

LIST OF SYNOPSIS IN SIX CIVIL APPEALS

I N D E X

SR. NO.	PARTICULARS	DECREE AMOUNT	DECREE	PAGE NO.
1	CIVIL APPEAL NO. 9339 OF 2010 (MP. NO. 5 OF 2009)	(Rs.506.53 Crores) Hon'ble Special Court Order dated 08.06.2010	Order dated 25.07.2003 in Suit No. 28 of 1995	1 to 10
2	CIVIL APPEAL NO. 9338 OF 2010 (MP NO. 6 OF 2009)	(Damages Rs.222.04 Crores) Hon'ble Special Court Order dated 08.06.2010	Order dated 14.08.2003 in MP No. 14 of 1995	11 to 21
3	CIVIL APPEAL NO. 3285 OF 2011 (MP NO. 7 OF 2009)	(Rs.16.25 Crores Claim of SBI Cap) Hon'ble Special Court Order dated 08.06.2010	Order dated 25.06.2003 in MP No. 61 of 1992	22 to 32
4	CIVIL APPEAL NO. 9342 OF 2010 (MP NO. 8 OF 2009)	(Rs.706 .98 Crores – SBI NHB) Hon'ble Special Court Order dated 08.06.2010	Order dated 22.04.2003 in MP No. 63 of 1992	33 to 43
5	CIVIL APPEAL NO. 3286 OF 2011 (MP NO. 9 OF 2009)	(Claim of Rs.137 .12 Crores of SBI on 7.5 Crore Units) Hon'ble Special Court Order dated 08.06.2010	Order dated 06.09.2002 in MP No. 88 of 1998	44 to 53
6	CIVIL APPEAL NO. 3284 OF 2011 (MP NO. 10 OF 2009)	(Claim on 50 Crores Bonds – SBI, Syndicate Bank) Hon'ble Special Court Order dated 08.06.2010	Order dated 03.03.2003 in Suit No. 41 of 1995	54 to 69

ITEM NO.68

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL D.NO(s). 25366 OF 2010

JYOTI HARSHAD MEHTA

Appellant (s)

VERSUS

S.B.I AND ORS.

Respondent(s)

(With appln(s) for condonation of delay in filing appeal. and office report)

WITH Appeal Civil D NO. D25364 of 2010

(With appln(s) for condonation of delay in filing appeal. and office report)

Appeal Civil D NO. D25365 of 2010

(With appln(s) for condonation of delay in filing appeal. and office report)

Date: 18/10/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Vishwanath Shekhar, Sr. Adv.
Ms. Kamini Jaiswal, Adv.
Mr. Divyesh Pratap Singh, Adv.
Mr. Abhimanue Shrestha, Adv.
Mr. I.H. Syed, Adv.

For Respondent(s) Mr. Subramonium Prasad, Adv.

Mr. Gopal Subramanian, SG
Mr. Tussad Cooper, Adv.
Mr. Zubin Morris, Adv.
Ms. Sangeeta Mandal, Adv.
Ms. Swati Sinha, Adv.
Ms. Taruna Prasad, Adv.
for M/S Fox Mandal & Co., Adv.

UPON hearing counsel the Court made the following
O R D E R

Issue notice.

M/s. Fox Mandal & Co. accepts notice for
respondent No.1 and Mr. Subramonium Prasad, learned
counsel accepts notice for respondent No.3.

Counter to be filed in four weeks.

(Ravi P. Verma)
Court Master

(M.S. Negi)
Court Master

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 9342 OF 2010

JYOTI HARSHAD MEHTA

Appellant (s)

VERSUS

S.B.I AND ORS.

Respondent(s)

(With appln(s) for stay and office report)

WITH Civil Appeal NO. 9338 of 2010

(With appln(s) for stay and office report)

Civil Appeal NO. 9339 of 2010

(With appln(s) for stay and office report)

Appeal Civil D NO. D32659 of 2010

(With appln(s) for c/delay in filing appeal, c/delay in refiling
appeal and office report)

Appeal Civil D NO. D32708 of 2010

(With appln(s) for c/delay in filing appeal, c/delay in refiling
appeal and office report)

Appeal Civil D NO. D32711 of 2010

(With appln(s) for c/delay in filing appeal, c/delay in refiling
appeal and office report)

Date: 08/04/2011 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN

HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s)

Ms. Kamini Jaiswal, Adv.

For Respondent(s)

Mr. Subramonium Prasad, Adv.

Ms. B. Vijayalakshmi Menon, Adv.

Mr. Gopal S., Adv.

Mr. C. Aryama Sundaram, Sr. Adv.

Mr. Tushad Cooper, Sr. Adv.

Mr. Zubin S. Morris, Adv.

Ms. Sangeeta Mandal, Adv.

Ms. Taruna A. Prasad, Adv.

Ms. Anisha Singh Silwal, Adv

for M/s. Fox Mandal & Co., Adv.

Mr. Parag P. Tripathi, ASG

Ms. Monisha Handa, Adv.

Mr. Kunal Bahri, Adv.

Mr. B.V. Balaram Das, Adv.

.....2.

- 2 -

UPON hearing counsel the Court made the following
O R D E R

Delay condoned. Issue notice.

M/s. Fox Mandal & Co. appears for the State Bank
of India, Mr. Subramonium Prasad, appears for the
Custodian, Ms. B. Vijayalakshmi Menon, appears for
Standard Chartered Bank and Mr. B.V. Balram Das, appears
for the Dy. Commissioner of Income Tax, in all the
appeals.

Notice to Syndicate Bank, respondent No.2 in CA
No. D32711/2010.

Counter to be filed in three weeks and rejoinder,
if any, be filed in two weeks thereafter.

List thereafter.

(Ravi P. Verma)
Court Master

(M.S. Negi)
Court Master

SYNOPSIS LIST OF DATES AND EVENTS

The Appellant is a house wife, a notified person and widow of late Harshad S Mehta who had a sole proprietorship brokerage firm in the name and style of M/s Harshad S Mehta. The said brokerage firm used to undertake business in the capacity of broker as well as on a principal to principal basis with several banks and financial institutions including N.H.B and ANZ Grindlays Bank which was subsequently merged with Standard Chartered Bank, (herein after referred to as S.C.B).

The brokerage firm of M/s Harshad S Mehta used to regularly undertake transactions with N.H.B, most of which were on a principal to principal basis. At the relevant time in the year 1991-92, the said N.H.B had advanced monies in respect of some of the transactions which were to be completed by the said brokerage firm.

The brokerage firm of M/s Harshad S Mehta also enjoyed banking facilities with S.C.B who had extended routing facility to the said brokerage firm under which money market transactions undertaken by M/s Harshad S Mehta were settled through the said S.C.B. Under this routing facility, Pay Orders for transactions entered into with M/s Harshad S Mehta used to be drawn in favour of S.C.B for the purposes of securing same day credit which pay orders used to be deposited with S.C.B and credits in regard to which used to be given by S.C.B to the said brokerage firm. The said S.C.B has clearly admitted to have acted only as a banker and that because of the standing and reputation of M/s Harshad S Mehta, it had extended the aforesaid routing facility to it. S.C.B has stated that for the pay orders credited by them in the account of M/s Harshad S Mehta, they had merely acted as bankers and that they were not concerned with the underlying transactions for which the said pay orders were received.

That after the alleged scam broke out in April 1992, for the transactions outstanding with N.H.B, the N.H.B used their clout with R.B.I and by making a false representation, secured a directive from R.B.I against S.C.B, who was the payee bank to reimburse N.H.B, an amount of Rs.506.53 crores paid by N.H.B under some nine pay orders and the S.C.B paid this amount to N.H.B on 04.11.1992 under protest. S.C.B thereafter filed M.P No.28 of 1995 claiming recovery of monies from M/s Harshad S Mehta seeking relief of return of monies reimbursed to N.H.B together with interest and N.H.B filed Suit No.11 of 1995 against M/s Harshad S Mehta and two of their employees for recovery

After making payment under protest, on 04.11.1992 S.C.B entered into arbitration proceedings with N.H.B. On 29.03.1997 An award came to be passed by the Arbitrators in favour of S.C.B which was subsequently challenged by N.H.B before Special Court by filing M.A No.152 of 1997. The Special Court by an order dated 04.02.1998 was pleased to set aside the said Award and directed S.C.B to pay the amount back to N.H.B. Being aggrieved by Special Court Order, S.C.B filed Civil Appeal No.3112 of 1998 before this Hon'ble Court challenging the said order.

However dispute between S.C.B and N.H.B was resolved out of Court under directions of this Hon'ble Court and accordingly a Settlement Deed was filed in the proceedings in Civil Appeal No.3112 of 1998 where under N.H.B assigned their claim against M/s Harshad S Mehta in favour of S.C.B. They also decided to jointly pursue the claim against M/s Harshad S Mehta in Special Court.

That before the aforesaid out of court settlement, late Harshad S Mehta suddenly died in judicial custody on 30.12.2001 which resulted into a complete breakdown in his defence mechanism in as much as the Appellant being a house wife and herself being a notified person and not being

D

involved or familiar with the facts of the business transactions undertaken by late Harshad S Mehta and due to non availability of counsels, she could not defend the legal interests of her husband as well as for her own self. The Appellant was also facing several other insurmountable difficulties such as all the offices were sold, records and computers were taken away by the Custodian, the services of staff having first hand knowledge were dispensed with, and repeated prayers to give access to the records of the brokerage firm of M/s Harshad S Mehta and to extend assistance to her were denied. In these circumstances, at the relevant time, the Appellant was in no position to contest until from the year 2006 onwards, assistance was extended to her by her other family members.

The Appellant states that taking advantage of the aforesaid breakdown and secure in the knowledge that none was appearing much less contesting to represent the legal interests of late Harshad S Mehta, his creditors viz. S.C.B and N.H.B perpetrated a fraud in collusion with the Custodian of obtaining a decree for false and exaggerated amount from Special Court. In regard to this, the Appellant had no knowledge at the relevant time but she discovered the facts relating to the same in stages several years after and finally by taking inspection of court proceedings in the year 2007. The Appellant caused the enquiry and verified all the facts as through M.P No.41 of 1999, the Custodian was proposing to sell the only residence of the Appellant, late Harshad S Mehta and his other family members on the ground that the same was required to be sold to meet the huge liabilities of late Harshad S Mehta.

In the meantime, this Hon'ble Court in two Judgments reported in (2006) 2 SCC 385 in Ashwin Mehta's case and (2009) 10 SCC 564 in Jyoti Mehta's case, granted relief to the Appellant where this Hon'ble Court held that she could show that the liabilities computed by the Custodian were incorrect

E

and that in any event, the assets were sufficient to meet the liabilities. Upon the grievance made, this Hon'ble Court also granted the relief of a direction to Custodian to offer inspection of all the records pertaining to the assets and liabilities of all the flat owners which was duly sought for through which Appellant discovered the facts that in several cases, the Custodian had not caused recovery of attached assets for value of several hundreds of crores even after orders were made by Special Court several years earlier.

The Appellant states that she was always aware that late Harshad S Mehta had surplus of assets over liabilities and had repeatedly made offers to his creditors and all the authorities that be, expressing his willingness to meet all his obligations. But unfortunately, none of the authorities nor the creditors examined his offers seriously. That from 2006, the Appellant started seeking assistance from her family members and later was provided with services of counsel.

The Appellant in a short span of time made herculean efforts to secure several lacs of documents from the Office of Custodian and enquiry was made so as to unravel and discover the facts relating to the acts of fraud and collusion described in the petition. Earlier, the Appellant all along and bonafidely believed that the Custodian being a statutory authority and an Officer of the Court, was protecting the interests of genuine creditors and of the notified entities so that the objects which were set out in the Act could be achieved. The Appellant also was under a genuine but mistaken belief that premier institutions like S.C.B and N.H.B could not play fraud on the Special Court nor can Custodian act in collusion with the two of them in perpetrating such a fraud.

So far as M.P No.41 of 1999 relating to the sale of the residence of the Appellant and her family members, the two orders of the Ld. Judge ordering sale on 17.10.2003 and 25.07.2008 were both set aside by this Hon'ble Court and

F

numerous adverse observations were made against the Ld. Judge, particularly holding that the Ld. Judge had adopted verbatim all the contentions of the Custodian and had not dealt with the contentions of the notified entities. This Hon'ble Court held that there was non application of mind and that justice should not only be done but should be seen to be done.

Being greatly aggrieved by the Ld. Judge, the Appellant and her family members very reluctantly filed M.P No.16 of 2009 praying that the Ld. Judge should recuse himself as the Appellant and her family members had reasonable apprehension that justice would not be done to them. This petition was rejected by the Ld. Judge by holding that he was not biased but he never dealt with the issue before him i.e. the reasonableness of the apprehension of the Appellant and her family members. An appeal against the said order was not entertained by this Hon'ble Court but it was observed that specific cases of bias could be brought to its notice.

The Appellant states that briefly stated, the said acts of fraud and collusion are described as under :-

- a) *That both S.C.B and N.H.B suppressed several material facts and records from the Special Court and consciously made numerous representations only in order to secure a false decree in their favour.*
- b) *That false representation was made by S.C.B filing an affidavit on 02.07.1993 stating therein that late Harshad S Mehta had admitted to their claim though factually he had denied the claim. The decree was awarded on the basis of such misrepresentation as recorded in the decreetal order.*
- c) *That in the Special Court, both S.C.B and N.H.B had filed cross suits and contrary averments as a result of which several disputed questions of facts arose. In the main, it remained to be established whether N.H.B had*

undertaken transactions with M/s Harshad S Mehta or with ANZ Grindlays. In another identical proceedings, S.B.I had introduced evidence to show that N.H.B though was dealing with M/s Harshad S Mehta but was recording the transactions in its books as if they were undertaken with payee banks who were treated as a counter party. Hon'ble Justice S H Kapadia of the Special Court in a similar case of S.B.I by two orders dated 17.02.2000 and 04.06.2002, held that in a case of such nature, it was imperative to ascertain whether N.H.B had transactions with M/s Harshad S Mehta or with the payee bank as in its view, if the transactions were with M/s Harsha S Mehta, then the payee bank would not be liable to N.H.B. In order to secure a false decree, the said N.H.B with-held from the Special Court, the true facts and documents relating to the underlying transactions for which nine pay orders were issued and the decree in the sum of Rs.506.54 crores was awarded. If these material facts and documents were not with-held, the said decree would not have been awarded.

d) That S.C.B and N.H.B suppressed material facts that the underlying transactions for which the decree was awarded were all Ready Forward transactions and that such transactions were subsequently held to be illegal by this Hon'ble Court in a Judgment reported in (1997) 10 SCC 488 in the case of B.O.I Finance Ltd V/s Custodian & Ors. That had the illegality of the said transactions been disclosed, the Special Court would and could not have awarded the decree as for similar claims in several proceedings relating to such Ready Forward transactions, the Special Court had dismissed them after Apex Court Judgment on the ground that it could not assist in enforcing illegal transactions. To overcome this major difficulty, both S.C.B and N.H.B misrepresented that the liabilities were admitted and the material facts about the illegality of the transactions were suppressed.

e) That by a letter dated 18.06.1992, S.C.B had earlier conveyed to M/s Harshad S Mehta that they had no claims on the said brokerage firm of M/s Harshad S Mehta for transactions which were entered into with N.H.B and asked him to clear their name by owning up his transactions.

f) That there was no cause of action to hold M/s Harshad S Mehta liable towards S.C.B as S.C.B acting as his bankers, could not have admitted much less paid the amounts claimed against M/s Harshad S Mehta as there was no lis or privity of contract. In any event, without prejudice to above there was no question of awarding any interest to S.C.B as neither there was an agreement nor there was any justification for awarding it.

g) That all the three parties, S.C.B, N.H.B and the Custodian suppressed from the Special Court that even otherwise, it was a settled law that a solvent notified person is not liable to make any payment of interest and therefore the claim for interest running into several hundreds of crores was not tenable.

The Appellant is aggrieved by the impugned order on the following amongst other grounds :-

a) That the Ld. Judge did not permit completion of pleadings as the Appellant wanted to file an affidavit in rejoinder, which opportunity was denied though a request in this regard was made. Earlier both the Custodian and S.C.B were granted several adjournments on the ground that they wanted to file their affidavit in reply. Against the stipulated time limit of three weeks in the Regulations, Custodian filed their reply after seven months and S.C.B after a long period of ten months

b) That on the day when the Counsel representing the Appellant was representing her in this Hon'ble Court, the Ld. Judge denied granting an adjournment of one week on the ground of non availability of Counsel and compelled the Appellant's Advocate on record as well as all other parties to argue their case in respect of six major petitions, all on the same day involving complex questions of facts and having deep ramifications of several thousands of crores. It may be noted that in the impugned order, no oral arguments of any of the parties are recorded. Further it may be noted that in fact, N.H.B had not even filed their affidavit in reply and therefore according to Regulation 11 governing the Special Court, these allegations were bound to be treated as admitted by N.H.B. The impugned order is thus in complete violation of the principles of natural justice.

c) The entire impugned order proceeds on the basis of finding given by the Ld. Judge that the Appellant was aware of the fact of awarding of decree for several years and yet had made a false statement and had therefore not come with clean hands before the Special Court. The said finding is patently false as the knowledge of the decree or proceedings leading to the decree cannot be equated with the knowledge acquired subsequently by discovery of the facts relating to fraud and collusion by the Appellant making serious efforts to find out why the liabilities of late Harshad S Mehta were exaggerated by the Custodian. The Ld. Judge never examined all the contentions of the Appellant particularly that though she was aware of the decree, she discovered the fraud and acts of collusion several years later and that her petition was therefore in time and maintainable.

d) The Ld. Judge has erred by ascribing several motives on the Appellant, none of which are pleaded by the other side nor any oral arguments to that effect has

been advanced by any party. The Ld. Judge never examined any of the allegations of the Appellant about the fraud and acts of collusion by S.C.B, N.H.B and the Custodian. The Ld. Judge never probed the allegations though they had huge implications on not only the liabilities of Harshad S Mehta but his distributable surplus to meet the demands of other genuine creditors. The Ld. Judge rather appreciating her efforts has castigated the Appellant and credited her with ulterior motive and malafide intention and the whole purpose was to create an impression that the claim of the Custodian regarding assets and liabilities of Harshad S Mehta were factually not correct. The Ld. Judge has treated the Custodian as if he is infallible and believed S.C.B as if it could do no wrong.

e) The Ld. Judge has thrown the Appellant out on the threshold itself without applying his mind on the gravity of the acts of fraud and collusion and the implications of the same on the overall functioning of the entire Special Courts Act without appreciating that if the Appellant's contentions were proved, the same would materially alter not only the liability picture of late Harshad S Mehta, but would also ensure an equitable distribution of his assets amongst his genuine creditors as contemplated u/s 11 of the said Act.

f) That the Ld. Judge failed to realize that even otherwise and as per directions of this Hon'ble Court, the Appellant was within her right to contest all false claims against late Harshad S Mehta, more particularly false liabilities which were foisted upon him through orders obtained by fraudulent misrepresentation, suppression of material facts and documents or through acts of collusion, as if allegations were established, then the entire proceedings would stand vitiated and the orders of the decree would become nonest. The Ld. Judge has

focused only on the conduct of the Appellant and given several incorrect findings but never examined the conduct of S.C.B, N.H.B and the Custodian against whom not only serious allegations were made by the Appellant, but even conclusive evidence was adduced. Unfortunately, neither the contentions of the Appellant nor the supporting evidence ever came to be dealt with or examined by the Ld. Judge.

g) The Ld. Judge is unduly overawed by the consequences without appreciating that S.C.B and N.H.B were governed by a commercial motive to exploit the situation that got created by the sudden demise of late Harshad S Mehta and secure in the knowledge that he has surplus of assets over liabilities. The Appellant is aggrieved that a clear bias is visible in the conduct of the Ld. Judge who had discriminated between an individual and an institution and condemned the efforts of wife of the alleged scamster in his eyes.

h) That as was always apprehended by the Appellant, the Ld. Judge has in the above manner, disclosed strong bias against the Appellant by unduly and without any basis castigating her and by denying her of an opportunity of being heard. The clinching proof of this also became available when the legitimate prayer of the Appellant to place written submissions on record was rejected even after she was deprived of making oral submissions through her Counsel. The Ld. Judge ought to have framed issues and given a fair opportunity more particularly since Section 9(4) of the said Act specifically stipulates that the Court is bound to follow the principles of natural justice even if all the other provisions of the Civil Procedure Code are not made applicable.

23.04.1992 The securities scam broke out giving wide publicity in the media

SYNOPSIS LIST OF DATES AND EVENTS

The Appellant is a house wife, a notified person and widow of late Harshad S Mehta who had a sole proprietorship brokerage firm in the Bombay Stock Exchange in the name and style of M/s Harshad S Mehta. The said brokerage firm used to undertake business in two capacities both as a broker as well as on a principal to principal basis with several banks and financial institutions including S.B.I.

The brokerage firm of M/s Harshad S Mehta also enjoyed banking facilities with S.B.I who had extended routing facility to the said brokerage firm under which money market transactions undertaken by M/s Harshad S Mehta were settled through the said S.B.I. Under this routing facility, Pay Orders for transactions entered into by and with M/s Harshad S Mehta used to be drawn in favour of S.B.I which used to be deposited with S.B.I and credits in regard to which used to be given by S.B.I to the said brokerage firm. Similarly delivery of securities used to be received and tendered on behalf of the brokerage firm by S.B.I and even custody of the same used to be kept with S.B.I.

That in the relevant proceedings, S.B.I falsely denied the fact of above routing facility but has belatedly admitted to having extended this facility in another proceedings as it suited them which averments are duly recorded in the Judgment dated 04.06.2002 of Hon'ble Justice Shri S H Kapadia in Chamber Summons No.11 of 1999 in Suit No.35 of 1995 involving S.B.I.

That in the second week of April 1992, Shri Harshad S Mehta was summoned by S.B.I as according to them, they had not received delivery of Government Securities under various contracts entered into by them with M/s Harshad S Mehta for which payment was already effected by them, and therefore, they called upon him to make good those deliveries. That a settlement was THEN arrived at where subject to E & O.E and S.B.I agreeing to refund any excess payment, M/s Harshad S Mehta provided monies to S.B.I to purchase the said securities from the market in full and final settlement of their claim, S.B.I

also agreed to refund of any excess that was paid by M/s Harshad S Mehta as at the relevant time, he had no means to verify S.B.I claims with his records, in view of the fact that an income tax raid was going on in his firm.

Accordingly, between 13.04.1992 to 24.04.1992, M/s Harshad S Mehta provided to S.B.I a sum of Rs.622.52 crores which was utilized by S.B.I to purchase the securities from the market claimed to be in shortage. After the above purchase, S.B.I was left with a surplus of Rs.22.57 crores. Thereafter on 24.04.1992, the then Chairman of S.B.I Shri M N Goiporia went on public record one day after the breaking out of the alleged scam on 23.04.1992 that the reconciliation problem with M/s Harshad was over and that their bank had no claim on him.

That purely as an after thought and to take advantage of the priority status accorded to them under the said Act and the prevailing prejudice against late Harshad S Mehta, and in view of his claim that he had surplus of assets over liabilities, the said S.B.I on 06.03.1995 preferred a claim for damages by filing M.P No.14 of 1995. However, this claim was time barred as it related to transactions which were entered into by them during a period prior to three years and on that ground alone, their claim was liable to be rejected. Harshad S Mehta filed his written statement opposing the claim on numerous grounds and also sought complete particulars of his bank account maintained at S.B.I and details of his assets held by them which details were denied to him by the bank despite repeated requests and reminders. This was being done with a view to deny him access to records so that he could not defend claims against him.

That while the above proceedings were pending, on 30.12.2001, Harshad Mehta expired in judicial custody at an age of 47 years. That after his sudden demise, his counsels who until then were representing him kept on appearing out of courtesy and advised the Appellant to once again explore the possibility of an out of court settlement, and accordingly a proposal of repayment was mooted by her in May 2002 by filing

D

an affidavit in M.P No.63 of 1992 which did not receive a favourable response. The Appellant being a widow, house wife and a notified person, did not have any knowledge about the business of late Harshad S Mehta which was conducted by him through his staff, many of whom had abruptly left his employment. It was also not possible for the Appellant being a notified person to manage resources to fund a huge litigation in several civil, criminal and revenue matters nor did she have any personal knowledge of his business to give instructions to counsels. The counsels also could not continue because of non payment of fees.

Besides the above, the Appellant was facing several other insurmountable difficulties. The Custodian had filed M.P No.41 of 1999 and M.P No.4 of 2001 proposing sale of nine residential flats of all the family members of late Harshad S Mehta as well as all the existing office premises. That all the business records, books of accounts and documents and computers were seized by the Custodian and even the remainder of staff was asked to sit in Custodian's Office. All the offices were ordered to be sold without giving any alternative place to house huge volume of records. The Appellant therefore had no access to the records nor had any knowledge nor the resources and therefore, could not represent the legal interests of either late Harshad S Mehta or her own self.

The Appellant therefore brought all the facts relating to her difficulties to the knowledge of the Custodian and the Special Court at the relevant time itself and from time to time by filing various affidavits and one such affidavit is also filed in this Hon'ble Court 27.01.2004. The Appellant also filed an application before the Special Court in the year 2003 itself to grant her services of a Counsel who could represent her which application was dismissed on the ground of non appearance. The Appellant was also going through trauma and not keeping very good health.

E

The Appellant all along knew that her husband had surplus of assets over liabilities. She bonafide believed that the Custodian being a statutory authority and an Officer of the Court, would take care of interests of late Harshad S Mehta. It also never occurred to her that leading institution and bank like S.B.I could ever perpetrate a fraud upon the Special Court or authority like the Custodian could act in collusion with them. Thus though she was aware of some proceedings against her husband initiated by the banks making large claims, she was not aware about their falsity and the acts of fraud and collusion which were perpetrated particularly after the demise of late Harshad S Mehta.

That in the proceedings relating to sale of her only residence, she discovered the magnitude of the claims made against M/s Harshad S Mehta, particularly that such huge amount of damages and interest were claimed and awarded. In the year 2006, her family members secured relief from this Hon'ble Court in the matter of sale of their flats which Judgment was reported in (2006) 2 SCC 385 wherein this Hon'ble Court granted relief to all the notified entities to show that their assets were greater than their liabilities, and therefore their residence was not liable to be sold. At this point, the Appellant sought help and assistance from her family members to contest the litigation of late Harshad S Mehta and herself.

Since the Appellant did not have all the papers and orders and records, in February 2007 and April 2007, she applied to the Office of the Special Court, to grant her inspection and copies of all the proceedings including M.P No.14 of 1995 and after verification of the same, preferred M.A No.130 of 2007 inter alia seeking various reliefs against the aforesaid decree that was awarded to S.B.I. The S.B.I filed a limited reply to this application opposing it on the ground of its maintainability and without dealing with the merits of the same. The said application was rejected by the Ld. Judge, Special Court by an order dated 27.06.2008 on the ground that her contention that she got to know about the said decree in February 2007 was false and that her application was not maintainable and it was

F

not in time and was not bonafide. The Appellant challenged the said order before this Hon'ble Court by filing Civil Appeal No.6181 of 2008.

In the meantime, the Appellant received legal advice from a new counsel that since S.B.I had committed fraud and the Custodian had acted in collusion with S.B.I, the appropriate remedy for her would be to file a declaratory petition before the Special Court on the ground of fraud and collusion setting out facts and grounds for the same which would be maintainable as the limitation in respect of such a petition starts only from the date of knowledge of the fraud and collusion. Accordingly, the Appellant filed M.P No.6 of 2009 and thereafter applied to this Hon'ble Court to permit her to withdraw her pending Civil Appeal No.6181 of 2008 which prayers came to be granted on 09.11.2009.

After taking repeated adjournments and notwithstanding that Regulation No.11 of the Special Court stipulated that if a reply is not filed within three weeks, the Special Court could proceed in the matter treating them as uncontested, the Custodian filed their reply after seven months and S.B.I filed their affidavit in reply after nine months in the Appellant's petition.

So far as M.P No.41 of 1999 relating to the sale of the residence of the Appellant and her family members, the two orders of the Ld. Judge ordering sale of nine residential flats on 17.10.2003 and 25.07.2008 were both set aside by this Hon'ble Court and numerous adverse observations were made against the Ld. Judge, particularly holding that the Ld. Judge had verbatim adopted all the contentions of the Custodian and had not dealt with the contentions of the notified entities. This Hon'ble Court held that there was non application of mind and that justice should not only be done but should be seen to be done.

Being greatly aggrieved by the Ld. Judge, the Appellant and her family members very reluctantly filed M.P No.16 of 2009 praying that the Ld. Judge should recuse himself as the Appellant and her family members had reasonable

apprehension that justice would not be done to them. This petition was rejected by the Ld. Judge by holding that he was not biased but he never dealt with the issue before him i.e. the reasonableness of the apprehension of the Appellant and her family members. An appeal against the said order was not entertained by this Hon'ble Court but it was observed that specific cases of bias could be brought to its notice.

It is the case of the Appellant that taking advantage of the situation prevailing with the Appellant, the S.B.I suppressed several material facts and documents and made several misrepresentations and foisted upon the estate of Harshad S Mehta, totally false, fabricated and got up claim for damages untenable in law and in fact. S.B.I got assistance from the Custodian who colluded with it by abdicating their responsibility and in failing to discharge their obligation by neither contesting the false claim nor by bringing the relevant facts and more particularly the misrepresentations of S.B.I to the knowledge of the Special Court. The said acts of fraud and collusion succeeded in as much as not only a decree for damages in the sum of Rs.222.04 crores was awarded as claimed by S.B.I but a further sum of interest @ 15% on the said damages was also granted. The total sum now being claimed by S.B.I together with interest on account of the said decree as on 31.12.2005 comes to Rs.677.80 crores. The petition of S.B.I claiming damages was for contracts entered into them and therefore liquidated damages were claimed but now since S.B.I is exposed about suppression of material facts and documents, it is for the first time, taken a new stand in their affidavit in reply that their claim for damages was under Law of Torts.

Briefly stated, the facts of the said fraud and acts of collusion are set out as under :-

- a) *That S.B.I misrepresented that the claim made by them was in time though it was time barred and therefore the Special Court had no jurisdiction to award decree for such a time barred claim.*

H

b) That the said S.B.I suppressed the material fact that since a full and final settlement was arrived at by their banks with Harshad S Mehta in April 1992, no claim for damages was liable to be made.

c) That S.B.I leveled false allegations about fraud and collusion with their employees though they were never proved by them.

d) That S.B.I leveled allegations about unauthorized use of their monies and securities though factually they were part of contracts entered into by them with M/s Harshad S Mehta. The entire claim was got up to take advantage of the situation that prevailing more particularly after the demise of late Harshad S Mehta.

e) That S.B.I suppressed the material fact that their bank had extended routing facility to M/s Harshad S Mehta whereunder his money market transactions were settled by them. Thus the averments about collusion with their employees and unauthorized use of monies and securities were false to their own knowledge.

f) That S.B.I suppressed the material fact that they were holding Rs.22.57 crores for and on behalf of M/s Harshad S Mehta out of the amount of Rs.622.52 crores paid to them by M/s Harshad S Mehta in April 1992..

g) That S.B.I suppressed several material facts and documents, that the transactions were governed by the Rules, Regulations and Bye-laws of the Stock Exchange according to which, dispute if any, was liable to be mandatorily resolved under arbitration mechanism of the Stock Exchange and that even the damages were liable to be determined only in accordance with the said Bye laws. S.B.I suppressed the material fact that under these Bye-laws, they were not entitled to the claim of damages as set out in the petition nor to any interest on it.

h) That S.B.I suppressed the material fact that as per Bye law No.244 of the Stock Exchange, they were only

entitled to the difference between the price of the security on the fifteenth day of delivery and their contracted price and that by subsequently accepting the delivery in April 1992, and their failure to give notice as contemplated under the Bye-law, S.B.I had forfeited their right, if any, of claiming damages. S.B.I also suppressed the fact that as per Bye-law No.354, some of the contracts were void and therefore, no claim could have been made for damages in respect of such contracts.

i) The S.B.I also suppressed material fact that a large number of transactions entered into by them for which damages were claimed were Ready Forward transactions which were subsequently held to be illegal by this Hon'ble Court in the year 1997 and reported in reported in (1997)

10 SCC 488 in the case of B.O.I Finance Ltd V/s Custodian & Ors and therefore no claim could lie before the Special Court for such illegal transactions, much less for the damages and interest on it. The material facts were suppressed so that both the applicable law and the precedents set in the Special Court could be avoided.

j) That S.B.I made a false representation that loss of interest was caused to them by M/s Harshad S Mehta by unauthorizedly using their monies as actually no loss of interest was caused due to the fact that the securities delivered to them in April 1992 also included interest for the delayed period of delivery.

k) That S.B.I misrepresented and inflated their claim of damages in several ways. Where there was no shortage, it was falsely arrived at, where there was no loss of interest, it was falsely claimed and where securities were delivered, they were shown not delivered so as to arrive at a staggering figure of damages of Rs.222.04 crores. Further false claim of interest on three counts was made including claim of interest on the damages which only amounted to interest on interest impermissible in law..

J

- l) That S.B.I misrepresented that late Harshad S Mehta had opposed their claim only on one ground
- m) That S.B.I misrepresented by filing an affidavit that a proper service was effected by them on the Appellant.
- n) That the Appellant set out the facts of acts of collusion on the part of Custodian, some of which were listed in Para 37 of the petition.

The Appellant is aggrieved by the impugned order on the following amongst other grounds:-

- a) That the Ld. Judge did not permit completion of pleadings as the Appellant wanted to file an affidavit in rejoinder, which opportunity was denied though a request in this regard was made. Earlier both the S.B.I and the Custodian were granted several adjournments on the ground that they wanted to file their affidavit in reply. Against the stipulated time limit of three weeks as per the Regulations, S.B.I filed their reply after nine months and the Custodian after a period of seven months
- b) That on the day when the Counsel representing the Appellant was representing her in this Hon'ble Court, the Ld. Judge denied granting an adjournment of one week on the ground of non availability of Counsel and compelled the Appellant's Advocate on record as well as all other parties to argue their case in respect of six major petitions, all on the same day involving complex questions of facts and law. The impugned order is thus in complete violation of the principles of natural justice.
- c) The impugned order proceeds on the basis of finding given by the Ld. Judge that the Appellant was aware of the fact of awarding of decree for several years and yet had made a false statement and had therefore not come with clean hands before the Special Court. The said finding is patently false as the knowledge of the decree or proceedings leading to the decree has been incorrectly

equated with the knowledge about fraud and collusion which knowledge was acquired much later by the Appellant making serious efforts and enquiry. Similarly, the Appellant was entitled to question the computation of liabilities by the Custodian as per relief granted by this Hon'ble Court and for doing the same, no motives could be ascribed to her nor could her intentions be held to be mala fide.

d) That the Ld. Judge erred in invoking the principles of res judicata in denying her the relief without appreciating that the same was not applicable nor liable to be invoked. The Ld. Judge ought to have appreciated that M.A No.130 of 2007 was dismissed on the preliminary issue of maintainability and not on any substantive issues or on the merit of that application whereas in the new petition, the cause of action was separate and merit was required to be examined and dealt with on his own volition.

e) The Ld. Judge never examined any of the allegations of the Appellant about the fraud and acts of collusion by S.B.I and the Custodian though it had huge implications on not only the liabilities of Harshad S Mehta but his distributable surplus to meet the demands of other genuine creditors. Instead of probing and ascertaining facts, the Ld. Judge has falsely castigated the Appellant and has ascribed motives to her holding that the petition was filed with ulterior motive and mala fide intention, the whole purpose of which was to create an impression that the claim of the Custodian regarding assets and liabilities of Harshad S Mehta were factually not correct. The Ld. Judge has treated the Custodian as if he is infallible and believed S.B.I as if they could do no wrong.

f) The Ld. Judge has thrown out the petition of the Appellant on the threshold itself without applying his mind to the gravity of the acts of fraud and collusion. The Ld. Judge ought to have appreciated that if the Appellant's contentions were proved, the same would materially alter not only the liability picture of late Harshad S Mehta, but could also ensure an equitable distribution of his assets

L

amongst his genuine creditors as contemplated u/s 11 of the said Act.

g) That the Ld. Judge failed to realize that even otherwise and as per direction of this Hon'ble Court, the Appellant was within her right to contest all false claims against late Harshad S Mehta, more particularly if false liabilities were foisted upon him through orders obtained by fraudulent misrepresentation, suppression of material facts and documents or through acts of collusion, as in that event, the entire proceedings would stand vitiated and the orders of the decree would become nonest.

h) The Ld. Judge is unduly overruled by the consequences without appreciating that in five out of six petitions, S.B.I was a common party who was governed by a commercial motive to exploit the situation that got created by the sudden demise of late Harshad S Mehta and secure in the knowledge that he had surplus of assets over liabilities. The Appellant is aggrieved that a clear and deep rooted bias is visible in the conduct of the Ld. Judge who had discriminated between an individual and an institution and condemned the efforts of wife of the alleged scamster in his eyes.

i) That as was always apprehended by the Appellant, the Ld. Judge has disclosed deep rooted bias against the Appellant by unduly and without any basis castigating her and denying her of an opportunity of being heard. The clinching proof of this also became available when the legitimate prayers of the Appellant to place written submissions on record was rejected even after she was deprived of making oral submissions earlier through her Counsel. The Ld. Judge ought to have framed issues and was duty bound to give a fair opportunity to the Appellant more particularly since Section 9A(4) of the Act specifically stipulates that the Court is bound to follow the principles of natural justice even if all the provisions of Civil Procedure Code are not applied.

SYNOPSIS LIST OF DATES AND EVENTS

The Appellant is a house wife, a notified person and widow of late Harshad S Mehta who had a sole proprietorship brokerage firm in the name and style of M/s Harshad S Mehta. The said brokerage firm used to undertake business in the capacity of broker as well as on a principal to principal basis with several banks and financial institutions including S.B.I and SBI Capital Markets Ltd (SBI Caps).

That in money market, a large number of Ready Forward transactions used to be undertaken under a belief that they were legal. That by a Judgment dated 19.03.1997, this Hon'ble Court for the first time held such Ready Forward transactions to be illegal consequent to which various claims arising out of such outstanding and unperformed Ready Forward transactions pending in the Special Court were all dismissed on the ground that the Special Court cannot assist enforcing of such illegal contracts. M/s Harshad S Mehta had claims on several banks and financial institutions including on SBI Caps on account of such outstanding Ready Forward transactions, all of which were dismissed including the claim on SBI Caps. However SBI Caps claim on Harshad S Mehta was not dismissed. In the meantime, Harshad S Mehta died in judicial custody on 30.12.2001. Post his sudden demise, SBI Caps played a fraud upon the Hon'ble Special Court by making several misrepresentations and by suppressing material facts that their claim was on account of illegal Ready Forward transactions, that as per the terms of the contract entered into, no interest could have been awarded and dispute if any was liable to be mandatorily resolved only through the process of arbitration, and that even as per the law, no interest was liable to be awarded, so on and so forth. The Custodian actively colluded with SBI Caps in failing to discharge their duty and contest the false and illegal claim and in failing to point out the true, legal and factual position to the Court before it awarded the said decree in favour of SBI Caps. That the facts relating to the above acts of fraud and collusion are narrated herein after.

The brokerage firm of M/s Harshad S Mehta used to regularly undertake transactions with SBI Caps, most of which were on a principal to principal basis. At the relevant time, the said SBI Caps had entered into four Ready Forward contracts where under they made payment for purchase of Units of Unit 64 Scheme totaling an amount of about Rs.16.25 crores. These Ready Forward contracts were due for reversal between 30.04.1992 to 21.05.1992 but before that on 23.04.1992, the alleged scam broke out with wide media publicity and consequently the aforesaid reversals of transactions could not take place on their respective due dates. There were several outstanding Ready Forward transactions of M/s Harshad S Mehta with numerous banks and financial institutions including with SBI Caps where he had to receive monies but due to aforesaid scam, all these outstanding transactions were not honoured by the participants in the market and subsequently the claims regarding them came to be dismissed after this Hon'ble Court held such transactions to be illegal.

The brokerage firm of M/s Harshad S Mehta also enjoyed banking facilities with S.B.I who had extended routing facility to M/s Harshad S Mehta under which money market transactions undertaken by his firm were settled through S.B.I. Under this routing facility, Pay Orders for transactions entered into with M/s Harshad S Mehta used to be drawn in favour of S.B.I which used to be deposited with S.B.I and credits in regard to which used to be given by S.B.I to the said brokerage firm. Similarly delivery of securities used to be received and *tendered on behalf of his brokerage firm by S.B.I and custody* of the same used to be also kept with S.B.I. SBI Caps being 100% subsidiary of SBI was also enjoying similar routing facilities with their parent bank SBI and even their transactions used to be settled at the same branch of SBI.

That between the period from 30.03.1992 to 21.04.1992, SBI Caps, Madras Office entered into four Ready Forward transactions with M/s Harshad S Mehta under which they purchased and forward sold 1.08 crore Units for consideration of Rs.16.25 crores with a condition to reverse on different dates

between 30.04.1992 to 21.05.1992. These transactions as aforesaid could not get reversed. Therefore on 06.05.1992, SBI Caps by a fax message called upon M/s Harshad S Mehta to repay the amount paid by them. Thereafter on 04.06.1992, the Solicitors of S.B.I Caps called upon M/s Harshad S Mehta to repay Rs.16.25 crores together with interest on it @ 25% p.a. That on 16.06.1992, SBI Caps filed a complaint with the Custodian in respect of non payment of Rs.16.25 crores. On 13.11.1992, SBI Caps filed M.P No.61 of 1992 before the Special Court lodging claim for recovery of Rs.16.25 crores together with interest on it @ 25% p.a.

Harshad S Mehta addressed a letter on 25.02.1993 to SBI, his bankers, to furnish him itemized particulars and supporting records and details regarding debits and credits effected into his bank account and to disclose holding of securities on his behalf. This request was denied by SBI on 23.03.1993 so that Harshad S Mehta cannot resist several false claims of SBI and cannot discover facts relating to the holding of his assets lying in custody of S.B.I.

On 14.06.1993, Harshad S Mehta filed his written statement opposing the claim placing on record the fact that since criminal proceedings were initiated against him, he is unable to deal with the contents of petition as it would adversely prejudice and affect his defence in the criminal case. It was also placed on record that he has counter claim against SBI Caps to the tune of Rs.70.30 crores.

On 26.10.1993, Harshad S Mehta and his family members filed M.A No.215 of 1993 in the Special Court setting out a plan for an of court settlement with the creditors which proposal was made on a without prejudice basis. However due to lukewarm response of the creditors, the same came to be withdrawn on 21.03.1995 with liberty to file it again. On 19.03.1997, the Hon'ble Apex Court held Ready Forward transactions in Money Market to be

illegal. Shri Harshad S Mehta expired in judicial custody on 30.12.2001.

SBI Caps amended M.P No.61 of 1992 on 20.04.2002 to bring the legal heirs of late Harshad S Mehta on record but the amended plaint was not served upon the Appellant. Thereafter an ex parte decree came to be passed on 25.06.2003 in M.P No.61 of 1992 by the Special Court where the claim was awarded but the rate of interest was reduced to 15% p.a. That in July 2003, SBI Caps filed Execution Application No.280 of 2003 in M.P No.61 of 1992 inter alia praying for a relief for direction to make a payment to them for decretal amount of Rs.45.97 crores and further interest @ 15% p.a. was claimed.

That after the sudden demise of late Harshad S Mehta, his only legal heir the Appellant could not cope up with the huge volume of pending litigation. That she is a house wife and a notified person and was factually not aware about the business transactions of late Harshad S Mehta. That all the records relating to Harshad S Mehta including computers and original files were seized by the Custodian and even the staff members were directed to sit in Custodian's Office. In any event, those staff members who had first hand knowledge of the business of M/s Harshad S Mehta either left employment or their services were dispensed with by the Special Court at the instance of the Custodian. That even if the Appellant wanted, she could not have and she was not in a position to give any instructions to the counsels. Besides, some of the counsels representing late Harshad S Mehta continued only for some time as being a notified person, the Appellant was not in a position to make payment of fees to the counsels. That the Appellant was also suffering from mental trauma and had poor health because of the sudden and untimely demise of her late husband at a young age of 47 years. That there was a complete break down in the defence mechanism of Harshad S Mehta post his sudden demise and several decrees came to be awarded ex parte as the Appellant could not represent him in these matters.

Being aggrieved, the Appellant filed M.A No.278 of 2003 in September of 2003 seeking order from the Special Court for release of fees to engage services of counsel to represent herself as well as her late husband. This application was turned down by the Special Court by an order dated 08.10.2003 on the grounds that none appeared for the Applicant.

During the same period, the Appellant informed the Custodian that she had no knowledge about the matters of Harshad S Mehta. She also filed a detailed affidavit in October 2003 in M.P No.41 of 1999 wherein she placed the facts relating to the difficulties that she was undergoing. In November 2003, she also filed an affidavit before the Special Court that she had no knowledge regarding the accounts as they were drawn by Harshad S Mehta himself and the staff who had prepared them had resigned. That Shri Ashwin S Mehta, brother of late Harshad S Mehta, also filed an affidavit in Special Court that he could not assist in the affairs of M/s Harshad S Mehta and narrated the facts regarding the situation prevailing at that time. That the Appellant also filed a detailed affidavit before this Hon'ble Court in C.A.D No.25815 of 2003 setting out the facts relating to the difficulties that she was passing through. She narrated that though she wanted to contest the false liabilities foisted against Harshad S Mehta, she could not do so. She narrated that she filed application in the Special Court to seek access to the records and release of computers and for sanction and payment of fees for engaging services of a counsel, all of which were rejected.

In January 2004, the Special Court made orders in M.A No.270 of 1993 to handover the balance computers to the Custodian and issued directions that all the staff members of Harshad S Mehta may be placed at the disposal of the Custodian in their office. In April 2004, the Special Court directed the Custodian not to return the books of accounts and documents to the Appellant and other notified entities.

In June 2006, the Appellant once again requested the Custodian to return the books of accounts and all original

records of M/s Harshad S Mehta to enable her to contest the liabilities. In the same month, she also filed affidavit in M.P No.41 of 1999 once again describing the serious difficulties she was facing in representing Harshad S Mehta. She also filed M.A No.306 of 2006 praying for returning of books of accounts and other original records of M/s Harshad S Mehta to enable her to contest the liabilities which request was rejected by the Special Court by an order dated 09.10.2006.

That since the Appellant did not have all the records pertaining to the proceedings in M.P No.61 of 1992, on 28.02.2007, the Appellant applied to the Special Court to seek inspection of the proceedings and thereafter to obtain copies of the same. After receipt of the documents, the Appellant undertook verification, caused enquiries and obtained legal advise and gained knowledge about the fraud played upon the Special Court by SBI Caps and about the acts of collusion between SBI Caps and Custodian in obtaining the said decree. The Appellant having gained this knowledge preferred M.P No.7 of 2009 which was within time.

The Appellant on 12.06.2009, filed M.P No.7 of 2009 before the Special Court inter alia seeking a relief for a declaration that the decree dated 25.06.2003 in M.P No.61 of 1992 was nullity, void and nonest. The Appellant urged that SBI Caps had played a fraud upon the Special Court and the Custodian had acted in collusion with them for obtaining the decree where under several misrepresentations were made to the Special Court and material facts were suppressed

The complete facts regarding the aforesaid fraud and acts of collusion and supporting evidence has been described in the aforesaid M.P No.7 of 2009. However, the same are briefly narrated as under:-

a) That SBI Caps suppressed the material fact that the transactions for purchase of Units by them were Ready Forward transactions which were held by this Hon'ble Court to

be illegal, and therefore no claim could lie before the Special Court for such illegal transactions.

b) That the contracts for the said Ready Forward transactions were reduced to writing which were governed by the Rules, Regulations and Bye-laws of the Stock Exchange. SBI Caps suppressed the material facts in regard to the said contracts as under :-

i) That as per the terms of the contract, dispute, if any, it was mandatorily liable to be resolved under the arbitration mechanism of the Stock Exchange.

ii) That under the terms of the contract, no interest was liable to be paid for default in performance of the same.

iii) That the Special Court had rejected and dismissed several pending claims in regard to Ready Forward transactions of Harshad S Mehta including those against SBI Caps and SBI but this material fact was suppressed from the Special Court.

iv) That in terms of Bye-law No.354 (iii), some of these contracts were void and therefore not enforceable.

v) That as per Bye-law No.244, upon default in delivery, SBI Caps could have closed out the transaction and at the highest, could have been entitled to only difference between the price prevailing after fifteen days of the date of delivery and the contracted price, and that if such closing out was not done, then the buyer of the Units under such contracts forfeited all further rights of recourse against the said brokerage firm.

b) That SBI Caps and the Custodian were aware that no interest was liable to be paid by solvent notified entity in terms of the law settled by the Special Court and up-held by this Hon'ble Court.

c) That it was represented that the prevalent lending commercial rate was 25% p.a. though they were much lower.

d) That service was not effected upon the legal heir, which material fact was not disclosed to the Special Court.

That the Appellant and her family members were apprehensive that justice would not be done to them which apprehension developed due to several events and orders preceding the present proceedings. The Appellant and her family members therefore very reluctantly filed M.P No.16 of 2009 praying that the Ld. Judge should recuse himself. This petition was rejected by the Ld. Judge by holding that he was not biased but he never dealt with the issue before him i.e. the reasonableness of the apprehension of the Appellant and her family members. An appeal against the said order was not entertained by this Hon'ble Court but it was observed that specific cases of bias could be brought to its notice.

The Appellant is aggrieved by the impugned order on the following amongst other grounds:-

a) *That the Ld. Judge did not permit completion of pleadings as the Appellant wanted to file an affidavit in rejoinder, which opportunity was denied though a request in this regard was made. Earlier the SBI Caps and the Custodian were granted several adjournments on the ground that they wanted to file their affidavit in reply. Against the stipulated time limit of three weeks as per the Regulations, S.B.I Caps filed their reply after ten months, and the Custodian after a period of seven months.*

b) *That on the day when the Counsel representing the Appellant was representing her in this Hon'ble Court, the Ld. Judge denied granting an adjournment of one week on the ground of non availability of Counsel and compelled the Appellant's Advocate on record as well as all other parties to argue their case in respect of six major petitions, all on the same day involving complex questions of facts and law. It may be noted that in the impugned order, no oral arguments of any of the parties are recorded. The impugned order is thus in complete violation of the principles of natural justice.*

c) The impugned order proceeds on the basis of finding given by the Ld. Judge that the Appellant was aware of the fact of awarding of decree for several years and yet had made a false statement and had therefore not come with clean hands before the Special Court. The said finding is patently false as the knowledge of the decree or proceedings leading to the decree cannot be equated with the knowledge about the fraud which was acquired subsequently by discovery of the facts relating to fraud and collusion by the Appellant making efforts in that regard. Similarly, the Appellant was entitled to question the computation of liabilities by the Custodian and for the same, no motives could have been ascribed to her nor could her intentions be held to be mala fide.

d) The Ld. Judge never examined any of the allegations of the Appellant about the fraud and acts of collusion by SBI Caps and the Custodian. That the Ld. Judge never probed these allegations though it had huge implications on not only the liabilities of Harshad S Mehta but his distributable surplus to meet the demands of other genuine creditors. Instead of probing these issues, the Ld. Judge has falsely castigated the Appellant and has ascribed motives to her that she had filed the petition with ulterior motive and mala fide intention, the whole purpose of which was to create an impression that the claim of the Custodian regarding assets and liabilities of Harshad S Mehta were factually not correct. The Ld. Judge has treated the Custodian as if he is infallible and believed SBI Caps as if they could do no wrong.

e) The Ld. Judge has thrown out the petition of the Appellant on the threshold itself without applying his mind to the gravity of the acts of fraud and collusion and the implications of the same on the overall functioning of the entire Special Courts Act as he ought to have appreciated that if the Appellant's contentions were proved, the same would materially alter not only the liability picture of late Harshad S Mehta, but could also ensure an equitable

distribution of his assets amongst his genuine creditors as contemplated u/s 11 of the said Act .

f) That the Ld. Judge failed to realize that even otherwise and as per direction of this Hon'ble Court, the Appellant was within her right to contest all false claims against late Harshad S Mehta, more particularly if liabilities were foisted upon him through orders obtained by fraudulent misrepresentation, suppression of material facts and documents or through acts of collusion, as in that event, the entire proceedings would stand vitiated and the orders of the decree would become nonest. The Ld. Judge has focused only on the conduct of the Appellant and given several incorrect findings but never examined the conduct of SBI Caps and the Custodian against whom not only serious allegations were made by the Appellant, but even conclusive evidence was adduced. Unfortunately, neither the contentions of the Appellant nor the supporting evidence ever came to be dealt with or examined by the Ld. Judge.

g) The Ld. Judge is unduly overawed by the consequences without appreciating that in two out of six petitions, S.B.I Caps was a common party who was governed by a commercial motive to exploit the situation that got created by the sudden demise of late Harshad S Mehta and secure in the knowledge that he has surplus of assets over liabilities. The Appellant is aggrieved that a clear bias is visible in the conduct of the Ld. Judge who had discriminated between an individual and an institution and condemned the efforts of wife of the alleged scamster in his eyes.

h) That the Ld. Judge as was always apprehended by the Appellant, has in the above manner, disclosed strong bias against the Appellant by unduly and without any basis castigating her and denying her an opportunity of being heard. The Ld. Judge ought to have framed issues and was duty bound to give a fair opportunity to the Appellant more particularly since Section 9A(4) specifically

stipulates that the Court is bound to follow the principles of natural justice even if all the provisions of Civil Procedure Code are not applied.

i) The Appellants contention that the custodian is acting in collusion gets established by the fact that for past one year, she has been writing letters to the Custodian to cause recovery of 2 crore Units and cause enquiry about 1 crore Units from SBI Caps, Canfina in which regard she has written two letters each and followed it by issuing a legal notice through her Advocate on record. The Custodian who is duty bound to cause recovery of assets has not been responding to these and several such letters.

Dates	Events
30.03.1992	SBI Caps entered into a Ready Forward contract for purchase of Units under Unit 64 Scheme amounting to Rs.4.25 crores to be re-sold on 29.04.1992.
03.04.1992	SBI Caps entered into a Ready Forward contract for purchase of Units under Unit 64 Scheme amounting to Rs.4.00 crores to be re-sold on 04.05.1992.
20.04.1992	SBI Caps entered into a Ready Forward contract for purchase of Units under Unit 64 Scheme amounting to Rs.3.00 crores to be re-sold on 20.05.1992.
21.04.1992	SBI Caps entered into a Ready Forward contract for purchase of Units under Unit 64

SYNOPSIS LIST OF DATES AND EVENTS

The Appellant is a house wife, a notified person and widow of late Harshad S Mehta who had a sole proprietorship brokerage firm in the name and style of M/s Harshad S Mehta. The said brokerage firm used to undertake business in the capacity of broker as well as on a principal to principal basis with several banks and financial institutions including S.B.I and N.H.B.

The brokerage firm of M/s Harshad S Mehta used to regularly undertake transactions with N.H.B, most of which were on a principal to principal basis. At the relevant time, the said N.H.B had advanced monies in respect of some of the transactions which were to be completed by the said brokerage firm.

The brokerage firm of M/s Harshad S Mehta also enjoyed banking facilities with S.B.I who had extended routing facility to the said brokerage firm under which money market transactions undertaken by M/s Harshad S Mehta were settled through the said S.B.I. Under this routing facility, Pay Orders for transactions entered into with M/s Harshad S Mehta used to be drawn in favour of S.B.I which used to be deposited with S.B.I and credits in regard to which used to be given by S.B.I to the said brokerage firm. Similarly delivery of securities used to be received and tendered on behalf of the brokerage firm by S.B.I and custody of the same used to be also kept with S.B.I. S.B.I has belatedly admitted to having extended this facility which is duly recorded in the Judgment dated 04.06.2002 of Hon'ble Justice Shri S H Kapadia in Chamber Summons No.11 of 1999 in Suit No.35 of 1995.

That after the alleged scam broke out in April 1992, for the transactions outstanding with N.H.B, it took a false stand that it never dealt with private parties and that for transactions undertaken with M/s Harshad S Mehta, a false claim was made on the payee banks treating them as counter parties. That N.H.B being a 100% subsidiary of R.B.I, used their clout with R.B.I and by making a representation, secured a directive from R.B.I against S.B.I, who was the payee bank to reimburse N.H.B, an amount of Rs.707.75 crores paid by N.H.B under some thirteen cheques and the S.B.I paid this amount to N.H.B on 13.06.1992 under protest. S.B.I filed M.P No.63 of 1992 claiming recovery of monies from M/s

Harshad S Mehta and later also filed Suit No.35 of 1995 seeking relief of return of monies paid to N.H.B together with interest.

That during the course of proceedings in Suit No.35 of 1995, Hon'ble Judge Shri S H Kapadia clearly held under two orders dated 17.02.2000 and 04.06.2002 that it was imperative to establish whether N.H.B had transacted with M/s Harshad S Mehta or with the payee banks to establish the liabilities and for the purposes of ascertaining the truth, it was imperative to examine their records more particularly since S.B.I had brought evidence on record to prima facie establish that the transactions of N.H.B were with M/s Harshad S Mehta and not S.B.I.

The N.H.B challenged the aforesaid order before this Hon'ble Court. However the dispute between S.B.I and N.H.B was resolved out of Court under directions of this Hon'ble Court and accordingly a Settlement Deed was filed in the proceedings in Civil Appeal No.4146 of 2002 where under N.H.B assigned their claim against M/s Harshad S Mehta in favour of S.B.I. They also decided to jointly pursue the claim against M/s Harshad S Mehta and accordingly N.H.B was transposed as Petitioner No.2 in M.P No.63 of 1992. So far as ascertaining of facts as directed by Hon'ble Judge Shri S H Kapadia, no probe was carried out after the aforesaid out of court settlement.

That in the meantime, Harshad S Mehta suddenly died in judicial custody on 30.12.2001 where after his defence mechanism had a complete break down in as much as the Appellant being a house wife and herself being a notified person and not being involved or familiar with the facts of the business transactions undertaken by late Harshad S Mehta and due to non availability of counsels, could not defend the legal interests of her husband as well as her own self. She was also not a party to the proceedings in this Hon'ble Court of out of court settlement between S.B.I and N.H.B and had no records relating to the same. The Appellant was also facing several other insurmountable difficulties such as all the offices were sold, records and computers were taken away by the Custodian, the services of staff having first hand knowledge were dispensed with, and repeated prayers to give access to the records of the brokerage firm of M/s Harshad S Mehta and to extend assistance to her were denied. In these circumstances, at the

D

relevant time, the Appellant was in no position to contest until from the year 2006 onwards, assistance was extended to her by her other family members.

The Appellant states that taking advantage of the aforesaid breakdown and secure in the knowledge that none was appearing much less contesting to represent the legal interests of late Harshad S Mehta, his creditors viz. S.B.I and N.H.B perpetrated a fraud in collusion with the Custodian in regard to which the Appellant had no knowledge at the relevant time but she discovered the facts relating to the same in stages several years after by taking inspection of proceedings in the year 2007 and by filing M.A No.114 of 2007 to seek the records in Civil Appeal No.4146 of 2002. The Appellant caused the enquiry as through M.P No.41 of 1999, the Custodian was proposing to sell the only residence of the Appellant, late Harshad S Mehta and his other family members on the ground that the same was required to meet the huge liabilities of late Harshad S Mehta. From the proceedings in M.P No.41 of 1999, she discovered that the Custodian was not giving any credit for repayment of Rs.590.83 crores paid over to S.B.I and after receiving records in the proceedings in M.A No.114 of 2007 in the year 2009, she discovered the fraud that though Custodian had paid a sum of Rs.403.88 crores to S.B.I for which according to the orders of this Hon'ble Court, they were liable to give credit to M/s Harshad S Mehta, the credit was fraudulently and dishonestly not accounted for anywhere in the claim of decree pending before the Special Court and thus a huge fraud was perpetrated where S.B.I and N.H.B acted in collusion with Custodian. This fraud would be apparent on bare perusal of the records and orders.

In the meantime, this Hon'ble Court in two Judgments reported in (2006) 2 SCC 385 in Ashwin Mehta's case and (2009) 10 SCC 564 in Jyoti Mehta's case, granted relief to the Appellant holding that it was open for the appellant to show that the liabilities computed by the Custodian were incorrect and that in any event, the assets were sufficient to meet the liabilities. Upon a prayer made, this Hon'ble Court directed the Custodian to offer inspection of all the records pertaining to the assets and liabilities of all the flat owners which were duly sought for.

E

The Appellant was always aware that late Harshad S Mehta had surplus of assets over liabilities and in his lifetime had repeatedly made offers to his creditors and all the authorities, expressing his willingness to meet all his obligations. But unfortunately, none of the authorities or the creditors examined his offers seriously. That from 2006, the Appellant started seeking assistance from her family members and later was provided with services of counsel. After seeking copies of all the records and carrying out verification and examining the proceedings, she discovered the fraud and acts of collusion which had resulted in inflating the liabilities of late Harshad S Mehta.

The Appellant had to make herculean efforts to secure documents from the Office of Custodian so as to unravel and discover these facts. So far as the present appeal is concerned, the Appellant discovered the facts of the aforesaid fraud and acts of collusion after she was provided under the orders of the Special Court, copies of proceedings in Civil Appeal No.4146 of 2002 and other related papers on 25.03.2009. The Appellant all along and bonafide believed that the Custodian being a statutory authority and an Officer of the Court, would honestly protect the interests of creditors and of the notified entities so that the object which were set out in the Act could be achieved. The Appellant could also not have imagined much less suspected, that institutions of repute like S.B.I and N.H.B would perpetrate a fraud of this magnitude only to illegally secure for themselves a huge monetary gain.

So far as M.P No.41 of 1999 relating to the sale of the residence of the Appellant and her family members, the two orders of the Ld. Judge ordering sale on 17.10.2003 and 25.07.2008 were both set aside by this Hon'ble Court and numerous adverse observations were made against the Ld. Judge, particularly holding that the Ld. Judge had adopted verbatim all the contentions of the Custodian and had not dealt with the contentions of the notified entities. This Hon'ble Court held that there was non application of mind and that justice should not only be done but should be seen to be done.

Being greatly aggrieved by the Ld. Judge, the Appellant and her family members very reluctantly filed M.P No.16 of 2009 praying that the Ld. Judge should recuse himself as the Appellant and her family members had reasonable apprehension that justice would

not be done to them. This petition was rejected by the Ld. Judge by holding that he was not biased but he never dealt with the issue before him i.e. the reasonableness of the apprehension of the Appellant and her family members. An appeal against the said order was not entertained by this Hon'ble Court but it was observed that specific cases of bias could be brought to its notice.

That briefly stated, the acts of fraud and collusion are described as under:-

- a) That S.B.I by filing M.P No.63 of 1992 had made a claim on late Harshad S Mehta for a sum of Rs.774.90 crores comprising principal sum of Rs.707.56 crores and interest of Rs.68.41 crores computed @ 21% from 13.06.1992 to date of filing of claim. On 22.04.2003, the Special Court awarded the said decree of Rs.706.97 crores of the principal amount together with interest at the reduced rate of 15% as against 21% claimed by S.B.I. This *ex parte* decree came to be awarded on false and misleading representations made by S.B.I that Harshad S Mehta had admitted to the liability of Rs.706.97 crores in another proceedings being M.A No.215 of 1993. Factually however Harshad S Mehta had filed a written statement in the aforesaid proceedings denying the claim of S.B.I and had not made any admission about any factum of receipt of monies in M.A No.215 of 1993 as falsely represented by S.B.I. The portions of the said M.A No.215 of 1993 which were against the S.B.I were suppressed and with-held from the Special Court so as to mislead them into believing the admission of late Harshad S Mehta. But for this fraudulent misrepresentation, the said decree would not have come to be awarded.
- b) That the said S.B.I had earlier filed I.A No.4 of 2002 before this Hon'ble Court in Civil Appeal No.4146 of 2002 praying that Money Market assets of Rs.258 crores deposited by late Harshad S Mehta with N.H.B together with accruals thereon may be handed over to S.B.I on an undertaking that credit for the same would be given by them to late Harshad S Mehta in the claim made in M.P No.63 of 1992 which was then pending before the Special Court. This Hon'ble Court granted the prayers by an order dated 01.11.2002. Accordingly and in compliance of the order of this Hon'ble Court, the Custodian

made a payment of Rs.403.88 crores to S.B.I between the period from 22.10.2002 to 28.03.2003. However, in the proceedings of M.P No.63 of 1992, neither S.B.I nor N.H.B nor even the Custodian disclosed the fact of the above order of this Hon'ble Court and payments effected to S.B.I there under nor S.B.I revised their claim as per their commitment to this Hon'ble Court so as to give credit to late Harshad S Mehta for the amount of Rs.403.88 crores already received by it. All the three parties therefore not only committed the above fraud and acted in collusion with each other before the Special Court but have thereby also committed contempt of this Hon'ble Court by violating its aforesaid order dated 01.11.2002.

c) That S.B.I had earlier made averments and furnished facts in the Special Court in Suit No.35 of 1995 involving late Harshad S Mehta, N.H.B and S.B.I that as against the claim of N.H.B on S.B.I for an amount of Rs.707.56 crores, late Harshad S Mehta had actually not been credited with a sum of Rs.173.59 crores under various pay orders. S.B.I having placed all these facts before the Special Court in a collateral proceeding relating to the same claim, all the three parties were duty bound to bring these facts to the knowledge of the Special Court even in M.P No.63 of 1992 as if these material facts were disclosed, the Ld. Judge, Special Court Shri S H Kapadia (as he then was) would have accordingly reduced the decretal claim of S.B.I on Harshad S Mehta to that extent. The S.B.I having known that the claim on M/s Harshad S Mehta would be much less in view of Rs.173.59 crores not credited to him, could never have made false and contradictory averments that he had admitted to the factum of receipt of monies and thereby claim. The S.B.I in order to secure decree for a higher amount consciously made a false statement on oath.

d) That a large part of liability of Harshad S Mehta is made up of claims of interest. The Special Court as well as this Hon'ble Court had earlier laid down the law that solvent notified entities were not liable to pay interest from the date of notification and accordingly, no claim of interest of S.B.I was liable to be entertained, being contrary to law. Even otherwise, since there was no privity of contract between M/s Harshad S Mehta and S.B.I and no agreement to pay interest, the claim for

interest was clearly false and fabricated. Once again, all the three parties failed to bring to the knowledge of the Special Court the above binding law and facts only in order to secure a huge monetary gain for S.B.I and knowing fully well that late Harshad S Mehta was unrepresented and therefore there would be no opposition. The Custodian's collusion with S.B.I and N.H.B also gets conclusively established by their conduct as none of the aforesaid facts and law were pointed out by them to the Special Court nor the real issues requiring adjudication were pointed out though they were very well known to them.

e) That earlier by two orders dated 17.02.2000 and 04.06.2002, Hon'ble Justice Shri S H Kapadia had directed as well as emphasized on ascertaining full facts, more particularly since N.H.B had recovered a sum of Rs.707.56 crores from S.B.I under an R.B.I directive on a representation that their employees had fraudulently parted with the amount of Rs.707.75 crores under thirteen cheques which came to be deposited with S.B.I. The Ld. Judge had emphasized that in order to determine the liabilities of the parties, it was imperative to ascertain the full facts. In fact, Civil Appeal No.4146 of 2002 was preferred by N.H.B being aggrieved by the order of Hon'ble Justice Shri S H Kapadia (as he then was). In order to avoid any such enquiry, S.B.I misrepresented that late Harshad S Mehta had already admitted to the claim and both N.H.B and Custodian connived by remaining silent on the issue.

f) That the transactions entered into by N.H.B with late Harshad S Mehta were all Ready Forward transactions which were subsequently held to be illegal by this Hon'ble Court by a Judgment dated 07.05.1997 reported in (1997) 10 SCC 488 in the case of B.O.I Finance Ltd V/s Custodian & Ors. Pursuant to the aforesaid Judgment, in all matters where claims were based on such illegal Ready Forward transactions, the Special Court dismissed such cases on the basis that it could not assist in recovery of monies for illegal transactions. Further, for such outstanding illegal Ready Forward transactions, the interest could never have been awarded. All the three Respondents suppressed the material fact of illegality of these transactions

though the fact regarding the Ready Forward transactions were already disclosed by S.B.I in Suit No.35 of 1995.

g) That S.B.I was also holding some attached assets of late Harshad S Mehta for which it was liable to give credit against the claim made by it. But facts relating to all of these were suppressed both by S.B.I and the Custodian.

h) That the proposal of S.B.I to appropriate attached assets of late Harshad S Mehta of Rs.403.88 crores towards its claim in exclusion of other creditors was contrary to the express provisions as are contained in Section 11(2)(a) of the said Act. The revenue had the first priority over such attached assets and u/s 11(2)(b), all the banks had an equal claim on to the attached assets. Not only the provisions of the said Act were violated both before this Hon'ble Court and the Special Court, but the Custodian also failed to discharge both their duty and obligation to protect the interests of other creditors vis-à-vis S.B.I by not opposing such exclusive appropriation of properties by only one creditor to the exclusion of others including those who enjoyed priority over S.B.I.

i) That so far as N.H.B's claim against M/s Harshad S Mehta is concerned, the same was time barred but which fact was never disclosed to the Ld. Judge, Special Court. A decree awarded in a time barred claim is without jurisdiction and therefore nonest.

The Appellant is aggrieved by the impugned order on the following amongst other grounds:-

a) That the Ld. Judge did not permit completion of pleadings as the Appellant wanted to file an affidavit in rejoinder, which opportunity was denied though a request in this regard was made. Earlier both the S.B.I and the Custodian were granted several adjournments on the ground that they wanted to file their affidavit in reply. Against the stipulated time limit of three weeks in the Regulations, S.B.I filed their reply after nine months and the Custodian after a period of seven months

b) That on the day when the Counsel representing the Appellant was representing her in this Hon'ble Court, the Ld.

J

Judge denied granting an adjournment of one week on the ground of non availability of Counsel and compelled the Appellant's Advocate on record as well as all other parties to argue their case in respect of six major petitions, all on the same day involving complex questions of facts and law. It may be noted that in the impugned order, no oral arguments of any of the parties are recorded. Further it may be noted that in fact, N.H.B had not even filed their affidavit in reply and therefore according to Regulation 11 governing the Special Court, these allegations were bound to be treated as admitted by N.H.B. The impugned order is thus in complete violation of the principles of natural justice.

c) The entire impugned order proceeds on the basis of finding given by the Ld. Judge that the Appellant was aware of the fact of awarding of decree for several years and yet had made a false statement and had therefore not come with clean hands before the Special Court. The said finding is patently false as the knowledge of the decree or proceedings leading to the decree cannot be equated with the knowledge acquired subsequently by discovery of the facts relating to fraud and collusion by the Appellant making serious efforts to find out why the liabilities of late Harshad S Mehta were exaggerated by the Custodian and why even credit for the amounts of Rs.590.83 crores paid to S.B.I were not reflected and accounted in the liability which would obviously stand reduced by that amount. Similarly, the Appellant was entitled to question the computation of liabilities by the Custodian and for the same, no motives could have been ascribed to her nor could her intentions be held to be mala fide.

d) The Ld. Judge never examined any of the allegations of the Appellant about the fraud and acts of collusion by S.B.I, N.H.B and the Custodian. That on the main allegation, that credit of Rs.403.88 crores was not given by S.B.I, the Ld. Judge never examined even the affidavit in reply of S.B.I or Custodian. The S.B.I had in fact not denied the fact that they were liable to give credit and has merely denied that they have not suppressed the fact of receipt of the amount which fact according to them is disclosed in the execution application filed being M.A No.211 of 2003 on 23.07.2003. When the said

execution application is examined, even there the S.B.I had not given the credit for receipt of Rs.403.88 crores and thus a huge fraud played by them stands established. The Ld. Judge never probed this though it had huge implications on not only the liabilities of Harshad S Mehta but his distributable surplus to meet the demands of other genuine creditors. Instead of probing this fact, the Ld. Judge has falsely castigated the Appellant and has ascribed motives to her that she had filed the petition with ulterior motive and malafide intention, the whole purpose of which was to create an impression that the claim of the Custodian regarding assets and liabilities of Harshad S Mehta were factually not correct. The Ld. Judge has treated the Custodian as if he is infallible and believed S.B.I/ N.H.B as if they could do no wrong.

e) The Ld. Judge has thrown out the petition of the Appellant on the threshold itself without applying his mind to the gravity of the acts of fraud and collusion and the implications of the same on the overall functioning of the entire Special Courts Act, he ought to have appreciated that if the Appellant's contentions were proved, the same would materially alter not only the liability picture of late Harshad S Mehta, but could also ensure an equitable distribution of his assets amongst his genuine creditors as contemplated u/s 11 of the said Act.

f) That the Ld. Judge failed to realize that even otherwise and as per direction of this Hon'ble Court, the Appellant was within her right to contest all false claims against late Harshad S Mehta, more particularly if liabilities were foisted upon him through orders obtained by fraudulent misrepresentation, suppression of material facts and documents or through acts of collusion, as in that event, the entire proceedings would stand vitiated and the orders of the decree would become nonest. The Ld. Judge has focused only on the conduct of the Appellant and given several incorrect findings but never examined the conduct of S.B.I, N.H.B and the Custodian against whom not only serious allegations were made by the Appellant, but even conclusive evidence was adduced. Unfortunately, neither the contentions of the Appellant nor the supporting evidence ever came to be dealt with or examined by the Ld. Judge.

L

g) *The Ld. Judge is unduly overawed by the consequences without appreciating that in five out of six petitions, S.B.I was a common party who was governed by a commercial motive to exploit the situation that got created by the sudden demise of late Harshad S Mehta and secure in the knowledge that he has surplus of assets over liabilities. The Appellant is aggrieved that a clear bias is visible in the conduct of the Ld. Judge who had discriminated between an individual and an institution and condemned the efforts of wife of the alleged scamster in his eyes.*

h) *That the Ld. Judge as was always apprehended by the Appellant, has in the above manner, disclosed strong bias against the Appellant by unduly and without any basis castigating her and denying her of an opportunity of being heard. The clinching proof of this also became available when the legitimate prayers of the Appellant to place written submissions on record was rejected even after she was deprived of making oral submissions earlier through her Counsel. The Ld. Judge ought to have framed issues and was duty bound to give a fair opportunity to the Appellant more particularly since Section 9A(4) specifically stipulates that the Court is bound to follow the principles of natural justice even if all the provisions of Civil Procedure Code are not applied.*

23.04.1992 The securities scam broke out giving wide publicity in the media

27.04.1992 S.B.I called upon N.H.B to inform them if there were any outstanding transactions of late Harshad S Mehta with them. N.H.B confirmed that the balance is Nil.

15.05.1992 The bank accounts of M/s Harshad S Mehta were frozen by C.B.I u/s 102 of Cr.P.C

03.06.1992 N.H.B made a claim on S.B.I for an amount of Rs.707.75 crores on account of 13 cheques issued by them and drawn on S.B.I which were claimed to have been encashed by them.

SYNOPSIS LIST OF DATES AND EVENTS

The Appellant is a house wife, a notified person and widow of late Harshad S Mehta who had a sole proprietorship brokerage firm in the name and style of M/s Harshad S Mehta. The said brokerage firm used to undertake business in the capacity of broker as well as on a principal to principal basis with several banks and financial institutions including S.B.I and SBI Capital Markets Ltd (SBI Caps).

That at the behest of Harshad S Mehta, attached properties in the form of Public Sector Bonds of F.V Rs.50 crores belonging to him but lying with Syndicate Bank was ordered to be recovered by the Special Court on 13.01.1999. The value of this attached asset as in 2003 was Rs.130.73 crores made up of proceeds of redemption of the Bonds of FV Rs.50 crores and accrued interest earned and received thereon. That after the sudden demise of late Harshad S Mehta, S.B.I played a fraud upon the Special Court and the Custodian acted in collusion with them such that the attached assets recovered as above, was parted with in favour of S.B.I who lodged a false claim on it by making several misrepresentations and by suppressing material facts and documents. These valuable attached assets of Rs.130.73 crores have thus been handed over to S.B.I by the Custodian under a letter dated 04.03.2009 which has diminished his asset base and inflated the liabilities against him and which would deprive his genuine creditors. The facts relating to acts of fraud and collusion are narrated herein after.

The brokerage firm of M/s Harshad S Mehta used to regularly undertake transactions with Syndicate Bank, most of which were on a principal to principal basis. At the relevant time, the said Syndicate Bank had made payment for purchase of 17% NTPC Bonds of FV Rs.20 crores and 9% IRFC Bonds of FV Rs.30 crores (herein after referred to as "the said Bonds" totaling an amount of about Rs.48.73 crores. However, the said Bonds were not delivered by Syndicate Bank to Harshad Mehta despite receiving full consideration.

The brokerage firm of M/s Harshad S Mehta also enjoyed banking facilities with S.B.I who had extended routing facility to M/s Harshad S Mehta under which money market transactions undertaken by him were settled through S.B.I. Under this routing facility, Pay Orders for transactions entered into with M/s Harshad S Mehta used to be drawn in favour of S.B.I which used to be deposited with S.B.I and credits in regard to which used to be given by S.B.I to the said brokerage firm. Similarly delivery of securities used to be received and tendered on behalf of the brokerage firm by S.B.I and custody of the same used to be also kept with S.B.I. S.B.I though denying existence of routing facility in the present proceedings had belatedly admitted to having extended this facility which is duly recorded in the Judgment dated 04.06.2002 of Hon'ble Justice Shri S H Kapadia in the proceedings in Chamber Summons No.11 of 1999 in Suit No.35 of 1995.

That in May 1992, an inter bank settlement took place at R.B.I when Syndicate Bank failed to disclose that they had deliver the said Bonds to Harshad S Mehta. On 29.05.1992, S.B.I lodged their claim on Syndicate Bank for delivery of said Bonds.

That in September 1992, the Custodian issued a public notice calling upon all parties to disclose if they were holding any attached assets belonging to any notified parties. On 28.01.1993, Syndicate bank informed SBI that they are holding the said Bonds on their behalf and the same are in their custody and requested S.B.I to take delivery of the said Bonds.

On 06.02.1993, C.B.I directed Syndicate Bank not to effect the delivery of the said Bonds pending investigation launched by them is completed and clearance given by them. On 25.02.1993, M/s Harshad S Mehta requested S.B.I to make available the itemized details of his bank account and copies of the supporting debits and credits effected into and vouchers and supporting documents relating to movement and delivery of securities and assets held by

them in custody on his behalf which request was denied by SBI on 23.03.1993.

On 26.10.1993 Harshad S Mehta and his family members filed M.A No.215 of 1993 in Special Court setting out a plan for out of court settlement with the creditors which was submitted on a without prejudice basis. On 29.10.1993, late Harshad S Mehta addressed a letter to the Custodian requesting them to prefer a claim on S.B.I / Syndicate Bank for recovery of the said Bonds and to collect from Syndicate Bank excess amount of Rs.2.43 crores paid to them by Harshad S Mehta. However, the Custodian did not prefer any such claim.

On 25.01.1994, the Government amended the said Act by introducing Section 9A which conferred civil jurisdiction upon the Special Court to cause recovery of monies and assets of notified entities lying in third party hands.

On 06.02.1995, late Harshad S Mehta filed M.A No.94 of 1995 for recovery of the said Bonds and also claimed Rs.2.43 crores being excess amount paid to Syndicate Bank. On 21.03.1995, Harshad S Mehta, withdrew M.A No.215 of 1993 with liberty to file it again.

On 21.07.1995, C.B.I lifted the restraint order dated 06.02.1993 issued to Syndicate Bank on the delivery of said Bonds. On 19.03.1997, this Hon'ble Court held Ready Forward transactions in Money Market to be illegal. On 07.05.1997, the Special Court dismissed M.A No.94 of 1995 under the impression that it pertained to Ready Forward transaction although the said claim was for recovery of attached assets lying in third party hands.

On 06.11.1998, the Custodian preferred M.P No.88 of 1998 claiming the said Bonds together with accruals from Syndicate Bank belonging to Harshad S Mehta. On 13.01.1999, the Special Court declared these Bonds to be the

On 15.07.2002, SBI filed their affidavit claiming the said Bonds to be their property. On 06.09.2002, Custodian withdrew M.P No.88 of 1998 illegally and gave up the claim of the said Bonds which were already recovered by them as attached assets of Harshad S Mehta and consequently on 30.11.2002 and 21.12.2002, SBI received proceeds of Bonds amounting to Rs.130.72 crores from the Custodian.

Facing acute difficulties in obtaining services of counsel, Smt Jyoti H Mehta filed M.A No.278 of 2003 in September of 2003 seeking order from the Special Court for release of fees to engage services of counsel to represent herself as well as her late husband. This application was turned down by the Special Court by an order dated 08.10.2003 on the ground that none appeared for the Applicant.

During the same period, she informed the Custodian that she had no knowledge about the matters of Harshad S Mehta. She also filed a detailed affidavit in October 2003 in M.P No.41 of 1999 wherein she has placed the facts relating to the difficulties that she was undergoing. In November 2003, she also filed an affidavit before the Special Court that she had no knowledge regarding the accounts as they were drawn by Harshad S Mehta himself and the staff who had prepared them had resigned. That Shri Ashwin S Mehta, brother of late Harshad S Mehta, also filed an affidavit in Special Court that he could not assist in the affairs of M/s Harshad S Mehta and narrated the facts regarding the situation prevailing at that time. That Smt Jyoti H Mehta also filed a detailed affidavit before this Hon'ble Court in C.A D No.25815 of 2003 setting out the facts relating to the difficulties that she was passing through. She narrated that though she wanted to contest the false liabilities foisted against Harshad S Mehta, she could not do so. She narrated that she filed application in the Special Court to seek access to the records and release of computers and for sanction and payment of fees for engaging services of a counsel.

properties of Harshad S Mehta and directed Syndicate Bank to hand them over to the Custodian together with accruals thereon including redemption proceeds.

On 06.12.1999, S.B.I preferred M.A No.692 of 1999 in M.P No.88 of 1988 praying for recalling of the order dated 13.01.1999 on the ground that they could not record their appearance in the said proceedings. On 09.02.2000, M.A No.692 of 1999 filed by S.B.I came to be allowed and order dated 13.01.1999 ordering delivery of said Bonds to Custodian was recalled.

On 30.12.2001, Shri Harshad S Mehta expired in judicial custody. That after the sudden demise of late Harshad S Mehta, his only legal heir Smt Jyoti H Mehta could not cope up with a huge volume of pending litigation. That she is a house wife and a notified person and was factually not aware about the business transactions of late Harshad S Mehta. That all the records relating to Harshad S Mehta including computers and original files were taken away by the Custodian and even the staff members were directed to sit in Custodian's Office. In any event, those staff members who had first hand knowledge of the business of M/s Harshad S Mehta either left employment or their services were dispensed with by the Special Court at the instance of the Custodian. That even if Smt Jyoti H Mehta wanted, she could not have and she was not in a position to give any instructions to the counsels. Besides, some of the counsels representing late Harshad S Mehta continued only for some time as being a notified person, the Appellant was not in a position to make payment of fees to the counsels. That Smt Jyoti H Mehta was also suffering from mental trauma and had poor health because of the sudden and untimely demise of her late husband at a young age of 47 years. That there was a complete break down in the defence mechanism of Harshad S Mehta post his sudden demise and several decrees came to be awarded ex parte as Smt Jyoti H Mehta could not represent him in these matters for above reasons.

In January 2004, the Special Court made orders in M.A No.270 of 1993 to handover the balance computers to the Custodian and issued directions that all the staff members of Harshad S Mehta may be placed at the disposal of the Custodian in their office. In April 2004, the Special Court directed the Custodian not to return the books of accounts and documents to Smt Jyoti H Mehta and other notified entities.

In June 2006, Smt Jyoti H Mehta requested the Custodian to return the books of accounts and all original records of M/s Harshad S Mehta which were lying seized with Custodian to enable her to contest the liabilities. In the same month, she also filed affidavit in M.P No.41 of 1999 once again describing the serious difficulties she was facing in representing Harshad S Mehta. In July 2006, she addressed a letter to the Custodian seeking clarification as to why the Custodian had not given a credit for an amount of Rs.590.83 crores paid over to SBI against the decretal liabilities. She also filed M.A No.306 of 2006 praying for returning of books of accounts and other original records of M/s Harshad S Mehta to enable her to contest the liabilities which request was rejected by the Special Court by an order dated 09.10.2006. Between June 2006 and May 2007, Smt Jyoti H Mehta addressed numerous reminder letters to the Custodian soliciting their reply on the aforesaid Rs.590.83 crores and after having failed to secure their response, she filed M.A No.114 of 2007 before the Special Court to seek relief.

In the meantime, in January 2008, the Custodian filed their reply in M.A No.114 of 2007 wherein they took a stand that no credit of Rs.590 crores was liable to be given to Harshad S Mehta. The Appellant therefore filed an affidavit in rejoinder and also an additional affidavit more particularly seeking copies of proceedings in Civil Appeal No.4146 of 2002 where some order was made by this Hon'ble Court but the proceedings were not served upon Smt Jyoti H Mehta by SBI and N.H.B. Some ex parte order was also made by this Hon'ble Court. Eventually and pursuant to the directions of Special Court, copies of proceedings in C.A No.4146 of 2002 were made

available by the Custodian under an affidavit dated 25.03.2009 which was also recorded by the Special Court in its order dated 26.06.2009.

On 27.04.2009, the Appellant addressed a letter seeking particulars and details from the Custodian for recovery of the said Bonds from Syndicate Bank. It may be noted that she had no knowledge that the said Bonds were claimed by SBI and were handed over to them. Thereafter a reminder was sent on 08.05.2009 and 06.06.2009

On 01.05.2009, the Appellant having obtained some knowledge on recovery petition filed by the Custodian preferred application before Registrar seeking inspection and copies of proceedings in M.P No.88 of 1998. By perusing and verification of complete records, she discovered the facts relating to the fraud played by SBI in collusion with the Custodian.

On 12.06.2009, the Appellant filed M.P No.9 of 2009 before the Special Court inter alia seeking a relief for a declaration that the order dated 06.09.2002 in M.P No.88 of 1998 was nullity, void and nonest. The Appellant urged that she had discovered that both SBI and Syndicate Bank had played a fraud upon the Special Court and the Custodian had acted in collusion with them for obtaining the decree where under several misrepresentations were made to the Special Court and material facts were suppressed and also a false declaration was made. The complete facts and supporting evidence has been described in the aforesaid M.P No.9 of 2009.

The Appellant is aggrieved by the impugned order on the following amongst other grounds:-

a) *That the Ld. Judge did not permit completion of pleadings as the Appellant wanted to file an affidavit in rejoinder, which opportunity was denied though a request in this regard was made Earlier the S.B.I, Syndicate bank and the Custodian were granted several adjournments on the ground that they wanted to file their*

affidavit in reply. Against the stipulated time limit of three weeks as per the Regulations, S.B.I filed their reply after nine months and the Custodian after a period of seven months. However, Syndicate Bank failed to file any reply.

b) That on the day when the Counsel representing the Appellant was representing her in this Hon'ble Court, the Ld. Judge denied granting an adjournment of one week on the ground of non availability of Counsel and compelled the Appellant's Advocate on record as well as all other parties to argue their case in respect of six major petitions, all on the same day involving complex questions of facts and law. It may be noted that in the impugned order, no oral arguments of any of the parties are recorded. The impugned order is thus in complete violation of the principles of natural justice.

c) The entire impugned order proceeds on the basis of finding given by the Ld. Judge that the Appellant was aware of the fact of order for several years and yet had made a false statement and had therefore not come with clean hands before the Special Court. The said finding is patently false as the knowledge of the order or proceedings leading to the order cannot be equated with the knowledge acquired subsequently of discovery of the facts relating to fraud and collusion by the Appellant making serious efforts to find out why the liabilities of late Harshad S Mehta were exaggerated by the Custodian and why even credit for the amounts of Rs.590.83 crores paid to S.B.I were not reflected and accounted for in the liability which would obviously stand reduced by that amount. Similarly, the Appellant was entitled to question the computation of liabilities by the Custodian and for the same, no motives could have been ascribed to her nor could her intentions be held to be mala fide. The Ld. Judge failed to appreciate the efforts made by the Appellant in ascertaining as to whether the Custodian had recovered the attached assets of the said Bonds.

d) The Ld. Judge never examined any of the allegations of the Appellant about the fraud and acts of collusion by S.B.I, Syndicate Bank and the Custodian. That on the main allegation about several misrepresentations, fraud and collusion, the Ld. Judge never probed this though it had huge implications on not only the assets of Harshad S Mehta but his distributable surplus to meet the demands of his genuine creditors. Instead of probing this fact, the Ld. Judge has falsely castigated the Appellant and has ascribed motives to her that she had filed the petition with ulterior motive and malafide intention, the whole purpose of which was to create an impression that the claim of the Custodian regarding assets and liabilities of Harshad S Mehta were factually not correct. The Ld. Judge has treated the Custodian as if he is infallible and believed S.B.I as if they could do no wrong.

e) The Ld. Judge has thrown out the petition of the Appellant on the threshold itself without applying his mind to the gravity of the acts of fraud and collusion and the implications of the same on the overall functioning of the entire Special Courts Act, he ought to have appreciated that if the Appellant's contentions were proved, the same would materially alter not only the asset picture of late Harshad S Mehta, but could also ensure an equitable distribution of his assets amongst his genuine creditors as contemplated u/s 11 of the said Act.

f) That the Ld. Judge failed to realize that even otherwise and as per direction of this Hon'ble Court, the Appellant was within her right to contest all false claims against late Harshad S Mehta and seek recovery of his attached assets, more particularly if assets were taken away through orders obtained by fraudulent misrepresentation, suppression of material facts and documents or through acts of collusion, as in that event, the entire proceedings would stand vitiated and the order of the Court would become nonest. The Ld. Judge has

focused only on the conduct of the Appellant and given several incorrect findings but never examined the conduct of S.B.I, Syndicate Bank and the Custodian against whom not only serious allegations were made by the Appellant, but even conclusive evidence was adduced. Unfortunately, neither the contentions of the Appellant nor the supporting evidence ever came to be dealt with or examined by the Ld. Judge.

g) The Ld. Judge is unduly overawed by the consequences without appreciating that in five out of six petitions, S.B.I was a common party who was governed by a commercial motive to exploit the situation that got created by the sudden demise of late Harshad S Mehta and secure in the knowledge that he has surplus of assets over liabilities. The Appellant is aggrieved that a clear bias is visible in the conduct of the Ld. Judge who had discriminated between an individual and an institution and condemned the efforts of wife of the alleged scamster in his eyes.

h) That the Ld. Judge as was always apprehended by the Appellant, has in the above manner, disclosed strong bias against the Appellant by unduly and without any basis castigating her and denying her an opportunity of being heard. The clinching proof of this also became available when the legitimate prayers of the Appellant to place written submissions on record was rejected even after she was deprived of making oral submissions earlier through her Counsel. The Ld. Judge ought to have framed issues and was duty bound to give a fair opportunity to the Appellant more particularly since Section 9A(4) specifically stipulates that the Court is bound to follow the principles of natural justice even if all the provisions of Civil Procedure Code are not applied.

Dates

E v e n t s

SYNOPSIS LIST OF DATES AND EVENTS

The Appellant is a house wife, a notified person and widow of late Harshad S Mehta who had a sole proprietorship brokerage firm in the name and style of M/s Harshad S Mehta. The said brokerage firm used to undertake business in the capacity of broker as well as on a principal to principal basis with several banks and financial institutions including S.B.I and SBI Capital Markets Ltd (SBI Caps).

The brokerage firm of M/s Harshad S Mehta used to regularly undertake transactions with SBI Caps, most of which were on a principal to principal basis. At the relevant time, the said SBI Caps had made payment for purchase of 7.5 crore Units totaling an amount of about Rs.105.10 crores.

The brokerage firm of M/s Harshad S Mehta also enjoyed banking facilities with S.B.I who had extended routing facility to M/s Harshad S Mehta under which money market transactions undertaken by him were settled through S.B.I. Under this routing facility, Pay Orders for transactions entered into with M/s Harshad S Mehta used to be drawn in favour of S.B.I which used to be deposited with S.B.I and credits in regard to which used to be given by S.B.I to the said brokerage firm. Similarly delivery of securities used to be received and tendered on behalf of the brokerage firm by S.B.I and custody of the same used to be also kept with S.B.I. S.B.I though denying existence of routing facility in the present proceedings had belatedly admitted to having extended this facility which is duly recorded in the Judgment dated 04.06.2002 of Hon'ble Justice Shri S H Kapadia in the proceedings in Chamber Summons No.11 of 1999 in Suit No.35 of 1995. Similarly, SBI Caps being 100% subsidiary of SBI was also enjoying similar banking facilities with their parent bank SBI and even their transactions used to be settled at the same branch of SBI.

That in July 1992, SBI Caps registered an F.I.R with C.B.I against Harshad S Mehta for non delivery of 7.5 crore Units. In the same month, without coming to the Special Court and seeking its permission, SBI reimbursed Rs.105.10 crores to SBI Caps to save it from losing license from SEBI. Thus after notification of Harshad S Mehta, SBI as his banker, without his knowledge or consent, admitted liability on his behalf to rescue its subsidiary and this act of SBI was in complete violation of provisions of the Special Courts Act under which only the Special Court had exclusive jurisdiction to adjudicate claims against a notified person. In November 1992, SBI thereafter issued a legal notice on Harshad S Mehta seeking recovery of aforesaid Rs.105.10 crores which was followed up by SBI filing Suit No.41 of 1995 for recovery of Rs.105.10 crores together with interest @ 23.25% on it.

That in September 1992, the Custodian issued a public notice calling upon all parties to disclose if they were holding any attached assets belonging to any notified parties. In October 1992, SBI Caps discovered that they were holding excess 3.71 crore Units which were delivered to them by SBI in May 1992 and accordingly in January 1993, SBI Caps addressed a letter to RBI disclosing and setting out the facts relating to the aforesaid 3.71 crore excess Units. It may be noted that both SBI / SBI Caps neither disclosed the fact of aforesaid 3.71 crore Units to Custodian despite the public notice or to the Special Court nor did it amend or withdrew the F.I.R filed by them against Harshad S Mehta for 7.5 crore Units. SBI also never amended the legal notice issued by them on Harshad S Mehta making claim of Rs.105.10 crores for 7.5 crore Units. Thus clearly an attempt was made by SBI / SBI Caps to usurp 3.71 crore Units belonging to Harshad S Mehta and lying in the custody of SBI as his banker.

That Shri Harshad S Mehta upon discovery of facts, in February 1993, addressed a letter to the Custodian to lodge a claim on SBI Caps for recovery of 3.71 crore Units together with accrued benefits thereon. In the same month, Harshad S Mehta

also addressed a letter on SBI, his bankers, to furnish him itemized particulars and supporting records and details regarding debits and credits effected into his bank account and to disclose holding of any securities on his behalf. This request was denied by SBI on 23.03.1993 so that Harshad S Mehta cannot resist several false claims of SBI and cannot discover facts relating to the holding of his assets lying in custody of S.B.I.

In the meantime, in April 1993, the Custodian addressed a letter to SBI Caps seeking recovery of 3.71 crore Units on behalf of Harshad S Mehta. In the same month, SBI Caps replied denying the claim of Harshad S Mehta on the said 3.71 crore Units as according to them, the claim was not substantiated by evidence of proof of payments to SBI or SBI Caps in respect of these Units. SBI Caps forwarded a copy of their letter dated 12.01.1993 addressed to RBI on the subject. In August 1993, therefore the Custodian preferred M.A No.185 of 1993 both against SBI and SBI Caps for recovery of aforesaid 3.71 crore Units as well as accrual of dividends on it.

That in February 1994, in M.A No.185 of 1993, Special Court was pleased to direct appointment of a firm of Chartered Accountants to investigate the accounts of SBI Caps and Harshad S Mehta with SBI, and submit a report to the Special Court on the aspect of ownership of said 3.71 crore Units. That in April 1995, these firm of Chartered Accountants placed their report before the Special Court giving a finding that atleast 2.51 crore Units out of 3.71 crore Units belonged to Harshad S Mehta. For the balance 1.2 crore Units, the said Chartered Accountants could not ascertain facts. In November 1995, when the contents of their report were disputed, the Chartered Accountants asserted that SBI only as an after thought offered to give a credit for 3.71 crore Units in their claim filed for 7.5 crore Units in Suit No.41 of 1995 because of their findings about the ownership of above Units.

That in November 1996, the Special Court made an order holding that atleast 2.51 crore Units were properties of Harshad S Mehta as purchase consideration was paid by him. For balance 1.2 crore Units, the Court held that the Custodian could not furnish adequate evidence. The Court held that even those 1.2 crore Units could be the properties of Harshad S Mehta and therefore gave him liberty to make a claim for it. The Court held that SBI Caps and SBI were guilty of wrongful conversion of Units belonging to Harshad S Mehta and SBI was hiding from scrutiny the records of purchase and sale transactions. The Special Court held that 3.71 crore Units could not be appropriated against SBI's money claim of Rs.105.10 crores. That in July 1998, Shri Harshad S Mehta filed his affidavit in reply denying and opposing SBI's claim in Suit No.41 of 1995. It was also urged that the said claim was time barred. In January 1999, SBI Caps also filed their written statement in Suit No.41 of 1995

That the above order of the Special Court was challenged both by SBI and SBI Caps before this Hon'ble Court by filing separate Civil Appeals which were heard together and a combined order was made on 09.10.2001. This Hon'ble Court granted the prayers of SBI and SBI Caps that they wanted to lead oral evidence and the above order of the Special Court was set aside. This Hon'ble Court also held that the Special Court could independently and on its own obtain evidence from third parties to ascertain facts in a case of this nature. That soon after the aforesaid order, on 30.12.2001, Harshad S Mehta expired in judicial custody.

That in February 2003, without informing the Special Court about the aforesaid order dated 09.10.2001 of this Hon'ble Court, the Custodian withdrew M.A No.185 of 1993 and thereby the matter of claim of Harshad S Mehta on 3.71 crore Units was given up by the Custodian without compliance with the above order of this Hon'ble Court. That on 03.03.2003, SBI made a statement to the Special Court that in terms of the averments made by them in Para 19 of their Suit No.41 of 1995, they were ready and willing to

give a credit of Rs.51.99 crores being monetary equivalent of 3.71 crore Units to the heirs of late Harshad S Mehta on which basis, an ex parte order of decree was made by the Special Court. The Special Court reduced the interest rate from 23.25% to 15% p.a.

That in August 2003, SBI filed Execution Application No.205 of 2003 in Suit No.41 of 1995 inter alia praying for a relief for direction to make a payment to them for decretal amount of Rs.137.11 crores i.e. by reducing Rs.51.99 crores credit as aforesaid from a gross claim of Rs.189.10 crores. Further interest @ 15% p.a. was claimed on Rs.137.11 crores.

That after the sudden demise of late Harshad S Mehta, his only legal heir Smt Jyoti H Mehta could not cope up with a huge volume of pending litigation. That she is a house wife and a notified person and was factually not aware about the business transactions of late Harshad S Mehta. That all the records relating to Harshad S Mehta including computers and original files were taken away by the Custodian and even the staff members were directed to sit in Custodian's Office. In any event, those staff members who had first hand knowledge of the business of M/s Harshad S Mehta either left employment or their services were dispensed with by the Special Court at the instance of the Custodian. That even if Smt Jyoti H Mehta wanted, she could not have and she was not in a position to give any instructions to the counsels. Besides, some of the counsels representing late Harshad S Mehta continued only for some time as being a notified person, the Appellant was not in a position to make payment of fees to the counsels. That Smt Jyoti H Mehta was also suffering from mental trauma and had poor health because of the sudden and untimely demise of her late husband at a young age of 47 years. That there was a complete break down in the defence mechanism of Harshad S Mehta post his sudden demise and several decrees came to be awarded ex parte as Smt Jyoti H Mehta could not represent him in these matters for above reasons.

However, Smt Jyoti H Mehta filed M.A No.278 of 2003 in September of 2003 seeking order from the Special Court for release of fees to engage services of counsel to represent herself as well as her late husband. This application was turned down by the Special Court by an order dated 08.10.2003 on the ground that none appeared for the Applicant.

During the same period, she informed the Custodian that she had no knowledge about the matters of Harshad S Mehta. She also filed a detailed affidavit in October 2003 in M.P No.41 of 1999 wherein she has placed the facts relating to the difficulties that she was undergoing. In November 2003, she also filed an affidavit before the Special Court that she had no knowledge regarding the accounts as they were drawn by Harshad S Mehta himself and the staff who had prepared them had resigned. That Shri Ashwin S Mehta, brother of late Harshad S Mehta, also filed an affidavit in Special Court in nil that he could not assist in the affairs of M/s Harshad S Mehta and narrated the facts regarding the situation prevailing at that time. That Smt Jyoti H Mehta also filed a detailed affidavit before this Hon'ble Court in C.A D No.25815 of 2003 setting out the facts relating to the difficulties that she was passing through. She narrated that though she wanted to contest the false liabilities foisted against Harshad S Mehta, she could not do so. She narrated that she filed application in the Special Court to seek access to the records and release of computers and for sanction and payment of fees for engaging services of a counsel.

In January 2004, the Special Court made orders in M.A No.270 of 1993 to handover the balance computers to the Custodian and issued directions that all the staff members of Harshad S Mehta may be placed at the disposal of the Custodian in their office. In April 2004, the Special Court directed the Custodian not to return the books of accounts and documents to Smt Jyoti H Mehta and other notified entities.

In June 2006, Smt Jyoti H Mehta requested the Custodian to return the books of accounts and all original records of M/s Harshad S Mehta which were lying seized with Custodian to enable her to contest the liabilities. In the same month, she also filed affidavit in M.P No.41 of 1999 once again describing the serious difficulties she was facing in representing Harshad S Mehta. In July 2006, she addressed a letter to the Custodian seeking clarification as to why the Custodian had not given a credit for an amount of Rs.590.83 crores paid over to SBI against the decreetal liabilities. She also filed M.A No.306 of 2006 praying for returning of books of accounts and other original records of M/s Harshad S Mehta to enable her to contest the liabilities which request was rejected by the Special Court by an order dated 09.10.2006. Between June 2006 and May 2007, Smt Jyoti H Mehta addressed numerous reminder letters to the Custodian soliciting their reply on the aforesaid Rs.590.83 crores and after having failed to secure their response, she filed M.A No.114 of 2007 before the Special Court to seek relief.

In January 2008, Smt Jyoti H Mehta filed M.A No.23 of 2008 in Suit No.41 of 1995 praying for setting aside the ex parte order of decree dated 03.03.2003 passed in Suit No.41 of 1995. In April 2008, SBI filed a limited reply to this application opposing it on the ground of its maintainability but without dealing with the merits of it. On 04.07.2008, as per the legal advise received by her, she withdrew M.A No.23 of 2008.

In the meantime, in January 2008, the Custodian filed their reply in M.A No.114 of 2007 wherein they took a stand that no credit of Rs.590 crores was liable to be given to Harshad S Mehta. The Appellant therefore filed an affidavit in rejoinder and also an additional affidavit more particularly seeking copies of proceedings in Civil Appeal No.4146 of 2002 where some order was made by this Hon'ble Court but the proceedings were not served upon Smt Jyoti H Mehta by SBI and N.H.B. Some ex parte order was also made by this Hon'ble Court. Eventually and pursuant to the

directions of Special Court, copies of proceedings in C.A No.4146 of 2002 were made available by the Custodian under an affidavit dated 25.03.2009 which was also recorded by the Special Court in its order dated 26.06.2009.

The Appellant on 12.06.2009, filed M.P No.10 of 2009 before the Special Court inter alia seeking a relief for a declaration that the decree dated 03.03.2003 in Suit No.41 of 1995 was nullity, void and nonest. The Appellant urged that she had discovered that both SBI and SBI Caps had played a fraud upon the Special Court and the Custodian had acted in collusion with them for obtaining the decree where under several misrepresentations were made to the Special Court and material facts were suppressed and also a false declaration was made that the claim was in time though it was time barred.

The complete facts and supporting evidence has been described in the aforesaid M.P No.10 of 2009. However, the same are briefly narrated as under :-

a) That the said decree is awarded for a time barred claim for which the Special Court had no jurisdiction. SBI made a false declaration that their claim was within time.

b) That SBI was not entitled to any claim from M/s Harshad S Mehta as there was no privity of contract between them and it could not have stepped into the shoes of SBI Caps. SBI being bankers to both M/s Harshad S Mehta as well as SBI Caps protected the interests of its 100% subsidiary and without any authority or consent or even knowledge of Special Court or M/s Harshad S Mehta, admitted to the claim of SBI Caps of Rs.105.10 crores against M/s Harshad S Mehta and reimbursed this amount to SBI Caps. There were several misrepresentations regarding the aforesaid reimbursement. In any event, SBI could never have usurped the powers of the Special Court and bypassed it by admitting to any claims on behalf of a notified person which could

have been adjudicated only by Special Court under Section 9A of the said Act.

c) That SBI and SBI Caps suppressed the material fact that the transactions for purchase of 7.5 crore Units by SBI Caps included Ready Forward transactions which were declared by this Hon'ble Court to be illegal, and therefore no claim could lie before the Special Court for such illegal transactions. It was also suppressed from the Special Court that atleast for purchase of 5 crore Units, SBI Caps had received B.R from National Housing Bank with whom SBI Caps had made efforts to cause recovery.

d) That SBI and SBI Caps as well as Custodian suppressed the material fact regarding pending compliance of a combined order made by this Hon'ble Court on 09.10.2001 in two Civil Appeals filed by SBI and SBI Caps. The said decree could not have been awarded without compliance with the aforesaid order of this Hon'ble Court and therefore it was suppressed.

e) That 3.71 crore Units together with accrued benefits on it were the attached properties of M/s Harshad S Mehta and liable to be distributed amongst all his creditors. This asset was initially suppressed from the Custodian and the Special Court by SBI and SBI Caps and after they were discovered, several false stands were taken to resist the claim of M/s Harshad S Mehta. The evidence established ownership of Harshad S Mehta based on which an order was made by the Special Court that they were attached properties and were not liable to be appropriated or set off against the money claim of SBI. To overcome this, SBI and SBI Caps devised a plan to misrepresent to the Special Court after sudden demise of Harshad S Mehta to convert this valuable asset into a money value of Rs.51.99 crores and concede the credit for it so as to deprive the other creditors as well as Harshad S Mehta. This offer was made only with a view to secure exclusive appropriation in their favour contrary to the provisions of Section 11 of the said Act and to deny the true value of this attached asset which was far greater than the sum of Rs.51.99 crores.

f) That the claim of SBI was fraudulently exaggerated in the following manner :-

i) A credit of Rs.51.99 crores was liable to be given against principal sum of Rs.105.10 crores and not against the claim amount of Rs.189.10 crores which included interest @ 23.25% even on the aforesaid credit of Rs.51.99 crores.

ii) That though the Court awarded only 15% interest against the claim of 23.25%, SBI never reduced the sum of Rs.189.10 crores to give effect to it and thereby misrepresented to the Special Court to exaggerate decretal value.

iii) That interest of 15% could have been computed only on Rs.53.11 crores (Rs.105.10 crores less Rs.51.99 crores). Thus not only a higher interest rate of 23.25% taken but interest on interest has been claimed which is impermissible in law.

g) That after having succeeded in the Special Court in M.A No.185 of 1993, the Custodian falsely and illegally gave up the claim of M/s Harshad S Mehta against SBI / SBI Caps by withdrawing the said M.A No.185 of 1993. The Custodian acted in collusion with SBI and SBI Caps to give them a huge monetary favour at the cost of M/s Harshad S Mehta and his other creditors. The Custodian knew of the order of this Hon'ble Court and had already obtained evidence through Chartered Accountants which established the ownership of M/s Harshad S Mehta atleast on 2.51 crore Units. The Custodian also knew that this attached asset was liable to be distributed u/s 11 on a pro rata basis amongst all the creditors but yet contrary to the law, consciously allowed SBI to exclusively appropriate a valuable attached asset running into several crores. The Custodian also could not have conceded and agreed to a credit of only Rs.51.99 crores as offered by SBI though it knew that the value of assets was far greater than that. The Custodian also never pursued recovery of 2 crore Units belonging

to Harshad S Mehta which was sold off by SBI Caps on 31.05.1992 to Syndicate Bank, evidence in which regard was adduced by Harshad S Mehta in his affidavit dated 04.03.1996.

g) SBI and SBI Caps represented to this Hon'ble Court that opportunity of leading oral evidence may be granted to them to establish the fraud played upon them by their employee which relief was granted by this Hon'ble Court by an order dated 09.10.2001. However before the Special Court, this order was suppressed to obtain a false decree without complying with the order of this Hon'ble Court.

h) That the proposal of giving credit of Rs.51.99 crores made in Para 19 of Suit No.41 of 1995 was convoluted and could have come into play only after the Special Court coming to the conclusion that 3.71 crore Units were not properties of Harshad S Mehta. No such conclusion was reached but instead the Special Court had come to the conclusion that it was the property of M/s Harshad S Mehta. That it was never explained to the Court that the true reason behind the offer of giving credit was to seek exclusive appropriation of an attached asset in favour of SBI which was contrary to provisions of Section 11 of the said Act which mandated distribution in favour of other creditors also.

i) That it was suppressed from the Special Court that 3.71 crore Units were attached properties in terms of Section 3(2) of the said Act even though it might have been lying in the hands of SBI / SBI Caps. That once such property was attached upon notification, even the Special Court much less Custodian had any powers to extinguish the right, title and interests of Harshad S Mehta in the said 3.71 crore Units. There was no power in the Special Court to allow exclusive appropriation. The true meaning and import was fraudulently never explained to the Special Court and in fact, material facts were suppressed from it.

h) That SBI had taken contradictory and false stand regarding the routing facility extended by them to M/s Harshad S Mehta. That in proceedings in Suit No.41 of 1995, the existence of said routing facility was denied and where it suited SBI, in proceedings in Suit No.35 of 1995, it has admitted to existence of this facility which was duly recorded by the Special Court in its order dated 17.02.2000 and 04.06.2002 in Chamber Summons No.35 of 1999 and Chamber Summons No.11 of 2002 in Suit No.35 of 1995.

i) That SBI had not effected service on the Appellant in terms of Regulation No.8 governing the Special Court but yet the Court was misled into believing that a proper service had been effected upon the Appellant.

That the Appellant and her family members were apprehensive that justice would not be done to them which apprehension developed due to several events and orders preceding the present proceedings. The Appellant and her family members therefore very reluctantly filed M.P No.16 of 2009 praying that the Ld. Judge should recuse himself. This petition was rejected by the Ld. Judge by holding that he was not biased but he never dealt with the issue before him i.e. the reasonableness of the apprehension of the Appellant and her family members. An appeal against the said order was not entertained by this Hon'ble Court but it was observed that specific cases of bias could be brought to its notice.

The Appellant is aggrieved by the impugned order on the following amongst other grounds:-

a) *That the Ld. Judge did not permit completion of pleadings as the Appellant wanted to file an affidavit in rejoinder, which opportunity was denied though a request in this regard was made. Earlier the S.B.I, SBI Caps and the Custodian were granted several adjournments on the ground*

that they wanted to file their affidavit in reply. Against the stipulated time limit of three weeks as per the Regulations, S.B.I filed their reply after nine months, SBI Caps after ten months, and the Custodian after a period of seven months.

b) That on the day when the Counsel representing the Appellant was representing her in this Hon'ble Court, the Ld. Judge denied granting an adjournment of one week on the ground of non availability of Counsel and compelled the Appellant's Advocate on record as well as all other parties to argue their case in respect of six major petitions, all on the same day involving complex questions of facts and law. It may be noted that in the impugned order, no oral arguments of any of the parties are recorded. The impugned order is thus in complete violation of the principles of natural justice.

c) The entire impugned order proceeds on the basis of finding given by the Ld. Judge that the Appellant was aware of the fact of awarding of decree for several years and yet had made a false statement and had therefore not come with clean hands before the Special Court. The said finding is patently false as the knowledge of the decree or proceedings leading to the decree cannot be equated with the knowledge acquired subsequently of discovery of the facts relating to fraud and collusion by the Appellant making serious efforts to find out why the liabilities of late Harshad S Mehta were exaggerated by the Custodian and why even credit for the amounts of Rs.590.83 crores paid to S.B.I were not reflected and accounted in the liability which would obviously stand reduced by that amount. Similarly, the Appellant was entitled to question the computation of liabilities by the Custodian and for the same, no motives could have been ascribed to her nor could her intentions be held to be malafide.

d) The Ld. Judge never examined any of the allegations of the Appellant about the fraud and acts of collusion by S.B.I, SBI Caps and the Custodian. That on the main allegation

about several misrepresentations, fraud and collusion, the Ld. Judge never probed this though it had huge implications on not only the liabilities of Harshad S Mehta but his distributable surplus to meet the demands of other genuine creditors. Instead of probing this fact, the Ld. Judge has falsely castigated the Appellant and has ascribed motives to her that she had filed the petition with ulterior motive and mala fide intention, the whole purpose of which was to create an impression that the claim of the Custodian regarding assets and liabilities of Harshad S Mehta were factually not correct. The Ld. Judge has treated the Custodian as if he is infallible and believed S.B.I / SBI Caps as if they could do no wrong.

e) The Ld. Judge has thrown out the petition of the Appellant on the threshold itself without applying his mind to the gravity of the acts of fraud and collusion and the implications of the same on the overall functioning of the entire Special Courts Act, he ought to have appreciated that if the Appellant's contentions were proved, the same would materially alter not only the liability picture of late Harshad S Mehta, but could also ensure an equitable distribution of his assets amongst his genuine creditors as contemplated u/s 11 of the said Act .

f) That the Ld. Judge failed to realize that even otherwise and as per direction of this Hon'ble Court, the Appellant was within her right to contest all false claims against late Harshad S Mehta, more particularly if liabilities were foisted upon him through orders obtained by fraudulent misrepresentation, suppression of material facts and documents or through acts of collusion, as in that event, the entire proceedings would stand vitiated and the orders of the decree would become nonest. The Ld. Judge has focused only on the conduct of the Appellant and given several incorrect findings but never examined the conduct of S.B.I, SBI Caps

and the Custodian against whom not only serious allegations were made by the Appellant, but even conclusive evidence was adduced. Unfortunately, neither the contentions of the Appellant nor the supporting evidence ever came to be dealt with or examined by the Ld. Judge.

g) The Ld. Judge is unduly overawed by the consequences without appreciating that in five out of six petitions, S.B.I was a common party who was governed by a commercial motive to exploit the situation that got created by the sudden demise of late Harshad S Mehta and secure in the knowledge that he has surplus of assets over liabilities. The Appellant is aggrieved that a clear bias is visible in the conduct of the Ld. Judge who had discriminated between an individual and an institution and condemned the efforts of wife of the alleged scamster in his eyes.

h) That the Ld. Judge as was always apprehended by the Appellant, has in the above manner, disclosed strong bias against the Appellant by unduly and without any basis castigating her and denying her an opportunity of being heard. The clinching proof of this also became available when the legitimate prayers of the Appellant to place written submissions on record was rejected even after she was deprived of making oral submissions earlier through her Counsel. The Ld. Judge ought to have framed issues and was duty bound to give a fair opportunity to the Appellant more particularly since Section 9A(4) specifically stipulates that the Court is bound to follow the principles of natural justice even if all the provisions of Civil Procedure Code are not applied.

i) The Appellants contention that the custodian is acting in collusion gets established by the fact that for past one year, she has been writing letters to the Custodian to cause recovery of 2 crore Units and cause enquiry about 1 crore Units from SBI Caps, Canfina in which regard she has written

two letters each and followed it by addressing a letter through her Advocate on record. The Custodian who is duty bound to cause recovery of assets has not been responding to these and several such letters.

- 23.04.1992 The securities scam broke out giving wide publicity in the media
- 15.05.1992 The bank accounts of M/s Harshad S Mehta were frozen by C.B.I u/s 102 of Cr.P.C
- 08.06.1992 M/s Harshad S Mehta got notified u/s 3(2) of the said Act
- 07.07.1992 S.B.I Capital Markets Ltd (SBI Caps) filed an FIR with C.B.I against M/s Harshad Mehta and Others regarding 7.50 crore units,
- 16.07.1992 SBI reimbursed a sum of Rs.105.75 crores to SBI Caps, their subsidiary by debiting the bank account of M/s Harshad Mehta without the permission of Special Court. This was on account of claim of SBI Caps on M/s Harshad S Mehta for non delivery of 7.5 crore Units.
- 10.09.1992 Custodian gave a Public Notice asking parties to come forward and make disclosure of holding of any attached asset belonging to notified entities.