from the attached accounts and this position was well understood by the notified parties when they decided to continue to occupy the



attached premises after the order was made for sale of those flats. So far as the reference made to the terms in the advertisements issued by the Custodian is concerned, it is undisputed that in the sale notice pursuant to which now the highest bid has been accepted by the Court, there is a clear term that the outgoings till the date on which possession will be given, will not be paid by the purchaser. The purchaser of the flats cannot be made to pay the outgoings because it will result in reducing the price which he is willing to offer and that will cause loss to the creditors of the notified parties. Even assuming that by mistake the Custodian included that term in one advertisement, in my opinion, that will not prevent this Court from issuing direction that the amount of outgoing is to be paid from the future income of the notified parties. In my opinion, there is no substance in the submission made on behalf of the notified parties that because of their notification they do not have any future income. Notification of any person under the provisions of the Special Court Act does not prevent him from carrying on any business that he wants to carry on. In any case, if the notified parties were



under the impression that they cannot carry on any business or that they do not want to carry on any business so as to earn income, then they should not have chosen to occupy the attached flats in relation to which substantial amount of maintenance is payable.

4. Taking overall view of the matter therefore, in my opinion, a direction has to be issued to the notified parties who are occupying those flats to pay the amount of maintenance from their future income. So far as the submission made on behalf of the notified parties that the amount of Rs.25,16,200/- is not payable by them and should be paid from their attached accounts is concerned, in my opinion, that submission has to be accepted because the amount spent on repairs of the flats will be the amount spent for preserving the attached assets and therefore, that amount can be paid from the attached accounts. The report is therefore, disposed of with the direction to the notified parties whose names are mentioned above to pay the amount of maintenance i.e. Rs.1,62,80,811/- within a period of four weeks from today. If they fail to make payment, the Custodian



shall initiate process for recovery of the amount.
Now that I have held that the amount of repairs has
to be paid to the Society from the attached accounts,
the Custodian is permitted to pay that amount to the
Society, if necessary, by breaking the fixed
deposits. The report is disposed of.

sdm
(D.K. DESHMUKH, J.)
Special magr



Applied on.....13/2/09.....
Pages.....17.....
Examined by.....Mrs. Nair.....
Compared with.....Mr. Belsay &.....
Ready on.....2/4/09.....
Delivered on.....2/4/09.....

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